

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Appellate Case No: 2012-211992

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S.C. Supreme Court

THE STATE

PETITIONER,

v.

TRAVAS D. JONES

RESPONDENT.

CORRECTED APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVAS D. JONES,

APPELLANT

APPELLATE CASE NO. 2012-211992

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

-vs-

TRAVAS D. JONES,

Defendant.

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)
)
)

TRANSCRIPT OF RECORD
12-GS-32-00148, et al

April 4-6, 2012
May 7, 2012
Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX MCMAHON, Judge; and a jury.

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

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1 Mr. Foreman, and give it to the bailiff, and I will
2 certainly have to respond. I know there are some people
3 that have lives outside the courtroom.

4 With that being said, thank you very much for
5 your presence today and your attention. I know you will
6 give that same attention to all the parties throughout
7 the trial of this case.

8 Any objections from the State to anything I
9 have told the jury, Solicitor?

10 MR. WHETSTONE: None from the State, Your
11 Honor.

12 THE COURT: From Mr. Jones, Mr. Floyd?

13 MR. FLOYD: No, Your Honor.

14 THE COURT: Thank you very much. Solicitor,
15 you may address the jury.

16 MR. SCOTT: Thank you, Your Honor. May it
17 please the Court.

18 THE COURT: Yes, sir.

19 **OPENING STATEMENT**

20 MR. SCOTT: Ladies and gentlemen of the jury,
21 there is a neighborhood in Cayce. It's called Broad
22 Acres. More commonly it's called Pokimo (phonetic).
23 It's a cozy little neighborhood comprised of mostly
24 brick, ranch-style homes, most of them built in the
25 early '50s. So they are over 60 years old at this

1 point.

2 It sits off of 12th Street Extension in Cayce.
3 Of course, when this neighborhood was developed, 12th
4 Street Extension didn't exist. The 12th Street
5 Extension was built so people could have easier access
6 to I-77. When Broad Acres came to be, I-77 didn't
7 exist.

8 In a neighborhood like this, there are many
9 longtime residents, people who have lived there years
10 and years, people like Julius Winn, who worked at the
11 Western Auto on Devine Street. He retired, was a
12 widower, living in his home on in Broad
13 Acres, been there since 1967.

14 There is another fellow named Henry Shuler.
15 He's been there almost as long. Julius Felder lives
16 there, and he has lived there so long and accomplished
17 so much in his role with N.A.A.C.P. that the road he
18 lives on, which was once called Pear Road, is now Julius
19 Felder Drive.

20 So along with all these established homes and
21 established residents, as happens oftentimes, there are
22 a number of rentals that have kind of popped up over the
23 years because some of the longtime residents have moved
24 on or passed on. There is absolutely nothing wrong with
25 the rental properties or renters.

1 Oftentimes they are looking to live somewhere
2 until they can find a more established place or they are
3 using it as a temporary home until they can buy their
4 own home. But oftentimes what happens when there are
5 rental properties, you have people that might not
6 necessarily have the same stake in a community as some
7 of these long-term residents have, and they might not be
8 as respectful to the community.

9 There is a home on . It's
10 . This is a rental house. It's
11 owned by a man named Ricky Williams. Ricky Williams
12 came to own this property after his mother passed it on
13 to him. She was one of these long-term residents I was
14 speaking of.

15 What he does for income, aside from that
16 property, he rents out other properties in the Midlands
17 area. In the summer of last year at some point, he
18 rented it to a woman name Bernice Pearson.

19 She subsequently left the property and left
20 her two sons, who are half-brothers, as tenants. They
21 got on the lease. Ricky Williams has a lease signed by
22 these two men. One of them is Travas D. Jones. The
23 other is his half-brother, Theyatti Glover.

24 So these two men were living there last year.

25 What you are going to hear is neighbors began to notice

1 some suspicious activities going on at that home. One
2 of these neighbors, Jennifer Meador, noticed some
3 activity that she will describe. She is a witness.

4 I submit to you that she is going to explain
5 that she started noticing cars pulling up to the house
6 at all hours of the day and night. The thing that was
7 noteworthy to her was these visitors would park parallel
8 to the street, the drivers of the vehicle would go
9 inside no longer than a minute or two, and get back in
10 their car and leave. This was not something that she
11 saw once or twice a day. This was something she saw
12 over 20 times a day.

13 The thing that is significant about
14 Ms. Jennifer Meador is that she has been in law
15 enforcement her entire adult life. So what she saw in
16 her experience was an indication that that was a drug
17 house. She was witnessing drug transactions at all
18 hours of the day and night.

19 She will testify that sometimes she worked the
20 night shift; so she was there all day. What is going on
21 all day is she sees cars coming and going. People going
22 in and staying for a minute or two and then leaving.
23 Some days she worked the day shift. Then she would be
24 at home all night. It was the same thing then too: At
25 all hours of the night cars coming and going.

1 She contacted -- she did what any responsible
2 citizen would do if they thought something was going on.
3 She contacted her local law enforcement agency. That
4 happened to be the Cayce Department of Public Safety.
5 As I said, she works for the Columbia Police Department,
6 but the jurisdiction falls with Cayce.

7 Ed Pereira, who is here in the yellow tie, he
8 received her complaint and he began conducting
9 surveillance on the home. What that entailed was he
10 would do frequent drive-bys along the street. There is
11 really no good place in that neighborhood to park and
12 not be seen by the tenants at So he
13 would have to drive by and take photos of what he
14 observed.

15 He did see, at least on one occasion,
16 automobiles coming, stopping for a minute or so, and
17 then leaving. What he decided to do next was what law
18 enforcement calls a trash pull.

19 What is a trash pull? It's kind of
20 self-explanatory. What he would do is ride with the
21 sanitation department on trash days and pick up the
22 trash that Mr. Travas D. Jones and his roommates would
23 leave outside and look for evidence of any kind of
24 crimes. In this case drug activities is what he was
25 looking for.

1 What he found did indicate there was drug
2 activity: Lose tobacco, remnants of marijuana,
3 indicating that there was some drug activity going on in
4 the home.

5 What he did next was swear out a search
6 warrant. He, along with other members of the Cayce
7 Department of Public Safety, executed that search
8 warrant November 15th of last year.

9 Upon arrival Mr. Travas D. Jones was there
10 with other individuals, and what they found was crack
11 and cocaine. There was a heater in the living room and
12 behind that heater in a number of baggies was 3.8 grams
13 of cocaine -- or we allege there was 3.8 grams of
14 cocaine found there.

15 In a drawer in the kitchen there was over
16 25 grams of crack. In a bedroom the State alleges
17 belonged to Mr. Travas Jones, there was a pistol found
18 underneath the bed.

19 As a result of all this, there was some
20 charges, and there were some arrests made. Mr. Jones
21 and Mr. Theyatti Glover and another fellow named Bradley
22 West who was in the house were all charged with
23 trafficking crack, possession with intent to distribute
24 cocaine, and possession of a pistol during the
25 commission of a violent crime.

1 Now, we are going to have to prove those
2 charges beyond a reasonable doubt. In every criminal
3 case the prosecution, which is what the State is called
4 in criminal cases, the party who brings the charges
5 bears the burden of proof which is referred to as beyond
6 a reasonable doubt.

7 Now, the judge is ultimately going to tell you
8 what reasonable doubt is or what beyond a reasonable
9 doubt means, but let me explain it to you the way I
10 understand it.

11 It is the kind of doubt that would cause a
12 reasonable person to hesitate to act. It doesn't mean
13 that we have to prove this case and every element beyond
14 any doubt. The judge, I'd submit to you or I think will
15 probably explain it to you, that there is almost nothing
16 in this life that we are 100 percent certain of, and
17 beyond a reasonable doubt does not require that.

18 If after we show you all the evidence and you
19 hear all the testimony, you are firmly convinced that
20 Mr. Travas D. Jones is guilty of trafficking crack,
21 possession with intent to distribute cocaine, and the
22 possession of the pistol, you are going to find him
23 guilty.

24 You need to be firmly convinced. I submit to
25 you that you will be after you hear all the evidence and

1 see the evidence and hear the testimony from law
2 enforcement.

3 Trafficking crack, what we are going to have
4 to prove to you, the three things, beyond a reasonable
5 doubt: That it was crack. We will have a chemist here
6 that we hope will tell you all that what he analyzed was
7 crack.

8 We are going to have to show you that
9 Mr. Travas Jones possessed it. Let me explain real
10 quick briefly. There are two kinds of possession.
11 There is actual possession. That would be like when
12 they did the search warrant, they patted him down and he
13 had crack in his pocket. That would be actual
14 possession.

15 Crack was in a sink drawer, and cocaine was
16 behind the heater in the room he was in. That is what
17 you call constructive possession. We need to prove to
18 you that he had dominion or control over it or he had
19 dominion or control over the premises where it was
20 found.

21 We are going to show you he was a resident of
22 ; therefore, he had dominion and
23 control over that crack and the premises where it was
24 found.

25 It's the same with possession with intent to

1 distribute. We are going to have to show that -- let me
2 back up. The last element of trafficking is we have got
3 to prove that it was over 10 grams. In this case it was
4 25 grams; so over two and a half times the legal limit
5 for trafficking. Ten grams and over of crack is
6 trafficking. He had 25 grams.

7 Possession with intent to distribute, again,
8 we will have to show possession. Constructive
9 possession again. It was behind the heater. It was not
10 on his person or in his hand or anything like that. He
11 had dominion and control over it. It was in his house
12 near where he was found.

13 It's over the inference weight and it was
14 cocaine. In that case the cocaine weighed 3.8 grams.
15 There is an inference that he had to have possessed it
16 with intent to distribute if it's over 1 gram. I'm
17 sorry for rambling, y'all. This is going to be
18 explained to you later. I did want to cover that very
19 briefly.

20 The possession of a weapon during the violent
21 crime. What is the violent crime here? In South
22 Carolina our legislature has determined that trafficking
23 any drugs is a violent crime.

24 So if you find that he was trafficking crack
25 cocaine and we prove to you the gun was in his

1 possession or prove to you it was under his bed, then
2 you can kind find him guilty of possession of a pistol
3 during the commission of a violent crime.

4 Ladies and gentlemen, again we are going to
5 prove all this to you through our witnesses that are
6 pretty much going be law enforcement. As a matter of
7 fact, I think they are all law enforcement.

8 One of the things you are going to do is use
9 your common sense and judge credibility of the witnesses
10 and what bias that they may have. These are all
11 seasoned law enforcement agents. You are going to judge
12 credibility yourself, and you will use your own common
13 sense.

14 We are not going to ask you to jump to any
15 conclusions. Again, just use your common sense. I
16 fight myself often to say this term. It's over used but
17 sometimes something is what it is.

18 In this case they served a search warrant.
19 There is crack located at arm's length away from the man
20 who rents the property, cocaine nearby, a gun under his
21 bed.

22 Ladies and gentlemen, at the end of this
23 trial, I submit to you that you will have proof beyond a
24 reasonable doubt to find him guilty -- and we are going
25 to ask you to find him guilty -- of trafficking crack

1 cocaine, possession with intent to distribute cocaine,
2 and possession of a firearm during the during the
3 commission of violent crime.

4 Ladies and gentlemen, again, we have already
5 introduced ourselves. My name is Dale Scott. With me
6 is William Whetstone. We are assistant solicitors. We
7 represent the State.

8 The defense attorney is going to tell you how
9 important this case is to Mr. Travas D. Jones and it is,
10 and I understand y'all are jumping in here on Wednesday
11 toward the end of the week. I'm rambling up here, but
12 we will try to make this pretty quick.

13 Hopefully we will be done early Friday, maybe
14 before then. Do pay attention, y'all, because this is
15 important to him, but it's also important to the State.
16 It's important to Lexington County and it's important
17 for the people of Cayce. It's important to the people
18 of this neighborhood. Thank you, ladies and gentlemen.

19 THE COURT: Thank you, Solicitor.

20 Mr. Floyd.

21 **OPENING STATEMENT**

22 MR. FLOYD: Thank you, Your Honor.

23 Mr. Foreman, and ladies and gentlemen of the jury, this
24 young man is Travas Jones, Travas Jones. He is the
25 defendant in this case. He is a man about who you will

1 make one of the most important decisions you ever make
2 about somebody, and you just now met him.

3 Because you are going to decide today -- not
4 today, probably tomorrow, maybe Friday -- whether or not
5 he should be found guilty of one of the most serious
6 offenses in our society, trafficking in drugs.

7 Now, we submit to you that the evidence is not
8 what you just heard. We ask you to pay close attention.
9 There are a couple of things I would like to comment on
10 right now. I will not talk a long time about this. You
11 will hear the case in a few minutes.

12 First of all, you are not guilty -- even if
13 the State proves that Mr. Travas Jones lived at that
14 home -- he would not be guilty simply because there were
15 drugs found in it.

16 Secondly, Travas Jones was not inside that
17 house when this squad of police arrived on the scene.
18 He was not even inside the house. There were five
19 people inside the house. He is outside the house.

20 What those people did inside that house while
21 the police were coming in, you know, that's not on
22 Travas Jones. Whether there was somebody in that house
23 that put drugs somewhere, that's not on Travas Jones
24 because he is outside in the yard. You listen close.
25 He was not arm's length away as you just heard.

1 Now, I will sit down and shut up. All we ask
2 is this. Please keep an open mind. Please listen
3 closely. Don't convict Travas Jones on mere speculation
4 that you think something was going on there, and
5 therefore he must be guilty.

6 Hold the State's feet to the fire. He has got
7 the same rights each and every one of us have. If you
8 never have served on a criminal jury before, you have to
9 almost set aside human nature.

10 Because some of you may have the thought in
11 your mind that because Travas Jones was arrested -- and
12 he was -- carried to jail -- and he was -- charged with
13 these crimes -- which he was -- and sits here before you
14 to be judged -- which he does -- you may have the
15 thought in your mind: Well, he must be guilty.

16 If you've got that kind of thought, you've got
17 to put it out of your mind. Because, you see, Travas
18 has got the same rights each and every one of us has.
19 One of the most important rights is what we call the
20 presumption of innocence.

21 So you put out of your mind all I just said
22 about him being charged, arrested, and tried. You must
23 look at Travas Jones, and you must say in your mind and
24 in your heart, Travas Jones is innocent and remains
25 innocent unless the State proves his guilt beyond a

1 reasonable doubt and convinces all 12 of you.

2 Thank you very much for your presence here. A
3 person can be arrested by law enforcement, charged, and
4 taken to trial but he can't be convicted unless 12
5 members of the community unanimously agree that the
6 evidence proves that guilt beyond a reasonable doubt.

7 So you are his protection and we appreciate
8 your presence. I look forward to speaking to you again
9 in what we call the closing arguments. Thank you very
10 much.

11 THE COURT: Thank you, Mr. Floyd.

12 Solicitor, you may call your first witness.

13 MR. WHETSTONE: Your Honor, the State would
14 call Ed Pereira.

15 EDWARD L. PEREIRA, JR., being
16 first duly sworn, testifies as follows:

17 CLERK: State your full name, spelling your
18 last on the record, sir.

19 MR. FLOYD: Your Honor, I believe this witness
20 may present a matter of law.

21 THE COURT: Mr. Foreman, ladies and gentlemen,
22 if you would please step momentarily to your jury room.
23 Do not discuss the case during this brief recess.

24 (The jury retires to the jury room.)

25 THE COURT: Mr. Floyd.

1 tip -- from a neighbor who you have already been
2 introduced to her and who is here to testify today who
3 is employed by the Columbia Police Department but lived
4 in the neighborhood where this residence was.

5 Your Honor, according to the Cayce incident
6 report, this information was provided to the police on
7 September the 16th of 2011. At that time this person,
8 Ms. Meador, allegedly claimed that there was suspicious
9 activity going on at a house next door to her residence.

10 She did not know the address of that
11 residence; however, she did describe it though. She
12 said it was a tan house with black shutters. From that
13 information an investigation was begun by Detective
14 Pereira, and there were two trash pulls.

15 According to their reports, there was
16 marijuana residue located there and loose tobacco. This
17 information was used to seek the search warrant from
18 Judge James. However, if you go to the affidavit in the
19 search warrant, Your Honor -- and, Your Honor, do you
20 have one?

21 THE COURT: No, sir.

22 MR. FLOYD: Your Honor, this is my copy. I
23 will pass it up for you. If I can find another copy, I
24 will pass you up the other pages.

25 THE COURT: All right.

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1 MR. FLOYD: That's all, Your Honor.

2 THE COURT: Bring us our jury, please.

3 (The jury returns to the courtroom.)

4 THE COURT: Welcome back, ladies and
5 gentlemen. Thank you very much for your presence. We
6 are going to continue on with the direct examination of
7 Officer Pereira by the State. We will probably take
8 testimony until about 5:30. If you would please give
9 the parties your complete and undivided attention.

10 Solicitor, you may proceed.

11 MR. WHETSTONE: Thank you, Your Honor.

12 EDWARD L. PEREIRA, JR.,
13 having been previously duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 BY MR. WHETSTONE:

16 Q Detective Pereira, state your full name, please.

17 A Edward L. Pereira, Jr., P-E-R-E-I-R-A.

18 Q Officer Pereira, where do you work?

19 A I am employed with the Cayce Department of Public
20 Safety.

21 Q What are your day-to-day duties there?

22 A I'm a full-time narcotics officer.

23 Q And what does that involve?

24 A Investigation of any narcotics-related activity
25 with the City. We are currently also assigned with

1 the Drug Enforcement Agency on a joint task force.

2 Q And how long have you been employed in that
3 capacity as a narcotics officer?

4 A For about the past year now.

5 Q Do you have any previous law enforcement
6 experience?

7 A Yes. I graduated the Criminal Justice Academy in
8 2000 and basically have served as a patrol officer
9 until 2009 when I was promoted to an investigator.

10 Q At this time were you a patrol officer with Cayce
11 Public Safety?

12 A At this time?

13 Q Excuse me. In your previous employment from 2000
14 to 2009, were you a patrol officer?

15 A From 2000 to 2004, I was with the University of
16 South Carolina as a patrol officer. In 2004 I
17 started with the City of Cayce as a patrol officer,
18 leaving for a brief period of time to work with
19 South Congaree Police Department.

20 I did return back to the City of Cayce, again
21 as a patrol officer. Then in 2009 I went to
22 investigations and worked in investigations until
23 2011 when I went to full-time narcotics.

24 Q What kind of investigations did you do with the
25 investigations unit?

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1 A Basic criminal investigations, anything from
2 burglaries to assaults, traffic-related deaths.
3 I'm the department's primary arson investigator --
4 I should say fire investigator, basically anything
5 they need me on at any given time.

6 Q How did you first become involved with the case we
7 have today?

8 A Being in the narcotics side, I was given a report
9 and information on a report that was submitted --

10 MR. FLOYD: Your Honor, I object to any
11 hearsay.

12 THE COURT: Well, he hadn't testified to
13 hearsay yet, but I would sustain it. He cannot testify
14 to hearsay.

15 MR. WHETSTONE: Yes, Your Honor.

16 THE COURT: Go ahead. You may continue,
17 Solicitor.

18 MR. WHETSTONE: Thank you, Your Honor.

19 BY MR. WHETSTONE:

20 Q How did you become involved in the case we have
21 today?

22 A Receiving a report from Jennifer Meador.

23 Q Without saying what Ms. Meador said, what did
24 you -- what actions did you take or what did you
25 come to learn?

1 A I started conducting surveillance on
2 located in the City of Cayce.

3 Q Why?

4 A For possible drug-related activity, high volume of
5 traffic, vehicles coming and leaving at all hours
6 of the day and night, only staying for a brief
7 period of time, parking near the roadway, person
8 going in and coming out for a brief couple of
9 minutes, and then driving away.

10 MR. FLOYD: Your Honor, may we approach?

11 THE COURT: Yes, sir, certainly.

12 (Whereupon there was a bench conference off
13 the record in the presence of the jury but out of the
14 hearing of the jury.)

15 THE COURT: Thank you, Mr. Floyd.

16 Solicitor, you may continue.

17 BY MR. WHETSTONE:

18 Q As a result of this report, again, what address did
19 you become concerned with?

20 A

21 Q Is that in Lexington County?

22 A That's correct.

23 Q What actions did you take after receiving this
24 report?

25 A I started surveilling the address. Due to the very

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1 tight-knit neighborhood it was, it was very
2 difficulty to be able to pull in somebody else's
3 drive. Obviously they may come home and kind of
4 blow my cover.

5 So I had to actually drive up and down the
6 street without being actually seen, using my
7 vehicle with dark tinted windows. Hopefully he
8 wouldn't see me and surveil the house while going
9 back and forth in front of it.

10 Q Can you describe what this area at

11 , the neighborhood, what it was like?

12 A It's an older community, mostly single-story
13 structures, brick-type structures, older. It was
14 built in the '50, '60s area, a more quieter portion
15 of the neighborhood. is pretty
16 much a straight road. You can see down it for like
17 at least a half mile. It's very straight.

18 (Attorneys confer.)

19 MR. FLOYD: No objection to this photograph,
20 Your Honor.

21 BY MR. WHETSTONE:

22 Q Officer Pereira, I will show you what is marked as
23 State's Exhibit Number 1. Do you recognize this?

24 A I do.

25 Q How can you do so?

1 A Because I took that picture.

2 Q What is it?

3 A It is of

4 MR. WHETSTONE: Your Honor, the State would
5 move to have State's Exhibit 1 moved into evidence.

6 THE COURT: Without objection, Mr. Floyd?

7 MR. FLOYD: No objection, Your Honor.

8 THE COURT: State's 1 in evidence without
9 objection.

10 (State's Exhibit Number 1 is received into
11 evidence.)

12 BY MR. WHETSTONE:

13 Q Is this the house you were conducting surveillance
14 on?

15 A That's correct.

16 Q What date did you first begin conducting
17 surveillance?

18 A After receiving information, after September
19 the 30th is when I started conducting.

20 Q What did you see on that date?

21 A While doing exactly what we talked about, myself
22 and Agent Thomas were in the vehicle. We were
23 driving down the road on that date. We observed a
24 white Chevy Avalanche style truck pull up in front
25 of the home, directly as what I had been told.

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1 The vehicle had pulled up parallel to the
2 roadway, stopped, and a person was getting out. We
3 drove around the block very quickly to get back to
4 a position to where we could park down the road and
5 watch the vehicle.

6 Within a matter of minutes, the same person
7 came back out, got in the vehicle, and drove away,
8 which was consistent with the drug-related activity
9 that we were looking at.

10 Q What happened next after that vehicle left?

11 A A traffic stop was done on the vehicle due to a
12 traffic-related infraction where that individual
13 was talked to and then released a short time later.
14 I did go back by the house, where I observed a 1986
15 Chevy Caprice that was parked in the driveway.

16 I did run the tag on the Caprice. It came
17 back to a Bradley West. I did observe -- I
18 retrieved a picture of Bradley West, and it was the
19 same individual that I saw standing in the doorway
20 of the home.

21 Q This is kind of jumping ahead, but has Mr. West
22 been charged in this case?

23 A He has.

24 Q What are his charges?

25 A Trafficking in crack cocaine, possession of

1 cocaine.

2 Q Did you at a later -- did you continue your
3 surveillance?

4 A I did. On October the 21st, I conducted
5 surveillance at the same location,
6 , and observed Mr. Bradley West in the house,
7 again standing at the front door. I also observed
8 a second vehicle parked in the house. It was a
9 1982 Oldsmobile with a South Carolina tag of

10

11 Q Did you determine who that vehicle belonged to?

12 A It belonged to a Bernice Pearson.

13 Q Who is Bernice Pearson?

14 A The mother of the defendant.

15 Q Who is the defendant in this case?

16 A I'm sorry. Travas Jones.

17 Q What did you do next in your investigation?

18 A On October the 24th, I conducted the first trash
19 pull on

20 Q And how did that take place, the trash pull?

21 A In conducting a trash pull, what we will do is we
22 will take one of our sanitation trucks, one of the
23 bigger garbage trucks that you see go down the
24 road.

25 It has the big door that folds the trash up

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1 inside and shoves it up into the back of the truck.
2 What we do is we make sure that door is all the way
3 up and closed, and that bucket area that is on the
4 back is clean.

5 We will then follow that truck in one of our
6 unmarked vehicles and let that sanitation person
7 drive in front of us. On this particular incident,
8 just like on others, we will let him drive down.
9 He will stop at the location we want him to pick
10 up, which this location was on

11
12 The trash can is waiting directly out front by
13 the roadway directly in front of the home. I
14 observed him get out of the vehicle, walk around,
15 pick up the trash can, empty the trash into that
16 open area of the bucket that is in the back.

17 He then placed the trash can back on the
18 side of the road and drove away with me directly
19 behind him. We then followed the trash truck back
20 to our department where we were able to search the
21 trash.

22 Q And did you retrieve -- let me back up. Was anyone
23 with you during the trash pull?

24 A Yes, Agent Thomas.

25 Q Is he seated in the courtroom today?

1 A Yes, he is. He's right there with the blue shirt
2 on.

3 Q After you retrieved the trash, what did you do
4 next?

5 A We searched the trash, going through it,
6 photographing any evidence we may find. In this
7 particular case, I note we found some items of
8 paraphernalia, which would have been loose tobacco
9 cut out of cigars and use when they actually use a
10 cigar to put marijuana or anything else in. They
11 will scrape the tobacco out of it.

12 A lot of times you will find that in trash.
13 It could be a sign of drug-related activity. That,
14 bags, cigar actual wrappers, and we did find a
15 residual amount of green leafy substance that was
16 submitted into evidence for testing.

17 Q So these items were collected?

18 A Yes, sir.

19 Q And who did you submit them to?

20 A Into our evidence department. We have a locker
21 that the actual drugs will go into.

22 Q Did you drop them into this locker?

23 A I did.

24 Q What happened next in your investigation after the
25 trash pull?

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1 A On November the 2nd, I was conducting early morning
2 surveillance on and noticed that
3 the same 1982 Oldsmobile was in the driveway that I
4 had been observing before.

5 Q And what happened next in your investigation?

6 A On November the 7th I conducted a second trash pull
7 on the location.

8 Q And how was this done?

9 A The same identical way we did the first one. We
10 got with our sanitation department. Again, they
11 brought the big truck around, made sure the door
12 was closed up all the way in the back.

13 It was clean and empty in the back of it. I
14 did follow him back around again where the trash
15 can was placed out by the roadway waiting for trash
16 to be picked up.

17 He did stop. I watched him exit the vehicle,
18 walk around the back, dump the trash from
19 into the back of the trash truck,
20 place the trash can back in front of the house. He
21 got back in the truck, and I followed him back to
22 our police department where I searched that trash
23 again.

24 Q Did you find anything in your search?

25 A On that one we found also residual items of

1 paraphernalia. We also, once again, found a green,
2 leafy, plantlike substance that was submitted into
3 evidence to be tested.

4 Q Officer, I will show you what is State's Exhibit 2,
5 3, 4, 5, and 6. Please examine those.

6 A (Witness complies.)

7 Q Can you identify what is in those photos?

8 A This is the items of paraphernalia that I talked
9 about that were inside the trash pull inside the
10 trash from.

11 Q And are you referring to all of the photos or
12 State's Exhibit's 6 in your description?

13 A If I may, in State's Exhibit --

14 THE COURT: Just a minute. Are these in
15 evidence?

16 COURT REPORTER: Not yet, Judge.

17 THE COURT: They can't be published until they
18 are in evidence.

19 BY MR. WHETSTONE:

20 Q How are you able to identify the contents of these
21 photographs?

22 A Because I was the one who took the photographs.

23 MR. WHETSTONE: Your Honor, the State would
24 move to admit State's Exhibit 2, 3, 4, 5, and 6 into
25 evidence.

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1 THE COURT: Mr. Floyd?

2 MR. FLOYD: Your Honor, I don't think the
3 proper foundation has been laid.

4 THE COURT: All right. I agree.

5 BY MR. WHETSTONE:

6 Q Again, Officer Pereira, what are these?

7 A These are pictures --

8 Q Without displaying them?

9 A These are pictures that I had taken during the time
10 that I conducted the trash pulls. These are the
11 actual pictures of the items that were inside the
12 trash that was recovered from

13

14 Q And this is a fair and accurate description of what
15 was taken during those trash pulls; is that
16 correct?

17 A That is correct.

18 MR. WHETSTONE: Your Honor, the State would
19 move to have State's Exhibit 2, 3, 4, 5, and 6 moved
20 into evidence.

21 THE COURT: Mr. Floyd?

22 MR. FLOYD: No objection at this point, Your
23 Honor.

24 THE COURT: State's 2 through 6 are in
25 evidence without objection.

1 (State's Exhibit Number 2-6 are received into
2 evidence.)

3 BY MR. WHETSTONE:

4 Q Again, these photographs -- that being State's 2
5 through 6 -- contain items that you retrieved
6 during the trash pull that day; correct?

7 A That is correct.

8 Q Again, what did you do with these items?

9 A These particular items right here were
10 photographed. It was loose tobacco and stuff like
11 that. We didn't keep loose tobacco or anything
12 else.

13 We took photographs of all the items and then
14 the green, leafy, plantlike substance that we
15 believed possibly was marijuana at the time was
16 taken into evidence.

17 Q And State's Evidence 4, what is in that photo?

18 A This is a photo of small cellophane bags. These
19 are like sandwich bags, very commonly found for
20 anybody who is storing small quantities of drugs.
21 A lot of times they will wrap it up in a cellophane
22 bag, and that's where they keep it.

23 If you are going to distribute it, sell it, or
24 anything along those lines, a lot of times this is
25 what you would find would be these small plastic

1 bags.

2 Q And State's Evidence 3, what is in that photograph?

3 A Inside here is Swisher Sweets, a common-known cigar
4 that people will cut and use to smoke marijuana.

5 Like I said, they will scrape loose tobacco out of
6 it. When we find the loose tobacco, we usually
7 find the wrapper where they have smoked marijuana
8 or something like that.

9 Q State's Evidence 2, what is in that photo?

10 A In this photo is two small, hand-rolled cigarettes
11 with what appears to be our naked eye to be -- the
12 common name is a joint, where they roll marijuana
13 up into paper in Swisher Sweet wrappers.

14 This was placed on top of a piece of paper
15 that we also found in the trash that appeared to be
16 numbers with guys' names on the top of them, as if
17 they were keeping score or something possibly.

18 Q State's Evidence 5, what is in that photograph?

19 A This is a Pepsi box that was found inside the
20 trash. Inside the bottom corner of it is loose
21 tobacco, all inside the bottom corner of it. It's
22 where a lot of loose tobacco has been dumped out.

23 Q And what about State's Evidence 6?

24 A This is a closer shot of the same picture. Here is
25 a closer shot trying to get in better where you can

1 actually see the loose cigar tobacco here inside
2 the box with the Swisher Sweets wrapper right here
3 (indicating).

4 MR. FLOYD: No objection to these photographs,
5 Your Honor.

6 THE COURT: All right, sir.

7 BY MR. WHETSTONE:

8 Q Officer Pereira, I am going to show you State's
9 Exhibit 7, 8, and 9. Can you examine those,
10 please.

11 A Yes, sir.

12 Q Can you identify what they are?

13 A These are the pictures --

14 Q Can you identify them?

15 A These?

16 Q Yes. Do you recognize them?

17 A Yes, I do.

18 Q How are you able to do so?

19 A Because I took these pictures. These are accurate
20 depictions of what I had seen while observing the
21 house while doing the mobile surveillance driving
22 up and down the road. These are the pictures that
23 I took.

24 MR. WHETSTONE: Your Honor, the State would
25 move to have State's Exhibit Number 7, 8, and 9 moved

1 into evidence.

2 THE COURT: Without objections?

3 MR. FLOYD: That's correct, Your Honor.

4 THE COURT: State's 7, 8, and 9 are in
5 evidence.

6 (State's Exhibit Number 7-9 are received into
7 evidence.)

8 BY MR. WHETSTONE:

9 Q Officer Pereira, State's Evidence 7, what is in
10 that picture?

11 A This is a corner shot of the house. If you are
12 driving down , the house would have
13 been off to my right at that point in time. Like I
14 said, I couldn't park in anybody else's driveway
15 for fear of being discovered.

16 So while moving I was actually having to take
17 pictures out the side window of my truck while I
18 was going down the road. This is one of those
19 pictures showing the front and side corner of the
20 house at

21 Q What are the objects that are in that picture?

22 A The most prominent one would obviously be the large
23 pit bull in the yard directly to the front. Also,
24 a grill in the front and the chain-length fence,
25 the house being green with black shutters trimmed

1 in white.

2 Q I will show you State's Evidence 8. What is in
3 that photo?

4 A This is of the same location right here, as you can
5 actually see the green house with the black
6 shutters is now off to my left. I am actually
7 traveling the other way going back up the road
8 while trying to take pictures again.

9 You can see the house that is directly here in
10 the middle (indicating) between these two houses,
11 the house right here (indicating) with the
12 Oldsmobile that is parked out in the front yard --
13 correction. It's a Chevrolet that is parked there.

14 Q And State's Evidence 9, what is in that photo?

15 A This is another picture directly at the front of
16 the home, the same one,
17 Once again, you see the house is green with a black
18 door on the front, trimmed in white with black
19 shutters.

20 Q What kind of car is in that photo?

21 A This appears to be a Chevrolet.

22 Q After conducting surveillance and conducting the
23 trash pulls, what happened next in your
24 investigation?

25 A On November the 10th, I obtained a search warrant

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1 for

2 Q And what happened after the search warrant was
3 obtained?

4 A On the 14th while doing some observation, I had saw
5 Mr. Bradley West at the location again at

6 . Pretty much every time I
7 had been by there, I had seen him or his vehicle
8 there. On the 15th myself, along with other
9 members of the Cayce Department of Public Safety,
10 conducted a search warrant at

11

12 Q What time of day did you conduct this operation?

13 A I know it was around approximately 1:00 P.M.

14 Q During the daytime?

15 A Yes, it was midday.

16 Q What was the weather like outside?

17 A A little bit overcast maybe, sunny, no rain.

18 Q Was it fairly clear?

19 A Yes, it was.

20 Q And who was with you when you were conducting this
21 operation, law enforcement?

22 A Myself, Agent Thomas, Sergeant Ballentine, Sergeant
23 Valdario, Officer Antley, Detective Merrill,
24 possibly other members of the Cayce Department of
25 Public Safety S.W.A.T. team.

1 Q What was your position in the execution of the
2 search warrant?

3 A I was actually the point person. Being a member of
4 the S.W.A.T. team as well, I was the point person.
5 I was the initial person that jumps out of the
6 vehicle and starts. Everybody else was stacked up
7 behind me.

8 On this particular operation, that's what we
9 did. As soon as we pulled up, when we exited our
10 vehicle, I was the first one out of the vehicle.
11 While going through the front yard, the
12 chain-length fence has gates in the front of it.

13 While going through that, there was a black
14 male that was off to my right standing in the yard.
15 Due to our safety, we want to make sure everybody
16 has their hands clear and they are down on the
17 ground, and we are taking them into custody quick
18 so nobody gets hurt.

19 I did engage that person in the front yard,
20 telling him to get down. That person did not. I
21 peeled off from my team and went directly at him,
22 telling him to get down.

23 That's when that person did get down on the
24 ground, and I was able to rejoin my team. We went
25 in through the front door and took the rest of the

1 people down that were inside the house.

2 Q Was the individual you approached outside, has that
3 individual ever been charged in this case?

4 A No, he's not.

5 Q Was that reflected in the report that you made?

6 A No. I believe in my investigative notes that I had
7 put that Travas Jones was located in the front
8 yard. I believe that is incorrect. I don't
9 believe it was Travas Jones that was actually
10 standing in the front yard.

11 Q In fact, that was an error on your part?

12 A That is correct.

13 Q And after you made contact with the individual
14 outside, you said you went inside?

15 A That is correct.

16 Q And what did you observe?

17 A Being on the tail end of the S.W.A.T. team
18 basically as we went in, I observed that there was
19 several people on the floor of the living room as I
20 went in. I basically stood guard and watched while
21 these people were taken into custody and gotten up
22 off the floor and escorted outside.

23 Q How many individuals, excluding law enforcement,
24 were in the house at when you
25 went inside?

1 A There was five people.

2 Q Can you describe what the house was like inside?

3 A It was a very small house inside, I think probably
4 less than about 800 square feet. When you go
5 through the front door of the house, you would go
6 basically into the living room area, which was a
7 very small little living room area.

8 Off to the left would have been your kitchen,
9 and then to your left and to your right were the
10 bedrooms that were toward the back of the house.
11 They had an adjoining bathroom that could have been
12 accessed through either bedroom. So it was a very,
13 very small house.

14 Q What was found during the course of this search?

15 A The results of it was -- and I have in my notes --
16 approximately 28 grams of an off-white in color
17 rocklike substance; approximately 2 grams of a
18 white powder, one Hi-Point .40-caliber handgun, two
19 black in color digital scales, a small quantity of
20 green leafy substance, and various other items of
21 drug paraphernalia.

22 Q Who was arrested after this search was done? What
23 individuals?

24 A As a result of our search warrant, the first
25 individual, Michael Mann, was actually wanted out

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1 of Richland County Sheriff's Department. He was
2 taken into custody for that.

3 Bradley West was arrested for trafficking
4 crack cocaine and possession of cocaine. Michael
5 Jones was wanted by the West Columbia Police
6 Department and was taken into custody.

7 Julius Lynch was arrested for simple
8 possession of marijuana and possession of drug
9 paraphernalia. The defendant Travas Jones was
10 arrested for trafficking crack cocaine and
11 possession of a weapon during a violent crime, and
12 possession of cocaine.

13 Q Again, what individuals were arrested for
14 trafficking crack in this case?

15 A The individuals arrested for trafficking were
16 Bradley West and Travas D. Jones, and additional
17 warrants were issued out at that time for the other
18 person that lived inside the home.

19 Q Who was that other person that lived in the home?

20 A Excuse me if I mispronounce it, Theyatti Glover.

21 Q Was he there at the time of the search warrant?

22 A He was not there at the time of the search warrant.

23 Q What individuals were arrested for the cocaine
24 charge?

25 A Bradley West was arrested for cocaine, Travas Jones

1 was arrested for cocaine, and warrants were issued
2 for Mr. Glover.

3 Q What about the weapon charge? Who was arrested for
4 that?

5 A Mr. Travas Jones.

6 Q On that day were you able to determine who lived at
7 the residence at ?

8 MR. FLOYD: Your Honor, I will object to any
9 hearsay evidence.

10 THE COURT: Well, it depends on -- I sustain
11 the objection as far as hearsay is concerned.

12 You may continue, Solicitor. Ask your next
13 question, Solicitor.

14 MR. WHETSTONE: Yes, Your Honor. Beg the
15 Court's indulgence one moment.

16 (Pause.)

17 THE COURT: Yes, sir. I tell you what. Why
18 don't we stop for the day. I've got to advise the jury
19 of their duties and responsibilities over the evening
20 recess. This is not homework or anything I don't want
21 to think that. Why don't we stop for the day. It's
22 right at 5:30.

23 Officer, you may step down, I will have some
24 further instructions for you before we conclude court
25 today. You may step down at this time.

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1 job he ever had. My court reporter says, I am sorry for
2 that, Mr. Adams.

3 BAILIFF: I would have to say it's the most
4 fun job.

5 THE COURT: I guess she has different ideas
6 and thoughts about fun, Mr. Adams. I wanted to take a
7 few moments just to relate that.

8 BAILIFF: Thank you.

9 THE COURT: Officer, Detective Pereira, if you
10 would come back around, please.

11 EDWARD L. PEREIRA, JR.,
12 having been previously duly sworn, resumed the witness
13 stand and testified as follows:

14 THE COURT: You are still under oath.

15 We are continuing with the direct examination
16 of Detective Pereira by the solicitor.

17 Solicitor, you may proceed.

18 MR. WHETSTONE: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. WHETSTONE:

21 Q Officer Pereira, without mentioning anything anyone
22 said to you, did you find evidence in the house at
23 indicating who were the
24 residents there?

25 A Evidence was found inside the home specific to

1 bedrooms that had listed people's names on them.

2 Q And what was that evidence?

3 A I know one, for example, was a hospital folder from
4 Lexington County Medical Center that had the
5 defendant Travas D. Jones' information on it.

6 Q And who did you determine from this evidence to be
7 living at this residence?

8 MR. FLOYD: Your Honor, I object. That is
9 asking for a conclusion.

10 THE COURT: Yes, I believe you would have to
11 rephrase that question, Solicitor. I sustain the
12 objection.

13 BY MR. WHETSTONE:

14 Q Did you locate evidence in this case indicating who
15 may have lived in which room?

16 A I personally myself did not locate any of the
17 evidence. The team members of my team did.

18 Q Did the evidence you found, did it indicate who
19 these objects you found, who it belonged to?

20 MR. FLOYD: Your Honor, I object. He has
21 already testified he didn't find these things.

22 THE COURT: Restate the question, Solicitor.

23 BY MR. WHETSTONE:

24 Q Did the evidence you observed when this search
25 warrant was executed, did it indicate who belonged

1 to it or who was the recipient of this evidence?

2 A Yes. The evidence I observed inside the house,
3 like I said, one was a hospital folder, and the
4 listed name on the folder was Travas Jones.

5 Q Officer Pereira, what is marked as State's Exhibit
6 10, can you identify that?

7 A Yes, I can.

8 Q How are you able to do so?

9 A Visually seeing this and recognizing the individual
10 in this picture.

11 Q Is this an accurate reflection of a picture that
12 was taken during the execution of the search
13 warrant in this case?

14 A That is correct.

15 Q And who is in that picture?

16 A The defendant Travas Jones.

17 Q Is the person in that picture in the courtroom
18 today?

19 A Yes, he is.

20 Q Can you identify him?

21 A He is right there in the orange shirt.

22 Q Thank you, Officer Pereira. Please answer any
23 questions Mr. Floyd may have.

24 THE COURT: Thank you, Solicitor.

25 Mr. Floyd.

1 MR. FLOYD: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. FLOYD:

4 Q Officer Pereira, you were the lead investigator on
5 this particular case?

6 A Yes, sir.

7 Q And in connection with that investigation, did you
8 prepare investigative notes outlining your
9 investigation?

10 A That is correct.

11 MR. FLOYD: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, sir, certainly.

14 BY MR. FLOYD:

15 Q Officer Pereira, I ask if you can identify this
16 document?

17 A That's correct, sir. It's my investigative notes
18 in this case.

19 Q Is that an accurate copy of your notes?

20 A Yes, sir.

21 MR. FLOYD: Your Honor, we would like to have
22 this marked as an exhibit right now just for I.D.
23 purposes.

24 THE COURT: Defendant's Exhibit 1 is marked
25 for identification purposes.

1 (Defendant's Exhibit Number 1 is marked for
2 identification).

3 BY MR. FLOYD:

4 Q Officer Pereira, I would ask if you can identify
5 two additional documents for me?

6 A Yes, sir, I can. The first document is an
7 informational report that was filed by Jennifer
8 Meador. The second document is a narrative section
9 of our operational plan.

10 Q For the search warrant?

11 A Yes, sir.

12 Q Thank you.

13 MR. FLOYD: Your Honor, I would like to have
14 these marked for defendant's for I.D. purposes.

15 THE COURT: Defendant's 2 and 3 for I.D.
16 purposes.

17 (Defendant's Exhibits Number 2-3 are marked
18 for identification).

19 BY MR. FLOYD:

20 Q Now, Officer Pereira, is it your testimony that
21 this investigation actually kind of began with the
22 information provided them by Ms. Meador, who was a
23 resident of that area?

24 A That is correct.

25 Q And that information is contained in the incident

1 report that you just identified; is that correct?

2 A That was some of the information that was obtained,
3 that's correct.

4 Q Now, in that incident report, that information that
5 was provided, isn't it true that it said that this
6 house in question was a tan house?

7 A That is correct.

8 Q From there you did some periodic surveillance, I
9 guess, of the area?

10 A That's correct.

11 Q And that periodic surveillance is contained in your
12 investigative notes; is that correct?

13 A Yes, sir.

14 Q Now, isn't it true, according to your report on
15 September 30th, you did some surveillance on that
16 area?

17 A That's correct.

18 Q And you found a car out front and you found its
19 owner to be Bradley West; is that correct?

20 A That's correct.

21 Q You saw an individual standing in the doorway on
22 that day, and you determined that that individual
23 was Bradley West; is that correct?

24 A That is correct.

25 Q Now, you then went by again on October 21st?

- 1 A Yes, sir.
- 2 Q And you saw someone standing in the door at that
3 time; did you not?
- 4 A Yes, sir, I did.
- 5 Q And isn't it true that that person you saw in the
6 doorway was Bradley West?
- 7 A That is correct.
- 8 Q On October 24th you conducted some surveillance on
9 that house; did you not?
- 10 A I did.
- 11 Q And did you not see Bradley West's vehicle there?
- 12 A Yes, I did.
- 13 Q On November the 2nd, did you see Bradley West's
14 vehicle?
- 15 A Yes, I did.
- 16 Q Now, up to that point in time, in all the
17 surveillance you had done on that area and on that
18 house, you never saw Travas Jones; did you?
- 19 A No, I did not.
- 20 Q Now, you say on November the 7th, you conducted
21 what you call a trash pull?
- 22 A That's correct.
- 23 Q I think you testified -- if I say it wrong, you
24 correct me -- that y'all were following a trash
25 truck?

- 1 A That's correct.
- 2 Q Is that correct?
- 3 A Uh-huh. (Indicating affirmative response.)
- 4 Q And the trash truck was making its regular rounds?
- 5 A No, it was not.
- 6 Q Is this the only house it stopped at?
- 7 A That is correct.
- 8 Q And you are behind it?
- 9 A That is correct.
- 10 Q And did you take any pictures of that?
- 11 A No, I did not.
- 12 Q So we don't have any pictures of the sanitation
- 13 workers actually picking up the trash?
- 14 A No, we do not.
- 15 Q Now, when they picked up the trash, is the trash in
- 16 that area, is it contained in a roll cart or
- 17 something like that?
- 18 A In a large green trash container with a flip top on
- 19 it.
- 20 Q And how do the sanitation workers remove the trash
- 21 from the container and put it in the trash truck?
- 22 A When the container is sitting by the side of the
- 23 road, they stop, they come around, and they grab
- 24 the trash container by the handle, take it to the
- 25 truck. The trucks have an assist lift that will

1 actually dump it into the back of the truck and
2 place it back on the ground. Then it's wheeled
3 back to the side.

4 Q Is that what happened this time?

5 A It was.

6 Q So it's dumped into the trash truck?

7 A That is correct.

8 Q Was there other trash in the truck?

9 A It was not.

10 Q So this was a completely clean truck?

11 A Both times. This was actually one of our spare
12 sanitation trucks.

13 Q You searched it beforehand and so forth?

14 A Yes, the open bin in the back was checked
15 beforehand.

16 Q Now, did you make photographs of the trash bags
17 themselves?

18 A No, I did not.

19 Q The photographs that you made then were only of
20 certain items that you retrieved from the trash?

21 A That is correct.

22 Q Then whatever evidence of any potential
23 significance, you would send for testing?

24 A That is correct.

25 Q Now, on either one of those occasions when you

1 followed the trash truck, did you take pictures so
2 we could see the trash truck?

3 A No, I did not.

4 Q And this would just be a trash truck followed by a
5 vehicle going down the street, stopping in front of
6 one house, and taking the trash from that house?

7 A That is correct.

8 Q Nobody came out and said, Why aren't you talking my
9 trash?

10 A No, sir.

11 Q So we don't have any pictures of that?

12 A No, sir.

13 Q Now, after that did you obtain a search warrant?

14 A Yes, sir, after the second trash pull.

15 Q I am going to pass you up another document and ask
16 if you can identify it?

17 A Yes, sir, it appears to be a copy of the search
18 warrant for

19 MR. FLOYD: Your Honor, may I have this marked
20 for defendant's I.D., please?

21 THE COURT: Defendant's 4 for I.D. only.

22 (Defendant's Exhibit Number 4 is marked for
23 identification).

24 BY MR. FLOYD:

25 Q Now, were you present during the execution of the

1 search warrant?

2 A I was.

3 Q Can you tell us how many officers from the City of
4 Cayce participated in the execution of the search
5 warrant?

6 A I do not have the op plan in front of me to tell
7 you exactly how many officers were there. Members
8 of our Cayce S.W.A.T. team were there, myself,
9 Agent Thomas, Detective Merrill.

10 MR. FLOYD: Your Honor, may I approach?

11 THE COURT: Yes, sir.

12 BY MR. FLOYD:

13 Q See if you can identify this document.

14 A Yes, sir, it's part of our op plan, our operations
15 plan.

16 MR. FLOYD: Your Honor, I would like to have
17 this marked as defendant's exhibit for I.D. purposes.

18 THE COURT: Defendant's 5 for I.D. only.

19 (Defendant's Exhibit Number 5 is marked for
20 identification).

21 BY MR. FLOYD:

22 Q Would this document assist you in telling us how
23 many people?

24 A Yes, sir.

25 Q If you would look at that.

1 A Yes, sir, it would have been 14 people.

2 Q Fourteen people?

3 A Yes, sir.

4 Q And how many vehicles would have been involved?

5 A It looks like between seven and eight vehicles.

6 Q And with all of this 14 people and seven and eight
7 vehicles, would they be arriving at the location at
8 approximately the same time?

9 A Yes, sir.

10 Q That's a residential area; is it not?

11 A Yes, it is, sir.

12 Q This would have been quite a little commotion for
13 that area; wouldn't it?

14 A Yes, sir.

15 Q Would you agree with me that anybody that was
16 inside that residence would have heard the seven or
17 eight vehicles arrive?

18 A We try to be a little stealthy when we come up and
19 attempt to surprise obviously.

20 Q Then when you get out of the car, everybody runs to
21 the house or around the house; don't they?

22 A Yes, sir.

23 Q That's going to cause some noise? Would you agree?

24 A It will cause some.

25 Q And wouldn't you agree that anybody in that house

1 would know that something is up?

2 A If they heard us, yes, sir.

3 Q If they heard you. Did you have to climb fences?

4 A No, sir.

5 Q So we've got these 14 people all kind of closing in
6 on the house after driving up. Well, when you
7 drive up is it creeping up or do people come drive
8 up, slam the breaks, and jump out of the car?

9 A We attempted to arrive very quickly and exit the
10 vehicles very quickly.

11 Q That would require slamming the doors; wouldn't it?

12 A We try not to slam doors. It's a giveaway.

13 Q You are telling us that they arrive on the scene
14 quickly?

15 A Yes, sir.

16 Q Leap out of the vehicle quickly?

17 A Yes, sir.

18 Q Stop and push the door closed?

19 A We don't worry about closing our doors.

20 Q You slam the doors; don't you?

21 A We don't close the doors.

22 Q Oh, you don't even close them?

23 A No, sir.

24 Q You have all these cars with all the doors open and
25 everybody is jumping out?

- 1 A Yes, sir.
- 2 Q Do you have an opinion as to whether or not anybody
- 3 in the house could have heard anything?
- 4 A I don't know what the people inside the house
- 5 heard, sir.
- 6 Q Was the front door open?
- 7 A Yes, sir, it was.
- 8 Q Were there windows in the house?
- 9 A I do not recall if the windows in the house were
- 10 open or not.
- 11 Q I mean, are there windows in the house?
- 12 A Yes, sir, there are.
- 13 Q So anybody in the house could look out the front
- 14 door and see the cars?
- 15 A Yes, sir.
- 16 Q Look out the window and see the cars?
- 17 A Yes, sir.
- 18 Q And you had some people running to the front of the
- 19 house, and you had some people running around to
- 20 the back of the house?
- 21 A That is correct.
- 22 Q And it's a small house; is it not?
- 23 A Yes, sir.
- 24 Q Did you say you thought it was about 800 square
- 25 feet?

1 A Somewhere around there.

2 Q I will show you again Defendant's for I.D. Exhibit
3 2. There is a narrative at the top of that
4 document; is it not?

5 A Yes, sir, it is.

6 Q And that is kind of your operation plan for the
7 search; is that correct?

8 A That is correct.

9 Q And wouldn't you agree with me that what the
10 operation plan says is you are there to get Bradley
11 West?

12 A Yes, sir.

13 Q Travas Jones' name is not in there at all; is it?

14 A No, sir.

15 Q Thank you. Now, I will go back to your
16 investigative notes if you wish to refer to them.

17 A Yes, sir.

18 Q According to your investigative notes, you say:
19 "Reporting officer, along with Cayce S.W.A.T. team,
20 conducted a search warrant on the location.
21 Several subjects were on scene at the time of the
22 service" -- and this is important -- "The first
23 subject, Travas Jones, was located in the front
24 yard." Does it say that?

25 A Yes, sir, it does.

1 Q Is that accurate?

2 A No, sir, it's not.

3 Q So you are saying your report is not accurate?

4 A I'm saying that portion of it is not accurate.

5 Q Every other portion of it is accurate?

6 A That's correct.

7 Q Back to your investigative notes. Your

8 investigative notes do not say anything at all

9 about any subsequent contact with the neighbor,

10 Ms. Meador, after the incident report referred to

11 earlier; do they?

12 A No, sir.

13 Q So are they accurate?

14 A Yes, sir, it's still accurate.

15 Q Still accurate. So when did you make this

16 discovery that the person in the front yard was not

17 Travas Jones?

18 A I do not recall when I discovered that.

19 Q You can do supplemental reports; can you not?

20 A Yes, I can.

21 Q Did you ever do a supplemental report saying: My

22 initial report was in error. It was not Travas

23 Jones in the front yard?

24 A No, I did not.

25 Q How many men were on this property when y'all got

1 there?

2 A Besides ourselves?

3 Q Besides the police.

4 A Six people total were on the property at the time.

5 Q Six people. All of them men?

6 A Yes, sir.

7 Q And I believe you testified that you ended up
8 charging three of the six with these drugs that you
9 say were found on the premises?

10 A Yes, sir.

11 Q And that was you charged Travas Jones, you charged
12 Bradley West, and you charged Theyatti Glover
13 later; is that correct?

14 A Yes, sir.

15 Q Now, on that day did you find any drugs on Travas
16 Jones?

17 A No, we did not.

18 Q Were you aware that animal control had been out
19 there before you searched?

20 A Yes, I was.

21 Q In fact, y'all sent them out there to make sure the
22 dog was under control; did you not?

23 A That's correct.

24 Q And isn't it true that Travas Jones went outside
25 with the animal control person about the dog?

- 1 A That's incorrect.
- 2 Q That's incorrect?
- 3 A Yes, sir.
- 4 Q Who went out there with them?
- 5 A I do not know.
- 6 Q Well, how do you know that is incorrect?
- 7 A From other officers I guess that will testify.
- 8 Q Were you there when the animal control person was
- 9 there?
- 10 A We arrived shortly after, while she was there.
- 11 Q While she was there, y'all arrived. Were you there
- 12 when she got there?
- 13 A When she got there, no, I was not.
- 14 Q Did anybody have it under surveillance when she got
- 15 there?
- 16 A Yes.
- 17 Q Who was that?
- 18 A That would have been Detective Merrill and I
- 19 believe possibly Lieutenant Garron.
- 20 Q Were they parked on the street?
- 21 A I believe they were parked on the same street.
- 22 Q Two men sitting in a car?
- 23 A I do not know if they were in the same vehicle. I
- 24 actually believe they were in separate vehicles.
- 25 Q Were any of the vehicles used marked police cars?

1 A Yes, sir.

2 Q How many mark police cars converged on the scene?

3 A I know one that had pulled out directly upfront and
4 I believe another one was around the side.

5 Q So anybody inside would know it was police, not
6 just eight potential white men to rob them?

7 A That is correct.

8 Q Or eight potential cars with white men to rob them.
9 After you did the search, did you give a copy of
10 the search warrant to Mr. Jones?

11 A No, we did not. We left it at the house.

12 Q I'm going to pass you up Defendant's Exhibit for
13 I.D. Number 4, which is a copy of the search
14 warrant, and ask if you can read the bottom
15 paragraph.

16 A Yes, I can. "A copy of this search warrant shall
17 be delivered to the person in charge of the
18 premises searched at the time of such person if
19 practicable. If not such person, as soon
20 thereafter as is practicable. In the event the
21 identity of the person in charge is not known, if
22 such person cannot be found after reasonable
23 diligence in attempting to locate the person, a
24 copy shall be attached to a prominent place on such
25 premises."

- 1 Q And did you give a copy to Travas Jones?
- 2 A No, it was not practical at that time.
- 3 Q It wasn't practical? You couldn't find him?
- 4 A No, sir, he was in custody.
- 5 Q Did he have pants? Did he have pockets?
- 6 A Yes, sir.
- 7 Q Was the reason because you didn't know who was in
- 8 charge of the premises? Because if you don't know
- 9 who is in charge, you are supposed to just leave it
- 10 there; aren't you?
- 11 A Yes, sir.
- 12 Q So was that situation? You didn't know who was in
- 13 charge?
- 14 A No, sir.
- 15 Q But you didn't give who you thought was in charge a
- 16 copy of it as required; did you?
- 17 A No, sir, it wasn't practical at the time.
- 18 Q It wasn't practical. Just one other question.
- 19 When you went in the front door, was the door open?
- 20 A Yes, sir, the door was open.
- 21 Q Did you knock or just go in?
- 22 A We announced.
- 23 Q You announced. Nobody tried to keep you out; did
- 24 they?
- 25 A No, sir.

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1 Q You didn't knock?

2 A No, sir. We announced. The door was standing
3 open.

4 Q Does your report say that you knocked? Or that was
5 just your plan?

6 A The plan was with a closed, secured door, yes, sir.

7 Q But in this situation the door was open?

8 A That's correct.

9 Q And nobody tried to close it on you?

10 A No, sir.

11 Q Nobody tried to keep you out of there?

12 A No, sir.

13 Q Thank you.

14 MR. FLOYD: No further questions, Your Honor.

15 THE COURT: Redirect?

16 MR. WHETSTONE: Yes, Your Honor.

17 **REDIRECT EXAMINATION**

18 **BY MR. WHETSTONE:**

19 Q Officer Pereira, were you able to confirm with
20 Ms. Meador exactly which house she reported the
21 traffic coming in and out of all hours of the night
22 and day?

23 A That is correct. I did speak with her personally.
24 She advised me --

25 MR. FLOYD: Your Honor, I object to any

1 hearsay.

2 THE COURT: I would sustain the objection
3 based on hearsay. He can answer the question if he
4 confirmed, which he has answered.

5 BY MR. WHETSTONE:

6 Q Did you personally observe the house at
7 yourself?

8 A I did.

9 Q And in your report did you document any other
10 Oldsmobiles that you saw at the residence at
11 ?

12 A I did.

13 Q Who did that automobile come back registered to?

14 A One of the automobiles came to Bradley West. The
15 other automobile came to Bernice Glover Pearson.

16 Q Who is Bernice Glover Pearson?

17 A I believe it to be Travas Jones' mother.

18 Q At the time of the execution of the search warrant
19 when you entered the house, were you able to
20 observe any evidence of Bradley West residing at
21 ?

22 A No, I didn't.

23 Q Was he arrested in this case?

24 A Yes, he was.

25 Q For what?

1 A Trafficking crack cocaine and possession of
2 cocaine.

3 Q Were you able to observe, during the execution of
4 the search warrant, any items in the bedrooms of
5 the house at ?

6 A I did observe some of the items in the bedrooms.

7 Q What were those items?

8 A One in particular off the top of my head was a
9 Lexington County Medical Center folder that was
10 inside one of the bedrooms that had Travas Jones'
11 name on it.

12 Q Thank you.

13 THE COURT: Recross?

14 **RECROSS EXAMINATION**

15 BY MR. FLOYD:

16 Q You didn't make any kind of notes, did you, or put
17 in any kind of report any kind of contact with
18 Ms. Meador, other than that initial incident
19 report; is that correct?

20 A No, sir, I did not.

21 Q And your report still says, does it not, that
22 Travas Jones was in the front door when the warrant
23 was executed?

24 A That's correct.

25 Q Would you agree the house you executed the search

1 warrant on was green?

2 A The house I executed the search warrant on was
3 light green siding.

4 MR. FLOYD: No further questions, Your Honor.

5 THE COURT: You may step down.

6 THE WITNESS: Thank you, your Honor.

7 (Witness leaves the witness stand.)

8 THE COURT: Solicitor, you may call your next
9 witness.

10 MR. WHETSTONE: Your Honor, the State would
11 call Officer Cal Thomas.

12 THE COURT: If you would come around and be
13 sworn, please.

14 CALEB E. THOMAS, being
15 first duly sworn, testifies as follows:

16 CLERK: State your full name, spelling your
17 last on the record.

18 THE WITNESS: My name is Caleb E. Thomas. The
19 last names is T-H-O-M-A-S.

20 DIRECT EXAMINATION

21 BY MR. WHETSTONE:

22 Q Officer Thomas, where do you work?

23 A I am employed by the City of Cayce Police
24 Department.

25 Q And what are your current duties with the police

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1 department?

2 A I'm assigned to the investigative unit,
3 specifically myself and Detective Pereira. We work
4 drug enforcement investigation.

5 Q How long have you been at this job?

6 A Currently at Cayce I have been back three years. I
7 was previously at Cayce for a year and a half, and
8 I have been in law enforcement for over 20 years.

9 Q And how long have you served in this current
10 narcotics position?

11 A Three and a half years.

12 Q What positions were you in previously and at which
13 agencies?

14 A I have been involved in drug enforcement
15 investigations for approximately nine years out of
16 my career. I've also worked as a Federal Air
17 Marshal for the United States Federal Air Marshal
18 Service.

19 Q How did you first become involved in the case we
20 are having today?

21 A I was aware when Investigator Pereira received the
22 initial incident report of the complaint of the
23 activity at . He advised me
24 that he was going to follow up on that complaint
25 and start doing surveillance on it.

1 Q And were you present when the trash pulls were
2 done?

3 A I was.

4 Q And, again, can you tell me when the search warrant
5 was executed?

6 A Yes. On November 15th we decide to execute the
7 search warrant at the residence. I would have been
8 involved the days previous to that, preparing the
9 op plan for that.

10 Q Officer Thomas, I will show you what is State's
11 Exhibit 11. Can you identify that?

12 A Yes, that's the residence at and
13 also the residence next door.

14 Q How are you able to do so?

15 A It's the house that we executed the search warrant
16 on on November 15th.

17 Q And that's a fair and accurate picture of the way
18 the area looked?

19 A It is.

20 Q Can you describe when the search warrant was
21 executed on that day what position the cars were

22 in. If you could, kind of where they were.

23 A Yes, if you --

24 THE COURT: Is this in evidence? Is this
25 picture in evidence?

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1 MR. WHETSTONE: I'm sorry, Your Honor. The
2 State --

3 MR. FLOYD: He asked me if I had objection. I
4 don't have any objection to the item. I don't know if
5 it's actually been introduced.

6 THE COURT: All right. State's 11 is in
7 evidence without objection; is that right?

8 MR. FLOYD: I have no objection to it, Your
9 Honor.

10 MR. WHETSTONE: The State would move to have
11 it entered.

12 THE COURT: It's in evidence without
13 objection.

14 (State's Exhibit Number 11 is received into
15 evidence.)

16 BY MR. WHETSTONE:

17 Q Go ahead.

18 A This would be in front of the
19 residence. The officers from the Cayce Department
20 on Public Safety S.W.A.T. team and myself and
21 Detective Pereira would have been parked on the

22 next street over for basically what is called
23 staging for the operation.

24 We had some surveillance prior to. We also
25 had animal control that was available to secure a

1 pit bull that was at the residence to avoid any
2 harm to the animal or to the officers involved in
3 the search warrant.

4 When we were notified that everything was
5 clear, we would have come down Julius Felder and
6 then onto Several vehicles would have
7 pulled into the yard or the driveway -- in front of
8 the residence or in the driveway. Officers from
9 the S.W.A.T. team would have exited their vehicles
10 and made entry into the front door of the
11 residence.

12 Q What was your position in this lineup entering the
13 house on that day?

14 A I believe I was in the second vehicle that pulled
15 in. The vehicle in front of us pulled into the
16 driveway and we pulled in immediately behind there.

17 Q And were you one of the first individuals in the
18 house?

19 A I was. I believe I would have been third actually
20 to make entry into the front door, Officer Youmans
21 being in front of me, and I believe Officer Anthony
22 would have been in front of me. I was one of the
23 first ones into the residence.

24 MR. WHETSTONE: Your Honor, may the witness
25 step down.

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1 THE COURT: Yes, sir.

2 (Witness leaves the witness stand.)

3 THE COURT: Switch sides with him so that his
4 voice comes toward the bench and towards the court
5 reporter. Thank you.

6 BY MR. WHETSTONE:

7 Q Officer Thomas, could you draw the layout of the
8 house at and what you
9 observed that day?

10 A Sure. I'm not best artist in the world.

11 THE COURT: Keep your voice up for me when you
12 are away from the microphone.

13 THE WITNESS: Yes, sir.

14 A (Witness complies.)

15 Q Can you describe where you entered?

16 A Yes. This would be the front door right here
17 (indicating). That's where all the officers from
18 the S.W.A.T. team made entry. This over here
19 (indicating) would also be the driveway.

20 Q Where did you enter on that day?

21 A From the front yard through this front door.

22 Q And what did you first observe when you entered the
23 house?

24 A I observed several subjects sitting around this
25 table right here (indicating). It appeared they

1 were playing cards, cards on the table, money on
2 the table. There was a subject in this chair
3 (indicating), a subject on this couch (indicating).

4 By the time I had made entry, other officers
5 had ordered these subjects on the ground. They
6 were -- most of them were complying. So I went
7 through, straight through, to this bedroom
8 (indicating) and did not find anybody in this
9 bedroom or anybody in this kitchen (indicating).

10 We determined -- some other officers went into
11 this bedroom (indicating), and we determined that
12 this (indicating) is a connecting bathroom. So
13 when I determined that and that this bedroom was
14 also clear, I exited from this bedroom on the left
15 rear.

16 Q So let's back up just a second. When you entered,
17 there were individuals at this table (indicating)?

18 A That's correct, surrounding this table.

19 Q Did they seemed surprised by your entry?

20 A Yes.

21 Q Were they just sitting there?

22 A Yes.

23 Q What did you observe in this first area besides the
24 individuals that were there?

25 A While we were securing everybody, that's all we

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1 observed, was just the subjects sitting around this
2 table. They were trying to get on the floor, but
3 it was fairly crowded with the officers in there as
4 well.

5 It's a very small room actually. Cards were
6 on the table, money on the table. I believe there
7 may even have been some alcohol, an alcoholic
8 drink, that was on the table, but that was it.
9 There was nothing else. No other individuals were
10 anywhere in the house.

11 Q And at some point did you conduct a search of the
12 house?

13 A That's correct. Once we got all these subjects
14 detained, made sure they had no weapons or
15 anything, they were all taken outside the front
16 door of the residence so we would have room to
17 conduct our search, and then we started making
18 assignments to the search.

19 Q And did you observe anything in this first bedroom
20 on the left?

21 A Yes. One of my duties on the scene was to

22 determine what was of evidentiary value. I also
23 lead the S.W.A.T. team; so I made the assignments.
24 I informed all the officers if they found something
25 to notify me. I was notified and I went in this

1 bedroom (indicating), and I observed the firearm
2 that we seized underneath the mattress in this
3 bedroom.

4 Q What else did you find in the bedroom?

5 A I was also notified, I believe by Officer Antley,
6 that there was some drugs that were observed behind
7 this heater (indicating). I went over there myself
8 and took pictures of a bag of crack, and I believe
9 it was a bag of cocaine that was hidden behind this
10 heater.

11 Q What did you do with that evidence?

12 A I photographed that. I remember specifically
13 photographing it, where it was behind the heater,
14 and then we pulled it out and took individual
15 pictures of it. Then I advised Officer Antley to
16 take that as evidence.

17 We had -- one of the assignments that I made
18 was Detective Merrill was sitting at this kitchen
19 table (indicating) scribing, which means taking
20 notes on everything that was seized from the house,
21 where it was seized from, and who actually obtained
22 it. He was sitting at this table. That's where
23 anything in the house would have been directed to,
24 to Detective Merrill at that table.

25 Q Did you observe anything else in this bedroom where

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1 you found the gun?

2 A Yes, there was also some paperwork, Lexington
3 Medical file folder. Inside the paperwork, it had
4 Travas Jones' name on it. We also determined that
5 that was of evidentiary value. So I advised the
6 officers to do the same thing, take it, photograph
7 it, and take it to Detective Merrill.

8 Q And what about in this right bedroom (indicating)?
9 Did you observe anything in there?

10 A Yes, I was actually in here assisting Officer
11 Ballentine. I personally observed some uniforms
12 hanging on the wall that had the name Theo on it.
13 I recognized that as Theyatti Glover.

14 There was also a driver's license on the
15 dresser right there, Mr. Glover's driver's license.
16 So I advised Officer Ballentine to take pictures of
17 that stuff as well.

18 Q And what about in the kitchen area? What did you
19 find?

20 A We had to kind of regroup a little bit because of
21 the size of the house and the number of subjects
22 that we had in the house. So we reassigned some
23 officers, but I was assigned -- one of my duties
24 was to search the kitchen.

25 When I started searching, I immediately opened

1 a drawer, which is right here (indicating). There
2 is a microwave oven on this counter right here
3 (indicating). There were some drawers right there
4 by it.

5 As soon as I opened that drawer, I observed
6 several plastic bags, some had what is referred to
7 as a cookie of crack cocaine, several other smaller
8 bags with crack cocaine and cocaine, and some
9 digital scales that were also located in that
10 drawer.

11 Q And what did you do with this evidence?

12 A I did the same thing that the other officers were
13 doing. I photographed it, where it was, pulled it
14 out, took some photographs, and then I took it to
15 Detective Merrill where he would have entered it on
16 the search warrant return.

17 Q And did you observe anything else in the house?

18 A Yes. While I was searching and trying to get my
19 evidence entered into Detective Merrill's
20 inventory, I noticed a Pyrex dish that was on the
21 shelf right here (indicating).

22 I saw some residue in the bottom of it, which
23 is common in the cooking of crack cocaine. So I
24 advised somebody, I believe it was Detective
25 Merrill. I actually took that and told him to put

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1 that on the return as well.

2 Q Thank you, Officer. You can have a seat. I have a
3 few more questions for you.

4 A (Witness resumes the witness stand.)

5 MR. WHETSTONE: The State would move to have
6 this drawing moved into evidence.

7 THE COURT: Mr. Floyd?

8 MR. FLOYD: If I might review it, Your Honor.

9 THE COURT: Certainly.

10 (Pause.)

11 MR. FLOYD: I don't have any problem with it,
12 Your Honor.

13 THE COURT: State's Exhibit 12 is in evidence
14 without objection.

15 (State's Exhibit Number 12 is received into
16 evidence.)

17 BY MR. WHETSTONE:

18 Q Officer Thomas, I will show you what is State's
19 Exhibit 13, 14, 15, and 16. Can you identify
20 those?

21 A Yes, sir. Thirteen is a photograph --

22 Q Without saying what they are, can you identify
23 them?

24 A Yes, I can identify these photographs.

25 Q How so?

1 A This is an accurate representation of what I saw
2 when I was in that bedroom and was present when the
3 photographs were taken.

4 Q It's an accurate representation of the search
5 warrant on that day?

6 A Yes, sir.

7 MR. WHETSTONE: Your Honor, the State would
8 move to have State's Exhibits 13, 14, 15, and 16 moved
9 into evidence.

10 THE COURT: Mr. Floyd?

11 MR. FLOYD: No objection, Your Honor.

12 THE COURT: State's 13 through 16 are in
13 evidence without objection.

14 (State's Exhibits Number 13-16 are received
15 into evidence.)

16 BY MR. WHETSTONE:

17 Q Officer Thomas, can you briefly describe what is in
18 those photos?

19 A Exhibit 13 is a photograph of the firearm that was
20 located in the left rear bedroom in
21 on the day of the search warrant. Fourteen is a
22 picture of the outside of the folder, the Lexington
23 Medical Center folder, that was located in that
24 left rear bedroom at on that day.

25 State's Exhibit 15 is the inside of that

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1 folder, some paperwork that is listed inside that
2 folder, and State's Exhibit 16 is a close-up of
3 that paperwork which identifies Travas Jones as the
4 patient that belongs to that folder.

5 Q Officer Thomas, I will show you State's Exhibit 17
6 through 33. Could you please examine these?

7 A (Witness complies.)

8 Q Are you able to identify those?

9 A Yes, these are accurate representations of what we
10 observed in the house, that day.
11 Those are photographs from that day.

12 MR. WHETSTONE: Your Honor, the State would
13 offer State's Exhibits 17 through 33 for admission into
14 evidence.

15 THE COURT: Mr. Floyd.

16 MR. FLOYD: We don't have any objection to the
17 photographs, Your Honor.

18 THE COURT: State's 17 through 33 are in
19 evidence without objection.

20 (State's Exhibits Number 17-33 are received
21 into evidence.)

22 BY MR. WHETSTONE:

23 Q Officer Thomas, let's back up a minute. The Pyrex
24 dish that was found, how was that significant in
25 this case?

1 A It's commonly used -- especially Pyrex measuring
2 cups are commonly used. Individuals that cook
3 powder cocaine into crack cocaine, it's a quick,
4 easy way to do it.

5 Powder cocaine, baking soda, measuring cups,
6 and a microwave, basically you can convert powder
7 cocaine into cocaine base, commonly referred to as
8 crack.

9 Q And you found scales in this case; correct?

10 A That's correct.

11 Q And how were those significant?

12 A Oftentimes individuals that distribute these drugs
13 in large quantities or even in small quantities
14 sometimes will use digital scales to confirm that
15 they are getting the most bang for their buck or
16 getting the amount of product they want when they
17 break it up into further sale.

18 Q In your experience as a law enforcement officer in
19 the narcotics division, what would the street value
20 be of 1 gram of powder cocaine?

21 A It's varies based on demand, but a hundred dollars
22 a gram is a pretty accurate estimate of what it
23 would be.

24 Q How about for one gram of crack cocaine?

25 A Sometimes a little more because of the actual

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1 effort made into cooking the cocaine into crack.

2 Sometimes it goes as high as \$150 a gram.

3 Q And in State's evidence 12 in the drawing, you said
4 that you had found cookies of crack cocaine in the
5 kitchen drawer. Again, how are those -- what you
6 call cookies -- significant?

7 A These cookies are basically used for individuals
8 who distribute drugs to break them up into smaller
9 amounts and distribute them by a dosage unit,
10 commonly recovered to as a 20 rock or \$20 worth of
11 crack.

12 You can break it down further and actually
13 make more money. But when you see cookies of crack
14 cocaine like that, that usually indicates that an
15 individual is using the powder cocaine and
16 converting it into crack for distribution as crack.

17 Q And you said that you had found some items in your
18 drawing in both of the bedrooms; is that correct?

19 A Yes, sir.

20 Q Based on the items you observed in the bedrooms,
21 were you able to determine who lived at the
22 residence at ?

23 MR. FLOYD: Your Honor, I object. That would
24 be making some kind of conclusion.

25 THE COURT: I sustain the objection.

1 BY MR. WHETSTONE:

2 Q The items that were found in your drawing in
3 State's Exhibit 12, the bedroom on the left, whose
4 items did these belong to?

5 A Travas Jones.

6 Q The bedroom on the top right in State's Exhibit 12,
7 whose items did these belong to?

8 A Theyatti Glover.

9 Q In this case were there any other items found by
10 other members of the S.W.A.T. team?

11 A Yes, there were.

12 Q And you had mentioned at some point you made
13 contact with an animal control officer in this
14 case?

15 A That's correct, prior to the operation.

16 Q What was the significance of the animal control
17 officer?

18 A During Detective Pereira's surveillance prior to
19 this search warrant being executed, he observed a
20 pit bull at the residence. I believe animal
21 control was also familiar with the animal.

22 So we contacted them in an effort to avoid any
23 problems with a pit bull. We didn't want any
24 officers to have to encounter a vicious dog as we
25 were trying to make entry into the residence.

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1 So we contacted the animal control officer to
2 go to the residence and advise the residents there
3 that she wanted to conduct a welfare check on the
4 dog. It was a ruse to get the animal out of the
5 house and away from any harm that may come to the
6 animal or the officers.

7 We had radio contact, not only with the animal
8 control officer, but also with a surveillance agent
9 that was, I believe Detective Merrill, who was
10 watching the animal control officer for her safety.

11 When she got the animal outside to check on
12 the animal and get it restrained, they notified us
13 that the animal was clear from the house and was no
14 longer a threat, and that's when we started our
15 operation.

16 Q Officer Thomas, I want to show you State's Exhibit
17 10. Can you identify this?

18 A Yes, that's a photograph of Travas Jones.

19 Q Is that a fair and accurate description of what was
20 taken at the time of the search warrant?

21 A That's correct. I observed Mr. Jones out in the
22 front yard of the residence. That's an accurate
23 description.

24 MR. WHETSTONE: Your Honor, the State would
25 move to have State's Exhibit 10 moved into evidence.

1 THE COURT: Mr. Floyd?

2 MR. FLOYD: What is number 10? Is that just
3 Mr. Jones' photograph?

4 THE COURT: Yes, sir.

5 MR. FLOYD: I thought it was already in. I
6 have no objection.

7 THE COURT: State's 10 is in evidence without
8 objection.

9 (State's Exhibit Number 10 is received into
10 evidence.)

11 BY MR. WHETSTONE:

12 Q Officer Thomas, do you observe the person in that
13 photograph in the courtroom today?

14 A I do. It's Mr. Jones in the orange shirt seated
15 next to his attorney.

16 Q On the date of the search warrant, where was he
17 located in the house when you first observed him?

18 A He was in the living room. By the time I came out
19 from the left rear bedroom, Mr. Jones was on the
20 floor. Shortly thereafter I assisted in escorting
21 all the individuals in the living room out the

22 front door.

23 Q State's Exhibit 12, was he in this area
24 (indicating)?

25 A Yes, he was.

1 Q Thank you, Officer Thomas. Please answer any
2 questions Mr. Floyd may have?

3 THE COURT: Thank you, Solicitor.
4 Mr. Floyd.

5 MR. FLOYD: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. FLOYD:

8 Q Officer Thomas, do you still have the aerial
9 photograph up there?

10 A Yes, sir, I believe so.

11 Q It's Number 11. I couldn't see where you were
12 pointing a while ago. How many vehicles were in
13 front of the house when y'all executed the search
14 warrant?

15 A Law enforcement vehicles or other vehicles?

16 Q Let's start with law enforcement vehicles.

17 A I can't give you -- I don't recall the exact
18 number, but I know there were two vehicles that
19 pulled up first that contained officers of the
20 S.W.A.T. team.

21 There would have been a marked police car
22 coming in behind that for identification purposes.
23 Then there was another marked unit probably on the
24 street behind it. There may have been another
25 vehicle or two, but that's the ones I recall.

1 Q And how many officers charged toward the house?

2 A I don't recall exactly how many of our S.W.A.T.
3 team members were there that day. We have a total
4 of 12 members on the S.W.A.T. team, including
5 myself and Detective Pereira.

6 Q So there was a lot of people?

7 A Yes, sir. Not all the officers would have made
8 entry inside the house because some of them were
9 assigned to the outside perimeter.

10 THE COURT: Let me see that photograph,
11 please? Are you through with it, Mr. Floyd?

12 MR. FLOYD: Yes, sir.

13 BY MR. FLOYD:

14 Q Now, Officer Thomas, did y'all remove all the
15 people out of the house?

16 A Yes, sir, once we determined it was secured and no
17 one had any weapons or anything on them.

18 Q And there was somebody in the front yard also;
19 wasn't there?

20 A There was. I do not know who that, but there was
21 an individual with the animal control officer in
22 the front yard.

23 Q Some individual who I guess had familiarity with
24 the dog?

25 A I guess so. I can't really answer that question.

1 Q You took all -- how many people did you remove from
2 the house?

3 A I believe there were five in the living room, I
4 believe.

5 Q And you took everybody outside the house, did you
6 not, before you searched?

7 A That's correct.

8 Q So none of the people that were in the house could
9 see you search?

10 A No.

11 Q Did you handcuff them all?

12 A Yes, sir.

13 Q So you removed all of them out of the house,
14 handcuffed them? Or you handcuffed them and then
15 moved out?

16 A They would have been handcuffed and secured inside
17 the house. I didn't personally handcuff all of
18 them. They would have been handcuffed, patted down
19 for weapons, or any other contraband and would have
20 been taken out of the house. It was a very cramped
21 area. We couldn't even hardly move around with all
22 the people on the floor in the living room.

23 Q So basically y'all enter the house, handcuff
24 everybody, and remove them from the house?

25 A That's correct.

- 1 Q That's before you find anything; isn't it?
- 2 A That's correct.
- 3 Q So if there's anybody there, they are going to be
- 4 handcuffed and removed?
- 5 A That's correct.
- 6 Q Now, you have testified that you found items
- 7 identifying certain people in the house?
- 8 A Yes, sir.
- 9 Q Some people's name were on it. You found other
- 10 documents in there with people's names that didn't
- 11 get charged; didn't you?
- 12 A Not that I can recall.
- 13 Q Oh, okay.
- 14 A Yes, there was. If I recall correctly, there was a
- 15 description bottle, empty prescription bottle that
- 16 was listed on the search warrant return, and that
- 17 individual I wasn't familiar with.
- 18 Q You weren't familiar with that individual?
- 19 A No.
- 20 Q Do you remember what room it was in?
- 21 A I do not. I would have to refer to the search
- 22 warrant return.
- 23 Q So would it be your position that whoever's name
- 24 was on that pill bottle would be a resident of that
- 25 room where it was found?

1 A I can't speak to that. I wouldn't know. I don't
2 even know. It's listed here on the search warrant
3 return. The prescription in the name of Kay Mason
4 found on the dining room side table.

5 Q So did you consider her a resident of the house?

6 A No, I did not.

7 Q So just finding somebody's name on something
8 doesn't make them a resident of the house; does it?

9 A Not if it's found in the dining room table, empty
10 prescription bottle.

11 Q You saw a checkbook in there; didn't you?

12 A Again, I would have to look at the entire
13 investigation and all the evidence.

14 Q I ask, if you can identify this, I would have it
15 marked as a Defendant's Exhibit?

16 A I don't recognize it but I recognize the name. It
17 appears to be a photograph of a check in the name
18 of Bernice Pearson's account paid to C.V.S., Bank
19 of America check.

20 Q That was found in the house; wasn't it?

21 A I don't know. I can't answer that.

22 Q So you don't know for sure on that?

23 A Excuse me?

24 Q You don't know for sure on that?

25 A I do not.

1 Q So if this was found in the house, would that make
2 her a resident of the house?

3 A Again, it would be based on further investigation.

4 Q I ask if you can identify this document.

5 A I don't recognize that photograph either.

6 Q Would you agree that contains somebody's name,
7 other than Theyatti Glover and other than Travas
8 Jones?

9 A Yes, it does.

10 Q Officer Thomas, are those photographs just put in
11 evidence?

12 A Yes, sir.

13 Q May I look at them.

14 A Sure.

15 Q Officer Thomas, can you recognize that photograph?

16 A I do recognize what is in the photograph. I'm not
17 sure who took that photograph.

18 Q Would you describe for the jury what it shows?

19 A It's an accurate representation of what I observed
20 that day in the left rear bedroom of

21

22 MR. FLOYD: Your Honor, I would like to have
23 this photograph marked for I.D. purposes.

24 THE COURT: Is that Number 6, Madame Court
25 Reporter?

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1 COURT REPORTER: Yes, sir.

2 (Defendant's Exhibit Number 6 is marked for
3 identification).

4 BY MR. FLOYD:

5 Q There is a photograph, Officer Thomas, of the gun.
6 I might have left it up here.

7 THE COURT: Is that 13?

8 MR. FLOYD: Thirteen. You are right, Your
9 Honor.

10 BY MR. FLOYD:

11 Q Is that a photograph of what y'all said was a gun
12 that was found in one of the bedrooms?

13 A It appears to be -- it's a close-up version of what
14 is in the previous pictures.

15 Q And was that gun moved when these photographs were
16 taken?

17 A I don't know. Like I said, I don't recognize the
18 other photograph; so I don't know.

19 Q Let me show you something that kind of had me
20 mystified a little bit. This is Defendant's for
21 I.D. Number 6. Is that a photograph of the gun
22 lying on the mattress or the bottom part of the
23 bed, box springs, whatever you call it?

24 A Yes, sir.

25 Q Would you agree with me that that gun appears to be

1 on the -- if you are standing at the foot of the
2 bed, it's on the right side; isn't it?

3 A That's correct, in this photograph.

4 Q However, when we look at State's Exhibit 20, it's
5 on the left side of the bed standing at the foot;
6 isn't it?

7 A In State's Exhibit 20, I can't -- it's a photograph
8 from the living room, and I can't tell if that's
9 the gun or not.

10 Q You can't tell if that's the gun? How about this
11 version of it?

12 A Again, I can't determine from that far away if
13 that's the actual firearm that was recovered.

14 Q Well, do you see anything on the mattress?

15 A Yes, sir.

16 Q What do you see on the mattress?

17 A It's a dark colored object in front of Sergeant
18 Valdario.

19 Q Which side of the mattress is it on in that
20 photograph?

21 A On the left-hand side.

22 Q So you've got one photograph where you are showing
23 the gun on the right-hand side, and then there is
24 another one showing what you call a black object on
25 the left-hand side?

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1 A That's correct.

2 Q Now, the photographs y'all had of the gun, it only
3 shows one object; does it not?

4 A I'm sorry?

5 Q It only shows one object on the box springs;
6 doesn't it?

7 A In this photograph, yes, but this is a close-up.
8 It doesn't show the entire box spring.

9 Q Are you telling this jury there was another object
10 on the box springs?

11 A I'm unaware of that. This photograph and the other
12 photograph from a distance is what I observed in
13 that room. I don't know which photographs were
14 taken first or which ones were taken after the
15 fact. The gun would have been made safe at some
16 point. I don't know at what point.

17 I know the photographs in the State's Exhibits
18 are what I observed in the bedroom on that day.
19 These photographs that were taken from the living
20 room showing a distance into the bedroom, I don't
21 know at what point they were taken.

22 Q I got you.

23 MR. FLOYD: Your Honor, I'd like to have this
24 other photograph marked for Defendant's Exhibit 7.

25 THE COURT: All right. Defendant's Exhibit 7

1 is marked for identification.

2 (Defendant's Exhibit Number 7 is marked for
3 identification).

4 BY MR. FLOYD:

5 Q Now, Officer Thomas, we have introduced the picture
6 of Travas Jones. Y'all also took pictures of all
7 the men that were there that day; did you not?

8 A I did not take them, but I believe there were
9 photographs taken, yes, sir.

10 Q And is it true -- if you know -- that on that day
11 when y'all got inside the residence, nobody had any
12 drugs on their person; did they?

13 A No, sir.

14 Q So you sent an animal control officer to the
15 residence first; is that correct?

16 A That's correct.

17 Q And how long was that animal control officer there
18 if you know?

19 A I can estimate but I don't know exactly. It would
20 have been five minutes at the most, I would
21 imagine.

22 Q And then y'all arrived on the scene within five
23 minutes, say, of her arrival?

24 A That's correct.

25 Q And she is a Cayce official; is she not?

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1 A Animal control officer, yes, sir.

2 Q She has clothing identifying herself and a vehicle
3 identifying herself as a Cayce animal control
4 officer?

5 A That's correct.

6 Q Some official person. And she had come to the
7 scene and all these people were inside? Well, I'm
8 sorry. You weren't there. I apologize. I
9 withdraw the question. So she was there for around
10 five minutes or so, and then everybody converged on
11 the scene?

12 A Yes, sir. We would have been one behind the other,
13 yes, sir.

14 Q And she would still be there?

15 A She was in the front yard, yes, sir.

16 Q She was in the front door yard with someone
17 standing there with the dog?

18 A That's correct.

19 Q So there basically had been a Cayce official on the
20 premises scene for some -- at least five minutes?

21 A Actually I said it would be at the most five
22 minutes.

23 Q At the most five minutes before the seven or eight
24 vehicles and 14 officers would have arrived?

25 A Again, I don't know how many vehicles we had. I

1 know there were at least two that contained
2 S.W.A.T. team members and two marked units. There
3 may have been a third vehicle that contained
4 S.W.A.T. team members as well.

5 Q And you mentioned about a Pyrex dish. And 24 and
6 23, is that what you are referring to?

7 A Yes, sir.

8 Q What you are saying is you found all this residue
9 in the bottom of this Pyrex jar?

10 A (Witness nods.) (Indicating affirmative response.)

11 Q So you assume this Pyrex jar was used to cook
12 cocaine into crack?

13 A I didn't assume. I thought that it may have; so we
14 sent it for analysis.

15 Q And it was sent to S.L.E.D. for them to analyze it
16 to see if the residue was cocaine; is that correct?

17 A That's correct.

18 Q Thank you.

19 MR. FLOYD: Your Honor, I have no further
20 questions?

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MR. WHETSTONE:

24 Q Officer Thomas, who is this individual seated here?

25 A That's Travas Jones.

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1 Q And where was he when the search warrant was
2 executed on November 15, 2011?

3 A He was in the living room.

4 Q So he was inside the house?

5 A That's correct.

6 Q Was he sitting or standing?

7 A He was seated initially, and then he was ordered to
8 the ground and secured.

9 Q Thank you.

10 THE COURT: Recross, Mr. Floyd?

11 MR. FLOYD: Nothing further, Your Honor.

12 THE COURT: Thank you very much, Officer. You
13 may step down.

14 (Witness leaves the witness stand.)

15 THE COURT: I think now would be a good time
16 to take our morning recess. Mr. Foreman, and ladies and
17 gentlemen of the jury, during this recess do not discuss
18 this case with anyone. That includes your fellow jurors
19 or anyone else. We will take about a 15-minute recess.
20 You may go with your bailiff. Thank you very much.

21 (The jury retires to the jury room.)

22 THE COURT: Court will be in recess 15
23 minutes.

24 (Whereupon there is a recess.).

25 THE COURT: Anything from the State before we

1 bring in the jury?

2 MR. WHETSTONE: No, sir, Your Honor.

3 THE COURT: Mr. Floyd?

4 MR. FLOYD: No, sir, Your Honor.

5 THE COURT: Bring our jury, please.

6 (The jury returns to the courtroom.)

7 THE COURT: Solicitor, you may call your next
8 witness.

9 MR. WHETSTONE: Thank you, Your Honor. The
10 State would call Jennifer Meador to the stand, please.

11 THE COURT: If you would come around and be
12 sworn, please.

13 JENNIFER MEADOR, being
14 first duly sworn, testifies as follows:

15 CLERK: State your full name, spelling your
16 last, please.

17 JUROR: Jennifer Meador. The last name is
18 spelled M-E-A-D-O-R.

19 DIRECT EXAMINATION

20 BY MR. WHETSTONE:

21 Q Ms. Meador, what do you do for a living?

22 A I am a police officer.

23 Q With what agency?

24 A I am currently with the Columbia Police Department.

25 Q And how long have you been there?

JENNIFER MEADOR -- DIRECT -- MR. WHETSTONE

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- 1 A I have been with Columbia P.D. for about a year and
2 a half. Prior to that I was a State Fugitive
3 Investigator for Probation, Parole, and Pardon, and
4 then prior to that I was a police officer at U.S.C.
5 Police Department.
- 6 Q And how long were you Probation, Parole, and
7 Pardon?
- 8 A Six years.
- 9 Q What about with the U.S.C. Police?
- 10 A Two years sworn and two years prior.
- 11 Q In your current duties with the Columbia Police
12 Department, what are -- what position are you
13 assigned or what is your specialist?
- 14 A I am a patrol -- on patrol now currently. I have
15 been in the south region and east region areas on
16 patrol. I have also been the N.C.I.C. operator and
17 researcher as well.
- 18 Q And you operate out of Richland County?
- 19 A Yes, I do.
- 20 Q Where do you live?
- 21 A I live at
- 22 Q How long have you lived at this residence?
- 23 A I purchased the house, I believe, in 2001 or 2002.
24 I have been there for a while.
- 25 Q How did you become involved in the case we are

1 having today?

2 A The house next to me or actually both houses next
3 to me were actually vacant houses. Then some
4 individuals moved in next door. I didn't know them
5 by name, did meet them a couple of times.

6 But what drew my attention to it, to the house
7 next door to me -- and if you are facing my house,
8 it's the one to the left, which is why we are
9 here -- the vehicle traffic.

10 Q Let me stop you there.

11 A Okay.

12 Q What is that address to the left of you?

13 A It is . I did not know that the first date
14 that I filed the report, but my follow-up
15 conversations with Pereira did state that it was

16

17 Q Who did you file a report with?

18 A I believe it was Cayce Police Department and I
19 believe Officer Catoe.

20 Q And what did you report?

21 A I reported that there was heavy vehicle traffic
22 going to my neighboring residence, that the
23 vehicles would pull in, stop, somebody would get
24 out of the car, go in for one or two minutes, give
25 or take, and then come back out to the car, and

1 then the car would leave.

2 This would go on all hours of the night. I
3 work night shift and day shift. So I could see the
4 vehicle traffic all hours of the night. My hours
5 were kind of odd. It was just constant throughout
6 the day, every day pretty much.

7 Q So cars were coming in the daytime, as well as all
8 hours of the night?

9 A That's correct.

10 Q And who did you speak with besides Officer Catoe?

11 A Ed Pereira was my main contact, and I believe one
12 other person did make contact with me. I'm not
13 sure who that person was by name. I'm familiar
14 with Officer Detective Pereira. So most of my
15 conversations were with he and I.

16 Q Officer Meador, I will show you what is marked as
17 State's Exhibit 34. Can you identify that?

18 A Actually my house is to the right over here
19 (indicating), and to the left is my neighbor's
20 house, which is . I am .

21 Q Is that a fair and accurate description of the way
22 it looked at the time you made your report?

23 A Yes.

24 MR. WHETSTONE: Your Honor, the State would
25 offer State's Exhibit 34 into evidence.

1 THE COURT: Mr. Floyd?

2 MR. FLOYD: No objection, Your Honor.

3 THE COURT: Thirty-four is in evidence without
4 objection.

5 (State's Exhibit Number 34 is received into
6 evidence.)

7 BY MR. WHETSTONE:

8 Q Officer Meador, where -- if you could describe --
9 where did you observe from your house, from your
10 residence, the traffic that was coming in and out?

11 A I have a room that is offset, and it was a little
12 bit blocked by my tree here (indicating), but the
13 tree is actually in the front yard. I have two
14 windows on the side of my house that has direct
15 visual contact with -- you can pretty much see
16 everything in the front yard and the side.

17 Also, you can see all the vehicles that were
18 coming here. Also, going to and from work or to
19 and from anywhere, I was also observing the vehicle
20 traffic as well.

21 Q You did personally observe this from your window?

22 A Did personally, yes, I did.

23 Q Where exactly were the cars that were coming in and
24 out, where were they parked?

25 A Typically here (indicating). There were some

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1 vehicles that were in the back of the house
2 sometimes or parked towards the back of the house
3 and more, I guess, stationary vehicles on the --
4 well, if you are facing their house, it would have
5 been on the left in their driveway.

6 But the vehicles that would typically come and
7 go were just pulling directly in front of the
8 fenced-in area, and then they would pull out and in
9 both directions as well.

10 Q And when you weren't personally observing this from
11 your window, could you tell that it was going on?

12 A Yeah, I could hear. We had a very or had before a
13 very quiet neighborhood. It's not a through
14 street. We don't have a lot of vehicular traffic.
15 Occasionally -- we've got some teenagers across the
16 street, and they would have some vehicles come in
17 and out, but it's very quiet. So it was
18 noticeable, especially, you know, during sleeping
19 hours or when the T.V. is off, you could hear a lot
20 of vehicle traffic.

21 Q Could you hear anything else besides the vehicle
22 traffic when the cars were coming in?

23 A No, not really. Like I said, I could hear them
24 stopping, of course. A lot of it -- which is why I
25 reported it -- was actually me observing it.

1 Q Did your neighbors also notice this as well?

2 A Yes, they did --

3 MR. FLOYD: Objection, Your Honor. That would
4 have to be hearsay.

5 THE COURT: Yes, I would sustain the
6 objection.

7 BY MR. WHETSTONE:

8 Q Did you ever observe any residents of
9 at the house?

10 A Yes, I did. I actually spoke a couple of times
11 with Travas Jones here in the courtroom about his
12 dog and just, you know, polite, friendly, Hello,
13 I'm your neighbor, type conversation, not any long
14 type of conversation. Mainly a lot of it was about
15 his dog. Then I guess later on I started wearing a
16 uniform to work.

17 Q Let me stop you right there. Did they know -- the
18 occupants of when they moved
19 in -- did they know you were an officer?

20 A No, and it would not have been obvious. I do not
21 have a take-home car, and I was not in uniform at
22 the time.

23 Q When you say you didn't have a take-home car, what
24 does that mean?

25 A I did not have a patrol car, any kind of vehicle

1 that would let anybody or alert anybody that I
2 would have been a law enforcement officer. Also,
3 like I said, I wasn't in uniform and didn't wear my
4 firearm out visible during that, from July up until
5 October 19th.

6 Q Why is this? Why weren't you coming home in a
7 marked car or in your uniform at this time?

8 A I was actually on light duty at the time from
9 surgery that I had.

10 Q What does light duty mean?

11 A Light duty means that in our agency, you are unable
12 to wear your uniform. You are also unable to wear
13 your firearm on you. You can have it on you, but
14 it can't be visible. You are more in civilian-type
15 clothing.

16 Q And when you made your initial complaints or
17 reports to Cayce Public Safety, were you not
18 wearing your uniform at this time?

19 A No, I was not wearing my uniform.

20 Q And at some point -- at which point did you begin
21 wearing your uniform or would come home in it?

22 A It's still wasn't that often but after
23 October 19th when I was cleared.

24 Q And in your duties as a police officer, have you
25 ever made drug cases?

1 A Yes. Many, yes.

2 Q Do you do so in your current?

3 A Some in my current, more in my previous. I was on
4 the -- worked with the J.T.T.F., which was the
5 Joint Terrorism Task Force. Also, I was a member
6 of the U.S. Marshal's Fugitive Task Force.

7 We also conducted surveillance there, which we
8 did make drug cases out of those surveillance
9 activities. I've also done some undercover drug
10 work as well with the Columbia Police Department
11 before I was employed but in joint operations. So
12 I have worked with a lot of drug cases and been
13 familiar with them.

14 Q Did the activity at strike
15 you as drug activity?

16 A Yes, it did.

17 MR. FLOYD: Your Honor, I object that has got
18 to be speculation.

19 THE COURT: Overruled.

20 BY MR. WHETSTONE:

21 Q When the individuals that were coming back and
22 forth next door, when they came, how long were they
23 typically inside the residence at
24 before they left?

25 A Just a couple of minutes and then they would leave.

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1 That was the most common. Occasionally, you would
2 have a couple of people that would come and stay
3 longer, but typically -- especially with the
4 vehicles. They were definitely coming and going.
5 The people would just go inside and come right back
6 out.

7 Q What time did you -- when you were working nights,
8 what time did you typically get home from that
9 shift?

10 A About 5:00 A.M. Sometimes I would be home before
11 5:00 A.M.

12 Q And were you observing this activity next door when
13 you got home?

14 A Yeah, more towards the 4:00 A.M. times, but yes.

15 Q So you would arrive home at 4:00 A.M.?

16 A Uh-huh. (Indicating affirmative response.) That
17 is correct.

18 Q And what about when you worked days, what time did
19 you get home?

20 A That would depend, 7:30, 8:00 o'clock. That would
21 be the days I was working. Days that I was off,
22 particularly on night shift, I would go to the
23 store and stuff, grocery store around 2:00 A.M.,
24 just because it's convenient to stay on the same
25 schedule. So I was still observing it, again, at

1 all hours.

2 Q When you arrived home from your day shifts, were
3 you still observing this activity?

4 A Yes, probably more frequent during that time,
5 during the late afternoon into night hours.

6 Q Thank you Officer Meador. Please answer any
7 questions Mr. Floyd may have.

8 THE COURT: Thank you, Solicitor.

9 Mr. Floyd:

10 MR. FLOYD: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. FLOYD:

13 Q Ms. Meador, when you reported this activity
14 initially to Cayce, didn't you tell them it was a
15 tan house?

16 A That is actually incorrect. I was not provided
17 with the report until this case started, but I told
18 the officer that the house used to be tan but that
19 now it was a weird color, a weird greenish-sageish
20 color is what I told him.

21 But to further describe it, I told him that
22 facing my house, it was the house to the left, and
23 then I did tell him that the house to the right of
24 me was vacant.

25 Q So their report is wrong then?

- 1 A Yes, it is.
- 2 Q So that's another error in their reporting in this
- 3 case?
- 4 A Yes, it is.
- 5 Q You are a law enforcement officer?
- 6 A Yes, I am.
- 7 Q Have been for some time?
- 8 A Yes, sir.
- 9 Q Did you take any photographs of any of these
- 10 vehicles that you say came and went?
- 11 A I did not take photographs, no.
- 12 Q Got any license tags?
- 13 A I did. I copied down quite a few license tags and
- 14 was giving that information to Detective Pereira.
- 15 Q That's not in his report. Are you aware of that?
- 16 A I'm not aware of his reporting, but it was officer
- 17 to officer; so that's common.
- 18 Q That's common?
- 19 A Officer-to-officer conversations? Yes, I would say
- 20 that is common practice.
- 21 Q You don't put those kind of things in a report?
- 22 A You can. It's up to how you do the investigation.
- 23 You can.
- 24 Q So you are telling me if you are doing an
- 25 investigation and an officer gives you

1 information --

2 A I would run the tags. So I would have that
3 information.

4 Q You wouldn't put it in your report?

5 A Not an incident report. It might be in my
6 investigative notes.

7 Q Well, if it resulted in an arrest, you would
8 certainly put it in there; wouldn't you?

9 A Perhaps.

10 Q Did you say you started wearing a uniform when?

11 A October 19th.

12 Q Any changes after that?

13 A I'm sorry?

14 Q Any changes in activity?

15 A No, not really. It might have slowed down a little
16 bit over there, but it was pretty much still the
17 same.

18 Q So nobody was concerned about an officer being next
19 door?

20 A Actually your client, Mr. Jones, did make a comment
21 to me probably late October. He asked if I was a
22 police officer, which I did respond yes.

23 Q You had a uniform on; didn't you?

24 A Correct.

25 Q Didn't you tell him your husband worked for

1 S.L.E.D.?

2 A No, I'm not married.

3 Q So you started wearing a uniform October 19th and
4 really nothing changed?

5 A Correct.

6 Q You have no pictures?

7 A No, I do not.

8 Q No logs?

9 A No, sir, it was not my investigation.

10 Q Thank you.

11 MR. FLOYD: No further questions.

12 THE COURT: Redirect?

13 MR. WHETSTONE: Yes, Your Honor.

14 **REDIRECT EXAMINATION**

15 BY MR. WHETSTONE:

16 Q Was it the residence at that
17 you complained to the officers with Cayce Public
18 Safety?

19 A Yes.

20 Q Was it that was indeed
21 searched?

22 A Yes.

23 Q In this case.

24 A Yes.

25 Q Thank you.

1 THE COURT: Recross?

2 MR. FLOYD: Nothing further, Your Honor.

3 THE COURT: Thank you. Thank you very much,
4 Ms. Meador. You may step down.

5 (Witness leaves the witness stand.)

6 THE COURT: You may call your next witness.

7 MR. SCOTT: The State calls Ricky Williams.

8 HAYNE R. WILLIAMS, JR., being
9 first duly sworn, testifies as follows:

10 CLERK: State your full name, spelling your
11 last on the record.

12 THE WITNESS: My name is Hayne R. Williams,
13 Jr. The last name is W-I-L-L-I-A-M-S.

14 DIRECT EXAMINATION

15 BY MR. SCOTT:

16 Q Mr. Williams, what do you do for a living?

17 A I'm in the pest control business. I'm also a real
18 estate agent, and I have some rental properties.

19 Q Approximately how many rental properties do you
20 have?

21 A Let me restate that. I have one rental property
22 now. I have sold my others, just recently sold
23 them.

24 Q What is that rental property?

25 A

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- 1 Q And how did you come to acquire that property?
- 2 A I bought it in 1991.
- 3 Q Who did you buy it from?
- 4 A The V.A., Veterans Administration.
- 5 Q Since 1991. So you have owned it, gosh, I guess,
- 6 20 years?
- 7 A Yes.
- 8 Q How long have you rented it out?
- 9 A I have been renting it out since 1996. No, I'm
- 10 sorry. That's not correct. I'm sorry. I have
- 11 been renting it since 2005.
- 12 Q Was that particular home -- did you have a lease or
- 13 did you have renters in it on November 15, 2011?
- 14 A Yes.
- 15 Q And who was renting the home from you at that
- 16 point?
- 17 A I initially rented the house to Bernice. I don't
- 18 have the lease in front of me. Was it Pearson?
- 19 Bernice Glover?
- 20 Q You don't have the lease in front of you?
- 21 A I don't have it in front of me, no. I'm sorry.
- 22 Q I show you State's Exhibit Number 35.
- 23 A Okay.
- 24 Q Do you recognize that?
- 25 A Absolutely, yes.

1 Q How are able to do so?

2 A This is the lease that I used. This is the one
3 that I used when Bernice Pearson rented the
4 property.

5 Q Whose handwriting is that?

6 A That's my handwriting.

7 MR. SCOTT: Your Honor, the State offers
8 State's Number 35 for admission.

9 THE COURT: Mr. Floyd?

10 MR. FLOYD: No objection.

11 THE COURT: State's 35 in evidence without
12 objection.

13 (State's Exhibit Number 35 is received into
14 evidence.)

15 BY MR. SCOTT:

16 Q When did that lease start?

17 A June 25, 2011.

18 Q Who are the initial tenants on the lease?

19 A The initial tenants were Bernice Pearson -- well,
20 Bernice Pearson was the initial tenant, and Theo
21 Glover was to also be an occupant.

22 Q Were you aware of any relation these two had?

23 A I knew Theo was her son.

24 Q How many rooms did that building have?

25 A It's a two bedroom, one bath house with a living

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- 1 room and a kitchen.
- 2 Q Do you know approximately how many square feet is
- 3 in that house?
- 4 A Roughly 900.
- 5 Q Was Bernice Pearson on the lease on November 15,
- 6 2011?
- 7 A At that point she had -- she stated that she was
- 8 moving; so we put Travas Jones on the lease.
- 9 Q And did he sign your lease?
- 10 A He did, yes, sir.
- 11 Q Do you see his signature on there?
- 12 A I do.
- 13 Q What's the date on that lease?
- 14 A The initial date, of course, is June 25th, but when
- 15 we signed -- when we crossed through Bernice's name
- 16 and put the lease in Travas' name, I did not date
- 17 that. That was an error on my part. I did not
- 18 date that.
- 19 Q Do you know approximately when he moved in?
- 20 A Yes. I believe that was November 2nd.
- 21 Q And let me ask you this. Did you ever take any
- 22 payments from him?
- 23 A Yes.
- 24 Q He handed you rent money for that unit?
- 25 A Absolutely.

1 Q How many tenants are allowed to live in that home?

2 A Technically the tenants that are listed as
3 occupants. So it would have been two. That was
4 Travas and Theo.

5 Q That is indicated on your lease?

6 A Yes, sir.

7 Q May I hold it?

8 A (Witness complies.)

9 Q And how was the lease structured? Was it an annual
10 lease or a six-month lease?

11 A It was a month-to-month lease.

12 Q What was the rent?

13 A Five-seventy-five.

14 Q How did you collect your rent?

15 A I would go by. I would go by the house and collect
16 it.

17 Q Just curious. When was the last time you painted
18 that house?

19 A It was April of 2011.

20 Q What color is it now?

21 A It's like a light green now, and it was previously
22 a tan, a mauveish-tan color.

23 Q Did you ever receive any complaints about the
24 tenants? Without saying what anybody said, either
25 a yes or no answer, did you ever receive any

1 complaints?

2 A Yes.

3 Q You didn't date when Travas Jones came on the
4 lease, but he did assume Bernice Pearson's tenancy?

5 A Yes.

6 Q You have met with Travas Jones face to face?

7 A Yes.

8 Q And how many times have you collected rent from
9 him?

10 A Three to four times.

11 Q And do you see him in the room today?

12 A Yes, I do.

13 Q Where is he? Could you point to him, please?

14 A Right over there in the orange shirt.

15 Q Thank you. Please answer any questions Mr. Floyd
16 may have.

17 THE COURT: Thank you, Solicitor.

18 CROSS EXAMINATION

19 BY MR. FLOYD:

20 Q Mr. Williams, have you got your lease?

21 A Yes, sir.

22 Q According to the lease, the occupants shall be
23 limited to Bernice Pearson and Theo Glover. That's
24 what it says on the front; right?

25 A Initially, yes, sir.

1 Q You didn't change that when you say Travas came in?

2 A I did not change the front, no.

3 Q I think you testified that Travas came in
4 November 2nd of 2011?

5 A The best I can recall, yes.

6 Q Thank you.

7 MR. FLOYD: No further questions.

8 THE COURT: Redirect?

9 **REDIRECT EXAMINATION**

10 BY MR. SCOTT:

11 Q When was the last date you collected rent from
12 those particular tenants?

13 A November 2nd.

14 Q But you testified earlier you collected rent from
15 Travas three times before?

16 A Yes. I would usually speak with Bernice about the
17 rent, and I would go by the house to collect it. I
18 would call her and find out when she would be home.
19 If she wasn't home or she wasn't there -- which was
20 from what I could recall frequently she was not --
21 she would tell me that Travas would meet me at the
22 house, and he would have the rent.

23 Q Okay.

24 A And I would go by and collect the rent from him.

25 Q So do you know for sure when he moved in?

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1 MR. FLOYD: Objection, asked and answered
2 already, Your Honor, several times.

3 THE COURT: I will allow the question.

4 A Do I know when he moved in? I was familiar with
5 Travas from the very start. When I would go by
6 there, he was there. I would collect the rent
7 from him. When I would go make repairs to the
8 property, he would be there. I assumed he was
9 living there.

10 Q Okay. Let me show you briefly State's Number 12.
11 Is that a fair depiction of the inside of that
12 house?

13 A Yes.

14 Q It's not drawn to scale. Would you agree with
15 that?

16 A Yes.

17 Q How many bedrooms are in there?

18 A Two bedrooms.

19 Q And how many people, according to your lease and
20 according to your understanding, were the tenants
21 who were allowed to live there?

22 A Two.

23 Q Thank you.

24 MR. SCOTT: Nothing more.

25 THE COURT: Recross?

RECROSS EXAMINATION

2 BY MR. FLOYD:

3 Q Mr. Williams, it would not be unusual for a son to
4 be visiting his mother; would it?

5 | A No.

6 | Q Or helping her take care of her business?

7 | A No.

8 Q But he formally moved in November second is your
9 recollection?

10 | A Yes.

11 | Q Thank you.

12 MR. SCOTT: No further questions.

13 THE COURT: Thank you. Thank you very much,
14 Mr. Williams. You may step down.

15 (Witness leaves the witness stand.)

16 MR. SCOTT: We would ask that this witness be
17 excused, Your Honor.

18 THE COURT: Any objections?

19 MR. FLOYD: No objection, Your Honor.

20 THE COURT: Thank you for being with us,
21 Mr. Williams. You may be excused.

22 THE WITNESS: Thank you.

23 THE COURT: You may call your next witness.

24 MR. SCOTT: The State calls John Valdarío.

25 | JOHN WAYNE VALDARIO, JR.,

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1 being first duly sworn, testifies as follows:

2 CLERK: Once you are seated, please state your
3 full name, spelling your last on the record.

4 THE WITNESS: John Wayne Valdario, Jr.,
5 V-A-L-D-A-R-I-O.

6 DIRECT EXAMINATION

7 BY MR. SCOTT:

8 Q Where are you employed, Mr. Valdario?

9 A I am currently employed with the Cayce Police
10 Department.

11 Q Currently. And how long have you been there?

12 A I have been at Cayce about two and a half years.

13 Q And did you have any prior law enforcement
14 experience?

15 A I do.

16 Q What is that?

17 A I was with the South Carolina Highway Patrol for 12
18 years.

19 Q Anything before that?

20 A No.

21 Q So you have 14 and a half years of law enforcement
22 experience?

23 A That's correct.

24 Q And what are your duties now with Cayce?

25 A I'm a patrol sergeant. I run a shift and then I'm

1 also assigned to the S.W.A.T. team.

2 Q What are the duties of members of the S.W.A.T.
3 team?

4 A We perform search warrants, arrest warrants, and we
5 do a lot of training.

6 Q Did you have an occasion to be involved with a
7 search warrant on November 15, 2011?

8 A I did.

9 Q And what was the address that you were searching?

10 A

11 Q That's in Cayce?

12 A Yes.

13 Q Is that in Lexington County?

14 A It is.

15 Q What was the nature of the search warrant? I guess
16 what were you looking for?

17 A Specifically it was a narcotics search warrant.

18 Q Did you enter the home?

19 A I did.

20 Q What did you observe? Let me back up. Where were
21 you in order of officers that entered? I think it
22 was testified there was a few of them.

23 A Our vehicle, when I got out, there was a gap
24 between myself and the officers that had already
25 entered. So when I entered it was not really as

1 part of the stack. There were other officers
2 already in front of me that had already entered in.
3 So I came in as they were still getting people down
4 on the ground.

5 Q So let me ask you again then. What did you observe
6 when you entered?

7 A When I first entered, there were, I believe, two
8 people that were already on the ground, and there
9 were two people that were still seated that hadn't
10 been escorted to the ground yet or to the floor.

11 Q What room was that?

12 A This was going to be in the main, like den, the
13 main room when you entered the front door.

14 Q And what room did you search?

15 A The left rear bedroom.

16 Q Did you find anything back there?

17 A I did.

18 Q What did you find?

19 A I found a pistol.

20 Q Where was it?

21 A It was between the mattresses in the bed that was
22 in the middle of the room.

23 Q Can you see this (indicating)?

24 A I can.

25 Q I'm sorry. Would you repeat that. Where did you

1 search?

2 A The left rear bedroom.

3 Q Is that (indicating) what you are referring to?

4 A Yes, sir.

5 Q Left rear bedroom. You said you found a gun under
6 the mattress?

7 A Yes, sir.

8 Q What did it look like?

9 A It was black in color. It was a .40-caliber
10 semiautomatic pistol.

11 THE COURT: Let me stop you just a minute,
12 Solicitor. I assume you are going to lay a foundation
13 for the potential introduction of a firearm into
14 evidence; is that correct?

15 MR. SCOTT: That's correct, Your Honor.

16 THE COURT: Mr. Foreman, ladies and gentlemen
17 of the jury, there are certain policies and procedures
18 that we follow when weapons, firearms, or ammunition are
19 introduced into evidence in courts of law in South
20 Carolina.

21 The firearms are to be unloaded at all times.
22 They are to either be open, in other words, the slide
23 back and/or a locking device in place to where the slide
24 cannot go forward.

25 If it is a semiautomatic weapon, the clip or

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1 magazine would be removed. If it's a cylinder weapon,
2 the bullets would be removed from the cylinder and also
3 from any of the chambers involved.

4 The firearms are to be handled only by the
5 barrel and not to be pointed at any person in the
6 courtroom. Further, there would be no time in which a
7 witness would have both the firearm and/or ammunition in
8 his or her possession.

9 That would go the same for the jury. In other
10 words, if I allow the item into evidence, and there is a
11 firearm and also ammunition, when you go to your jury
12 room for deliberation, the firearm perhaps would be in
13 the jury room with you. If at a later time you want to
14 examine any ammunition -- I don't know if there is any
15 or not -- the firearm would come out; the ammunition
16 would go in.

17 I have reviewed those issues with the
18 solicitor and the defense attorney. They are familiar
19 with those issues involved in the presentation and
20 introduction of firearms in evidence in the case.

21 Thank you. Thank you, Solicitor. Can you
22 tell me the status, please, of the firearm you intend to
23 introduce?

24 MR. SCOTT: Your Honor, this pistol is
25 breached and it does have a lock on it provided to me by

1 the Cayce -- as secured by the Cayce Department of
2 Public Safety. It is secured.

3 THE COURT: And the magazine is removed?

4 MR. SCOTT: The magazine is removed, Your
5 Honor.

6 THE COURT: No round in the chamber?

7 MR. SCOTT: There is no round in the chamber,
8 Your Honor.

9 THE COURT: In fact, the locking device would
10 go through the chamber and the magazine area?

11 MR. SCOTT: That's correct, Your Honor.

12 THE COURT: Thank you. Thank you very much.
13 You may proceed.

14 (State's Exhibit Number 36 is received into
15 evidence.)

16 BY MR. SCOTT:

17 Q Officer Valdario, I am showing you what has been
18 marked as State's Exhibit Number 36. Do you
19 recognize that?

20 A I do.

21 Q How are you able to do so?

22 A It is the weapon that was found between the
23 mattresses at

24 Q Aside from it being breached -- or how did it
25 appear when you found it under the mattress?

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1 A When I found it under the mattress, the slide was
2 forward, and there was a magazine in the magazine
3 well.

4 Q What did you do with it?

5 A Can you repeat the question?

6 Q What did you do with the gun after you located it?

7 A Called for a camera to have it photographed.

8 Q I show you State's Exhibit Number 20. What is that
9 a picture of?

10 A That's a picture of that left rear bedroom. I'm
11 kneeling down beside the bed, and that's the
12 firearm on the bed.

13 Q Who did you say is kneeling down beside the bed?

14 A That's me.

15 THE COURT: What number is that?

16 THE WITNESS: Twenty, sir.

17 THE COURT: Thank you.

18 BY MR. SCOTT:

19 Q That's where you found the gun?

20 A No, sir, that is not where I found the gun.

21 Q Where did you find it?

22 A The gun was on the right side of the bed. The
23 weapon was on the right side of the bed when I
24 found it, when it was initially found. This
25 photograph was taken after I cleared the weapon.

- 1 Q So I want to show you Defendant's Exhibit Number 6.
2 What does that depict?
- 3 A That's the firearm on the bed where I found it.
- 4 Q And what position on the bed is it?
- 5 A It's on the right side. If you are standing at the
6 foot of the bed looking up, it's on the right side.
- 7 Q And that's how you found it?
- 8 A That's how I found it.
- 9 Q Can you explain one more time why it was moved? In
10 another picture it is depicted in another location.
- 11 A After we photographed it, I cleared the weapon.
12 This photograph was taken at some point after the
13 weapon was cleared but before I took it to
14 Detective Merrill.
- 15 Q But it was found under the mattress?
- 16 A Between the mattresses, yes. Between the -- under
17 the mattress and on top of the bed springs.
- 18 Q And it was in the back, left bedroom?
- 19 A That's correct.
- 20 Q Did you observe anything else in that bedroom?
- 21 A There was several items that we searched, the only
22 other thing of note was the Lexington Medical
23 Center folder.
- 24 Q You personally observed that?
- 25 A I did.

1 Q And what name was in it?

2 A Travas Jones.

3 Q Did you observe anything else in the house?

4 A When I went to turn the weapon in to Detective
5 Merrill in the kitchen, Detective Thomas and, I
6 believe, Officer Antley were in the kitchen. There
7 was some -- they had found some crack cocaine in
8 the kitchen.

9 Q Where was it when you saw it?

10 A When I saw it, it was sitting on the counter in the
11 kitchen.

12 Q Thank you, Mr. Valdario. Please answer any
13 questions Mr. Floyd may have for you.

14 THE COURT: Thank you, Solicitor.

15 Mr. Floyd.

16 MR. FLOYD: Thank you, Your Honor.

17 **CROSS EXAMINATION**

18 BY MR. FLOYD:

19 Q Officer Valdario, are you telling us you moved the
20 gun before it was photographed?

21 A No, I moved it after it was photographed.

22 Q Who photographed it?

23 A I don't know who photographed it. I called for a
24 camera and it was photographed.

25 Q There is no question the photographs show the gun

1 on different sides of the bed; do they not?

2 A Yes, sir. This one show it on the left side of the
3 bed with me kneeling beside the bed on the left
4 side.

5 Q That's Number 20?

6 A That's Number 20.

7 Q And then Defendant's Exhibit 6 for I.D. shows it on
8 what side of the bed?

9 A It's on the right side of the bed.

10 Q That's not in the State's photographs here; is it?
11 You may not know. I'm sorry. You might not know
12 that.

13 A I haven't seen -- I have seen a picture in the
14 State's. I mean, I know we have got a picture the
15 same as yours.

16 Q There's no question that the one photograph shows
17 it on the left and one photograph shows it on the
18 right?

19 A That's correct.

20 Q No question?

21 A Yes.

22 Q Thank you, Officer Valdario.

23 MR. FLOYD: No further questions.

24 THE COURT: Redirect?

25 MR. SCOTT: Nothing further from the State,

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1 Your Honor.

2 THE COURT: Thank you very much. You may step
3 down.

4 (Witness leaves the witness stand.)

5 THE COURT: You may call your next witness.

6 MR. SCOTT: Your Honor, the State calls Evan
7 Antley.

8 EVAN R. ANTLEY, being
9 first duly sworn, testifies as follows:

10 CLERK: State your full name, spelling your
11 last on the record.

12 THE WITNESS: Evan R. Antley. Antley is
13 A-N-T-L-E-Y.

14 DIRECT EXAMINATION

15 BY MR. SCOTT:

16 Q Thank you, Mr. Antley. Where are you employed?

17 A With the City of Cayce Police Department.

18 Q And how long have you been there?

19 A Approximately two and a half years.

20 Q When did you graduate from the Criminal Justice
21 Academy?

22 A I graduated from the Academy in March of 2010.

23 Q Then you went directly into the Cayce Public Safety
24 Department?

25 A I had been hired December 1st of 2009 with the

1 City, yes, sir.

2 Q What are your current duties with the department?

3 A Currently I'm assigned to the traffic enforcement
4 unit. We have a separate set of individuals who
5 primarily focus on traffic violations. I'm also
6 assigned to the S.W.A.T. team with the City.

7 Q So you help execute search warrants from time to
8 time?

9 A I do, yes, sir.

10 Q Did you have occasion to assist in executing a
11 search warrant on November 15, 2011?

12 A Yes, sir, at I did.

13 Q Explain what happened when you arrived.

14 A I was in the first vehicle that arrived on the
15 scene, other than the animal control truck that was
16 already there. I was riding with Detective Pereira
17 and Officer Youmans.

18 When we arrived on scene, myself, Officer
19 Youmans, and Detective Pereira moved towards the
20 residence. At some point I noticed that Detective
21 Pereira had moved to our right. Myself and Officer
22 Youmans continued towards the front of the house
23 towards an open front door.

24 Q What did you see when you walked inside the house?

25 A As we were walking up, we could see people in the

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1 living area. You could see directly into the
2 living area of the house. As we walked in, we were
3 giving commands for everyone that was in the
4 residence to show us their hands and to get on the
5 ground.

6 So as we made entry into the door, some people
7 had already complied and laid down immediately.
8 Some people were still frozen and had to be
9 assisted to the ground once we made entry into the
10 room.

11 Q What were they doing?

12 A It appeared as if they were having a card game.
13 There were cards on the table, money on the table.
14 I recall -- I know at least one, maybe two,
15 alcoholic drinks had been knocked over on the floor
16 from all the commotion. It appeared they were
17 hanging out having a card game.

18 Q So sitting down playing cards? Were they standing
19 up playing cards?

20 A There were seats around the table that was in the
21 den area. I recall, as we approached, right
22 before we arrived when we approached, I do recall
23 one person had stood up, and we told him to get on
24 the ground. Of course, they stood and then laid
25 down.

1 Q I want to direct your attention to State's Exhibit
2 Number 12. Could you step down?

3 MR. SCOTT: Your Honor, is it okay to have
4 Mr. Antley step down?

5 THE COURT: Yes, sir. Keep your voice up for
6 us.

7 THE WITNESS: Yes, sir.

8 (Witness leaves the witness stand.)

9 BY MR. SCOTT:

10 Q Mr. Antley, this (indicating) is the front door.
11 Where were the defendants -- or I'm sorry -- where
12 were the people who were in the house, where were
13 they when you entered?

14 A I recall we came in this way (indicating). Julius
15 Felder is on this side (indicating) of the house.
16 We came in and pulled diagonally this way
17 (indicating).

18 We entered. I saw a few individuals in this
19 living area (indicating). One of the individuals
20 had turned and stood near the doorway, but they
21 were -- there was one in this chair (indicating)
22 who actually was one of the ones that it took a
23 while for him to get on the ground.

24 We actually held him by the arm and he laid
25 down. There was one or two on this end

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1 (indicating) of the table. Then they were
2 occupying this couch here also (indicating). So
3 they were gathered around the table.

4 Q This (indicating) is labeled kitchen. Did you see
5 anybody in the kitchen?

6 A No, sir, I don't recall seeing anyone in the
7 kitchen.

8 Q Did you search anybody when you arrived?

9 A I did. We arrived and I secured, I believe it was
10 Mr. West. I don't have my report in front of me.
11 There was a Bradley West that was on this end
12 (indicating) of the table. He was placed in
13 handcuffs and searched at that time and escorted
14 out into the yard. Yes, sir.

15 Q I know you don't have your report on you, but do
16 you recall finding anything on him?

17 A Significantly it was, I believe, exactly a thousand
18 dollars in cash on Mr. West.

19 Q Did you search any area of the house?

20 A I'm sorry. I did search this living area, this den
21 area (indicating). That immediate first room, I
22 did search that. That was my assignment, yes, sir.

23 Q What did you find?

24 A I found, behind this heater (indicating) attached
25 to the wall, was two plastic bags. It had numerous

1 off-white, rocklike substances that appeared to me
2 to be crack cocaine.

3 Q Did you seize it?

4 A We did. It was photographed. I then took the
5 evidence to the custodian or the scribe, who was
6 Detective Merrill.

7 Q Detective Merrill. I will ask you to step back up
8 to the witness stand.

9 A (Witness resumes the witness stand.)

10 Q I will show you a couple of these pictures. Did
11 you take any pictures that day?

12 A I did. After I completed my search of the living
13 area, I assisted in taking photographs of the
14 kitchen as Detective Thomas was searching.

15 Q I am going to show you State's Exhibit Number 20
16 and 22. Do you recognize these?

17 A I do.

18 Q How are you able to recognize those?

19 A After you enter the den, this (indicating) would
20 have been the wall with the heater that I was
21 speaking of. These are the bags that I had
22 observed behind the heater. It's a clear and
23 accurate depiction of what I observed that day in
24 the den.

25 Q So you took possession of them and took them to

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1 Detective Merrill?

2 A I did.

3 MR. SCOTT: Let me get this marked.

4 (State's Exhibit Number 37 is marked for
5 identification).

6 BY MR. SCOTT:

7 Q Let me show you State's I.D. 37. Do you recognize
8 that?

9 A I do.

10 Q Does that depict what you found behind the heater
11 November 15th?

12 A I recall this package when we take the items. This
13 appears to be the item. We take it to the scribe.
14 He writes on the package where it was found and by
15 whom.

16 Q Who was the scribe?

17 A That would be Detective Merrill.

18 Q Thank you. And did you go into the kitchen area
19 there?

20 A I did. After I had completed my search of the den,
21 I assisted in taking photographs of the kitchen
22 area.

23 Q What did you photograph in there?

24 A As soon as I entered, I observed that Detective
25 Thomas had opened a drawer and there was -- I

1 recall it was two cookies of crack cocaine inside
2 the drawer with another bag with -- I believe it
3 was like powder cocaine, a playing card, a digital
4 scale.

5 Q So you personally observed all these items in that
6 drawer?

7 A Yes, sir.

8 Q Let me show you State's Exhibit 29, 27, 26, 25, and
9 30. Do you recognize those photographs?

10 A I do. These would have been the photographs I
11 would have taken that day.

12 Q What do they depict?

13 A Items that were observed in the kitchen inside that
14 drawer.

15 MR. SCOTT: Let me get these marked.

16 (State's Exhibits Number 38-39 are marked for
17 identification).

18 BY MR. SCOTT:

19 Q Let me show you State's 38 and 39. Do you
20 recognize those?

21 A I do.

22 Q What are they? Is that what you observed in that
23 drawer in the kitchen?

24 A It's not in the same form, but it appears to be the
25 same -- these here, by observation, it appears to

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1 be the pieces of those crack cookies. This here
2 (indicating) appears to be the other small bag that
3 was found.

4 Q You photographed all this evidence?

5 A I did.

6 Q Did you do anything else? What other involvement
7 did you have in that search?

8 A Other than photographing the kitchen, no further
9 involvement.

10 Q Thank you. Please answer any questions Mr. Floyd
11 may have.

12 THE COURT: Thank you, Solicitor.

13 Mr. Floyd.

14 MR. FLOYD: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. FLOYD:

17 Q Officer Antley, you were in the first wave to enter
18 the house?

19 A Yes, I was the second officer in the door.

20 Q The second officer in?

21 A Yes, sir.

22 Q When y'all drove up in the vehicles, there was a
23 fence -- isn't there -- around the house?

24 A Yes, sir.

25 Q And so there was a little bit of distance from

1 where you parked your car to go in the front door;
2 isn't that right?

3 A It's a short distance, yes, sir.

4 Q And you have to come through the gate or jump the
5 fence?

6 A You could do either, I guess. We actually used the
7 gate, yes, sir.

8 Q Used the gate. I will show you State's Exhibit 1.
9 Is that the front of the house?

10 A Yes, sir.

11 Q So basically there is a cyclone fence all the way
12 in front of the house; isn't there?

13 A There is a driveway on the -- if you are facing the
14 house from the road, there is a driveway on the
15 left. So the fence has to stop at some point.
16 There is that fence that stretches the front yard,
17 yes, sir.

18 Q When you entered -- and you were the second one --
19 did go through the gate or did you come the other
20 way?

21 A We went through the gate, like I said, yes, sir.

22 Q So anybody inside would have heard the cars running
23 up, and then people run running through the gate
24 into the house?

25 A I guess they could have. I don't know if they said

1 they would have. It's possible they could have,
2 but like I stated before, we try not to slam doors.
3 We don't worry about doors. We don't slide tires
4 as we pull up. We don't make a practice to
5 announce ourselves before we are ready and in an
6 advantageous position.

7 Q Wouldn't you agree that's it most likely they would
8 hear eight people, eight cars coming, 14 people
9 running toward the house?

10 A I'm not sure how likely that would be if they are
11 in there having a card game, as what it appeared,
12 I'm not sure exactly how likely that would be. No,
13 sir, I'm not quite sure.

14 Q Was the front door open?

15 A It was standing open, yes, sir.

16 Q So you don't think that would have assisted them in
17 hearing eight vehicles and 14 men heavily armed,
18 heavily clothed running toward their house?

19 A Of course, that would have assisted yes, sir.
20 However, everyone didn't show up at exactly the
21 same millisecond. When we arrived we immediately
22 began exiting our vehicle and giving orders.

23 Some of those vehicles were just perimeter
24 vehicles or, you know, admin staff. That would not
25 actually involved them in jumping out of a vehicle

1 and entering the house.

2 Q So you got there. Y'all get out of your vehicle,
3 and you start -- who did you give orders to?

4 A I'm sorry?

5 Q Who do you give the orders to?

6 A Anyone who is on premises at the time. We are not
7 sure exactly.

8 Q Actually there was a man in the front yard; wasn't
9 there?

10 A I believe so, yes, sir.

11 Q So somebody had to give orders to the man in the
12 front yard?

13 A Yes, sir.

14 Q The front door was open. So don't you think it's
15 likely that the people inside would have been
16 alerted to your presence?

17 A Yes, sir, they were alerted at the same time we
18 were ordering them on the ground. We didn't --
19 there was no real pause. Once we realized the door
20 was open, we knew we had to start giving commands
21 for them to lay down.

22 Q Are you testifying that in your opinion, nobody in
23 that house knew you were there until you got
24 inside?

25 A No, sir. I testified that as we were approaching

1 the house, we ordered them. Of course, they knew
2 we were there before we were inside the door
3 because we started yelling at them as we were
4 coming up through the yard.

5 Q I got you. So, in fact, you get out of your
6 vehicles. So whatever noise y'all would have made
7 driving up there and getting out of your vehicles
8 would then be followed by the running toward the
9 ~~house and the orders to the guy in the front yard~~
10 and the people in the house: Get down. Get down,
11 or whatever you were saying to them?

12 A Yes, sir.

13 Q So there is no question that the people inside knew
14 for some period of time that you were coming before
15 you got inside?

16 A However short that time was, yes, sir.

17 Q And I think your main -- you went and searched
18 Bradley West, I think?

19 A Yes, sir. I ended up searching Bradley West, yes,
20 sir.

21 Q And you said you got a thousand dollars out of his
22 pockets?

23 A Yes, sir, out of his pocket. Yes, sir.

24 Q But you didn't get any drugs off of him; did you?

25 A No, sir.

1 Q Now, these pictures may be up here, Officer Antley,
2 of the heater. Are those in front of you right
3 there? Can you show me the picture that shows
4 exactly where these bags were when you first saw
5 them?

6 A I haven't seen that picture up here, no, sir.

7 Q Could I see those pictures you have got there? Do
8 you have a picture that would show the jury exactly
9 where the drugs were before they were moved?

10 A Other than the one in your hand, no, sir.

11 Q Would that be this one or is there another one? I
12 don't want to put words in your mouth.

13 A That would represent the location of the drugs
14 before they were placed on top of the heater for a
15 closer photograph.

16 Q You are pretty sure this is the one? I am
17 guessing. So I don't know whether that is right or
18 not.

19 A You are asking me is there another picture?

20 Q Yes. I assume or did you take a picture of the
21 drugs where you first saw them?

22 A At that point I was not taking pictures. That
23 picture there would represent where the drugs were
24 in relation to the heater, between the heater and
25 the wall.

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1 Q And because this one (indicating)?

2 A Yes, sir.

3 Q Would this have been taken before the drugs were
4 moved?

5 A Yes, sir.

6 MR. FLOYD: Your Honor, I would like to have
7 this one marked as a defendant's for I.D.

8 (Defendant's Exhibit Number 8 is marked for
9 identification).

10 BY MR. FLOYD:

11 Q In looking at this picture, is this a picture of
12 the heater that we are talking about?

13 A Yes.

14 THE COURT: What number is that, Mr. Floyd?

15 MR. FLOYD: This one, Your Honor, is Number
16 20.

17 THE COURT: Thank you.

18 BY MR. FLOYD:

19 Q And that's a wall unit, I guess you call it? It's
20 a unit attached to the wall?

21 A Yes, sir.

22 Q And is this the drawing of it right here
23 (indicating)? Am I pointing to the right place?

24 A Yes, sir.

25 Q So it's on the wall there next to the kitchen, but

1 on the side of the living room/den whatever you
2 call this area (indicating); is that correct?

3 A Yes, sir.

4 Q Now, how big would you say this room is? This
5 first room where the card game was going on?

6 A I would say maybe from that wall where the heater
7 is to the wall on the other side of the couch, I'm
8 guessing, 12, 14 feet. I'm guessing.

9 Q About 12, 14 feet. How about from -- this is the
10 front door here (indicating); right? How about
11 this way (indicating)?

12 A I'm guessing about the same. I'm not sure. We
13 didn't drop a tape. I couldn't tell you for sure.

14 Q If you are the wall where the heater is, would it
15 be about from me to the other wall?

16 A To the wall across?

17 Q Yes.

18 A Thereabouts. Approximately from you or to the
19 podium behind you, yes, sir.

20 Q And how many men were inside that house?

21 A I believe it was a total of four or five in the
22 house.

23 Q And I will show you Number 8, Defendant's Exhibit
24 Number 8, is that the same heater that is shown in
25 State's Exhibit 20?

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- 1 A Yes, sir.
- 2 Q Now, I.D. Defense Number 8 is a closer up of the
3 area. Is that the way you found those packages we
4 just talked about, that you talked about and
5 identified a while ago?
- 6 A That represents the position. That represents
7 where they were sitting behind the heater, yes,
8 sir.
- 9 Q When you say sitting behind the heater, it's
10 visible; isn't it?
- 11 A From that angle you have get up next to the wall to
12 actually look behind the heater. You can't see it
13 but that mount, I guess, is what it's sitting on --
14 I'm not sure exactly -- is five or four inches
15 below the top of the heater. So you actually had
16 to get -- like this shot is -- on top and look
17 down.
- 18 Q But if you are staning there over that heater, you
19 could see it?
- 20 A Yes, sir.
- 21 Q So you wouldn't say it was well hidden; would you?
- 22 A It was hidden from the eye. When you walk by,
23 unless you looked hard, you wouldn't see it.
- 24 Q If you looked right down, you could see it?
- 25 A Yes, sir. If you looked hard, yes, sir, you would

1 see it.

2 Q Thank you.

3 MR. FLOYD: No further questions, Your Honor.

4 THE COURT: Redirect?

5 MR. SCOTT: Briefly, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MR. SCOTT:

8 Q Mr. Antley, what does S.W.A.T. stand for?

9 A Well, it's Special Weapons and Tactics.

10 Q What sort of tactic do you employ when you are
11 driving up on a house that you know to be occupied
12 and you are going to serve a search warrant?

13 A Of course, when we turned the corner, it was --
14 Detective Pereira accelerated hard and then went
15 straight towards where the final rest of the
16 vehicle was, where we actually stopped.

17 When we stopped you don't want to slam on
18 brakes or hit a chain-link fence or jump out
19 slamming doors. We try, before we actually get in
20 front of the residence, the doors are already
21 cracked open, and we are holding them closed.

22 Q So is one of your tactics stealth?

23 A Yes, sir. We train and train and train about
24 stealth, trying not to be -- that way we know what
25 we are doing before we alert the people inside the

1 house that we are coming.

2 Q You use your blue lights and sirens when you are
3 doing traffic duty; right?

4 A Yes, sir.

5 Q Do you do that when you are serving a search
6 warrant?

7 A No, sir.

8 Q When you jump out of your car, you talked about
9 leaving the doors open because you don't want to
10 slam them. Do you just kind of walk out of your
11 car up to the door? Do you run? What do you do?

12 A We move fast. It's like a fluid movement. We try
13 to not stop or let our gear make a whole lot of
14 noise. It's a quick exit out of the vehicle, and
15 we try to have some type of formation going into
16 the house.

17 Q Why do you do all this?

18 A We train that way. It's the most -- we get in a
19 line. It's accountability that we use, but I guess
20 it's one of the proven ways to go in without being
21 heard.

22 Q So you are saying the element of surprise is
23 important?

24 A Yes, sir.

25 Q And you train constantly --

1 A Constantly.

2 Q -- how to enter a home?

3 A Constantly, yes, sir.

4 Q Did you employ these tactics on November 15th?

5 A Yes, sir.

6 Q Let me ask you this: How long did it take for you
7 to get from your car out here on the roadway up to
8 this house?

9 A Maybe two seconds, three seconds. From the time --
10 once we were actually out of the vehicle, moving
11 from the vehicle to the front door, it was just a
12 mere matter of seconds.

13 Q Okay.

14 A Yes, sir.

15 Q Thank you, sir.

16 MR. SCOTT: Nothing further.

17 THE COURT: Recross?

18 **RECROSS EXAMINATION**

19 BY MR. FLOYD:

20 Q Did you say you come in fast, stop, quick, get out?
21 I didn't hear everything that was said. That's why
22 I'm asking you again.

23 A We come in fast, stop smooth, and once we are out
24 of the vehicle, we move fast.

25 Q Are those American-made vehicles that you arrive

1 in? Are they --

2 A We were riding in a General Motors vehicle. I'm
3 not sure.

4 Q Are they internal combustion engines?

5 A They are.

6 Q When you drive fast in them, does the engine make
7 noise?

8 A The engine makes noise all the time if the vehicle
9 is running, yes, sir.

10 Q And the faster you drive it, the more noise it
11 makes; doesn't it?

12 A Yes, sir.

13 Q So we got these several cars converging on the
14 house. So there would be engine noise preceding
15 your entry; would there not?

16 A There would be engine noise before we exited the
17 vehicle.

18 Q Thank you. Let me ask you this. We are in a room
19 like this. How long do you think it would take
20 someone to take a couple of steps and drop some
21 drugs behind that heater?

22 MR. SCOTT: Your Honor, I think he is asking
23 for an answer that would elicit speculation on the
24 witness' part.

25 THE COURT: Overruled.

1 BY MR. FLOYD:

2 Q How long do you think it would take somebody to
3 take a couple of steps and drop the drugs there
4 behind the heater?

5 A I'm not sure how long that would take.

6 Q Do you think you could do that quicker than you
7 could drive up, exit, run across the front yard,
8 and come through the front door?

9 A I couldn't answer that question.

10 Q Thank you.

11 MR. FLOYD: No further questions.

12 THE COURT: Thank you. Thank you very much,
13 Officer. You may step down.

14 (Witness leaves the witness stand.)

15 THE COURT: I believe now would be a good time
16 for us to take our recess for lunch. I remind you,
17 ladies and gentlemen, during this recess do not discuss
18 the case with anyone. That includes your fellow jurors,
19 lunch mates, family, friends, or anyone else. If anyone
20 tries to talk with you about the case, please let me
21 know immediately.

22 Please remember my instructions to you. Do
23 not use your computer, cellular phone, or any other
24 electronic device to obtain or disclose any information
25 about the case.

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1 THE COURT: Anything before we bring in the
2 jury from the State?

3 MR. SCOTT: Nothing from the State, Your
4 Honor.

5 THE COURT: From the defense?

6 MR. FLOYD: No, Your Honor.

7 THE COURT: Bring us our jury, please.

8 (The jury returns to the courtroom at
9 2:34 P.M.)

10 THE COURT: Welcome back, ladies and
11 gentlemen. I hope y'all had a pleasant lunch. We are
12 continuing the trial of the case by the presentation of
13 testimony by the State in its case in chief.

14 Solicitor, you may call your next witness.

15 MR. SCOTT: Thank you, Your Honor. The State
16 calls Frank Ballentine.

17 FRANK HAROLD BALLENTINE,
18 being first duly sworn, testifies as follows:

19 CLERK: State your full name, spelling your
20 last on the record.

21 THE WITNESS: My name is Frank Harold
22 Ballentine. The last name is B-A-L-L-E-N-T-I-N-E.

23 DIRECT EXAMINATION

24 BY MR. SCOTT:

25 Q Mr. Ballentine, where are you employed?

1 A The City of Cayce, Departments of Public Safety.

2 Q How long have you been there?

3 A Kind of like the previous people. Off and on, I
4 have been in law enforcement for over 19 years,
5 with 17 and a half of that with the City of Cayce.

6 Q What are your current duties?

7 A My current duties are as a road sergeant. That
8 means I supervise a shift of people that are
9 patrolling, marked uniform vehicles, and I also
10 participate as a member of the Cayce S.W.A.T. team.

11 Q So you execute search warrants?

12 A That is correct.

13 Q This is part of your regular duties?

14 A That is correct.

15 Q And did you participate in the search warrant at
16 on November 15, 2011?

17 A I did. I participated as part of the Cayce
18 S.W.A.T. team.

19 Q And do you recall -- they talk about stack going in
20 there. Do you recall where you were in the initial
21 stack?

22 A Yes, sir. As we were getting ready to actually
23 respond to the residence, a white Chevy Avalanche
24 had pulled up out in front of the residence. I was
25 toward the end of the stack.

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1 So myself and Officer Dooley were instructed
2 to make sure we secured that vehicle before we went
3 to the residence. So we broke away from what
4 should have been going straight to the residence,
5 just to check that vehicle quickly.

6 In a matter of less than a second, we had
7 already swung by the vehicle, made sure no one was
8 in, and then jumped back in to going to the
9 residence. There was only, I believe, seven of us
10 that made initial entry into the residence. I was
11 around number five or six going into the residence.

12 Q I am confused. You mentioned an Avalanche and
13 there was no one in it?

14 A Yes, sir.

15 Q Did you state a minute ago that it pulled up as you
16 were there?

17 A No, sir. It had pulled up just prior to our
18 responding around to the residence because we had
19 the observers that were watching the residence, and
20 they had seen the vehicle pull up.

21 Somebody was in the vehicle but the observer
22 in their position could not tell exactly what the
23 person did at that time. So we thought there might
24 still be somebody in the vehicle.

25 Q But they weren't?

1 A They were not.

2 Q So what did you observe when you went inside?

3 A Like I said, I was around the fifth or sixth person
4 going through the door. We were still so close
5 together that the defendant was still seated just
6 inside the door to the left.

7 Even though the other officers had gone
8 through and were yelling for people to get on the
9 ground, and some people were still in motion
10 getting on the ground, he was still seated directly
11 in the door to my right.

12 I escorted him to the ground and I assisted
13 him to the ground. Because there was another
14 person right inside the door laying on the ground,
15 we kind of went toward the kitchen just a little
16 bit. So when he laid down, his head was right
17 there by that wall toward the kitchen area.

18 Q So when you entered the door, he was to the right
19 and he was seated?

20 A Yes, sir.

21 Q When you mentioned the defendant, of course, you
22 are talking about Travas Jones?

23 A Travas Jones, yes, sir.

24 Q Did you speak to Mr. Jones?

25 A Basically our communication with Mr. Jones was

FRANK BALLENTINE -- DIRECT -- MR. SCOTT

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1 limited at that time. All I did was order him to
2 the ground. I assisted him to the ground right
3 where he was.

4 Then the next thing we do is secure everyone.
5 That's from a safety standpoint. I then placed
6 Mr. Jones into handcuffs and began to pat Mr. Jones
7 down.

8 So we really didn't talk at that time. As I
9 was patting Mr. Jones down, checking for weapons or
10 other contraband, I did find in one of his pants
11 pocket a wad of money that later I counted it in
12 front of Mr. Jones and determined it to be \$670.

13 Q He didn't have anything else on him?

14 A No, sir.

15 Q And did you search any part of the house?

16 A Yes, sir. Once we removed everyone that was
17 secured inside, the five subjects or five people
18 that were still inside the residence, backed out
19 front. The sixth subject was still out in front.

20 I initially helped with getting Officer
21 Garcia, which is one of our perimeter officers,
22 going around getting names of people. I did have a
23 chance to speak to the sixth person, the one that
24 was in the yard when all the officers were going
25 in.

1 That gentleman was identified as Michael Jones
2 in the front yard. Once I helped identify some
3 people in the yard, I went in and started doing a
4 search of the right rear bedroom as you are looking
5 at it on the paper there.

6 Q The individual in the yard, is that the one that
7 Pereira went and made contact with during the
8 initial --

9 A Yes, sir. That's the person that was initially
10 standing in the yard with the dog and animal
11 services. I didn't know his identity at the time.
12 But once we escorted everybody back outside --
13 because I was helping with Officer Garcia talking
14 to everyone -- that's when I found out his
15 identity.

16 Q Tell me his name again.

17 A His name was Michael Jones.

18 Q So it's your testimony that it wasn't this man,
19 Travas Jones, in the front yard, but it was
20 somebody named Michael Jones?

21 A Mr. Travas Jones was the one seated in the chair.
22 I actually physically handcuffed Mr. Travas Jones
23 inside myself.

24 Q And you found what in his pockets?

25 A He had \$670 cash folded up in his pocket.

FRANK BALLENTINE -- DIRECT -- MR. SCOTT

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1 Q Can you see this, State's Exhibit Number 12, from
2 there?

3 A Yes, sir I can.

4 Q You stated that when he laid down, his head was in
5 the kitchen area?

6 A Yes, sir. I know the drawing, being not to scale,
7 the table is actually kind of hidden a little bit.
8 When you first come out the door, there is like a
9 little short wall right there between that kitchen
10 area and the wall that separates the kitchen. So
11 he was laying on the ground with his body right
12 beside that wall, the one with the heater attached
13 to it.

14 Q So he was somewhere in here (indicating)?

15 A Yes, sir, with his head toward the kitchen and his
16 feet back toward the living room.

17 Q Okay. Does this (indicating), I guess, symbolize
18 the wall between the kitchen and the living room?

19 A Yes, sir.

20 Q Tell me what other part of the house you searched?

21 A From that point once I assisted outside with the
22 people, I went in and began searching the bedroom
23 to the right rear.

24 Q That's this bedroom (indicating)?

25 A Yes, sir, that bedroom there. Myself and Officer

1 Dooley were assigned to searching that room. You
2 do a systematic search. Basically you start at one
3 corner, and you do everything. The other person
4 starts at the other side.

5 Basically you pass each other. That way you
6 kind of get a double look. We found nothing of
7 evidentiary value in that room. I did find -- the
8 closet, as soon as you go through the door to the
9 left, there is a closet. It was full of clothes.
10 The clothes, a lot of them were uniforms, and they
11 had the name Theo written on the uniforms.

12 Q Who is Theo?

13 A Mr. Glover, that I believe is the other resident.

14 Q Do you know of any relation between Mr. Theo Glover
15 and Travas Jones?

16 A My understanding is they are somehow brothers or
17 half-brothers or something.

18 Q I will show you State's Exhibit Number 19. What is
19 that a picture of?

20 A This is an accurate depiction of some of the
21 clothing that I saw in that closet at the time.
22 This picture shows them once they were removed from
23 the closet.

24 Q What else did you find back there in that bedroom?

25 A There was also a dresser in the room. As soon as

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1 you go through the door to the right, there was a
2 dresser. In that dresser we did find the checkbook
3 that the defense had mentioned earlier.

4 It was in one of the drawers to that dresser.
5 It was in the name of the lady that I believe
6 Detective Pereira told us was the mother of
7 Mr. Jones and Mr. Glover.

8 Q Did you find anything else in that dresser?

9 A I can't recall on the dresser, if there was
10 anything else that had any names on it. But in the
11 closet where the clothes were hanging -- the closet
12 was a tall closet. It was an older house.

13 There was a shelf at the top. It was all well
14 made. It was not like a removable shelf. It had a
15 lip to it, and that kind of woodwork is that old
16 tongue and groove.

17 It was strong enough that I pulled myself up
18 to look at the shelf on top, and there was a stack
19 of papers up in the closet that I moved down.
20 There was some old bond paperwork in somebody
21 else's name that is not Mr. Glover or Mr. Jones.

22 Q Let me show you State's Exhibit Number 18 really
23 quick. Do you recognize that?

24 A Yes, sir, that's a picture of Mr. Glover's South
25 Carolina driver's license. It was sitting on top

1 of that dresser that I was talking about. It was
2 to the right inside the room.

3 Q Let me show you State's Exhibit Number 40. Do you
4 recognize that?

5 A Yes, sir that's an accurate depiction of the
6 paperwork that I found in the top of the closet on
7 the day of the search warrant.

8 Q Did you find anything else with that name on it?

9 A There was just a stack of legal documents, just
10 like this. It was like bond paperwork and arrest
11 warrants and stuff in the name of Deandre Staley.
12 That was altogether in the stack up in the top of
13 that closet. I couldn't tell how long it had been
14 there, but it seemed like it had been there a
15 while.

16 Q Is that what the defense was mentioning earlier
17 when they were talking about a warrant?

18 A Yes, sir.

19 Q But in the closet you said you found Theyatti
20 Glover's uniforms and you found that I.D. where?

21 A The I.D. was on the dresser. Immediately when you
22 go through the door to the right, the dresser is
23 there.

24 Q And anything else that you observed that day that
25 was noteworthy to you?

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1 A No, sir, not that I recall.

2 Q Okay. Please answer any questions Mr. Floyd may
3 have.

4 THE COURT: Thank you, Solicitor.

5 Mr. Floyd.

6 MR. SCOTT: I'm sorry, your Honor. May I
7 introduce Number 40 for admission into evidence.

8 THE COURT: Have you seen 40, Mr. Floyd?

9 MR. FLOYD: I provided it for him, Your Honor.

10 THE COURT: Sir?

11 MR. FLOYD: I provided it for him.

12 THE COURT: So no objection?

13 MR. FLOYD: No objection.

14 THE COURT: State's 40 is in evidence without
15 objection.

16 (State's Exhibit Number 40 is received into
17 evidence.)

18 CROSS EXAMINATION

19 BY MR. FLOYD:

20 Q Officer Ballentine, you were what, fifth or so in
21 the house you said?

22 A Fifth or sixth. I am guesstimating because I was
23 right behind Sergeant Valdario.

24 Q And you had stopped off for a brief period of time
25 to clear a vehicle?

- 1 A Yes, sir. I actually didn't stop. It was all kind
2 of a fluid motion. I was in the third vehicle
3 arriving driven by Lieutenant Garren. As I exited
4 the vehicle, my job was to basically make sure the
5 vehicle was empty. I ran past that vehicle, which
6 was on my way to the gate to go into the residence
7 anyway.
- 8 Q Where was that vehicle parked?
- 9 A That vehicle was out at the roadway parallel to the
10 roadway.
- 11 Q (Indicating)?
- 12 A Out at the roadway.
- 13 Q Like this (indicating).
- 14 A Yes. It's the same motion you have here but
15 just out further, if you are trying to put it
16 parallel.
- 17 Q Oh, that's (indicating) the front door?
- 18 A Yes, sir, that the front door.
- 19 Q Let's say this (indicating) is the fence.
- 20 A The fence. It was right there in front of the
21 fence, yes, sir.
- 22 Q I was thinking that was the gate. It would be
23 right here (indicating) in front of the fence?
- 24 A Yes, sir.
- 25 Q That would be the Avalanche?

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- 1 A Yes, sir.
- 2 Q Was there another vehicle there?
- 3 A The Avalanche was the only one that I was directed
4 to check. So I didn't even look to see what other
5 vehicle was there because back at the driveway,
6 there was two patrol vehicles that pulled in ahead
7 of us. So if there was vehicles in front of them,
8 I didn't even pay attention.
- 9 Q There might have been but you don't know?
- 10 A The white Avalanche is the only one I remember in
11 front of the residence at all.
- 12 Q So when the S.W.A.T. vehicles would have come on
13 the scene -- maybe it would be easier to use
14 State's Exhibit 1. That's (indicating) the house;
15 is that correct?
- 16 A That is correct, sir.
- 17 Q And that's (indicating) the fence?
- 18 A Yes, sir.
- 19 Q The cyclone fence. So is it your testimony that
20 the white Avalanche would have been parked here
21 (indicating) in front of the gate?
- 22 A No, sir, if I can show you real quick. Where the
23 gate is, the Avalanche was actually just back a
24 little bit on this side (indicating) of it.
- 25 Q So where did the S.W.A.T. vehicles park?

- 1 A You had two vehicles pulled in into the driveway
2 here (indicating) on the left side of the
3 residence, and then the vehicle I was in actually
4 was parallel to the road. We were back behind the
5 white Avalanche where we pulled up.
- 6 Q So the S.W.A.T. team members -- well, how about the
7 first people in? Do you remember where they
8 parked?
- 9 A I think -- and this is I'm only speculating -- but
10 I think their vehicle was more to the left side
11 here (indicating) that driveway area.
- 12 Q Okay. Have you looked over Officer Pereira's
13 investigative notes in connection with this?
- 14 A Briefly, sir.
- 15 Q Now, would you agree with me that he says that
16 Michael Jones was in the house? I will let you
17 look at it.
- 18 A (Pause.) His investigative notes indicate that he
19 thought Michael Jones was in the house.
- 20 Q Your recollection is you come through the door and
21 you say Travas Jones was right here (indicating)
22 next to the door?
- 23 A Yes, sir. Again, the picture is not to scale, but
24 it's that chair right there inside and to the right
25 slightly.

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- 1 Q Is it more over this way (indicating)?
- 2 A I mean, you run into the chair basically when you
- 3 come through the front door.
- 4 Q And the other gentlemen are back over in here
- 5 (indicating) then?
- 6 A Everybody else, when I came through the door,
- 7 everybody else was either on the ground or in the
- 8 process of getting on the ground in that room. As
- 9 I said, there was one body like almost blocking my
- 10 way right there at that chair.
- 11 Q (Indicating photograph).
- 12 A I can't remember exactly how his body was. His
- 13 body was right beside where Mr. Jones was because
- 14 Mr. Jones actually had to come toward the kitchen
- 15 more.
- 16 Q Just to have room to lay down?
- 17 A Yes, sir.
- 18 Q It was kind of tight in there with all those people
- 19 living on the floor?
- 20 A Yes, sir.
- 21 Q And all you people coming in and standing up?
- 22 A Yes, sir.
- 23 Q Thank you, Officer Ballentine.
- 24 MR. FLOYD: I have no further questions.
- 25 THE COURT: Redirect?

REDIRECT EXAMINATION

1

2 BY MR. SCOTT:

2

3 Q You mentioned some patrol cars ahead of you pulled
4 into the driveway?

3

4

5 A I believe that's the direction that the vehicles in
6 front of us went, was the driveway to the left
7 side.

5

6

7

8 Q Did you observe patrol cars in the driveway when
9 you pulled up?

8

9

10 A Again, I'm not trying to sound funny. But when you
11 are focused on things, you are kind of looking at
12 what you are doing right at the moment. The
13 S.W.A.T. team, you just trust what the other
14 members are doing.

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15 So where they physically were at in relation
16 to me is kind of hard for me to remember. I think
17 their vehicles were toward the driveway side of the
18 residence.

15

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19 My focus was the white Avalanche. So I'm
20 staring at it from the time we pull up, till the
21 time I get out, run past the Avalanche and make
22 sure it's clear before I went to the residence.

19

20

21

22

23 Q I don't know if you can answer this, but in these
24 pictures we see the fence in front of the house.
25 So did this fence or gate extend into the

23

24

25

1 driveway?

2 A I don't think it extended into the driveway, no,
3 sir.

4 Q So that would allow cars obviously to pull into the
5 driveway?

6 A Yes, sir. We actually, when we walked people from
7 the front yard over to our prisoner transport van,
8 I remember we just walked through that side going
9 back to the prison transport van. I don't remember
10 having any obstacles in our way on that side. This
11 is when he left.

12 Q You are free and clear to run in -- the gate
13 borders the front of the house. You are free and
14 clear to run in through the driveway; is that
15 correct?

16 A That is correct, sir.

17 Q And how long did it take you to get out of your car
18 and into the house?

19 A Again, a matter of seconds. Because by the time I
20 made it through -- and I'm saying I'm at the end of
21 the stack -- Mr. Jones was still seated inside. He
22 hadn't had a chance to even get up with the other
23 officers already coming through.

24 Q Thank you.

25 THE COURT: Recross, Mr. Floyd?

RECROSS EXAMINATION

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BY MR. FLOYD:

Q Officer Ballentine, so your recollection is that the Antley vehicle was to this side (indicating) of you toward the driveway?

A Yes, sir.

Q So if he testified that he came through the gate, he would have had to go this way (indicating). Well, the gate would be down here (indicating). So he would have to go this way (indicating) and through the gate; is that correct?

A Again, sir, I can't testify to what they physically did. I just know that I went to the Avalanche, and I came through the front gate.

Q Thank you.

MR. FLOYD: No further questions.

THE COURT: Thank you. Thank you very much, Officer. You may step down.

(Witness leaves the witness stand.)

THE COURT: You may call your next witness.

MR. SCOTT: The State calls Jason Merrill.

THE COURT: If you would come around and be sworn, please.

JASON ROBERT MERRILL, being first duly sworn, testifies as follows:

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1 CLERK: State your full name, spelling your
2 last.

3 THE WITNESS: My name is Jason Robert Merrill.
4 The last name is spelled M-E-R-R-I-L-L.

5 DIRECT EXAMINATION

6 BY MR. SCOTT:

7 Q Mr. Merrill, where do you work?

8 A I currently work at the Cayce Department of Public
9 Safety.

10 Q What do you do there?

11 A I'm a detective. My major duties are following up
12 investigation on various number or different types
13 of cases. Up until January of this year, I was the
14 evidence custodian as well. That was a part-time
15 responsibility of mine.

16 Q What does an evidence custodian do?

17 A Basically I was responsible for maintaining
18 evidence, the integrity of evidence, securing it.
19 Also, part of my responsibilities was transporting
20 items of evidence out for analysis at places such
21 as S.L.E.D., the State Law Enforcement Division.

22 Q Tell me, what is a scribe? What does a scribe do
23 as far as in law enforcement when a search warrant
24 is executed?

25 A At our department the scribe, whenever we do an

1 execution of a search warrant, the responsibility
2 would be to basically document as part of the
3 search warrant process what was seized by law
4 enforcement and to keep track of that.

5 As part of the search warrant, there is a
6 thing called the return, which we are required to
7 return to a judge within a certain amount of time,
8 and it has to show basically an inventory of what
9 we seized as part of the search warrant.

10 Q Did you act as scribe and did you act as evidence
11 custodian on November 15, 2011, at

12 ?

13 A Yes, I did.

14 Q And did they find any evidence that day?

15 A Yes. Part of my responsibilities that day, I was
16 asked to assist with the S.W.A.T. team and
17 Detective Pereira and Detective Thomas to act as a
18 scribe for them.

19 What I did basically was once the S.W.A.T.
20 team made entry and everything was secure -- you
21 know, people were secured and detained and
22 removed -- I went in and basically sat at the
23 kitchen table there as you walk in the door to the
24 left, right off the kitchen.

25 I had with me packaging materials for whatever

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1 evidence we might find. I also had a copy of the
2 warrant. I was there to write down -- as they
3 found stuff, I would write it down on the warrant.

4 Q So in State's Exhibit Number 12, there is a round
5 table diagrammed in the kitchen area. Is that the
6 table you sat at?

7 A Yes, I believe it was. I don't remember exactly
8 what shape it was, but that would be the area where
9 the table was.

10 Q Did you participate in the actual search or did you
11 stay at the table?

12 A I stayed at the table.

13 Q It's your testimony that the officers, when they
14 would retrieve something, they would bring it to
15 you?

16 A Yes, they were instructed, I believe by Detective
17 Thomas, that if they found something, get it
18 photographed. Then once they were cleared, to
19 bring it to me where they stayed with me while I
20 packaged it in front of them, and I labeled where
21 they found it and what officer found it.

22 Q So they brought it to you; you document it. Then
23 after that it is in your control and custody; is
24 that correct?

25 A That's correct.

1 Q Let me show you State's 37, 38, and 39. For now
2 they are listed as I.D. exhibits, exhibits for I.D.
3 Do you recognize those?

4 A Yes. These are the bags which I packaged as each
5 officer -- in this case Officer Antley, Officer
6 Thomas, and another one from Officer Thomas --
7 brought me the evidence for me to package.

8 Q Whose handwriting do you see on the bags?

9 A That is my handwriting.

10 Q And what do they indicate? What sort of
11 information do you write on the bags?

12 A The number I put on it corresponds to the number on
13 the search warrant return. It represents to me
14 kind of an order in which things were brought to
15 me, not necessarily in the order of which they were
16 found. I also put on there the location that it
17 was reported to me where it was found and by what
18 officer found it as it was reported to me.

19 Q After you receive it, you document it. What do you
20 do with evidence that you suspect being illegal
21 narcotics?

22 A We take them to the State Law Enforcement Division
23 for testing.

24 Q Is there any special packaging you use?

25 A Yes. We use what is called a B.E.S.T. kit. It's a

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1 packaging that S.L.E.D. provides for you to meet
2 their internal requirements. It has certain
3 paperwork that needs to be filled out so S.L.E.D.
4 can have the appropriate information to process the
5 analysis.

6 It also has a secure, tamper-resistant or
7 tamper-evident bag inside in which we place any
8 substances that we wish to have tested.

9 Q After you documented that suspected -- those
10 suspected drugs -- did you put them in a B.E.S.T.
11 bag?

12 A Yes. After the operation was complete, I brought
13 these back to headquarters and packaged them into
14 what we call a B.E.S.T. kit. For the immediate
15 time being, I secured them in our evidence room
16 until I could get a chance to run them out to
17 S.L.E.D.

18 In this case on November 29th, I was able to
19 check them out of our evidence room, our secure
20 evidence room, and bring them to S.L.E.D. for
21 analysis.

22 Q So between the time they were seized and up until
23 the time they were taken to S.L.E.D. for analysis,
24 did they remain in your care and custody and your
25 complete control that entire time?

1 A Yes, they did.

2 Q And I guess the same with the pistol, you
3 wouldn't have had to put this in a B.E.S.T. bag,
4 but State's Exhibit Number 36, did you retrieve
5 this?

6 A Yes, that was also placed into our evidence room.

7 Q When you took it out to S.L.E.D., do you remember
8 who you left it with?

9 A Yes. According to my records, I left -- I gave it
10 to Ms. Selena Kinard. I'm not sure of the
11 pronunciation. I apologize.

12 Q And she is an employee of S.L.E.D.?

13 A Yes, I believe her to be an employee of S.L.E.D.
14 who works in their evidence intake.

15 Q So that best bag had not been tampered with or cut
16 open in any way between the time you sealed it and
17 when you took it to her?

18 A Correct. I didn't notice any evidence of
19 tampering. I didn't alter or change the evidence
20 in any way.

21 Q Thank you. Please answer any questions Mr. Floyd
22 may have.

23 THE COURT: Thank you, Solicitor.

24 Mr. Floyd.

25 MR. FLOYD: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. FLOYD:

3 Q Officer Merrill, so basically you placed the items
4 in the evidence room. They weren't in your actual
5 control or care. They were in the evidence room
6 for 14 days before you took it to S.L.E.D.?

7 A Yes, sir, of which I was responsible for the
8 evidence room.

9 Q Now, there was a Pyrex container. Was that taken
10 to S.L.E.D. also?

11 A Yes, it was.

12 Q Now, can you tell us which envelopes come from what
13 part of the house? Do you understand my question?

14 A Yeah. You are referring to the envelopes
15 containing the substances and where exactly they
16 came from in the house. I can tell where they were
17 reported to be. I did not personally observe them
18 when they were found.

19 Q Where were they found?

20 A These from State's Exhibit 37 were found in the
21 living room in the heater -- in or by the heater.
22 Like I said, I did not personally observe it. That
23 was what was reported to me. State's Exhibit 38
24 was found in the kitchen drawer. Also, State's
25 Exhibit Number 39 was also found in the kitchen

1 drawer.

2 Q The kitchen drawer. So basically you were like
3 what they call the scribe. You don't actually do
4 the search yourself?

5 A Correct. That would be a good characterization.

6 Q Were you present while the search was being
7 conducted?

8 A Yes, I was present at the table in the kitchen
9 area.

10 Q Is it true that all the occupants of the house had
11 been removed from the house?

12 A Yes. At the time that I entered, they had been
13 removed from the house.

14 Q And was the front door closed so that the search
15 could be done in secrecy or privacy?

16 A When I entered I remember the front door being
17 open, but, yes, we did close it, at least partially
18 while we were searching, just to prevent any
19 conversation or anything that like from carrying
20 over, from either direction so we could concentrate
21 basically.

22 Q And your job consisted of taking the items that
23 were brought to you, memorializing it or
24 documenting it, and taking them to S.L.E.D. and
25 putting them in the evidence room?

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1 A Yes.

2 Q Thank you.

3 MR. FLOYD: I have no further questions, Your
4 Honor.

5 THE COURT: Redirect?

6 MR. SCOTT: Nothing from the State, Your
7 Honor.

8 THE COURT: Thank you. Thank you very much.
9 You may step down.

10 (Witness leaves the witness stand.)

11 THE COURT: Solicitor, you may call your next
12 witness.

13 MR. SCOTT: Your Honor, the State calls Selena
14 Kinard.

15 THE COURT: If you would come around and be
16 sworn, please.

17 SELENA KINARD, being
18 first duly sworn, testifies as follows:

19 CLERK: State your full name, spelling your
20 last on the record.

21 THE WITNESS: My name is Selena Kinard,
22 K-I-N-A-R-D.

23 DIRECT EXAMINATION

24 BY MR. SCOTT:

25 Q Ms. Kinard, where are you employed?

1 A I am employed with the South Carolina Law
2 Enforcement Division, also known as S.L.E.D.

3 Q And what are your duties at S.L.E.D.?

4 A I am in the evidence control department. We take
5 evidence in from agencies all over the State and
6 log that evidence into our computer system.

7 Q How long have you been there?

8 A June 4th will be five years.

9 Q Tell me the procedure when somebody from a law
10 enforcement agency comes with a piece of evidence
11 and leaves it with you, what do you do?

12 A Basically each person that comes into log in
13 evidence, they have to sign in with our
14 receptionist. When we are ready to call that
15 person back, we call our receptionist and tell her
16 we are ready for that particular agency.

17 They come back into the evidence control area,
18 which we have four separate doors for four
19 technicians, and they sit directly in front of me
20 and log in that evidence into the computer
21 system -- or I log it into the computer system.

22 Q What kind of evidence do you receive? It's not
23 just drug evidence; isn't that right?

24 A That's correct. We receive anything from weapons
25 to clothing from suspects or victims, rape kits,

1 just anything.

2 Q You are kind of the gatekeeper; right? I guess
3 besides the receptionist, the evidence comes to
4 you. That's how it enters into S.L.E.D. to be
5 analyzed?

6 A That's correct.

7 Q So you can testify that they bring it to you --
8 well, if it is drugs, how does it typically come
9 packaged to you?

10 A Typically if it will fit into a B.E.S.T. kit, we
11 ask the officers to put the drugs into a B.E.S.T.
12 kit. If it's too big to fit into a B.E.S.T. kit,
13 then, of course, it would be put in a box.

14 Q If it comes in a B.E.S.T. kit, do you ever open it
15 up.

16 A What we do is -- I know now they don't keep the
17 envelopes -- but a B.E.S.T. kit, the outer
18 packaging is an envelope with the instructions on
19 how to fill out the B.E.S.T. kit on the front of
20 the envelope.

21 We open that envelope and verify the inner
22 packaging, which is the tamper-evident pouch, to
23 make sure that the officer that sealed it has
24 signed, dated, and printed their name on the inside
25 packaging and also that the numbers match up. Each

1 B.E.S.T. kit has its own B. number, as we call it,
2 and we make sure those two numbers match up.

3 Q Do you inspect the tamper resistant? Do you check
4 to see if it has been tampered with?

5 A Yes, we do check the seal. It's like a teal
6 colored or green colored like glue, and we do
7 verify that that is not opened or somebody has
8 tampered with it.

9 Q Were you working on November 29, 2011?

10 A Yes, I was.

11 Q Did you have occasion to receive some drug evidence
12 from Jason Merrill of Cayce?

13 A Yes, I did.

14 Q And at any time did you tamper with the package or
15 open it or anything?

16 A The only time I would have opened it would have
17 been the outer envelope.

18 Q So not the actual bag that contained the alleged
19 narcotics?

20 A No.

21 Q Do you recognize State's I.D. Exhibits Number 37,
22 38, and 39?

23 A I do not. The drugs would be inside of the
24 tamper-evident pouch, which is placed actually
25 inside an envelope. Just looking at these

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1 packages, I do see where the lab number that
2 corresponds with this particular case is
3 handwritten on there. So I can verify that it's
4 the lab number.

5 MR. SCOTT: If I could get this marked,
6 please.

7 (State's Exhibit Number 41 is marked for
8 identification).

9 BY MR. SCOTT:

10 Q Let me show you State's Exhibit 41 for purposes of
11 I.D. Do you recognize what that is?

12 A Yes, I do recognize this. This is the pouch that I
13 was speaking of that is placed actually inside of
14 an envelope. I would have affixed a yellow label
15 similar to this on the outer envelope when I logged
16 it in.

17 This is the pouch that we do check to make
18 sure that the officer has dated, signed, and
19 printed his name on there. If any of the
20 information is missing, we will not accept the
21 B.E.S.T. kit.

22 Q And do you have your records in front of you of
23 receiving the package from November 29, 2011, from
24 Mr. Merrill?

25 A Yes, I do.

1 Q What did you in turn do with that package?

2 A On November 29th I logged it in at 11:21 A.M.
3 Actually it was obviously less than a minute, at
4 11:21 I scanned it into what we call the drug
5 evidence intake storage. It's an area in our
6 evidence rooms that house the drugs and weapons
7 that is locked down separately from the rest of our
8 evidence.

9 Q Who typically picks up the evidence from there?

10 A It would be -- we have four technicians that
11 actually log in, and then we have an evidence
12 technician that strictly works in the evidence
13 room, Patricia Crooks. On December the 6th, she
14 was actually the person that retrieved it from the
15 intake storage.

16 Q Do you have in your notes the purpose that those
17 drugs were submitted to S.L.E.D.?

18 A No, I don't.

19 Q Why are drugs typically supplied to S.L.E.D.?

20 A Typically they have -- we don't usually know the
21 background of the cases. We log in so many cases
22 every day. We assume it's either a drug bust or a
23 stop or a seizure and then to be analyzed.

24 Q Thank you. Do your notes show where that
25 particular suspected narcotics were going?

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1 A According to my chain of custody, it was assigned
2 to Doug Robinson. He is a forensic scientist
3 within the drug I.D. department.

4 Q Thank you. Please answer any questions Mr. Floyd
5 may have.

6 THE COURT: Thank you, Solicitor.

7 Mr. Floyd.

8 MR. FLOYD: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. FLOYD:

11 Q Ms. Kinard, let me see if I can get this straight.
12 You recognize this (indicating)?

13 A Yes, sir.

14 Q But there is no way that you can say with certainty
15 that Exhibits Number 37, 38, and 39 were inside
16 this?

17 A I can look at the packages, Exhibits 37, 38, and
18 39, and on these packages is handwritten the
19 particular lab number. Each case get its own lab
20 number, and it's unique to each case. In this case
21 its L-11-13440. I do see on those packages that
22 that lab number is handwritten on there.

23 Q I understand that, but you don't know when that lab
24 number was written on there; do you?

25 A No, I cannot say. That is not my handwriting.

1 MR. SCOTT: Your Honor, may we approach
2 briefly?

3 THE COURT: No, sir. You can continue.

4 MR. FLOYD: Thank you. I have no further
5 questions, Your Honor.

6 THE COURT: Do you have anything on redirect,
7 Solicitor?

8 REDIRECT EXAMINATION

9 BY MR. SCOTT:

10 Q Were you present this morning when myself and the
11 defense attorney opened this bag and took those
12 out?

13 A I can't say for sure. I have been here since
14 9:30 this morning. I didn't witness it.

15 Q But when you receive it, it's in the B.E.S.T. kit;
16 correct?

17 A That's correct.

18 Q And you find numbers on here that correspond to
19 this yellow tag that you affixed?

20 A That's correct.

21 Q Thank you.

22 THE COURT: Recross, Mr. Floyd?

23 MR. FLOYD: Nothing further, Your Honor.

24 THE COURT: Thank you very much, Ms. Kinard.
25 You may step down.

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1 (Witness leaves the witness stand.)

2 THE COURT: Any objections to this witness
3 being excused?

4 MR. SCOTT: None from the State, Your Honor.

5 MR. FLOYD: None from the defense, Your Honor.

6 THE COURT: Thank you very much. You may call
7 your next witness, Solicitor.

8 MR. SCOTT: The State calls Pat Crooks,
9 Patricia Crooks.

10 THE COURT: Ms. Crooks, if you would come
11 around, please.

12 PATRICIA CROOKS, being
13 first duly sworn, testifies as follows:

14 CLERK: State your full name.

15 THE WITNESS: My name is Patricia Crooks,
16 C-R-O-O-K-S.

17 DIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q Ms. Crooks, where are you employed?

20 A I am employed at the South Carolina Law Enforcement
21 Division, also known as S.L.E.D.

22 Q And what are your duties with S.L.E.D.?

23 A My duties at S.L.E.D. consist of working in the
24 evidence room. I pull evidence that is ready to be
25 examined for forensic scientists or for forensic

1 technicians.

2 Once the evidence has been examined, it's
3 returned back to the evidence room, and it's
4 restocked to be returned to the agencies. I also
5 pull evidence to be returned to agencies when
6 someone from the agency comes in to pick up
7 evidence.

8 Q Did you bring your notes with you documenting your
9 involvement with this particular case?

10 A I do. I have a copy of the chain of custody.

11 Q What exactly was your involvement?

12 A After the evidence was logged in and placed in the
13 drug evidence intake storage, I removed that
14 evidence from the intake storage on 12/6/2011 at
15 9:29.

16 I scanned it to myself. Each person has an
17 individual barcode, and that is how the computer
18 tracks the evidence is by the barcodes of the
19 people who handle the evidence.

20 Once I scan it to myself, then I rescan it
21 when I give it to the person collecting it, which
22 in this case would be the forensic scientist, Doug
23 Robinson.

24 Q And how often do you do exactly what you just
25 explained as part of your job?

1 A Hundreds of times a day, probably thousands.

2 Q And do you do anything typically with the evidence,
3 other than taking it from point A. and documenting
4 that you are taking it, and delivering it to point
5 B. and documenting that?

6 A I don't.

7 Q In this case is that what you did with State's
8 Exhibits 37, 38, and 39, which were logged into
9 State's Exhibit Number 41?

10 A Yes. This would have been to Laboratory
11 Number L-11-13440, item 1.

12 Q And who did you ultimately deliver that to?

13 A To forensic scientist, Doug Robinson.

14 Q Thank you, Ms. Crooks. Please answer any questions
15 Mr. Floyd may have for you.

16 THE COURT: Thank you, Solicitor.

17 Mr. Floyd.

18 MR. FLOYD: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. FLOYD:

21 Q Good afternoon, Ms. Crooks.

22 A Good afternoon.

23 Q Let me show you Exhibits 37, 38, and 39.

24 A Okay.

25 Q Can you identify them?

1 A Not by looking at this, other than it has the
2 laboratory number on it. I would have received it
3 from this container that would have been inside the
4 B.E.S.T. kit.

5 Q In the form they are now, you can't identify them;
6 can you?

7 A Except for the S.L.E.D. laboratory number that
8 indicates it belongs with this L-11-13440.

9 Q Thank you.

10 MR. FLOYD: No further questions.

11 THE COURT: Redirect, Solicitor?

12 MR. SCOTT: None, Your Honor. We would also
13 ask that this witness be excused.

14 THE COURT: Any objections, Mr. Floyd?

15 MR. FLOYD: No objection, Your Honor.

16 THE COURT: Thank you very much for being with
17 us today, Ms. Crooks. You may step down and you may be
18 excused.

19 THE WITNESS: Thank you.

20 (Witness leaves the witness stand.)

21 THE COURT: Solicitor, you may call your next
22 witness.

23 MR. SCOTT: Your Honor, the State calls
24 Douglas Robinson.

25 MR. FLOYD: Your Honor, we have a matter of

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1 THE COURT: Yes, she may be excused. Thank
2 you. Thank you for being with us.

3 Anything, Mr. Floyd, before we bring in our
4 jury?

5 MR. FLOYD: Nothing further, Your Honor.

6 THE COURT:

7 (The jury returns to the courtroom.)

8 THE COURT: Welcome back, ladies and
9 gentlemen. We are continuing the trial of the case by
10 the presentation of testimony by the State.

11 Solicitor, you may call your next witness.

12 MR. SCOTT: Your Honor, the State calls
13 Douglas Robinson.

14 DOUGLAS ROBINSON, being
15 first duly sworn, testifies as follows:

16 CLERK: State your full name, spelling your
17 last.

18 THE WITNESS: Douglas Robinson,
19 R-O-B-I-N-S-O-N.

20 DIRECT EXAMINATION

21 BY MR. SCOTT:

22 Q Mr. Robinson, where are you employed?

23 A The South Carolina Law Enforcement Division,
24 commonly known as S.L.E.D.

25 Q What is your position over there?

1 A I'm a forensic chemist assigned to the drug
2 analysis department.

3 Q Would you explain, what is a forensic chemist?

4 A A forensic chemist by definition is basically a
5 scientist, and specifically someone who works with
6 chemical analyses. The forensic side of it is just
7 someone who deals with law enforcement or evidence.
8 So basically I perform drug analyses on suspected
9 seizures for court purposes.

10 Q So is it fair to say you determine whether a
11 substance is indeed an illegal narcotic?

12 A The primary duty that I have is to test and
13 identify suspected controlled substances that are
14 submitted to our lab.

15 Q Do you also, I guess, determine what the weight is
16 of the substance?

17 A That's part of the analysis, yes.

18 Q What type of training must you have to qualify for
19 your position at S.L.E.D.?

20 A Well, specifically I graduated from the University
21 of South Carolina with a Bachelor's of Science in
22 chemistry. After that I spent approximately four
23 years doing environmental chemical analyses.

24 After being hired at S.L.E.D., I completed
25 long legal training at the South Carolina Criminal

1 Justice Academy and then received in-house training
2 from my department, specifically for the analysis
3 and identification of controlled substances.

4 Q And how long have you been with S.L.E.D.?

5 A Just over four years.

6 Q How many times do you think you've had the chance
7 to chemically analyze a substance to determine
8 whether or not it contained a narcotic?

9 A I'm sure it's in the thousands.

10 Q You test it for crack?

11 A Yes.

12 Q Test it for cocaine?

13 A Two very common compounds, yes.

14 Q Do you have any idea how many analyses of crack you
15 make in a given month?

16 A Again, it's varies wildly, but I would say over my
17 career at S.L.E.D., I have tested hundreds, if not
18 thousands, of submissions of one of the two.

19 Q So you make analyses as a regular part of your
20 duties?

21 A Yes, sir.

22 Q Have you had a chance to qualify as an expert in
23 general sessions court?

24 A I have.

25 Q Have you qualified as an expert in the field of

1 analysis of narcotics?

2 A Yes, sir.

3 Q How many times?

4 A Eight.

5 MR. SCOTT: Your Honor, the State would offer
6 Mr. Robinson as an expert witness.

7 THE COURT: In what field?

8 MR. SCOTT: Oh, I'm sorry, Your Honor, the
9 field of analysis of narcotics.

10 THE COURT: Mr. Floyd?

11 MR. FLOYD: I have no questions to ask on
12 this, Your Honor.

13 THE COURT: Thank you. Mr. Foreman, ladies
14 and gentlemen of the jury, normally a person cannot give
15 opinion testimony. Normally when a person testifies,
16 they must testify as to what they either saw, heard, or
17 sensed by smell or something of that nature.

18 However, there is an exception when someone is
19 qualified because of education and experience. They are
20 permitted to give their opinion in certain areas if the
21 Court qualifies them that way.

22 This witness will be qualified in the area of
23 forensic chemistry and analysis of narcotics to give
24 opinion testimony in that area. That does not mean you
25 must accept the opinion, but it is evidence for you the

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1 jury to use in any way you see fit.

2 Thank you, Solicitor. You may continue.

3 MR. SCOTT: Thank you.

4 BY MR. SCOTT:

5 Q I want to direct your attention to State's Exhibits
6 38, 37, and 39 and also State's Number 41. Would
7 you take a look at those items for me, please.

8 A (Witness complies).

9 Q What are those?

10 A Well, obviously we have got four different things
11 here. The first is a B.E.S.T. evidence sample
12 testing kit, what we have referred to so far as a
13 B.E.S.T. kit for short.

14 This is the tamper evident container we send
15 off to local law enforcement agencies. As you can
16 see on the two sides and the bottom, you have got a
17 blue swirl pattern.

18 You have also got a pattern across the top, as
19 well as a green blue strip. These four sides
20 become -- it's obvious if someone has tried to
21 stretch or pull; therefore, it's evident that it
22 has been tampered with.

23 At the very bottom, there is a line where we
24 typically would make our cut during the analysis.
25 Otherwise, there should never be any cuts or breaks

1 in this. The other three items -- may I refer to
2 my notes, please?

3 Q Sure.

4 A State's Exhibit 37 is the plastic pouch that
5 contains the zip-lock bags. This was one of three,
6 State's Exhibits Number 38 and 39 being the other
7 two, that were contained in the B.E.S.T. kit, that
8 were sealed in the B.E.S.T. kit when I received it.

9 Q And it was sealed whenever you received it for
10 purposes of analysis?

11 A That's correct.

12 Q Is that something you check for every time you test
13 drugs?

14 A Absolutely. Before I do any kind of analysis or
15 really handle it in any way, that would be the
16 first thing I would check is to make sure that all
17 seals were intact and that there was no evidence
18 tampering.

19 Q Let me ask you this: Did you observe that B.E.S.T.
20 kit and those other three items this morning?

21 A Yes, sir.

22 Q And were you able to observe myself, Mr. Floyd, and
23 the evidence custodian, Jason Merrill, open the
24 bag?

25 A Yes, sir. I was present when the packaging -- not

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1 actually the B.E.S.T. kit -- but this is what we
2 call a K-pack. This is a heat-sealed plastic bag
3 that the B.E.S.T. kit is inserted into after the
4 analysis, and it's sealed up.

5 This is what we would send out after the
6 analysis is over. So everything was contained in
7 this K-pack. I did observe the B.E.S.T. kit, as
8 well as the bags, being pulled out. It was my
9 understanding at the time that it was being sorted
10 for court purposes today.

11 Q Okay. And do you recognize State's Exhibits 37,
12 38, and 39 as coming out of State's Exhibit
13 Number 41, which you have identified as the
14 B.E.S.T. kit?

15 A Yes, sir. The B.E.S.T. kit, State's Evidence 41,
16 did contain three bags. I can identify these bags.
17 Not only do they correspond to my notes, but I also
18 have the lab number, the item number, and my
19 initials on all three of the large bags, as well as
20 the same format on each of the bags on the inside.
21 So they are identifiable.

22 Q As far as 37, 38, and 39, when did you receive
23 those exhibits?

24 A They were received in the B.E.S.T. kit by myself on
25 December 6, 2011, when I went to retrieve them from

1 the evidence control department.

2 Q And who gave it to you?

3 A Evidence technician Patricia Crooks.

4 Q Are those exhibits in the same condition now as
5 when you first received them?

6 A They are in similar condition. The only changes
7 that were made were made by me. Obviously, before
8 I can do an analysis and take a weight, I have to
9 remove all the packaging. So they would have been
10 removed from the original packaging.

11 Also, if it's a package that is not able to be
12 resealed, such as a zip-lock bag, it's put into a
13 zip-lock bag. Circumstances such as today when we
14 have to handle it later, it's in a sealed
15 container. We don't have to worry about any
16 outside contamination.

17 Those bags are added and noted. It's very
18 tough to see, but the bottom of the bags that I
19 have added, it actually says, "bag added," which
20 would denote that it's extra packaging that I put
21 into the case. But other than that, everything
22 looks the same.

23 Q So that's your handwriting on some of those bags?

24 A Correct.

25 Q And would you state again what you were writing on

1 there?

2 A Yes. On any piece of evidence, any packaging, it
3 would have the S.L.E.D. number, which in this case
4 is L-11-13440. Then from there, to be able to
5 issue the report, we have to give sub-item numbers,
6 which would distinguish packaging. Those items
7 would also be on there and everything is also
8 initialed.

9 Q So everything is documented and the overall
10 integrity is always insured by you; is that
11 correct?

12 A Yes, sir. When it comes in, we check for seals.
13 When it leaves my possession, it's also sealed in
14 the K-pack I referred to.

15 Q Are you familiar with -- we have discussed crack
16 cookies today. Are you familiar with what a crack
17 cookie is?

18 A Yes, sir.

19 Q I want to show you State's Exhibit Number 27. Do
20 you recognize what that is in the picture?

21 A It's a picture of two, what I assume to be plastic
22 sandwich bags, looking at the size of them. Each
23 contain a single crack cookie.

24 Q I don't see anything in our evidence that you
25 reviewed that looks anything like that. Can you

1 explain why nothing in 37, 38, and 39 appears to be
2 in this shape, the cookie shape, the two round
3 wafers. Can you explain that?

4 A Well, the cooking process for cocaine base is very
5 simple, and it really requires no pressure. It
6 requires adding ingredients, heating it up, and
7 that's basically it.

8 The more you would compress something, the
9 harder it would be to break apart. These aren't
10 really compressed in any way. Obviously, through
11 the chain of custody, we have established that it
12 has passed through several different people.

13 Any time it's handled, it can be prettily
14 easily broken, like if it's mashed down on
15 something. A lot of time the cases are transported
16 more than one at time, if it was in a stack. It's
17 very easy to break them apart.

18 Q Would you have to break them to test them?

19 A As a standard practice, I would break it apart to
20 ensure that there was nothing on the center, that
21 it was a homogeneous mixture.

22 Q That doesn't change the chemical makeup of what you
23 are testing there in any way; does it?

24 A No, sir.

25 Q State's Exhibit Number 37, were you able to test

1 that?

2 A Yes, sir.

3 Q What sort of tests did you make?

4 A On each item, once it was separated out into the
5 sub items, all packaging was removed, a weight was
6 taken. I then performed an initial presumptive
7 test, using a chemical spot test.

8 I followed that up, based on those results,
9 with a confirmatory test using gas chromatography
10 mass spectroscopy, which is a long version of
11 G.C.M.S.

12 Q I will asked you specifically about 37, but let's
13 go over all, 37, 38, and 39. Did you perform the
14 same test on all three of those exhibits?

15 A It was the same battery of tests that were
16 performed. Obviously, based on the results of the
17 presumptive test, each item was treated separately.
18 So if the presumptive test gave me a little
19 different feel for it, I would approach it a little
20 different, but the tests were the same.

21 Q From those test were you able to form an expert
22 opinion as to what those exhibits contained?

23 A Yes, sir.

24 Q Please state your opinion as to your findings.

25 A The results are as follows: Item 1.1 is a

1 heat-sealed plastic bag marked number 1 containing
2 item 1.1.1, a plastic corner bag containing loose
3 rock substance and two plastic corner bags
4 containing rock substance. Results, cocaine base,
5 crack C-2 found with a combined weight of
6 3.4 grams, 52.4 grains.

7 Item 1.1.2, plastic sandwich containing item
8 1.1.2.1, rock substance, cocaine base, crack C-2
9 found, 0.7 grams, 10.8 grains. Item 1.1.2.2,
10 plastic corner bag containing powder substance,
11 cocaine C-2 found, 0.6 grams, 9.2 grains. 1.1.2.3,
12 plastic corner bag containing compressed powder
13 substance, cocaine C-2 found, 0.5 grams, 7.7
14 grains.

15 Item 1.2, heat-sealed plastic bag marked
16 number 7 containing item 1.2.1, three plastic
17 sandwiching bags containing rock substance, cocaine
18 base, crack C-2 found with the combined weight of
19 21.6 grams, 333.3 grains. Item 1.2.2, plastic
20 sandwich bag containing rock substance, cocaine C-2
21 found, 0.8 grams, 12.3 grains.

22 Item 1.3, heat-healed plastic bag marked
23 number 8 containing plastic sandwich bag containing
24 compressed powder substance, cocaine C-2 found,
25 1.9 grams, 29.3 grains.

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1 Q So your expert opinion is that the substances you
2 tested were crack and cocaine?

3 A Yes, sir.

4 Q You just mentioned separate tests or separate
5 items. What was the overall weight of what you
6 determined to be crack?

7 A All items weighed together, based on the chemical
8 compound, the cocaine base or crack came out to a
9 total of 25.7 grams, and the total weight of
10 cocaine hydrochloride or just cocaine is 3.8 grams.

11 Q Thank you.

12 MR. SCOTT: Your Honor, at this time the State
13 would offer 37, 38, and 39, as well as State's Exhibit
14 Number 41, for admission into evidence.

15 THE COURT: Mr. Floyd?

16 MR. FLOYD: Your Honor, I don't have any
17 objection.

18 THE COURT: State's 37, 38, 39, and 41 are in
19 evidence without objection.

20 (State's Exhibits Number 37-39 and 41 are
21 received into evidence.)

22 BY MR. SCOTT:

23 Q Mr. Robinson, please answer any questions Mr. Floyd
24 may have for you.

25 THE COURT: Thank you, Solicitor.

1 Mr. Floyd.

2 MR. FLOYD: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. FLOYD:

5 Q Mr. Robinson?

6 A Yes, sir.

7 Q When you test these substances, do you require --
8 how much of the substance do you have to consume in
9 the testing process?

10 A Actually a very small amount.

11 Q Can you kind of give us an illustration of how
12 small?

13 A Usually several milligrams. A milligram is
14 one-thousandth of a gram; so just a very small
15 amount.

16 Q Just a speck?

17 A A few grains of sand, if you will.

18 Q Now, weren't you also given a glass Pyrex container
19 to test in connection with this case?

20 A I believe so. It was under a separate S.L.E.D.
21 case number.

22 Q Let me see if this refreshes you on that?

23 A Yes, that's it.

24 Q And did you test that container to see if it had
25 any illegal substances?

1 A Yes, I did.

2 Q Did you find any illegal substances in the glass
3 Pyrex container?

4 A No, sir.

5 Q Thank you. One thing I am little confused on and
6 maybe you can help me. You talked about 1.1 and so
7 forth and 1.1.2. Can you tell us where each one of
8 these particular items came from?

9 A No, sir. I don't have any information as far as
10 the background of the case. I test everything
11 based off of whatever packaging is submitted.

12 Q So you can't tell us which ones of these particular
13 item or items would have come from what particular
14 place in the house?

15 A That's correct.

16 Q Or where it came from as far as that goes?

17 A No, sir.

18 Q Thank you.

19 MR. FLOYD: No further questions.

20 THE COURT: Redirect?

21 MR. SCOTT: Nothing from the State, Your
22 Honor.

23 THE COURT: Thank you, Agent Robinson, for
24 being with us. You may step down. Any objection to the
25 officer being excused?

1 MR. SCOTT: None from the State, Your Honor.

2 MR. FLOYD: No, Your Honor.

3 THE COURT: You may step down and you may be
4 excused.

5 (Witness leaves the witness stand.)

6 THE COURT: Solicitor, you may call your next
7 witness.

8 MR. SCOTT: Your Honor, the State rests.

9 THE COURT: Ladies and gentlemen, at this
10 point I am required to hear motions outside of your
11 presence briefly. If you would step to your jury room.
12 Do not discuss this case during this brief recess.

13 (The jury retires to the jury room.)

14 THE COURT: Motions, Mr. Floyd?

15 MR. FLOYD: Yes, Your Honor.

16 THE COURT: All right.

17 MR. FLOYD: Your Honor, at this time the
18 defense would move for a directed verdict of acquittal.
19 In connection with that motion, we would also renew our
20 motion to suppress the evidence seized pursuant to the
21 search warrant on the grounds that the search warrant
22 was invalid.

23 We renew that motion. We renew the motion
24 that in addition to the search warrant being invalid,
25 the officers executing the search warrant failed to give

1 THE DEFENDANT: I don't.

2 THE COURT: Thank you. Thank you very much.
3 I find that the defendant has made a decision not to
4 testify. It is his own decision made of his own free
5 will and accord, knowingly and voluntarily. You may
6 return to your seat, Mr. Jones.

7 Mr. Floyd, can you tell me if you are going to
8 present any evidence or any testimony?

9 MR. FLOYD: We will present some testimony.

10 THE COURT: Will that conclude, you think,
11 today? I'm not in any hurry. I am just trying to
12 figure it for planning purposes.

13 MR. FLOYD: How late were you planning on
14 going, Judge? My guess is -- I don't know how long the
15 cross would be -- half an hour, maybe an hour.

16 THE COURT: I was hoping to -- whether you did
17 or didn't put up any testimony -- finish the testimony
18 today and have the closings tomorrow. We will have time
19 to do that. Thank you. Thank you, Mr. Floyd. You can
20 bring the jury in.

21 (The jury returns to the courtroom.)

22 THE COURT: Welcome back. Ladies and
23 gentlemen, as you heard before the break, the State has
24 rested. You have heard all the evidence and all the
25 testimony you are going to hear in this case from the

1 State in its case in chief.

2 The defendant may now present evidence and
3 testimony if the defendant chooses to do so. A
4 defendant in South Carolina, no matter what the
5 seriousness of the charge, is always presumed to be
6 innocent.

7 The defendant does not have to present any
8 evidence or testimony, does not have to prove himself or
9 herself innocent. However, they may present evidence if
10 they choose to do so.

11 The burden of proof beyond a reasonable doubt
12 is always on the State of South Carolina. With that
13 being said, we will direct our attention to Mr. Floyd
14 and ask: Does the defendant intend to offer any
15 evidence or testimony, Mr. Floyd?

16 MR. FLOYD: Yes, we do, Your Honor.

17 THE COURT: Would you call your first witness,
18 please.

19 MR. FLOYD: Yes, Your Honor. We call
20 Ms. Nicole Walker.

21 VICTORIA NICHOLE WALKER,
22 being first duly sworn, testifies as follows:

23 CLERK: State your full name, spelling your
24 last on the record, please.

25 THE WITNESS: My name is Victoria Nicole

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1 Walker, W-A-L-K-E-R.

2 DIRECT EXAMINATION

3 BY MR. FLOYD:

4 Q Ms. Walker, do you know the defendant Travas Jones?

5 A Yes, I know him.

6 Q How do you happen to know him?

7 A I have a one-year-old child by Travas Jones.

8 Q Do you work, Nichole?

9 A Yes, I'm a medical assistant.

10 Q Now, is there a time that Travas lived with you?

11 A Yes, sir.

12 Q And where did y'all live at that time?

13 A When he first came home, he lived at

14 , Columbia, South Carolina.

15 Q And did he at one point move to ?

16 A Yes, sir.

17 Q When was that?

18 A November the 2nd.

19 Q Is that of 2011?

20 A 2011.

21 Q Before that time where was he living?

22 A With me.

23 Q Where was that at that time?

24 A At

25 Q Thank you. Answer any questions that the solicitor

1 may have for you.

2 THE COURT: Solicitor.

3 **CROSS EXAMINATION**

4 BY MR. SCOTT:

5 Q It's your testimony today that he lived with you up
6 until November 2nd?

7 A Yes, sir.

8 Q And you have been sworn under oath?

9 A Yes, sir.

10 Q And that's still your testimony?

11 A From my knowledge, yes, sir.

12 Q From your knowledge? How do you know that?

13 A Because he stayed with me. When I went to work,
14 Travas was home.

15 Q You have been sitting in court all week; haven't
16 you? Or the last couple of days; right?

17 A I came yesterday and I left early.

18 Q So you heard Ricky Williams, the landlord, today?

19 A Yes.

20 Q You heard him talk about how Mr. Travas Jones was
21 there --

22 A Sometimes.

23 Q -- every time he went by and paid rent?

24 A Sometimes. That is Travas mother's house.

25 Q Okay.

NICHOLE WALKER -- CROSS -- MR. SCOTT

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1 MR. FLOYD: Your Honor, may we approach?

2 THE COURT: Yes, sir.

3 (Whereupon there was a bench conference off
4 the record in the presence of the jury but out of the
5 hearing of the jury.)

6 BY MR. SCOTT:

7 Q I want to ask you again. Is it your testimony that
8 he lived there until November 2nd, 2011? And keep
9 in mind that you are under oath.

10 A I could say that Travas stayed there until I
11 know -- I really can't say. I know it was right
12 before all this happened. I got a phone call.
13 Y'all came to the house, and I can't give you an
14 exact date, but it was right before all this
15 happened. I can tell you that.

16 Q It wouldn't have been that summer? Can you say
17 that?

18 A I can't say it was the summer. That was a couple
19 months prior to that. So I wouldn't think it was
20 that.

21 Q But you really can't say for sure? Is that what
22 you are saying?

23 A No, but I know it was a couple of weeks before I
24 got in a wreck.

25 Q When did you get in the wreck?

1 A Like I believe October the 1st, something like
2 that.

3 Q He moved in that house in the summer of 2011;
4 didn't he?

5 A No, I'm not going to say that. Like I say, I got
6 in a wreck, and I know Travas was with me when I
7 got in the wreck, and he moved shortly after that.

8 Q Let me show you something.

9 MR. FLOYD: Your Honor, may we approach again?

10 THE COURT: Yes, sir.

11 (Whereupon there was a bench conference off
12 the record in the presence of the jury but out of the
13 hearing of the jury.)

14 (State's Exhibit Number 42 is marked for
15 identification).

16 BY MR. SCOTT:

17 Q I want to show you State's number 42 for I.D.
18 purposes. Just take a minute to read that.

19 A (Pause.)

20 Q Let me ask you one more time --

21 THE COURT: Did you read it?

22 THE WITNESS: Yes, sir, I read it.

23 THE COURT: All right, Solicitor.

24 BY MR. SCOTT:

25 Q Let me ask you one more time. As you stand there

NICHOLE WALKER -- CROSS -- MR. SCOTT

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1 under oath, did he move into that house

2 November 2nd?

3 A I can't tell you what day, like I told you. I know
4 it was after October the 1st because I had a wreck
5 on October 1, 2011.

6 Q Okay. You are the mother of his child?

7 A Yes, I am.

8 Q And you don't want to see him get in trouble; do
9 you?

10 A Wrong is wrong and right is right.

11 Q Oh, really?

12 A I mean, if he was wrong, then what else could I say
13 but him to go do whatever? If he right, like if it
14 was my -- if he was a stranger and I'm am up here
15 for you, if you wrong, you wrong. If you right,
16 you right.

17 Q Thank you.

18 MR. SCOTT: Nothing further from the State.

19 THE COURT: Redirect, Mr. Floyd?

20 MR. FLOYD: Nothing further, Your Honor.

21 THE COURT: Thank you. Thank you very much,
22 Ms. Walker. You may step down. You may call your next
23 witness, Mr. Floyd.

24 MR. FLOYD: Your Honor, we call Mr. Willie
25 Glover.

1 WILLIE GLOVER, being
2 first duly sworn, testifies as follows:

3 CLERK: State your full name, spelling your
4 last on the record.

5 THE WITNESS: Hi. My name is Willie Glover.

6 DIRECT EXAMINATION

7 BY MR. FLOYD:

8 Q Mr. Glover, where do you live?

9 A I live in West Columbia -- I
10 mean, Lexington -- yeah, West Columbia.

11 Q Do you know Travas Jones?

12 A Yes, sir.

13 Q How do you know Travas?

14 A Well, I raise him from a baby.

15 Q Would he be your stepson?

16 A Yes, sir.

17 Q Now, were you in the area when this search warrant
18 was served by Cayce on ? Had you
19 been there earlier that day?

20 A Yes, I been there about 9:30 or 10:00 that morning.

21 Q What time did you leave?

22 A Really about 20 minutes after I got a phone call.
23 So I told him, Y'all go ahead on and play cards.
24 I'll be back. I went and put the gun up under the
25 mattress and put some dope, a bag of dope, in the

WILLIE GLOVER -- DIRECT -- MR. FLOYD

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1 drawer, kitchen drawer, but I didn't tell him I did
2 that.

3 Q So you put dope in the kitchen drawer?

4 A Yes, sir.

5 Q Now, whose dope was that?

6 A Really it was a friend of mine, but I was in charge
7 of it.

8 Q Did Travas have anything to do with the dope you
9 put in the kitchen drawer?

10 A No, sir.

11 Q Did Travas have anything to do with the gun you
12 stuffed under the mattress?

13 A No, sir.

14 Q Why did you stick the gun under the mattress?

15 A Because I was going to meet somebody, and I was
16 going to get me some beer too. I didn't want to
17 carry the gun and drugs with me. I was coming
18 right back. Then I end up staying a little longer
19 than I, you know, supposed to.

20 Q Did you eventually come back to
21 that day?

22 A Yes, sir, I was coming back, and I seen all the
23 police cars. So I said, No, I ain't going there.

24 Q No question the dope in the kitchen drawer was put
25 there by you?

1 A Yes, sir.

2 Q Travas Jones had nothing to do with it?

3 A No, sir.

4 Q And the gun in the mattress, Travas Jones didn't
5 have anything to do with that either?

6 A He didn't have no idea that this was there.

7 Q Thank you, Mr. Glover. Answer any questions the
8 solicitor may have for you.

9 THE COURT: Solicitor.

10 CROSS EXAMINATION

11 BY MR. SCOTT:

12 Q Mr. Glover, I apologize. I think I must have
13 looked down for a minute. When I looked up, I
14 think you just said you put the crack in the drawer
15 in the kitchen?

16 A Yes, sir.

17 Q Did you stop law enforcement that day and tell
18 them, That's my crack?

19 A No, sir.

20 Q Why not?

21 A I didn't want to go to jail.

22 Q Do you want him to go to jail?

23 A No.

24 Q So what brought you to his house that day to put
25 the crack in his kitchen drawer?

WILLIE GLOVER -- CROSS -- MR. SCOTT

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1 A I was going to hold it. I was holding it for
2 somebody now.

3 Q Why were you doing that?

4 A Because he was going somewhere else, and I just
5 kept it for him.

6 Q Why did you put it in your son's drawer?

7 A Because I was going to the store after I got there.

8 Q What store?

9 A The corner store on down -- back toward Cayce.

10 Q What is it called?

11 A It's a little Mexican store right there on the
12 corner.

13 Q What were you doing there?

14 A I was going to get me some beer.

15 Q Tell me about the pistol. Were you just carrying
16 it around with you that day?

17 A No, I just happened to forgot to take it out, but
18 really I bought it from somebody which I didn't
19 really want it. I was going to really show it to
20 him, show him what I bought, and I ain't never got
21 a chance to.

22 Q Forgive me, Mr. Glover, but would you agree with me
23 this is a wild story?

24 A No, it is not wild.

25 Q Oh, it happens to you quite a bit that you carry

1 around a pistol and some crack and put in other
2 people's drawers and mattresses?

3 A I know it was wrong.

4 Q Would you agree with me that's a pretty wild set of
5 circumstances?

6 A Yes, sir.

7 Q And it happened the one day the police rolled up on
8 the house?

9 A No, sir, I never thought of that, that they would
10 roll up there.

11 Q You didn't think that was strange though that the
12 one day that the officers pulled up on your son's
13 house just happened to have been the day that you
14 are walking down -- you said Frink Street?

15 A Yes, sir.

16 Q Walking down Frink Street with a pistol and a bag
17 of crack. Then you pull off, put it in your son's
18 kitchen in his drawer and under his mattress. Then
19 coincidentally that same day law enforcement
20 arrives?

21 A I figured it would have been all right if he find
22 it, my son. Then I just left. I mean to put it
23 there, but I ain't thought you were going to see it
24 before I got back.

25 Q I don't even know what to ask you, Mr. Glover. Do

WILLIE GLOVER -- CROSS -- MR. SCOTT

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- 1 you agree with me that that is quite a coincidence
2 that the one day you are walking down the road with
3 a pocketful of crack and a pistol in your
4 possession, and you --
- 5 A Well, it been over 20 years since I got caught with
6 drugs and a gun.
- 7 Q You always walk around with a gun and crack?
- 8 A No. No, sir.
- 9 Q Just that one day?
- 10 A Yes, sir.
- 11 Q He is your stepson?
- 12 A Yes, sir.
- 13 Q Theyatti is your son?
- 14 A Theo is my son.
- 15 Q You call him Theo?
- 16 A Yeah.
- 17 Q They both live there together?
- 18 A Yes, sir. I didn't know at the time they were
19 living together until after I started going by, you
20 know, playing cards and stuff.
- 21 Q Who did you know to live there?
- 22 A I know Travas was living there.
- 23 Q Do you care for Travas?
- 24 A I care for all of them.
- 25 Q You raised him since he was a little boy; didn't

1 you?

2 A From babies.

3 Q You would do anything to help him; wouldn't you?

4 A Yes, sir.

5 Q You know what you have done today is you have sworn
6 under oath that you were in possession of crack
7 cocaine and a pistol?

8 A Yes, sir.

9 Q You hid it in somebody else's house is what you are
10 testifying to?

11 A Yes, sir.

12 Q You are a good father; aren't you?

13 A Yes, sir, always to all my kids.

14 Q Thank you, Mr. Glover.

15 THE COURT: Redirect, Mr. Floyd?

16 MR. FLOYD: Thank you, Your Honor.

17 **REDIRECT EXAMINATION**

18 BY MR. FLOYD:

19 Q Mr. Glover?

20 A Yes, sir.

21 Q Was the dope that was in that kitchen drawer your
22 dope?

23 A Yes, sir.

24 Q And you are not just making that up?

25 A No, sir.

WILLIE GLOVER -- RECROSS -- MR. SCOTT

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- 1 Q And the gun in the mattress was your gun?
- 2 A Yes, sir.
- 3 Q And you are not just making that up?
- 4 A No, sir.
- 5 Q You are not just saying this because you are trying
- 6 to help your son?
- 7 A No, that ain't the reason why.
- 8 Q Are you testifying to this because it's the truth?
- 9 A Yes, sir.
- 10 Q Thank you, Mr. Glover.

11 THE COURT: Recross?

12 MR. SCOTT: Briefly, Your Honor.

13 **RECROSS EXAMINATION**

14 BY MR. SCOTT:

- 15 Q Was the stuff behind the heater -- you have been
- 16 sitting in here listening to testimony?
- 17 A Yes, sir.
- 18 Q There was some crack and cocaine behind the heater.
- 19 Was that yours too?
- 20 A No, sir.
- 21 Q Just what was in the kitchen?
- 22 A Yes, sir.
- 23 Q And were you aware of the constant traffic that was
- 24 coming in and out of your son's residence?
- 25 A Well, yes, sir, because he would play cards and

1 stuff all the time.

2 Q So you went over there often?

3 A No, not often. When I have a couple of dollars to
4 play with, I go and play.

5 Q Tell me one more time, when did you go there that
6 morning to drop the crack and the pistol off?

7 A I didn't really want to drop it off, but I went to
8 play cards around 9:30, something to 10:00,
9 something like that. Then I went to the
10 refrigerator -- got called. I went to the
11 refrigerator and no beer was in it. So I put the
12 crack in after I got the call. I had to go down
13 the street anyway. I went in the room like I am
14 using the bathroom and put the pistol under the
15 mattress.

16 Q And you didn't tell him about that?

17 A I tell him I be back. I am going to run to the
18 store.

19 Q You didn't tell him you put a pistol under his
20 mattress?

21 A No, sir.

22 Q So 9:30 in the morning is when you went to the
23 store or thereabouts?

24 A It was somewhere going around 10:00 o'clock,
25 something like that.

WILLIE GLOVER -- RECROSS -- MR. SCOTT

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1 Q And when you came back, law enforcement was there?

2 A Yes, sir. And I been gone for a couple of hours,
3 about an hour of two, something like that.

4 Q How long does it take to go down to that store?

5 A Not long, about 15 -- about five or ten minutes.

6 Q And are you aware that search warrant was executed
7 after 1:00 o'clock, over three hours later?

8 A I came back through around that time.

9 Q So it took you that long to go to the store?

10 A I said I didn't come right back. I end up staying
11 longer than I was going to stay.

12 Q At the store?

13 A No, I went to stop somewhere else, at somebody else
14 house around the corner.

15 Q Thank you, Mr. Glover.

16 MR. SCOTT: Nothing further from the State.

17 THE COURT: Mr. Foreman, ladies and gentlemen
18 of the jury, step out momentarily. Do not discuss this
19 case during this brief recess.

20 (The jury retires to the jury room.)

21 THE COURT: Sheriff, take Mr. Glover into
22 custody, please.

23 SHERIFF: Step with me, please.

24 (Pause.)

25 THE COURT: Madame Clerk, I am appointing the

1 attention.

2 (The jury is excused for the day at 5:10 P.M.)

3 THE COURT: Any motions, Mr. Floyd?

4 MR. FLOYD: Yes, Your Honor. Your Honor, we
5 renew our motions made at the conclusion of the State's
6 case. In addition, Your Honor, since the testimony that
7 has just been presented by the defense, we would also
8 move for a dismissal of the trafficking charge and of
9 the weapons charge since Mr. Glover has testified that
10 those items were his. Accordingly, we would move that
11 those two charges be dismissed.

12 THE COURT: I would respectfully deny those
13 motions, Mr. Floyd. The case is one of constructive
14 possession and mere presence. I think there is
15 additional testimony that there were other items of drug
16 paraphernalia in the same drawer where the crack cocaine
17 in the kitchen was found. Is that where the scales were
18 located?

19 MR. SCOTT: It is, Your Honor. They were all
20 in one drawer.

21 THE COURT: Although the jury could believe
22 both. They could believe both, that Mr. Glover had
23 actual possession of the drugs at a point in time and
24 placed them in a location within the residence that
25 Mr. Glover has now testified to and that it was

1 Mr. Jones' residence.

2 His father or stepfather, as I understand it,
3 should know where his residence is. He placed them in
4 two different locations within that residence, one of
5 the drugs in the kitchen and the pistol between the
6 mattress in the bedroom where the hospital records with
7 Mr. Jones' name was found.

8 Mr. Glover could be guilty of actual
9 possession and Mr. Jones could be guilty of constructive
10 possession, but I think there is sufficient evidence,
11 direct and circumstantial, even in light of that
12 testimony. I would have to respectfully deny your
13 motion.

14 Now, as to actual possession, Solicitor, there
15 is no evidence of that; correct?

16 MR. SCOTT: That's correct, Your Honor.

17 THE COURT: I will not charge actual
18 possession. The State's theory is that Mr. Jones
19 constructively possessed 10 to 28 grams -- from 10 to
20 28 grams of crack cocaine, constructively possessed
21 cocaine, and constructively possessed the pistol;
22 correct?

23 MR. SCOTT: That's correct, Your Honor.

24 THE COURT: So I intend to charge mere
25 presence. Is there any other specific charges you

1 request, Mr. Floyd?

2 MR. FLOYD: I did have several, Your Honor. I
3 have three requests, Your Honor.

4 (Hands to Court.)

5 THE COURT: I think this is consistent with
6 what I intend to charge under, I think, it was the
7 Ballinger case or something like that. There is another
8 new case out, Fripp, I think.

9 So I think this is both dominion and control
10 and right to exercise and also -- I will get that
11 language squared away this evening. I will give it to
12 you before the charge in the morning. I think it is out
13 of that Ballinger case, Mr. Floyd. Like I say, with it
14 being constructive possession, I will charge mere
15 presence also.

16 Let me ask you this. Is it segregated out,
17 the weight? The crack cocaine, where is the crack
18 cocaine found? All of it in the kitchen?

19 MR. SCOTT: Your Honor, there was actually
20 some of the crack that came from behind the heater.
21 From my recollection -- and I will review -- there was
22 cocaine and crack behind the heater. There was all
23 crack in the kitchen.

24 THE COURT: That's what I thought. Is the
25 amount of crack in the kitchen --

1 front of the jury. Anything else?

2 MR. SCOTT: Nothing from the State, Your
3 Honor.

4 THE COURT: Mr. Floyd?

5 MR. FLOYD: Nothing from us, Your Honor.

6 THE COURT: Mr. Floyd, I read your requests to
7 charge again. Then I looked at the general charge and
8 then I looked at a couple of cases in regards to
9 constructive possession, which basically your three
10 requests to charge had to do with constructive
11 possession. Give me a minute and I can tell you.

12 I have constructive possession, to prove
13 constructive possession, the State must prove beyond a
14 reasonable doubt the defendant had both the power and
15 the intent to control the disposition or use of the
16 crack cocaine.

17 Constructive possession means that the
18 defendant had the dominion and control or the right to
19 exercise dominion and control over either the crack
20 cocaine itself or the property on which the crack
21 cocaine was found.

22 Mere presence at the scene where the drugs
23 were found is not enough to prove possession. Actual
24 knowledge of the presence of the crack cocaine is strong
25 evidence of the defendant's intent to control its

1 disposition or use.

2 The defendant's knowledge and possession may
3 be inferred when a substance is found on the property
4 under the defendant's control; however, the inference is
5 simply an evidentiary fact to be taken into
6 consideration by you along with the other evidence in
7 the case and to be given the weight you decide it should
8 have. Two or more persons may have possession of a
9 drug.

10 Then I also have some other language in
11 regards to the firearms charge. The principles relating
12 to constructive possession are also applicable in
13 regards to possession of firearms and other items.

14 Proof of constructive possession, along with
15 knowledge of the presence of the firearm, is sufficient
16 to support a conviction for possession of a firearm. To
17 prove constructive possession, the State must show the
18 defendant had dominion and control or the right to
19 exercise dominion and control over the firearm.

20 Constructive possession may be established
21 through either direct or circumstantial evidence and
22 possession may be shared. I think that covers your
23 charges, your requests.

24 MR. FLOYD: Your Honor, the problem we have
25 with the charge, I don't think it's the defendant's --

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1 if the defendant, for example, was a person in control
2 of the property, being a leaseholder, I don't think that
3 creates any kind of inference. I think the charge seems
4 to imply that mere ownership of the place where it was
5 found creates an inference.

6 THE COURT: All right. I will take that
7 inference language out. They can argue it.

8 MR. FLOYD: I agree they can argue it.

9 THE COURT: They can argue it both from him
10 paying the rent or over the course of time from
11 Ms. Meador seeing him as early as -- well, prior to
12 October 19th when she said she got released from light
13 duty and began wearing a uniform and she had seen him
14 before that time. I will take that part out. I don't
15 have a problem with that. Anything else in regard to
16 the charge?

17 MR. FLOYD: Your Honor, we would request some
18 language in there too similar to my opening statement
19 and the defendant request charge number two. Proof of
20 possession of an item requires more than proof of
21 control over the premises where the item is found.

22 THE COURT: Let me look back at the charge
23 just a minute.

24 Solicitor, do you have any objection to that:
25 Proof of possession of an item requires more than proof

1 of control over the premises where the item was found?

2 MR. SCOTT: Your Honor, if I recall the charge
3 you had encompassed that language.

4 THE COURT: My charge has: Constructive
5 possession means the defendant had dominion and control
6 or the right to exercise dominion and control over the
7 crack itself or the property on which the crack was
8 found.

9 Then I go to mere presence which means he
10 could have control over the property but he could still
11 be merely present at the scene where the drugs were
12 found. It's not enough to prove possession.

13 MR. SCOTT: There is nothing in there as far
14 as knowledge?

15 THE COURT: Actual knowledge of the presence
16 of the crack is strong evidence of the defendant's
17 intent to control its disposition or use.

18 MR. SCOTT: That seems to cover what Mr. Floyd
19 is saying.

20 MR. FLOYD: The problem I have kind of with it
21 is if you take that little phrase in there, it's almost
22 saying if they prove he controlled the property, then he
23 controlled the drugs. It seems to say that in that
24 charge.

25 THE COURT: Well, I was reading State versus

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1 Ballinger straight out of this case. Proof of
2 constructive possession requires a showing that the
3 accused had dominion and control over either the drugs
4 or the premises upon which the drugs were found, as well
5 as knowledge of the presence of the drugs. Mere
6 presence in the area where drugs is found does not
7 constitute constructive possession.

8 MR. FLOYD: I appreciate that, Your Honor. I
9 still think it seems to indicate that if they believe
10 Travas Jones was the person in control of the property
11 through the lease, that instruction seems to say that's
12 pretty much it.

13 THE COURT: I will deny that in that regard.
14 (A), I don't think that's what the instruction implies.
15 (B), I think this is clearly the law as cited as
16 recently as last month in State versus Fripp. Anything
17 else on constructive possession you want to put on the
18 record, Mr. Floyd?

19 MR. FLOYD: No, Your Honor. I guess just to
20 make sure my objection is noted to the failure to charge
21 defendant's request number two.

22 THE COURT: All right. And what about a
23 lesser-included offense on the possession with intent
24 and trafficking? Did y'all look at that issue?

25 MR. FLOYD: I thought about that a lot, Your

1 case.

2 I think given the testimony I just can't
3 discount it. It's not my job to believe or disbelieve
4 and then therefore decide what I will charge the jury in
5 that regard.

6 So I think I will reverse myself -- it may be
7 the first time I will be reversed on this case -- but I
8 will reverse myself, and I think I will charge
9 trafficking in crack cocaine, possession with intent to
10 distribute crack cocaine, simple possession of crack
11 cocaine, possession with intent to distribute cocaine,
12 simple possession of cocaine, and the weapon. With the
13 weapon, the only violent crime is trafficking?

14 MR. SCOTT: That's correct, Your Honor.

15 THE COURT: Anything further?

16 MR. FLOYD: Yes, Your Honor, I hesitate to go
17 back and revisit something.

18 THE COURT: That's all right.

19 MR. FLOYD: I have a lot of concerns about it.
20 The way the constructive possession charge reads, if I
21 heard it correctly, it starts off like actual possession
22 or constructive possession, constructive possession, and
23 the sentence goes like: Control of the property or the
24 premises upon which it is found, period.

25 THE COURT: Comma.

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1 MR. FLOYD: Or comma.

2 THE COURT: As well as knowledge of the
3 presence of the drugs.

4 MR. FLOYD: Then the next sentence is mere
5 presence, I believe.

6 THE COURT: Mere presence in the area.

7 MR. FLOYD: Here is the problem I have got,
8 Your Honor. If you read this instruction literally,
9 then what it would mean is that all the State has to
10 prove is that he controlled the premises and he is
11 guilty. Because the jury could look at that and say:
12 Well, if he was just present there, he might not be
13 guilty. But if he owns the premises, then he has to be
14 guilty.

15 THE COURT: Except for knowledge of the
16 presence of the drugs. It has got that language right
17 there: As well as knowledge of the presence of the
18 drugs.

19 MR. FLOYD: But, Your Honor, my argument is
20 this. Suppose somebody comes to your house and they
21 have got drugs on them, and you find out they have got
22 drugs on them. Then while they are in your house, the
23 police raid it because they are following the guy.
24 Under that instruction the person who owned the house
25 would be guilty.

1 THE COURT: I agree. He has got knowledge of
2 the presence of the drugs and dominion and control over
3 the property, the first thing he should have done is
4 either called 9-1-1 or eject the trespasser. If he has
5 got dominion and control over the property according to
6 the cases --

7 MR. FLOYD: Your Honor, does that mean if a
8 person's child comes into their house with drugs, that
9 makes the parent guilty when the parent finds the drugs?

10 THE COURT: He may not knowingly possess in
11 that particular regard. If you are talking about like
12 an intervention or something, there may not be criminal
13 intent in that regard.

14 I am just stating what the case on
15 constructive possession states. It requires a showing
16 that the accused had dominion and control over either
17 the drugs or the premises upon which the drugs were
18 found, as well as knowledge of the presence of the
19 drugs.

20 Then mere presence in the area where drugs are
21 found does not constitute constructive possession. I
22 think it depends on the totality of the circumstances,
23 of course, in the analysis of that.

24 Would I find someone guilty necessarily in
25 that scenario you are referring to? Perhaps not. But I

1 still think this is the standard, and this is Ballinger.
2 Ballinger has just been cited last month, as I said, in
3 State versus Fripp. I think it just cited it. I don't
4 think it actually defined the term anymore.

5 MR. FLOYD: Your Honor, my request to charge
6 came right out of the Hubbard book.

7 THE COURT: Out of the who?

8 MR. FLOYD: Jury instructions, Hubbard. I
9 think it protects the defendant who just happens to own
10 a property where somebody comes on the property with
11 drugs. I don't think they are guilty simply -- if
12 somebody comes to your house and they have got cocaine
13 in their pocket or marijuana in their pocket and you
14 happen to know they have got it, I don't think it makes
15 you guilty of possession of that drug because the
16 visitor has it on them. I think the charge seems to say
17 that.

18 THE COURT: Can I see where you are referring
19 to, Mr. Floyd?

20 MR. FLOYD: Yes, sir. I was just trying to
21 find it when we were talking.

22 THE COURT: When you find it, that's fine.

23 MR. FLOYD: It cites Hudson and Ellis.

24 THE COURT: These are kind of older cases,
25 Mr. Floyd. Did you try them?

1 MR. FLOYD: I probably could have but, no,
2 they weren't my cases.

3 (Pause.)

4 THE COURT: The Hudson case appears to be
5 husband and wife, both convicted of possession with
6 intent to distribute heroine. Officers executed the
7 search warrant at the residence. The husband was not
8 home. The wife ran upstairs. The officers heard some
9 running around in there. The wife was home with five
10 children.

11 When the officers got to her, they discovered
12 her standing by the bathroom door. The officers
13 retrieved three cellophane bags containing white powder
14 from the toilet before they could be flushed away. A
15 fourth cellophane bag was found beside the toilet.

16 Ms. Hudson testified she had never seen those
17 four bags of white powder before. Quote, "I knowed
18 nothing about it. I know I did not have that stuff in
19 my house." The officers also found a small brown
20 envelope, rolling papers, and a pipe commonly associated
21 with marijuana usage, along with several syringes found
22 in Ms. Hudson's purse.

23 When Ms. Hudson was arrested, their
24 daughter -- and this is 1981. This is interesting --
25 called the appellate, who was Robert, the husband, on

1 the phone in his van. That's 30 years ago. He had a
2 van phone, to relate what had happened.

3 Appellate did not go home, nor did he go to
4 the station to see his wife. He was arrested
5 approximately three hours later on Interstate 85. The
6 next exit was the Greenville/Spartanburg airport. When
7 stopped by police, appellate stated he was, quote, "just
8 driving around," unquote.

9 Conviction of possession of heroin requires
10 proof of possession, either actual or constructive,
11 coupled with knowledge of its presence. Actual
12 possession occurs when the drugs are found to be in the
13 actual physical custody of the person charged with
14 possession.

15 To prove constructive possession, the State
16 must show a defendant had dominion and control or the
17 right to exercise dominion and control over the heroin.
18 Constructive possession can be established by
19 circumstantial, as well as direct evidence, and
20 possession may be shared.

21 Where contraband materials are found on
22 premises under the control of the accused, this fact in
23 and of itself gives rise to an inference of knowledge
24 and possession which may be sufficient to carry the case
25 to the jury.

1 In the instant case where the appellate shared
2 control of the premises, we hold there was sufficient
3 evidence from which a reasonable trier of fact could
4 conclude beyond a reasonable doubt appellate Robert
5 Hudson constructively possessed heroin with intent to
6 distribute it. The facts in this case are that
7 Mr. Hudson wasn't home. So I really don't see the
8 difference here.

9 When you read your entire charge that you are
10 requesting, it seems to be encapsulated in my charge.
11 It is also necessary to show the defendant knew of the
12 item and that the defendant had dominion and control
13 over the item or had the right to exercise dominion and
14 control over it and show that the defendant had the
15 intent to control the disposition of its use. That is a
16 reading of Hudson.

17 I will stick with my charge, but I think you
18 are protected on the record. Anything else you want to
19 follow-up, Mr. Floyd, you certainly may do so. Anything
20 further, Solicitor? Mr. Floyd?

21 MR. SCOTT: Nothing from the State.

22 MR. FLOYD: Nothing further, Your Honor.

23 THE COURT: Is the State going to open?

24 MR. WHETSTONE: No, Your Honor.

25 THE COURT: So when the jury comes out, we

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1 will start with Mr. Floyd's closing argument, and then
2 the closing argument by the State?

3 MR. WHETSTONE: Yes, Your Honor.

4 THE COURT: How long do y'all need to argue,
5 Solicitor?

6 MR. WHETSTONE: Say around 30 minutes, Your
7 Honor.

8 THE COURT: Mr. Floyd?

9 MR. FLOYD: Probably about the same, Judge.

10 THE COURT: Why don't we take a 10-minute
11 recess for the benefit of our court reporter and
12 ourselves. Be back in ten minutes.

13 (Whereupon there is a recess.)

14 THE COURT: Anything before we bring in our
15 jury, Solicitor?

16 MR. WHETSTONE: Nothing from the State, Your
17 Honor.

18 THE COURT: Mr. Floyd?

19 MR. FLOYD: Nothing further, Your Honor.

20 THE COURT: Bring us our jury, please.

21 (The jury returns to the courtroom at
22 10:30 A.M.)

23 THE COURT: Good morning, ladies and gentlemen
24 of the jury panel. I hope you had a pleasant evening.
25 Welcome back. Sorry for the delay. Again, that had

1 nothing to do with the parties. They were out here
2 early. Again, working very diligently.

3 As you recall we are at the stage now of the
4 closing arguments by the attorneys. The procedure we
5 use in a case such as this is Mr. Floyd, the attorney
6 for Mr. Jones, will present his closing argument on
7 behalf of his client first.

8 Thereafter, it will be followed by a closing
9 argument by the State, the State being the party having
10 the burden of proving its case beyond a reasonable
11 doubt.

12 After the closing arguments of the attorneys,
13 I will then charge or instruct you on the law that
14 applies to the facts in the case. I don't limit
15 attorneys in their time in which they can address
16 juries. It's the last and final time and only the
17 second time they have had the opportunity to speak to
18 the jury on behalf of their clients.

19 It's generally 30, 35 minutes. Generally it's
20 not like -- I have been reading a book about a
21 Presbyterian minister, and they were saying he was
22 getting kind of warmed up after an hour and 45 minutes.
23 That's not criticism of a Presbyterian minister. I
24 didn't mean it like that. It just happened to be a
25 history book, and I thought good for him.

1 Generally it's about 30 minutes or so a side.
2 If we have gone a certain period of time, I may take a
3 break between the closing arguments and my charge to
4 you. It just depends. If you need a break, let me
5 know. Please give the parties your complete and
6 undivided attention.

7 One further thing. I don't allow spectators
8 in or out during the time the attorneys are addressing
9 the jury. You may certainly leave between the
10 arguments, in other words after Mr. Floyd and before the
11 solicitor, after the solicitor and before my instruction
12 to the jury.

13 With that being said, Mr. Floyd, you may
14 address the jury.

15 **CLOSING ARGUMENT**

16 MR. FLOYD: Thank you, Your Honor. Ladies and
17 gentlemen of the jury, this portion of the trial, as the
18 judge has instructed you, is called the closing
19 argument. This will be the last time that we will get
20 to address you about this most serious situation.

21 There are some things I will say to that I
22 have already said to you. It's not that I think you
23 forgotten it. It's just that it's so important in what
24 you do, and that is this.

25 Remember, as you look at Travas Jones, you

1 must say in your heart and in your mind Travas Jones is
2 innocent, and Travas Jones remains innocent unless the
3 State proves his guilt to each one of your satisfactions
4 beyond a reasonable doubt.

5 Now, what do we mean by that? A lot of people
6 define reasonable doubt as that doubt which would cause
7 a reasonable person to hesitate to act. That doubt
8 which will cause a reasonable person to hesitate to act.

9 So if we could somehow take all the evidence
10 you heard in this courtroom and put it in the shape of
11 this piece of paper. And because of one piece of that
12 evidence or the lack of one piece of that evidence, you
13 would hesitate before you would vote to find Travas
14 Jones guilty in this matter, than your obligation as a
15 juror is to return a verdict of not guilty, even if
16 other evidence in this case makes you suspicious.

17 Because when you vote guilty or not guilty,
18 what you are voting on is not whether you think he did
19 it. What you are voting on is whether or not the State
20 has proved his guilt beyond a reasonable doubt. That's
21 what you vote on.

22 Now, what is he charged with in this case?
23 One, he is charged with trafficking in crack cocaine.
24 Now, let me explain something to you. I will talk to
25 you a little bit about the law, as will Mr. Whetstone.

1 When we finish Judge McMahon will read you the law and
2 tell you what the law is.

3 Trafficking in crack cocaine requires the
4 proof of a certain quantity of crack in excess of
5 10 grams. He is also charged with possession with
6 intent to distribute cocaine. That's very simple too.
7 Did he have a quantity of cocaine? Did they prove he
8 had a quantity of cocaine? Did they prove he intended
9 to distribute it?

10 There is also a weapon charge. One thing kind
11 of unique about the weapon charge, the weapon charge can
12 only be guilty if, in fact, they prove he is guilty of
13 trafficking also. Because, you see, the weapon's
14 charge, possession of a firearm in connection with a
15 violent crime, trafficking in crack cocaine is a violent
16 crime or trafficking crack is a violent crime.
17 Possession with intent to distribute is not a violent
18 crime.

19 Now, along with these charges carries what are
20 called lesser-included offenses, and they are possession
21 of crack or possession with intent to distribute crack
22 or possession of cocaine. These are all the various
23 charges that you can consider.

24 Let's discuss them. Let's take the most
25 important one first, trafficking in crack cocaine. Now,

1 remember, the drugs were found at two locations. The
2 only location where there was a sufficient quantity of
3 drugs found to satisfy the trafficking statute was in
4 the kitchen drawer.

5 Now, in the kitchen drawer there was found
6 21.6 grams of crack, .8 grams of cocaine, and 1.9 grams
7 of cocaine. So that's the only area where you had a
8 sufficient quantity of drugs to satisfy the requirement
9 of trafficking. So the question is: Has the State
10 proven to you beyond a reasonable doubt that Travas
11 Jones possessed those drugs in the kitchen drawer?

12 The judge is going to charge you on
13 possession. Possession merely means that you have power
14 and control over the items, whether you have them on
15 your person or you know about them and have power to
16 control them.

17 Mere presence, merely being on the scene where
18 drugs are located is not proof of possession, nor is
19 mere ownership or the right to own or to occupy a
20 premise proof of possession. It must go beyond that.
21 It must go to the power to control and knowledge.

22 Now, there is something unusual in this case.
23 I've been practicing law a long time. It's the first
24 time I have ever seen it. But as to the drugs in that
25 drawer, what you have is an individual get on the stand,

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1 Willie Glover, and admit to you that he owned those
2 drugs. They were his drugs. He said Travas didn't know
3 about them. Travas had nothing to do with them.

4 Now, the mere fact that you heard that
5 testimony doesn't that make you hesitate? Maybe the
6 State is going to try to argue to you the man got up
7 there and lied to you. Somehow he did this for his
8 stepson.

9 Ladies and gentlemen, I want you to think
10 about that. Would he submit himself to the potential
11 penalties of that admission, a violent crime --
12 trafficking is a violent crime -- and possession of a
13 firearm in connection with a violent crime if they
14 weren't his drugs?

15 A parent will do a lot for a child. Isn't
16 that a little too much? Look at it the other way.
17 Suppose they really were his drugs. Doesn't that make
18 more sense? You are not going to let your son go to
19 prison for your crime. Doesn't that make more sense?

20 And let me tell you to think of this too. If
21 he is going to get up there and lie about the drugs, why
22 didn't he lie about the drugs that were in the heater?
23 If what he was doing was getting up there to try to get
24 his son out of something he did, why didn't he lie about
25 the drugs on the heater too?

1 What you have got is a man that is man enough
2 to come to court and say, I'm not going to let my son go
3 to prison for something I did. With that testimony how
4 can you not help but hesitate on that trafficking
5 charge?

6 Of course, that takes care of the gun charge
7 too. Because in order to be guilty of the gun charge,
8 even if you don't believe that his father said it was
9 his gun, there is no trafficking and Travas Jones can't
10 be guilty of possession of the firearm in connection
11 with a violent crime. So that take cares of the
12 trafficking and the firearm.

13 Now, let's talk about the drugs that were on
14 the heater. In trying to determine whether or not the
15 State has proven Travas Jones guilty of those drugs, the
16 drugs on the heater, you've got to think about some
17 things closely.

18 The only thing that the State has is their
19 theory that Travas Jones lived there. That's it.
20 That's it. The mere fact that he lived there is the
21 only evidence they have to connect Travas Jones with
22 those drugs.

23 They've got a lot of evidence to show you
24 Travas Jones didn't know anything about those drugs. I
25 am going to discuss some of that you with right now.

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1 Let's go back to the beginning of this investigation.

2 And did you hear what I got them to admit?

3 One, the person they were interested in, the
4 main reason for the search warrant, the only person's
5 name that was listed in the reason for the search
6 warrant was who? Bradley West. Remember that?

7 In all that time they had an investigation
8 that went on about a month, the police constantly going
9 up in front of . A couple of
10 things are kind of important about all of that.

11 One, never, not one time did they ever see
12 Travas Jones. The other thing that was kind of unusual
13 about that too is they never saw any other cars either,
14 except Bradley West and Bernice Pearson, Travas's momma.

15 We heard some stories about trafficking, a lot
16 of cars going around there. Why didn't the police ever
17 see any of them? Does it make you wonder? And how
18 about this investigation itself? There is a lot going
19 on about what went on.

20 Remember the police come there with a search
21 warrant. Here is the house. See how close it is to the
22 road, fence around it and so forth. Remember right
23 here, the door is closed. On this day the door was
24 open. So let's talk about what went on.

25 We know that they sent over an animal control

1 officer first. Remember that? Because there was a pit
2 bull in the yard. So they send the animal control
3 officer over there, and she takes -- she has
4 conversation with somebody in the house. Somebody in
5 the house comes out with her. While she is still there,
6 then the police arrive.

7 Back up just a moment. There is a little bit
8 of confusion here. There was either five or six men
9 inside this house. Let's suppose one of those men had
10 some drugs in their pocket. It was a group of guys
11 playing cards. Let's suppose one of them had drugs in
12 their pocket.

13 Now, an animal control officer comes to the
14 scene. Do you think it's making that person think, Hey,
15 what is going on out there? I got some drugs in my
16 pocket, alert.

17 What is the next thing that happens? While
18 that animal control officer is still there, there is a
19 little bit of confusion here too. Four to six cars -- I
20 will try to be fair -- four to six cars come flying up.
21 Fourteen officers leap from those vehicles and charge
22 toward the house.

23 I don't care how silent your training is and
24 so forth, there is no way to disguise that noise, those
25 vehicles, motors charging, coming up, men jumping out

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1 with gear, equipment and guns and all that. So people
2 inside this house, they knew the police were coming.

3 Stop it right there a minute. Where was
4 Travas Jones when these cars came flying up? Well, it
5 depends on which evidence you believe. According to the
6 investigative notes, Travas Jones was in the front yard.
7 Remember that?

8 I don't know why they didn't bring the animal
9 control officer to tell us who she was standing out
10 there in the front yard with, but they didn't. The
11 investigative note said Travas Jones was out in the
12 front yard.

13 One of the other officers say, No, it wasn't
14 Travas. He was inside the door. He put him right
15 inside the door. Remember that? So Travas Jones is
16 either in the front yard or he's just inside the door.
17 One thing is for sure. Of all those people in the house
18 Travas Jones is either still outside or he is the
19 furthest one away from the heater.

20 The heater is over here (indicating). The
21 other men are all down in here (indicating). Travas
22 Jones is either here (indicating) or outside. So
23 doesn't that make you hesitate as to whether or not it's
24 Travas Jones that put those drugs in the heater?

25 Now, there is a picture. This is State's

1 Exhibit 21, and this is State's Exhibit 20. So one is
2 kind of a long shot of the heater, kind of away from the
3 heater to show you the heater itself. This was the one
4 where they said, This is the way we saw -- or where we
5 found the drugs.

6 Now, as you see it's kind of obvious because
7 when you stand up, you can see it. What you see is just
8 a little ledge there. Now, who would put their drugs on
9 a ledge like that? Not a man who lives there and knows
10 that all that is is just a little ledge.

11 But if you are stuck in that room with drugs
12 in your pocket, and you are one of those five men in the
13 room with drugs in your pocket, you are going to get
14 them of your pocket; aren't you? And where is the
15 nearest place? To throw them right there.

16 Now, we know they have actually charged two
17 other people with these drugs. They charged Bradley
18 West and they charged Theo Glover, and it's only a small
19 little quantity in there.

20 So doesn't the fact that Travas Jones was the
21 furthest away from this heater make you hesitate?
22 Doesn't the fact that Bradley West, who was the subject
23 of the investigation and is also charged with these
24 drugs, doesn't that make you hesitate?

25 And doesn't the fact that Theo Glover is also

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1 charged with these drugs, doesn't that make you
2 hesitate? Doesn't the fact that Michael Mann was also
3 in this room make you hesitate? Doesn't the fact that
4 Julius Lynch was also in this room, doesn't that make
5 you hesitate?

6 You know, they tried to put on some kind of a
7 case here that Travas Jones is involved in some kind of
8 crack operation. Remember? They even tried to take
9 innocent stuff and turn it into evidence of Travas
10 Jones' criminal activity.

11 Remember the Pyrex jar? Took it off the
12 shelf, had something white in the bottom of it. Ah,
13 somebody is cooking crack here. See, you've got white
14 in the bottom of this Pyrex. Send it to S.L.E.D. No
15 drugs. And how much do you need to get a reading? Two
16 grains of sand. That's all you need. Look how much is
17 in the bottom of that. No drugs, no drugs, no drugs.

18 What else? Well, he has got a kitchen scale.
19 He's got a kitchen scale. Yeah, I know somebody can use
20 this in cooking. I know somebody may can use this to
21 measure portions and things like that, but no, it's
22 drugs.

23 Did they even bring them here to show them to
24 you? No, they didn't. Did they test them to see if
25 there was any drug residue on them? No, they didn't.

1 That's because they could look and see it didn't have
2 any drug residue on it.

3 They would rather not test it. Just let you
4 think: Wow, this guy is cooking crack, and he is
5 measuring it here. They are just trying to paint a
6 picture. They are trying to prejudice you as to Travas
7 Jones, that he has got to be involved with drugs because
8 he's got a Pyrex measuring thing that has got white in
9 the bottom of it, and he has got kitchen scales.

10 Another thing I think you need to think about.
11 Remember they did two trash pulls? Remember that? Two
12 different occasions they pulled some trash from in front
13 of his house. They said they found some residue of
14 marijuana and used that to get the search warrant.

15 But you know what is important? What they
16 didn't find. They found no residue of crack. They
17 found no residue of cocaine; did they? Because you know
18 we would have heard about it if they did. So they take
19 two trash pulls out of that house. No evidence of
20 crack. No evidence of cocaine. Doesn't that make you
21 hesitate?

22 You know, I will shut up and sit down now. I
23 see you suppressing of sighs of relief. I appreciate
24 it. I have been talking a long time. But, you see, the
25 way this system works, I don't get to interact with you.

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1 I don't get to ask you -- maybe you have got some kind
2 of question I can try to answer. The law doesn't allow
3 that.

4 All I can do is stand up here and talk and try
5 to cover everything that the State is going to cover.
6 Mr. Whetstone is going to get up behind me, and he gets
7 to talk to you last. I don't get to get up behind him,
8 and I don't get to stand up and say, Wait a minute.
9 Don't listen to what Mr. Whetstone is saying. Remember
10 this. I don't get to do any of that. This is my last
11 shot.

12 But you know what? I never can cover all the
13 questions you've got in your mind. All we can ask is
14 when you get back there in the room, and Mr. Whetstone
15 brings up something different or if I forgot to cover
16 something you have a question on, y'all can discuss it
17 and try be fair to Mr. Jones about it.

18 When you go back there, remember this. Has
19 the State proven to you the guilt of Travas Jones beyond
20 a reasonable doubt? When you go to address that
21 question, just remember these items of evidence that I
22 discussed with you.

23 One, the confession of Mr. Glover. Doesn't
24 that make you hesitate? Doesn't it take trafficking and
25 possession of a weapon off the table? Two, the subject

1 of this investigation was Bradley West, not Travas
2 Jones.

3 Three, the closest people to the heater were
4 the other people, four or five of them, however many
5 because you've got different numbers. It was not Travas
6 Jones. Six, the trash pulls from this residence, no
7 crack. No cocaine. The Pyrex, no crack, no cocaine.
8 The scales, don't even bring them in here to show them
9 to you. We have got to conclude no crack no cocaine.

10 The fact that Bradley West has also been
11 charged with this crime, the fact that Theo Glover has
12 also been charged with this crime, the fact that Michael
13 Mann was there, the fact that Julius Lynch was there,
14 the fact it's obvious somebody just threw those three
15 little bags and threw them on the heater out of their
16 pocket.

17 They, of course, would have had plenty of
18 notice with all that was going on outside that house for
19 this raid. The only way, the only evidence they have on
20 Travas Jones is pure speculation. The mere fact that he
21 was rightfully there as a tenant doesn't make him
22 guilty.

23 His mere presence there does not make him
24 guilty. By that theory a parent would be guilty if they
25 catch their child with drugs in their pocket? Does that

1 make the parent guilty who owns the house?

2 Now I really am going to shut up and sit down.

3 We appreciate your presence here. The police can charge
4 you and they can arrest you, and the State can make you
5 come to trial.

6 But the only way that you can be convicted is
7 if 12 members of the community unanimously agree that
8 the evidence proves the guilt beyond a reasonable doubt.
9 So we thank you for your presence, and we feel
10 comfortable placing Travas Jones in your hands. Thank
11 you very much.

12 THE COURT: Thank you, Mr. Floyd. Solicitor.

13 **CLOSING ARGUMENT**

14 MR. WHETSTONE: Thank you, Your Honor. Ladies
15 and gentlemen, common sense and good judgment. That's
16 all you have needed during the testimony of this case.
17 That is all you will need back there when you are
18 deliberating, and that is all you will need to find this
19 man, Travas Jones, guilty of trafficking crack,
20 possession with intent to distribute cocaine, and
21 possession of a weapon during the commission of a
22 violent crime.

23 First of all, ladies and gentlemen, thank you
24 for being here. I know it has been -- it has not seemed
25 that long, but it has been a lot of testimony. I

1 appreciate your patience. I know on Good Friday,
2 there's lots of places you would rather be than here,
3 especially with friends, family, or church obligations.

4 Let's start with the key element of what you
5 just heard is the defense's case. I would call this the
6 elephant in the room, Mr. Willie Glover's testimony you
7 heard yesterday. And what a story that was.

8 Mr. Glover comes in claims the crack that is
9 found in the kitchen drawer, claims the gun that is
10 found under Travas Jones' bed. He comes in and says --
11 Solicitor Scott elicited this testimony -- he comes in
12 between 9:00 or 10:00 in the morning goes to the
13 refrigerator realizes they are out of beer, goes and
14 decides, Well, I have this crack in my pocket and this
15 gun in my pocket. I better stash it before I go to the
16 convenience store.

17 It's interesting that this crack, State's
18 Exhibit 32, is in the shape of a crack cookie, which you
19 heard from Douglas Robinson is very fragile. It's
20 easily broken. You will see when you take the B.E.S.T.
21 kit back there that it has been broken through
22 transportation, through testing.

23 But somehow he had it in his pocket, walked
24 all the way to It didn't break.
25 It's still in its pure, untouched form in this bag.

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1 Somehow he places the drugs in here with digital scales.

2 He didn't mention that he had digital scales on him.

3 He somehow places it in the same drawer where
4 digital scales are, where this crack could easily be
5 measured, counted out, packaged, and ready for
6 distribution.

7 Somehow in this small house no one notices
8 that while he does that, puts it in the kitchen drawer,
9 he also -- this is a 900 square foot house by the way --
10 no one seems to notice that he also goes to Mr. Jones'
11 bedroom, stashes the gun under the bed.

12 Here comes the more interesting part. He says
13 he goes to the gas station to get more beer. As
14 Solicitor Scott elicited, he was only gone a few
15 minutes, and when he returned lo and behold, he happened
16 to come the day that the cops were issuing a search
17 warrant for this house.

18 What a set of coincidences. Not only that, he
19 mentioned, if you heard in the testimony, that he left
20 between 9:00 or 10:00 in the morning. You heard from
21 Solicitor Scott that this search warrant wasn't issued
22 until around 1:00 P.M. that afternoon.

23 So somehow at that point he says, I didn't
24 come back until after that point. Mr. Glover changes
25 his story. So now it becomes he left, went to go get

1 beer at the convenience store just down the road,
2 doesn't come back for three hours or more.

3 Ladies and gentlemen, after hearing
4 Mr. Glover's testimony yesterday, I am reminded of an
5 old phrase that has been attributed to P.T. Barnum: A
6 sucker is born every minute. Ladies and gentlemen,
7 Travas Jones is hoping that there are 12 suckers on this
8 jury right here, and y'all are the most gullible people
9 in the world.

10 Ladies and gentlemen, I would submit to you
11 that that story is just not believable. Who did you
12 also hear from yesterday? You heard from Nicole Walker.
13 Also, I would say a secondary key piece of evidence that
14 the defense is relying on in this case.

15 Ms. Walker comes in and says, There is no way
16 Travas Jones could have been living at that house very
17 long. He has been with me. It's worth mentioning that
18 Mr. Glover has been there since Mr. Jones was raised.
19 He has known him all his life. He has some bias, some
20 reason to want to help. He wants to help his son. We
21 don't blame him.

22 But that's not the truth in this case. It's
23 the same with Ms. Walker. She has a child by Mr. Jones.
24 She wants to help him. She says he didn't move into
25 that house until November 2nd.

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1 We know that Ms. Walker was in here when the
2 landlord Ricky Williams was up there saying, I believe
3 Mr. Jones signed the lease around November 2nd. But we
4 also heard from Ricky Williams is that rent payments
5 were picked up by him in person at the address,

6 three or four times. He saw
7 Mr. Jones there every time, and that's before the rent
8 payment was collected on November 1st from Mr. Jones.

9 You will see State's evidence Number 35
10 written and identified by Mr. Walker [sic]. Rent is due
11 on the first of each month. This is also signed by
12 Mr. Jones, which means if rent is due on the first of
13 each month and he saw Mr. Jones there three or four
14 times, then we are seeing him November 1st. We can
15 infer we have seen him there October 1st, September 1st,
16 and August 1st. He has been there every time at that
17 house.

18 We also heard from Ms. Meador, the next door
19 neighborhood. She has seen all this going on. She
20 makes the initial report. She has seen and spoken to
21 Travas Jones, seen him there every time. He has been at
22 that house. He has been at that house well before
23 November 2nd. He has been living at that house. He has
24 been running a crack house at

25 Ladies and gentlemen, I know you have been

1 patient and you have listened very carefully to the
2 testimony that was put forward all this week. Let's
3 review some of that. Let's start chronologically. Ed
4 Pereira gets the report from Jennifer Meador in mid
5 September, the complaint.

6 She lives next door. There is a lot of
7 activity going on. There's cars coming all through the
8 night bothering her, and she notices, Something is going
9 on. I have been in narcotics before. People are coming
10 all hours of the night, all hours of the day. This
11 looks like a crack house.

12 They are coming in one by one, leaving a
13 minute or two later. Something is up. So Ed Pereira,
14 being the good officer that he is, he decides to do
15 surveillance.

16 You will notice, if you remember his
17 testimony, surveillance is a difficult thing in a quiet
18 neighborhood like this. You are very noticed if you are
19 going in an area trying to see what is going on in a
20 house. You can see clearly from
21 that there is a mysterious car parked down the road
22 watching you.

23 I believe you will see is these pictures that
24 were taken that a lot of the surveillance he did -- if I
25 can find them -- were while the car was moving. You can

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1 see that a lot of these picture, he was not able to take
2 stationary. He wasn't able to sit there because he
3 would have been noticed.

4 There are a lot of pictures in this case, and
5 there will be a lot for you to review. You will have
6 them back there. This is one. You can see this is not
7 one that has his car where he is taking it and taking it
8 on the go. He can't stay there and do surveillance the
9 whole time. He would be noticed.

10 But what he does notice is that they do see
11 the traffic coming in. Their suspicions are up. So
12 because he is unable to do surveillance the way he wants
13 to, to be able to watch the house and see what is going
14 on clearly, he thinks to do a trash pull.

15 That's where we find marijuana. That's what
16 leads their suspicions that something is going on there.
17 Lo and behold, the search warrant is issued and
18 executed. What do we have? Officer Pereira is correct,
19 a crack house.

20 The defense, I would say thirdly, a key piece
21 of evidence that Mr. Floyd was harping on is that in
22 Mr. Pereira's report, it says he made contact with
23 someone outside, and in his report it says it was Travas
24 Jones.

25 You heard the testimony. We clarified that on

1 the stand. It was a mistake. It was actually Michael
2 Jones that was out there. Officer Pereira made an
3 innocent mistake, one that he clarified on the stand,
4 and one that was confirmed by Cal Thomas and another
5 officer in this case, Frank Ballentine. They are the
6 ones that entered the house, made contact with Travas
7 Jones, who is over there by the heater in the house. He
8 was identified by two people.

9 Let's think about the testimony from Cal
10 Thomas in this case. He's the one that gives us the
11 layout of the house. As you can see, it's not that big.
12 You can enter here. You can see both bedrooms. You can
13 see clearly this open area and the table. You can see
14 into the kitchen.

15 A key piece of information from Cal Thomas is
16 that when he entered, there wasn't a scatter. People
17 were sitting around the table playing cards. There
18 wasn't much movement. There was no sense in their
19 minds, in the officer's minds, that the individuals
20 inside this house knew they were coming.

21 You also heard from Cal Thomas that he is the
22 one in the kitchen who found the drugs in the drawer,
23 the scales. He testified. You heard from him the
24 street value being about a hundred dollars a gram for
25 both the cocaine and the crack.

1 Ladies and gentlemen, if Mr. Willie Glover had
2 all that crack in his pocket, wouldn't he be a little
3 bit hesitant leaving about \$2,000 worth of drugs in a
4 drawer in a small house where it could easily be found?
5 I would think he would have some reservations about
6 that.

7 Jennifer Meador, you heard from her next. We
8 have been over her report. She's the one that started
9 this whole case. She is seeing visibly from her window
10 next door people are coming in all hours of the night
11 and going out.

12 Something is up. She makes the report. She
13 has seen Travas Jones at the house. She has made
14 contact with him. She has talked to him. He is living
15 there.

16 Next, Ricky Williams. I think we have been
17 over his testimony well enough, but I would emphasize
18 again Travas Jones' name is on that lease. If you read
19 the lease, rent is picked up once every month. "I saw
20 Travas Jones there three or four times." It's very
21 important.

22 Then you also hear or you also heard from John
23 Valdario. He is the one that found the gun in the
24 bedroom. Another important fact, he found medical
25 records in what we believe was Travas Jones' room. That

1 is his room.

2 Evan Antley, you heard I believe Solicitor
3 Scott went over stealth. That's what they teach you in
4 S.W.A.T. tactics when you are executing a search warrant
5 at a house. The key point, what Officer Antley went
6 over and over and over again, is stealth. We train
7 constantly.

8 You heard him say they don't slam the doors.
9 They don't come to a screeching halt in front of a
10 house. They try to remain stealth, to remain
11 undetected. Sure enough, when you heard again from
12 Frank Ballentine, that seemed to be the case. Frank is
13 one of the first inside the house, and they are still
14 sitting there playing cards. They didn't move. They
15 didn't hear them come in.

16 From Frank you also find another key piece of
17 evidence against Mr. Jones. He has \$670 in his pocket.
18 How many of y'all have carried around \$670 on a daily
19 basis? I know I sure don't.

20 And what is the drug business? The crack
21 business? It's a cash business. It is a cash business.
22 There is no other reason for Mr. Jones to have that much
23 money in his pocket if he is not selling drugs.

24 You also heard from Jason Merrill with the
25 Cayce Police Department or Cayce Public Safety. He is

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1 the scribe. You heard the evidence in this case was
2 carefully collected. It was brought to him by all the
3 officers on the S.W.A.T. team that found things in the
4 house.

5 Carefully he wrote on what room it came from,
6 it's packaged, put into the evidence storage room. You
7 heard from Selena Kinard and Pat Crooks at S.L.E.D.
8 They were the intake folks at S.L.E.D. to make sure
9 everything was secure and kept safely at S.L.E.D.

10 Then you heard from Douglas Robinson, the
11 analyst at S.L.E.D. who tested the drugs. This is a
12 very important part. He comes to find we have
13 25.7 grams of crack cocaine and 3.8 grams of cocaine.

14 I believe you also heard from him how easy the
15 process of making cocaine is. It takes -- of making
16 crack cocaine, excuse me. It requires something to cook
17 it in, requires cocaine -- we have that -- something to
18 dilute it and a microwave. You will see in those
19 pictures all the capabilities are there. It could have
20 easily been done at the house and very quickly.

21 Let's review what we have. We have some very
22 strong evidence in this case. We have that this is
23 Travas Jones' house. He is on the rent -- he is on the
24 rental agreement. He has been seen by more than one
25 person several times at that location way back into the

1 summer, beginning -- we could place him there as early
2 as August.

3 Jennifer Meador has seen him out there. She
4 has made several complaints, seen him there a lot. He
5 is always there. We've got cars coming and going from
6 this place at all hours. We've got a crack house.

7 We have crack in the kitchen. We have got
8 crack behind the heater. We have got cocaine behind the
9 heater. We have got cocaine in the kitchen. We have
10 got scales in the kitchen.

11 Ladies and gentlemen, common sense and good
12 judgment. We can put Travas Jones there. We can put
13 Travas Jones dealing. We've got a crack house, common
14 sense and good judgment.

15 At the end of this case after I'm done, Judge
16 McMahon will charge you on the law. One of the
17 important things you will hear is the charge on
18 constructive possession. Constructive possession, what
19 does that mean?

20 That means a person has dominion and control
21 over the controlled substance, that being in this case
22 crack cocaine and cocaine. He has control over the
23 drugs or he has control over the premises where it's
24 located, , name on the rental
25 agreement. He is there when the search warrant is

1 executed. He has been seen there many times.

2 Constructive possession infers the defendant's
3 knowledge and possession may be inferred if the drug was
4 found on the premises under the defendant's control.
5 We've got that in this case. This is Travas Jones'
6 house. That's dominion and control right there. Ladies
7 and gentlemen, he knew that crack was there because he
8 was selling it.

9 The next two things I will go over that you
10 will hear from the judge is trafficking and possession
11 with intent to distribute. The trafficking charge in
12 this case that we are trying to prove against Mr. Jones,
13 the substance in this case is crack. Travas Jones had
14 possession of crack.

15 Possession can be shown by proving that Travas
16 Jones has dominion and control over either the crack or
17 the premises where it's found. He knows it's there.
18 This is his house.

19 To reach the trafficking level, we have an
20 inference level. Once you get over 10 or more grams,
21 you are considered to be trafficking in drugs. Ladies
22 and gentlemen, in this case we don't have 10 grams. We
23 have 25.7 grams of crack. That's a lot of crack.
24 Travas Jones is trafficking crack.

25 Possession with intent to distribute. The

1 substance we are talking about here in this possession
2 with intent to distribute charge is cocaine. Travas
3 Jones had possession of the cocaine. Again, possession
4 can be shown by proving that he, Travas Jones, had
5 dominion and control over the cocaine or the premises
6 where it was found.

7 Now, it's important to remember in possession
8 with intent to distribute, you do not have to actually
9 find someone actually distributing the drugs. The
10 amount in this case is enough to infer that he had
11 possession and intended to distribute it.

12 That amount that we have to reach is 1 gram.
13 That's your inference level. Anything, 1 gram or over,
14 this guy might be distributing it. We not only have 1
15 gram in this case. We have 3.8 grams of cocaine.

16 Finally, ladies and gentlemen, reasonable
17 doubt. Reasonable doubt. It's the type of doubt that
18 would cause a person to hesitate to act. Ladies and
19 gentlemen, reasonable doubt does not mean beyond all
20 doubt.

21 The important part that you should take back
22 there and remember is that you must be firmly convinced
23 of Mr. Jones' guilt. I have no doubt that you are
24 firmly convinced that Mr. Travas Jones is guilty, firmly
25 convinced. Remember that back there when you

1 deliberate.

2 Ladies and gentlemen, for sure this is an
3 important case for Mr. Travas Jones; but it's also
4 important, as Mr. Scott alluded his opening, to the
5 surrounding members of and the
6 community where he lived.

7 Mr. Scott mentioned Mr. Winn who lived across
8 the street -- we know about Ms. Meador and that other
9 neighbors were alerted to Travas Jones' activity. This,
10 no doubt, caused a disturbance in their neighborhood.
11 It no doubt made them nervous. It no doubt made them
12 scared to know this was going on. We certainly know
13 that from Ms. Meador's testimony.

14 It's important to remember that this case is
15 important to them. No doubt the neighborhood has gotten
16 quieter. No doubt Ms. Meador feels a little bit
17 safer --

18 MR. FLOYD: Your Honor, we would object to the
19 nature of this argument. I don't think that has
20 anything to do with it.

21 THE COURT: Step up here, please.

22 (Whereupon there was a bench conference off
23 the record in the presence of the jury but out of the
24 hearing of the jury.) you

25 MR. WHETSTONE: Ladies and gentlemen, in

1 conclusion. Thank you for your attention. My hope is
2 that in this case you will do justice and show that this
3 activity will not be tolerated in this community.

4 I hope that you will find Mr. Travas Jones
5 guilty of trafficking crack cocaine, guilty of
6 possession of a weapon during the commission of a
7 violent crime, and guilty of possession with intent to
8 distribute cocaine. Thank you.

9 THE COURT: Thank you, Solicitor. Would you
10 take down this podium for me and this easel on the
11 podium.

12 MR. WHETSTONE: Yes, sir.

13 (Pause.)

14 (Whereupon the Court charges the jury as
15 follows.)

16 THE COURT: Mr. Foreman, ladies and gentlemen
17 of the jury, I am now going to instruct you on the law
18 that applies to this case. The procedure I follow is I
19 charge the general law that applies to all criminal
20 cases in South Carolina.

21 I will then charge the specific offenses in
22 the indictments. I will charge what is known as the
23 lesser-included offenses within those greater offenses.
24 I will explain that to you. Finally, I will charge you
25 the form of the verdict and a specific form that you,

1 Mr. Foreman, and ladies and gentlemen of the jury, will
2 have with you during your deliberations.

3 To begin with, charge, arrest, indictment, not
4 evidence. The indictments charge the defendant with
5 trafficking in crack cocaine 10 to 28 grams, possession
6 with intent to distribute cocaine, and possession of a
7 weapon during the commission of a violent crime.

8 I remind you the fact that the defendant was
9 arrested, charged, and indicted in this case is not
10 evidence and cannot be considered by you as evidence of
11 guilt, nor does it create any presumption or inference
12 of guilt.

13 These documents, these indictments, are simply
14 the formal written instruments which contain the charges
15 made against the defendant. They are the formal
16 documents by which the case is brought into court. The
17 indictments in this case have these multiple charges, as
18 I have explained to you. Each indictment charges a
19 separate and distinct offense.

20 You must decide each indictment separately on
21 the evidence and the law that applies to it,
22 uninfluenced by your decision as to any other
23 indictment. However, as to the charge of possession of
24 a weapon during the commission of a violent crime,
25 Mr. Jones can only be found guilty of that if he is

1 found guilty of trafficking in crack cocaine.

2 As to the others the defendant may be
3 convicted or acquitted on any or all of the other
4 offenses. You will be asked to write a separate verdict
5 of guilty or not guilty on each indictment.

6 Presumption of innocence. The defendant has
7 pled not guilty to these indictments, and that plea puts
8 the burden on the State to prove the defendant's guilt.
9 A person charged with committing a criminal offense in
10 South Carolina is never required to prove himself
11 innocent.

12 I charge you that it is an important rule of
13 the law that a defendant in a criminal trial, no matter
14 what the seriousness of the charge may be, will always
15 be presumed to be innocent of the crime for which the
16 indictment was issued unless guilt has been proven
17 satisfying you the jury of that guilt beyond a
18 reasonable doubt.

19 This presumption of innocence does not end
20 when you begin your deliberations, but it accompanies
21 the defendant throughout the trial until you reach a
22 verdict of guilt based on evidence satisfying you of
23 that guilt beyond a reasonable doubt.

24 The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the

1 defendant which remains with the defendant until it has
2 been stripped from the defendant by evidence satisfying
3 you of the defendant's guilt beyond a reasonable doubt.

4 The presumption of innocence is not a mere
5 legal theory. It is not just a legal phrase. It is a
6 substantial right to which every defendant is entitled
7 unless you the jury are satisfied from the evidence of
8 the defendant's guilt beyond a reasonable doubt.

9 You heard that term several times now,
10 reasonable doubt. What is a reasonable doubt in the
11 law? A reasonable doubt is the kind of doubt that would
12 cause a reasonable person to hesitate to act.

13 The State has the burden of proving the
14 defendant guilty beyond a reasonable doubt. Some of you
15 in the past may have served as jurors in civil cases
16 where you were told that it is only necessary to prove
17 that a fact is more likely true than not true, such as
18 by the greater weight or the preponderance of the
19 evidence.

20 In a criminal case, the State's proof must be
21 more powerful than that. It must be beyond a reasonable
22 doubt. Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the defendant's guilt.

24 Now, ladies and gentlemen, we know there are
25 very few things in this world that we know with absolute

1 certainty, and in criminal cases the law does not
2 require proof that overcomes every possible doubt.

3 If based on your consideration of the
4 evidence, you are firmly convinced that the defendant is
5 guilty of the crime charged, you must find the defendant
6 guilty. If, on the other hand, you think there is a
7 real possibility that the defendant is not guilty, you
8 must give the defendant the benefit of that doubt and
9 find him not guilty.

10 Duties of the trial jury and trial judge. I
11 would remind you during the trial, you and I have
12 certain duties to perform. As the trial judge, it is my
13 responsibility to preside over the trial of the case,
14 and I also have the duty to rule on the admissibility of
15 the evidence offered during the trial.

16 You are to consider only the competent
17 evidence before you. You are to consider the testimony
18 which has been presented to you from the witness stand
19 and any exhibits which have been made part of the record
20 in this case.

21 I also have the additional duty to charge or
22 instruct you on the law that applies to this case. As
23 the presiding judge, I am the sole judge of the law of
24 this case, and it is your duty as jurors to accept and
25 apply the law as I now state it to you.

1 If you already have any idea about what the
2 law is or what the law ought to be and it does not agree
3 with what I now tell you the law is, you must abandon
4 your idea because you are sworn. You have taken an oath
5 to accept the law and apply the law exactly as I state
6 it to you.

7 In every case tried in this court before a
8 jury, the jury becomes the sole and exclusive judge of
9 the facts in a case. A trial judge can not intimate,
10 state, comment on, or make any statement to a trial jury
11 about the facts in a case.

12 Since you the jury are the sole judge of the
13 facts, you are not to infer from what I have said during
14 the course or progress of the trial, in ruling upon the
15 admissibility of evidence or otherwise, or anything that
16 I now say to you during this instruction that I have any
17 opinion about the facts in this case.

18 The law does not allow me to have an opinion
19 about the facts in this case. This is a matter for you
20 the jury solely to determine. As jurors it is your duty
21 to determine the effect, the value, the weight, and the
22 truth of the evidence presented during the trial.

23 Direct and circumstantial evidence. There are
24 two types of evidence which are generally presented
25 during a trial, direct evidence and circumstantial

1 evidence.

2 Direct evidence is the testimony of a person
3 who claims to have actual knowledge of a fact, such as
4 an eyewitness. It is evidence which immediately
5 establishes the fact to be proved.

6 Circumstantial evidence is proof of a chain of
7 facts and circumstances indicating the existence of a
8 fact. It is evidence which immediately establishes
9 collateral facts from which the main fact may be
10 inferred.

11 Circumstantial evidence is based on inference
12 and not on personal knowledge or observation. The law,
13 our law, makes absolutely no distinction between the
14 weight or the value to be given to either direct or
15 circumstantial evidence, nor is there a greater degree
16 of certainty required of circumstantial evidence than of
17 direct evidence.

18 You the jury should weigh all of the evidence
19 in the case. After weighing all of the evidence, if you
20 are not convinced of the guilt of the defendant beyond a
21 reasonable doubt, you must find the defendant not
22 guilty. If after weighing all of the evidence, you are
23 firmly convinced of the guilt of the defendant beyond a
24 reasonable doubt, you must find the defendant guilty.

25 Credibility of witnesses. Necessarily as a

1 trial jury you must determine the credibility of the
2 witnesses who have testified in this case. Credibility,
3 as you all know, simply means believability. It becomes
4 your duty as jurors to analyze and evaluate the evidence
5 and determine which evidence convinces you of its truth.

6 In determining the believability of the
7 witnesses who have testified in this case, you may
8 believe one witness over several or several over one.
9 You may believe part of the testimony of a witness and
10 reject the remaining part of the testimony of that same
11 witness. You may believe the testimony of a witness in
12 its entirety or reject the testimony of a witness in its
13 entirety.

14 You may consider whether any witness has
15 exhibited to you any interest, any bias, any prejudice,
16 or other motive in this case. You may also consider the
17 demeanor, the appearance, the manner of a witness while
18 on the witness stand.

19 You have one function and one function alone,
20 and that is to seek the truth from wherever that truth
21 may come. In doing that search for the truth, you use
22 your good judgment and your common sense.

23 Expert witness. Normally, as you heard me say
24 during the trial, a person cannot give opinion
25 testimony. Normally when a person testifies, they must

1 testify as to either what they saw, heard, or sensed by
2 smell or something of that nature.

3 However, there is an exception when someone is
4 qualified because of education or experience. They are
5 permitted to give their opinion in certain areas if they
6 are qualified in that area. You should consider all the
7 evidence that was presented in the case and any expert
8 testimony.

9 However, you do not give expert testimony any
10 greater weight simply because the person is qualified as
11 an expert. You give it the weight and the value you
12 deem it requires or is appropriate. You do not have to
13 accept the opinion of an expert even though it is
14 uncontroverted.

15 I instruct you and emphasize that the fact
16 that the defendant, Mr. Jones, did not testify is not a
17 factor to be considered by you in any way in your
18 deliberation and in your consideration of the question
19 of the guilt or innocence of the defendant. It must not
20 be considered by you in any manner whatsoever.

21 A defendant has the constitutional right to
22 remain silent, and the assertion of that right must not
23 be considered by you in your deliberations. I repeat:
24 Under your oath you are to draw no conclusions
25 whatsoever from the fact that the defendant in this case

1 did not testify.

2 The fact that this Defendant did not testify
3 should not even be discussed in the jury room. The
4 burden of proof, as I have stated, is on the State. The
5 defendant is not required to prove his innocence. The
6 burden of proof remains on the State to prove guilt
7 beyond a reasonable doubt.

8 Intent. In order to establish criminal
9 liability, criminal intent is required. For example,
10 the mental state required to be proven by the State for
11 a particular crime might be purpose, intent, knowledge,
12 recklessness, or criminal negligence, depending on the
13 crime.

14 Criminal intent must be proven by the State
15 beyond a reasonable doubt. Criminal intent is always a
16 matter that must be determined by the jury from all the
17 circumstances surrounding the situation.

18 There is no way to prove intent to a
19 mathematical certainty. There is no way that medical
20 science can dissect a person's brain and determine what
21 the person had in mind. So the law says that criminal
22 intent may be inferred from the circumstances shown to
23 have existed.

24 This is how you make your determination of
25 whether or not the element requiring intent was present.

1 It is not necessary to establish intent by direct and
2 positive evidence, but intent may be established by
3 inference in the same way as any other fact, by taking
4 into consideration the acts of the parties and all the
5 facts and circumstances of the case.

6 Criminal intent is a mental state, a conscious
7 wrongdoing. It is up to you determine what the
8 defendant intended to do based on the circumstances
9 shown to have existed.

10 Ladies and gentlemen, that is the general law
11 that applies to all criminal cases in South Carolina. I
12 am now going to charge you as to the specific
13 indictments. Thank you for continuing to give me your
14 complete and undivided attention.

15 The manner in which I am going to charge the
16 specific indictments is, first, I am going to instruct
17 you on the charge of trafficking in crack cocaine of
18 more than 10 grams but less than 28 grams.

19 Now, in our law there is a greater offense and
20 there are lesser-included offenses. There are two
21 lesser-included offenses to trafficking in crack cocaine
22 10 grams or more but less than 28 grams.

23 The first tier down, the first lesser-included
24 offense, is possession with intent to distribute crack
25 cocaine, and then the next tier down is simple

1 possession of crack cocaine.

2 So the manner in which I am going to explain
3 that indictment to you is trafficking in crack cocaine
4 10 to 28 grams, possession with intent to distribute
5 crack cocaine, and simple possession of crack cocaine.

6 Further, when we go to the second indictment,
7 the second indictment is possession with intent to
8 distribute cocaine. In that scenario there is one
9 lesser-included offense, which is simple possession of
10 cocaine.

11 So the difference between possession with
12 intent to distribute crack cocaine and possession with
13 intent to distribute cocaine is going to be whether it's
14 crack cocaine or cocaine. I will not go through
15 possession with intent to distribute twice just to
16 change that one word from crack cocaine -- those two
17 words -- from crack cocaine to cocaine.

18 The defendant is charged with trafficking in
19 crack cocaine. The State must prove beyond a reasonable
20 doubt that the defendant knowingly sold, manufactured,
21 cultivated, delivered, purchased, brought into this
22 State, or provided financial assistance or otherwise
23 aided, abetted, attempted, or conspired to sell,
24 manufacture, cultivate, deliver, purchase, or bring into
25 this State or was knowingly in actual or constructive

1 possession or knowingly attempted to become in actual or
2 constructive possession of crack cocaine.

3 The State must also prove beyond a reasonable
4 doubt that the amount of crack cocaine was 10 grams or
5 more but less than 28 grams. Now, the crux of
6 trafficking in crack cocaine amounts to (A), the weight,
7 minimum 10, up to 28, as far as this particular charge;
8 and, secondly, possession, specifically constructive
9 possession.

10 To prove possession the State must prove
11 beyond a reasonable doubt that the defendant had both
12 the power and the intent to control the disposition or
13 use of the crack cocaine.

14 Constructive possession means that the
15 defendant had dominion and control or the right to
16 exercise dominion and control over either the crack
17 cocaine itself or the property on which the crack
18 cocaine was found.

19 Mere presence at the scene where the drugs
20 were found is not enough to prove possession. Actual
21 knowledge of the presence of the crack cocaine is strong
22 evidence of the defendant's intent to control its
23 disposition or use.

24 Two or more persons may have joint possession
25 of a drug. Proof of constructive possession requires a

1 showing that the accused had dominion and control over
2 either the drugs or the premises upon which the drugs
3 were found, as well as knowledge of the presence of the
4 drugs. Mere presence in the area where the drugs are
5 found does not constitute constructive possession.

6 Now, ladies and gentlemen, that is the charge
7 on trafficking in crack cocaine 10 to 28 grams. Under
8 that charge is the lesser-included offense of possession
9 with intent to distribute crack cocaine.

10 If you determine the State has not proven
11 trafficking in crack cocaine beyond a reasonable doubt,
12 you should then consider whether the State has proven
13 beyond a reasonable doubt that the defendant is guilty
14 of possession with intent to distribute crack cocaine.

15 Possession with intent to distribute contains
16 all of the elements of trafficking except the amount of
17 the cocaine or crack cocaine. In addition, the State
18 must prove beyond a reasonable doubt that the defendant
19 had the intent to distribute the drug, whether it be
20 crack cocaine or the cocaine, in other words, whether
21 the defendant had the power and intent to control the
22 disposition and use of the contraband drug.

23 Possession of any amount of controlled
24 substance, coupled with sufficient indicia of intent to
25 distribute, will support a conviction for possession

1 with intent to distribute. Possession with intent to
2 distribute does not hinge on the amount of the drug
3 involved.

4 That is the charge on possession with intent
5 to distribute crack cocaine as a lesser-included offense
6 of trafficking, and that is also the same language of
7 the possession with intent to distribute cocaine.

8 Now, under both the possession with intent to
9 distribute crack cocaine and possession with intent to
10 distribute cocaine, there is simple possession. If you
11 find the State has failed to prove beyond a reasonable
12 doubt trafficking in crack cocaine or possession with
13 intent to distribute crack cocaine, you should then
14 consider simple possession of crack cocaine, which is
15 included as a lesser-included offense.

16 Simple possession does not require an intent
17 to distribute the contraband drug. A defendant charged
18 with possession, simple possession of cocaine, the State
19 must prove beyond a reasonable doubt that the defendant
20 knowingly or intentionally possessed the crack cocaine
21 or the cocaine.

22 Knowingly means with knowledge, consciously,
23 not accidental. Intentionally means willfully,
24 intending the result which actually occurred, not
25 accidentally or involuntary. Intent may be shown by

1 acts and conduct of the defendant and other
2 circumstances which may naturally and reasonably infer
3 intent.

4 So, ladies and gentlemen, again, to recap.
5 You may say, Judge, please give us a break, but to recap
6 I do want you to realize that, once again, trafficking
7 in crack cocaine, there's two lesser offenses:
8 Possession with intent to distribute crack or simple
9 possession of cocaine or not guilty.

10 On the charge of possession with intent to
11 distribute cocaine, there is a lesser-included offense
12 of simple possession of cocaine or not guilty. You
13 decide those indictments separately and distinctly, one
14 from the other, looking at the evidence that you find
15 applies to one based on your review of the facts and the
16 evidence that you find applies to the other.

17 Finally, ladies and gentlemen -- and I assure
18 you the end is in sight as far as my instructions to
19 you -- possession of a weapon during the commission or
20 attempt to commit a violent crime, the defendant is
21 charged with possession of a weapon during the
22 commission of or attempt to commit a violent crime.

23 The State must prove beyond a reasonable doubt
24 that the defendant was in possession of a firearm, a
25 firearm during the commission of a violent crime. A

1 firearm means any machine gun, rifle, revolver, or
2 pistol or any other weapon which is designed to or may
3 be readily converted to expel a projectile.

4 In order to find the defendant guilty of
5 possession of a weapon during the commission of a
6 violent crime, you must first find the defendant guilty
7 of either committing a violent crime or attempting to
8 commit a violent crime. Trafficking in crack cocaine is
9 a violent crime.

10 Only if you find the defendant guilty of
11 trafficking in crack cocaine, may you then find him
12 guilty of possession of a weapon during the commission
13 of a violent crime. That would not be an automatic
14 finding either. You could find him guilty of the
15 trafficking and not guilty on the possession of the
16 weapon. That would be entirely up to you.

17 The principles relating to constructive
18 possession, which I explained to you previously in the
19 drug offense, are also applicable in regard to
20 possession of firearms and other objects. Proof of
21 constructive possession alone with knowledge of the
22 presence of a firearm is sufficient to support a
23 conviction for possession of a firearm.

24 To prove constructive possession, the State
25 must show that the defendant had dominion and control or

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1 the right to exercise dominion and control over the
2 firearm. Constructive possession may be established
3 through either direct or circumstantial evidence and
4 possession may be shared.

5 That concludes the charges of trafficking in
6 crack cocaine, possession with intent to distribute
7 cocaine, the lesser-included offenses, and possession of
8 a weapon during the commission of a violent crime.

9 Finally, ladies and gentlemen, as to the
10 various indictments, on trafficking in crack cocaine,
11 you could find one of four indictments: Guilty of the
12 trafficking in crack, guilty of the possession with
13 intent to distribute, guilty of simple possession, or
14 not guilty.

15 As to possession with intent to distribute,
16 you could find one of three verdict. You will have this
17 form in the jury room with you, Mr. Foreman, ladies and
18 gentlemen of the jury. You could find guilty of
19 possession with intent to distribute cocaine, guilty of
20 simple possession of cocaine, or not guilty.

21 As to the charge of possession of a weapon
22 during the commission of a violent crime, you could find
23 one or two forms of verdict, either guilty or not
24 guilty.

25 The order in which I stated these possible

1 verdicts has no significance whatsoever. One must be
2 stated first. Your verdicts must be unanimous. All 12
3 of you must agree.

4 Your verdict must be based on the evidence,
5 the inferences, and the law as I have explained it to
6 you. It may not be based on passion, prejudice,
7 sympathy, or any other motive not in evidence in this
8 case.

9 Once the jury has reached the verdicts,
10 Mr. Foreman, at this point it's pretty self-explanatory,
11 it's got number one, number two, number three tracking
12 the indictments: Guilty of trafficking, guilty of
13 possession, guilty of simple, not guilty.

14 Once y'all reach the verdict, for example, on
15 that first, whatever it may be, if you would just place
16 a check to the left indicating your verdict, and if you
17 would then circle the check and the words or whatever
18 your verdict is. Then second is the same, and the third
19 is the same in that regard.

20 The law requires I meet with the attorneys one
21 final time outside of your presence to review my charge
22 and make sure I do not have to bring you back out here
23 for any additional instructions. If I do not have to
24 bring you back out, what will happen -- everybody looks
25 great today; so our two alternates will come out of the

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1 jury room, and I will give them further instructions.

2 We will then have delivered to you all the
3 evidence, items of evidence, that have been placed into
4 evidence in this trial of this case. You will then be
5 instructed to begin your deliberations. Do not begin
6 your deliberations until you are instructed to do so.

7 I think what I will do, given the lateness of
8 the hour, is have the clerk, by the time you go out now,
9 give you some menus to get your orders for lunch, and we
10 will eat in today, today being Friday. We will eat in
11 today, and she will give you menus. She can take care
12 of those administrative issues.

13 If you have any questions during the course of
14 your deliberations, please write out a note for me,
15 knock on the jury room door. The bailiff will be posted
16 right outside. With that being said, if you would now
17 go to your jury room and wait for further instructions.
18 Thank you. Thank you very much.

19 (The jury retires to the jury room.)

20 THE COURT: Any exceptions or additions,
21 Solicitor?

22 MR. WHETSTONE: No, Your Honor.

23 THE COURT: Mr. Floyd?

24 MR. FLOYD: Yes, Your Honor. We renew our
25 objection to Your Honor's charge on the concept of

1 constructive possession and also our objection to Your
2 Honor's refusal to charge our request to charge
3 number three.

4 THE COURT: Number three or two? I'm sorry.
5 You may have objected to both of them, Mr. Floyd.

6 MR. FLOYD: I think the main one was -- I
7 believe you are right. It's number two, Your Honor.

8 THE COURT: All right.

9 MR. FLOYD: Number two, defendant's request to
10 charge number two. Your Honor, it's our position that
11 Your Honor's charge, as it was given, basically is
12 tantamount to saying if you think Travas Jones lived
13 there, he is guilty. I think that was kind of the
14 argument that the solicitor made, and I can't object if
15 it was consistent with what your charge was.

16 I don't think that's an accurate statement
17 under the law. I think mere ownership of the premises
18 is insufficient. That would be making anyone who owns
19 property libel for whatever anyone has on their
20 property.

21 THE COURT: All right. Thank you. Thank you
22 very much, Mr. Floyd. I tried to follow the specific
23 concept in State versus Ballinger and State versus
24 Fripp, which reaffirmed Ballinger. I looked at your
25 case also, State versus Hudson.

1 You are protected in the record. I would
2 respectfully deny those motions. Anything further?
3 Here is the form of verdict if y'all would like to look
4 at it and if y'all would check the evidence.

5 (Pause.)

6 (The jury commences its deliberation at
7 12:05 P.M.)

8 (The following occurred at 1:20 P.M.)

9 THE COURT: I received a note from the jury:
10 Please give clarification on the difference between
11 trafficking and possession with intent to distribute.
12 So I will bring them out and recharge them on that. If
13 you would bring the jury, please.

14 BAILIFF: Your Honor, they have another
15 question that they are in the process of writing that
16 out.

17 THE COURT: I will just wait. If you will
18 give me that question before you bring them out so I can
19 look at it.

20 (Pause.)

21 THE COURT: It's actually two questions: Does
22 the gun have to be in direct possession or in his
23 dominion of the premises of the house to be considered
24 in his possession? Number two, also the difference
25 between simple possession and intent to distribute.

1 I will charge trafficking, possession with
2 intent to distribute, constructive possession,
3 possession of a firearm during the commission of a
4 violent offense, and that language that I charged before
5 on the constructive possession of a firearm.

6 MR. FLOYD: Your Honor, the only objection I
7 would have to it, Your Honor, we are getting back right
8 to the same thing I have been kind of complaining about,
9 I guess. You see the jury's question: Does it have to
10 be in actual possession or on the premises?

11 They are stuck on the fact that the
12 instructions seem to tell them that if he is in control
13 of the premises, he is responsible for everything on the
14 premises. We would ask for a clarification which would
15 incorporate what we requested in request to charge
16 number two that mere ownership of the premises or
17 control of the premises is not sufficient in and of
18 itself for possession.

19 THE COURT: Well, if you want me to charge
20 specifically the language of Hudson, I might consider
21 that. I am not offering the language of Ballinger,
22 which is the cited language for constructive possession.
23 I think that's the law from my reading of it.

24 When I looked back at Hudson -- and if you
25 want me to add Hudson, Hudson doesn't say that. Hudson

1 doesn't say what it's cited for in Hubbard's book. It
2 doesn't say that.

3 In looking at Hudson: When contraband
4 materials are found on premises under control of the
5 accused, this fact in and of itself gives rise to an
6 inference of knowledge and possession which may be
7 sufficient.

8 Evidence, including the fact that husband and
9 wife shared control of the premises in which heroin was
10 found was sufficient for a reasonable trier of fact to
11 conclude that defendant husband, who did not come home
12 after the search and who was arrested approximately
13 three hours later, constructively possessed heroin. The
14 whole issue is constructive possession, which is
15 dominion and control.

16 MR. FLOYD: I agree dominion and control is an
17 issue, Judge, but the charge seems to tell them that
18 just having dominion and control over the premises
19 themselves makes you responsible for everything that is
20 in there.

21 THE COURT: Well, when you look at Ballinger,
22 it says: Proof of constructive possession requires a
23 showing that the accused had dominion and control over
24 either the drugs or the premises upon which the drugs
25 were found, as well as knowledge of the presence of the

1 drugs. That's the South Carolina Supreme Court case --
2 excuse me -- Court of Appeals case of 1995, and then it
3 goes into mere presence.

4 MR. FLOYD: As long as we get at least
5 modified mere presence when you recharge them.

6 THE COURT: Sir?

7 MR. FLOYD: Can we at least modify mere
8 presence when you charge them on constructive
9 possession?

10 THE COURT: I'm not sure what you are asking
11 me. I can't quite understand, Mr. Floyd.

12 MR. FLOYD: Your Honor, we at least request if
13 you are going to recharge them on constructive
14 possession, you include the mere presence.

15 THE COURT: Oh, yes, sir. I will recharge
16 them entirely on trafficking, possession with intent,
17 simple possession, and the gun charge. Bring our jury,
18 please.

19 Did you have anything, Solicitor?

20 MR. WHETSTONE: No, Your Honor.

21 (The jury returns to the courtroom at
22 1:30 P.M.)

23 THE COURT: Welcome back, ladies and gentlemen
24 of the jury panel. I received two notes basically with
25 three questions: Please give clarification on the

1 difference between trafficking and possession with
2 intent to distribute on one note.

3 The second: Does the gun have to be in direct
4 possession or in his dominion of the premises of the
5 house to be considered in his possession? Secondly, on
6 that second note, also the difference between simple
7 possession and intent to distribute.

8 I am going to charge trafficking in crack
9 cocaine in its entirety, 10 to 28 grams, possession with
10 intent to distribute crack cocaine, and simple
11 possession. As part of that, I will charge constructive
12 possession. I will then charge the statute of
13 possession of a weapon during the commission of a
14 violent offense, to include the law of constructive
15 possession in that regard.

16 Trafficking. The defendant is charged with
17 trafficking in crack cocaine. The State must prove
18 beyond a reasonable doubt that the defendant knowingly,
19 sold, manufactured, cultivated, delivered, purchased, or
20 brought into this State, provided financial assistance
21 or other otherwise aided, abetted, attempted, or
22 conspired to sell, manufacture, cultivate, deliver,
23 purchase or bring into this State or was knowingly in
24 actual or constructive possession, knowingly attempted
25 to become in actual or constructive possession of crack

1 cocaine.

2 The State must also prove beyond a reasonable
3 doubt that the amount of the crack cocaine was 10 grams
4 of more but less than 28 grams. So it is knowing
5 possession of an amount greater than 10 but less than
6 28 grams. That's the crux of trafficking in crack
7 cocaine 10 to 28 grams.

8 Under that you would have the lesser-included
9 offense of possession with intent to distribute. Your
10 question kind of answers itself: With intent to
11 distribute. It answers itself. It's not amount driven.
12 If you determine that the State has not proven
13 trafficking in crack cocaine beyond a reasonable doubt,
14 you should then consider whether the State has proven
15 beyond a reasonable doubt that the defendant is guilty
16 of possession of crack cocaine with the intent to
17 distribute crack cocaine.

18 Possession with the intent to distribute
19 contains all the elements of trafficking, except the
20 amount -- except the amount. In addition, the State
21 must prove beyond a reasonable doubt that the defendant
22 had the intent to distribute, that the defendant had the
23 power and intent to control the disposition and use of
24 the contraband drugs.

25 Possession of any amount of a controlled

1 substance of crack cocaine, coupled with sufficient
2 indicia of intent to distribute, will support a
3 conviction for possession with intent to distribute.
4 Possession with intent to distribute does not hinge on
5 the amount of the drugs involved.

6 Simple possession, the next lesser included
7 offense. Included within the offense of possession with
8 intent to distribute is the lesser offense of simple
9 possession. Simple possession does not require an
10 intent to distribute the crack cocaine.

11 The State must prove beyond a reasonable doubt
12 that the defendant knowingly and intentionally possessed
13 crack cocaine. Of course, this goes back to the cocaine
14 as far as P.W.I.D. cocaine and simple possession of
15 cocaine.

16 Knowingly means with knowledge, consciously,
17 not accidentally. Intentionally means willfully,
18 intending the result which actually occurred, not
19 accidentally or involuntary. Intent may be shown by the
20 acts and conduct of the defendant and other
21 circumstances from which you may naturally and
22 reasonably infer intent.

23 Let's look at constructive possession. To
24 prove possession the State must prove beyond a
25 reasonable doubt that the defendant had both the power

1 and the intent to control the disposition or use of the
2 crack cocaine or of the cocaine.

3 Constructive possession means that the
4 defendant had dominion and control or the right to
5 exercise dominion or control over either the crack
6 cocaine itself or the property on which the crack
7 cocaine was found.

8 Proof of constructive possession requires a
9 showing that the accused had dominion and control over
10 either the drugs or the premises upon which the drugs
11 were found, as well as knowledge of the presence of the
12 drugs.

13 Mere presence in an area where drugs are found
14 does not constitute constructive possession. Actual
15 knowledge of the presence of the crack cocaine is strong
16 evidence of the defendant's intent to control its
17 disposition or use. Two or more people may have joint
18 possession of a drug.

19 Possession of a weapon during the commission
20 of a violent crime or the attempt to commit a violent
21 crime. The defendant is charged with possession of a
22 weapon during the commission of a violent crime. The
23 State must prove beyond a reasonable doubt that the
24 defendant was in possession of a firearm during the
25 commission or attempted commission of a violent crime.

1 A firearm means any machine gun, rifle,
2 revolver, pistol, or any weapon which will or is
3 designed to or may be readily converted to expel a
4 projectile.

5 In order to find the defendant guilty of
6 possession of a weapon during the commission of a
7 violent crime, you must first find the defendant guilty
8 of either committing a violent crime or attempting to
9 commit a violent crime. Trafficking in crack cocaine is
10 a violent crime.

11 The principles relating to constructive
12 possession are also applicable in regards to possession
13 of firearms or other objects. Proof of constructive
14 possession, along with knowledge of the presence of the
15 firearm, is sufficient to support a conviction for
16 possession of a firearm during the commission of a
17 violent crime.

18 To prove constructive possession, the State
19 must show that the defendant had dominion and control or
20 the right to exercise dominion and control over the
21 firearm. Constructive possession may be established
22 through either direct or circumstantial evidence and
23 possession may be shared.

24 That is the charges on trafficking in crack
25 cocaine 10 to 28 grams, possession with intent to

1 distribute crack cocaine, simple possession of crack
2 cocaine, constructive possession, the principle of
3 constructive possession, possession of a firearm during
4 the commission of a violent crime, and again the
5 principle of constructive possession.

6 Mr. Foreman, ladies and gentlemen, you may
7 return to your jury room and resume your deliberations.
8 If you have any other questions, please write out a
9 note, and we will certainly respond. Thank you. Thank
10 you very much.

11 (The jury retires to the jury room to continue
12 its deliberation at 1:40 P.M.)

13 (Court's Exhibits Number 2-3 are marked for
14 purposes of the record.)

15 THE COURT: Any exceptions, Solicitor?

16 MR. WHETSTONE: None from the State, Your
17 Honor.

18 THE COURT: Mr. Floyd?

19 MR. FLOYD: Yes, Your Honor. We again take
20 exception to Your Honor's charge on constructive
21 possession. We think it's contrary to the law. If it's
22 not the law as it is, it's the law as it should be.

23 When you charge that a person is in -- if he
24 has control of the premises, then he constructively
25 possesses what is on the premises, we think that is

1 contrary to the law.

2 Your Honor, what it does is it makes a person
3 guilty simply because they control a piece of property.
4 It makes them criminally liable for whatever is on the
5 property, and that is totally contrary to, I think, our
6 criminal system. I think it requires some control of
7 the illegal drug, not the property.

8 I think with your firearm, weapon constructive
9 possession charge, it's right. You are right on that.
10 It's the weapon. The problem I have with the drugs,
11 it's not only control of the drugs they are told can
12 make a person guilty but control of the premises where
13 the drugs are located. That's what we object to.

14 THE COURT: All right. Thank you. Thank you,
15 Mr. Floyd. I decline to charge as you request. Thank
16 you. Thank you very much. We will be awaiting our
17 jury's verdict.

18 (The following occurred at 2:20 P.M.)

19 THE COURT: I understand we have a verdict.
20 If you would bring us our jury, please.

21 (The jury returns to open Court to report its
22 verdict.)

23 THE COURT: Madame Clerk.

24 CLERK: Mr. Foreman, has the jury reached its
25 verdict?

1 FOREMAN: Yes, ma'am.

2 CLERK: Please pass it up by the bailiff.

3 (Hands to Court.)

4 THE COURT: Madame Clerk, if you would publish
5 the verdicts.

6 (Whereupon the verdict of the jury is
7 published as follows.)

8 CLERK: Indictment 2012-GS-32-148, 149, and
9 150, the State versus Travas Jones, as to the charge of
10 trafficking in crack cocaine 10 grams or more but less
11 than 28 grams, we the jury unanimously find the
12 defendant guilty of trafficking in crack cocaine 10
13 grams or more but less than 28 grams.

14 As to the charge of possession with intent to
15 distribute cocaine, we the jury unanimously find the
16 defendant guilty of possession with intent to distribute
17 cocaine.

18 As to the charge of possession of a weapon
19 during the commission of a violent crime, we the jury
20 unanimously find the defendant guilty. They are so
21 signed by the foreman, April 6, 2012.

22 Mr. Foreman, ladies and gentlemen of the jury,
23 if this is your verdicts, please indicate each of you by
24 raising your right hand, please.

25 (All jurors so indicate).

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1 THE COURT: Mr. Floyd, you have motions?

2 MR. FLOYD: Yes, Your Honor. Your Honor, at
3 this time we would move for a new trial. The basis and
4 the grounds for our motion include all the motions that
5 we made throughout this proceeding, including our
6 pretrial motion concerning the validity of the search
7 warrant, both as to the deficiencies in the affidavit
8 under the Franks v. Delaware motion and the failure to
9 provide the defendant with a copy of the service of the
10 warrant under 17-13-150.

11 We renew our motion made at the conclusion of
12 both the State's case and the defense case to dismiss on
13 grounds that there was insufficient evidence as a matter
14 of law to establish the guilt of the defendant beyond a
15 reasonable doubt.

16 We renew our motion where we took exception to
17 the Court's refusal to charge our defendant's requested
18 charge number two concerning the principle of law that
19 mere ownership of property does not necessitate guilt
20 just because contraband is located on the property.

21 We renew our motion when we took exception to
22 Your Honor's charge on constructive possession, both
23 prior to the jury's deliberation and after the jury's
24 questioning on the point.

25 Your Honor, it's our position that the charge

1 basically directed the jury to find the defendant guilty
2 if they, in fact, felt he was the rightful possessor of
3 the property, and the jury seemed to accept that
4 proposition of law in the way they worded their
5 questions to the Court concerning possession.

6 In fact, what the instruction actually told
7 the jury was that if Mr. Jones was lawfully the occupier
8 of that property, he was criminally responsible for any
9 contraband that was found on the property, whether it's
10 his or not. For all these reasons we move for a new
11 trial.

12 THE COURT: As to the search warrant and
13 17-15-150, I reaffirm my trial rulings in that regard.
14 As to the charge of the Court, I would deny the motion
15 as to request to charge two of the defendant and as to
16 the other charges. I specifically, throughout my
17 charge, not only did I charge criminal intent, I also
18 charged knowledge.

19 I charged directly from State versus Ballinger
20 and State versus Jennings, citing State versus Hudson,
21 that possession, along with knowledge of the presence.
22 So it was dominion and control, but in addition to
23 dominion and control, there had to be knowledge.
24 Additionally, I defined those terms in my charge. So I
25 would respectfully deny those grounds.

1 to overcome the 1999 conviction and show somehow it was
2 constitutionally defective or invalid. We don't believe
3 that. It's similar to Payne when they actually did have
4 a defendant testify regarding his prior D.U.I.
5 conviction.

6 The Court in that case said that even though
7 he had given testimony saying that he had not been
8 appointed a lawyer or was ever offered one and his
9 constitutional rights were violated, that that still
10 failed to reach the burden in that case, and the
11 previous D.U.I. conviction was used for enhancement.

12 We believe this current case with Mr. Jones is
13 exactly like that, and he hasn't shown anything to reach
14 his burden, and that these two drug offenses should be
15 third offenses.

16 THE COURT: Thank you. Thank you very much,
17 Solicitor. What does the firearms charge carry?

18 MR. WHETSTONE: Five years, Your Honor.

19 THE COURT: With the record before the Court
20 and the passage of time, I am sentencing him for
21 trafficking on crack cocaine second offense, possession
22 with intent to distribute cocaine second offense, and a
23 firearm's violation.

24 Although there is a document in the original
25 case file where it looks like the 15th of June of '99,

1 Judge Melanie James advised him at the time of the bond
2 setting, I would imagine, of his right to employ counsel
3 and that if he was unable to financially employ counsel,
4 the State would provide him with counsel. It appears a
5 signature looks similar to the signature on the
6 sentencing sheet.

7 I just viewed that when looking at all the
8 documents in the '99 case; however, given the fact there
9 is no record that would not have survived 12 years
10 anyway, regardless I am going to sentence him as a
11 second offense. I think he has met the threshold
12 burden, which is not a very high bar.

13 2012-GS-32-0148, trafficking in crack cocaine
14 10 or more but less than 28 grams second offense and
15 possession with intent to distribute cocaine second
16 offense, the defendant is committed to the State
17 Department of Corrections for a determinate term of 18
18 years.

19 On 12-GS-32-150, the firearms charge, he is
20 committed to the State Department of Corrections ~~for~~
21 five years. Those are concurrent, credit for time
22 served. Good luck to you, Mr. Jones. Thank you very
23 much.

24 (Court's Exhibit Number A. is marked for
25 purposes of the record.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

THE STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
vs.)
)
TRAVAS D. JONES,)
)
Defendant,)
)

IN THE COURT OF GENERAL SESSIONS

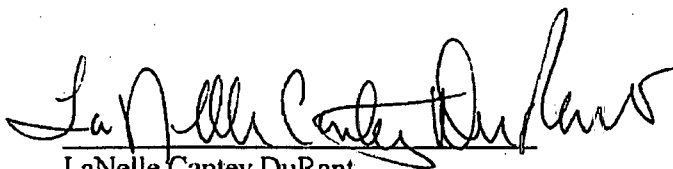
**DEFENDANT'S REQUEST
TO CHARGE #2**

Proof of possession of an item requires more than proof of control over the premises where the item was found or control over the vehicle in which the item was found. It is also necessary to show that Defendant knew of the item and that Defendant had dominion and control over the item or had the right to exercise dominion and control over it and show that the Defendant had the intent to control the disposition and use of the item.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 31st, 2013

A handwritten signature in cursive script, reading "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

vs.

TRAVAS D. JONES,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court's jury instruction regarding a defendant's control of the premises as evidence of constructive possession was a substantially correct statement of law and therefore, the trial court did not err in declining Appellant's requested instruction; further Appellant was not prejudiced by the trial court's refusal to give this instruction.

STATEMENT OF THE CASE

Appellant Travas Jones was indicted for trafficking over ten grams of crack cocaine, possession with intent to distribute cocaine, and possession of a weapon during a crime of violence. A jury found Jones guilty as charged after trial on April 4-6, 2012, over which the Honorable R. Knox McMahon presided. On May 7, 2012, Judge McMahon sentenced Jones to concurrent terms of eighteen years' imprisonment for each drug conviction and five years' imprisonment for the weapons charge.

STATEMENT OF FACTS

Jones' arrest and conviction came about after Officer Edward Pereira did some surveillance on a house based on a report from a concerned neighbor. The neighbor [Neighbor] happened to be a Columbia Police Department Officer who observed heavy vehicular traffic at Jones' residence during all hours of the day. People would arrive in vehicles, go inside the residence, and leave after a few minutes. Neighbor testified she had experience as a law enforcement officer making drug cases and doing surveillance, so she was suspicious the house was a drug house. She did not have a take-home patrol car and was not wearing a uniform at work then because she was on light duty. She had seen Jones at the house before and talked with him about his dog that he kept in the yard at the house. She called Officer Pereira. ROA. pp. 104-112.

Officer Edward Pereira testified that he started surveillance after he received the tip from Neighbor. He observed a vehicle pull up to the house, the person enter, and then leave again within minutes. A vehicle in the drive way was registered to Bernice Pearson, Jones' mother. Pereira conducted a trash pull and found loose tobacco and residual amounts of a leafy green substance he submitted for testing. Pereira did his second trash pull on November 7 and found leafy green substances again. Additionally, he found Swisher cigars, which are often used to make marijuana cigarettes by taking the tobacco out of the cigar and substituting the marijuana. He also found a piece of paper with names and numbers. Periera obtained a search warrant which led to narcotics and drug paraphernalia being seized. Jones was arrested and an arrest warrant was issued for his brother, Theyatti Glover. ROA. pp. 30-47.

When Jones was arrested, he had \$670 in cash in a wad in his pants. ROA. pp. 162-163.

Officer Caleb Thomas testified that the search warrant was executed on November 15 and he found Jones playing cards at a table with others. There was a bag of crack cocaine and a bag of powder cocaine behind a heater. Individually packaged rocks of cocaine and a bag of cocaine were found in the kitchen drawer. Also in the drawer were two digital scales. A Pyrex measuring cup was found, which Officer Thomas testified was commonly used to cook powder cocaine into crack cocaine. ROA. pp. 77-86; see ROA. pp. 141-144 (Officer Evan Antley's testimony that he observed Thomas open the drawer to find two crack cookies, a bag of powder cocaine, a playing card, and digital scales); ROA. pp. 208-209 (results of the forensic analysis identifying

the powder and rocks to determine they were powder cocaine and crack cocaine).

Willie Glover, Jones' stepdad, testified on behalf of Jones that he put the drugs in the kitchen drawer, but that the drugs behind the heater were not his. He claimed he was carrying them for a friend. ROA. pp. 220-225. Victoria Walker also testified for Jones and claimed Jones lived with her until November 2, 2011.

Ricky Williams is the property owner of the house where the Cayce Public Safety Officers executed the search warrant. He entered into a lease agreement with Bernice Pearson on June 25, 2011. However, from the start, Jones was at the house and paid the rent. He was familiar with Jones from the start and assume he was living there. Jones moved in November 2, 2011 and was added to the lease on November 15, 2011. ROA. pp. 120-125.

A gun was found in the middle of the mattress in one of the bedrooms. Also in the same bedroom was a Lexington County Medical Center folder with Jones' name on it. ROA. pp. 129-135.

ARGUMENT

The trial court's jury instruction regarding a defendant's control of the premises as evidence of constructive possession was a substantially correct statement of law and therefore, the trial court did not err in declining Appellant's requested instruction; further Appellant was not prejudiced by the trial court's refusal to give this instruction.

Jones claims the trial court erred in not instructing the jury that "proof of possession of an item requires more than proof of control over the premises where the item is found." ROA. p. 235, line 1 – p. 236, line 19 (trial counsel requesting language).¹ However, the trial court properly charged the substance of the law, including instructions to the jury that: "the State must prove beyond a reasonable doubt that the defendant had the intent to control the disposition or use of the crack cocaine" (ROA. p. 288, lines 10-13); "[m]ere presence at the scene where the drugs were found is not enough to prove possession" (ROA. p. 288, lines 19-20); and the State needed to prove dominion and

¹ Jones refers to the Supreme Court's recent decision in State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013), which found the jury instruction that "actual knowledge of the presence of a drug is strong evidence of intent to control its disposition or use" was improper. However, this case seems to be cited in support of Jones' argument for prejudice. Jones did not object to the charge on this basis at trial. A party cannot argue one ground below then argue another on appeal. State v. Hudgins, 319 S.C. 233, 237, 460 S.E.2d 388, 390-91 (1995); see also Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702, (2005) (finding counsel's submission of a request to charge without further explanation of his point is insufficient to preserve for review the specific language of a charge). Further, Jones limits his statement of the issue to the instruction regarding control of the premises and not the "strong evidence" instruction. State v. Culbreath, 377 S.C. 326, 332, 659 S.E.2d 268, 271 (Ct. App. 2008) ("In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal."). The "strong evidence" instruction was in accordance with the law in effect at the time of trial. See Solomon v. State, 313 S.C. 526, 443 S.E.2d 540 (1994) *overruled by Cheeks, supra*.

control over the contraband or premises and “knowledge of the presence of the drugs” before reminding the jury that “[m]ere presence in the area where the drugs are found does not constitute constructive possession.” (ROA. p. 289, lines 1-5).

A jury instruction is sufficient if, when considered as a whole, it covers the law applicable to the case. State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990). State v. Smith, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994) (noting the substance of the law, not any particular verbiage, must be charged to the jury); State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994) (finding reversal is not warranted where the charge given is substantially correct and covers the applicable law).

A jury instruction must be viewed in the context of the overall charge. See State v. Hicks, 330 S.C. 207, 218, 499 S.E.2d 209, 215 (1998). While a court is not required to give any particular verbiage, instructions may not confuse or mislead the jury. State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). Indeed, the purpose of the instructions is to enlighten the jury and to aid it in arriving at a correct verdict. Id.

To warrant reversal, a trial court’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008); State v. Burkhardt, 350 S.C. 252, 565 S.E.2d 298 (2002).

If the instructions given to the jury afford the proper test for determining the issues, the failure to give one side’s requested instructions is not prejudicial. State v. Hughey, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000) *overruled on other grounds by Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009).

Constructive possession is proven by showing that the accused has dominion and

control, or the right to exercise dominion and control, over the contraband. State v. Hudson, 277 S.C. 200, 284 S.E.2d 773, 774-75 (1981). Constructive possession may be established by circumstantial as well as direct evidence and possession may be shared. Id., at 775. "The State must show the defendant had dominion or control over the thing allegedly possessed or had the right to exercise dominion or control over it." State v. Stanley, 365 S.C. 24, 43, 615 S.E.2d 455, 465 (Ct. App. 2005). Possession of a controlled substance may be inferred from the circumstances of a particular case and may be imputed to a person with both the power and the intent to control the disposition and use of the drugs. State v. Brown, 319 S.C. 400, 404, 461 S.E.2d 828, 830 (Ct. App. 1995). "When 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." Hudson, 277 S.C. at 203, 284 S.E.2d at 775.

In the instant case, the trial court gave the following charge regarding constructive possession:

To prove possession the State must prove beyond a reasonable doubt that the defendant had both the power and the intent to control the disposition or use of the crack cocaine.

Constructive possession means that the defendant had dominion and control or the right to exercise dominion and control over either the crack cocaine or the property on which the crack cocaine was found.

Mere presence at the scene where the drugs were found is not enough to prove possession. Actual knowledge of the presence of crack cocaine is strong evidence of the defendant's intent to control its disposition or use.

Two or more persons may have joint possession of

a drug. Proof of constructive possession requires a showing that the accused had dominion and control over either the drugs or the premises upon which the drugs were found, as well as knowledge of the presence of the drugs. Mere presence in the area where the drugs are found does not constitute constructive possession.

ROA. p. 288, line 10 – p. 289, line 5.

Jurors are presumed to follow the trial court's instructions. State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). If the jury followed the trial court's instructions, they would not have convicted Jones merely because he resided at the drug house. The jury was instructed that they must be convinced he had knowledge of the drugs and intended to control their disposition.

In the instant case, the trial court's instructions were an accurate statement of law and the substance of the law, as requested by Jones, was charged, even though the precise verbiage was not. Accordingly, the trial court did not err.

CONCLUSION

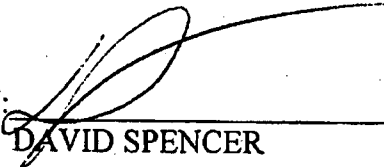
For all of the foregoing reasons the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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Bar # 68571

BY:



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ATTORNEYS FOR RESPONDENT

August 14, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

vs.

TRAVAS D. JONES,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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By: _____

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August 14, 2013

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

vs.

TRAVAS D. JONES,

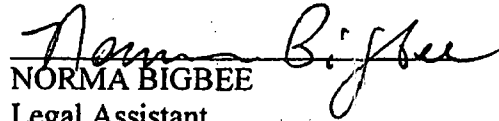
APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, 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 his attorney of record, Lanelle C. Durant, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina, 29211.

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

This 14th day of August, 2013


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**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVAS D. JONES,

APPELLANT

APPELLATE CASE NO. 2012-211992

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Jones' request that the jury charge on constructive possession contain the language that proof of possession of an item requires more than proof of control over the premises where the item is found?

STATEMENT OF THE CASE

On January 9, 2012, the Lexington County Grand Jury indicted Travas D. Jones on the charges of trafficking crack cocaine more than ten grams but less than twenty-eight grams, possession with intent to distribute cocaine (PWID), and possession of a weapon during a crime of violence. On April 4-6, 2012, Jones proceeded to trial before the Honorable R. Knox McMahon and a jury. Jones was represented by Wayne Floyd, and the state was represented by Charles William Whetstone and Christopher Dale Scott. The jury found Jones guilty as indicted. On May 7, 2012, Judge McMahon held a hearing for sentencing. The judge sentenced Jones to eighteen years on the trafficking crack cocaine and PWID cocaine as second offenses, and to five years on the possession of a weapon charge. All sentences were to run concurrently. Jones' attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying Jones' request that the jury charge on constructive possession contain the language that proof of possession of an item requires more than proof of control over the premises where the item is found.

Travas Jones and his half-brother, Theyatti Glover, lived in a rented house in the Twelfth Street area in Cayce. Both of their names were on the lease. R. 10, ll. 20 – R. 12, ll. 24; R. 121, ll. 5 – 25.

In September 2009, Jennifer Meador, who lived next door to Jones, called the police to report that she believed there was drug activity at Jones' house. She reported that there was heavy vehicle traffic next door all hours of the day and night. Cars would stop, a person would go inside for about two minutes and return to the car which then drove away. R. 104, ll. 13 – 24; R. 105, ll. 25 – R. 107, ll. 23.

The police then began a surveillance of the house in September 2011 following Ms. Meadors' call. R. 23, ll. 15 – 18; R. 24, ll. 5 – 9; R. 25, ll. 12 – 22; R. 27, ll. 20 – R. 28, ll. 25. On November 10, 2011, Detective Ed Pereira obtained a search warrant for Jones' address. R. 42, ll. 22 – R. 43, ll. 1. On November 14, 2011, Detective Pereira along with several other officers executed the search warrant on Jones' house. R. 43, ll. 2 – R. 44, ll. 25.

When the police entered the house, they found one black male standing outside and five people inside the house sitting around a table playing cards. R. 44, ll. 8 – R. 46, ll. 1; R. 72, ll. 14 – 24; R. 77, ll. 7 – R. 78, ll. 25. None of the five people had drugs on their person, but drugs were found at different places in the house as well as one Hi-Point .40 caliber handgun, digital scales, green leafy substance, and other drug paraphernalia. The crack cocaine was twenty-eight grams, and the cocaine was two grams. Appellant Travas Jones

along with Bradley West and Theyatti Glover, were charged with trafficking crack cocaine and possession of cocaine. Jones was also charged with the possession of a weapon during a crime of violence. Glover was not at the house at the time, but warrants were issued for him. R. 46, ll. 14 – 48, ll. 5; R. 100, ll. 5 – 13.

Officer Thomas helped search the house during the execution of the search warrant. The police found a gun under a mattress in the first bedroom which also had paperwork with Jones' name on it. A bag of crack and a bag of cocaine were found behind the heater in the main room. R. 72, ll. 14 – 24; R. 76, ll. 4 – 23; R. 79, ll. 11 – R.81, ll. 24. Officer Caleb searched the kitchen where he found in a drawer several plastic bags with crack cocaine and cocaine. R. 81, ll. 20 – R. 82, ll. 16.

Willie Glover, stepfather to Jones and father to Theyatti Glover, testified that he had been at the house on the morning of the incident. He put the gun under the mattress and put the crack cocaine in the kitchen drawer. Jones did not know Glover had these items nor that Glover left them in his house. R. 220, ll. 1 – R. 221, ll. 13.

Glover was holding the gun and drugs for a friend of his. Glover needed to go to the store to get beer, and stayed longer than he expected. When he returned, he saw the police cars and did not stop. R. 221, ll. 1 – R. 222, ll. 8.

Defense counsel asked for a dismissal of the charge against Jones based on Willie Glover' testimony which the judge denied. The judge said the jury could still find Jones guilty of constructive possession. The judge said this was a case of constructive possession and mere presence. R. 230, ll. 2 – R. 231, ll. 25. The judge had Willie Glover arrested outside the presence of the jury. R. 229, l. 16 – 23.

Defense counsel submitted a request for a jury charge on constructive possession. R. 233, ll. 6-11. The judge later tells the attorneys what his constructive possession charge will be. The judge stated his charge:

Constructive possession means that the defendant had the dominion and control or the right to exercise dominion and control over either the crack cocaine or the property on which the crack cocaine was found. Mere presence at the scene where the drugs were found is not enough to prove possession. Actual knowledge of the presence of the crack cocaine is strong evidence of the defendant's intent to control its disposition. The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control; however, the inference is simply an evidentiary fact to be taken into consideration by you along with the other evidence in the case and to be given the weight you decide it should. Two or more persons may have possession of a drug.

R. 233, ll. 6 – R. 234, ll. 9.

Defense counsel requested the judge to include the language that “proof of possession of an item requires more than proof of control over the premises where the item is found.” R. 235, ll. 1 – R. 236, ll. 19. The judge said he took the charge from the case of State v. Ballenger, 322 S.C. 196, 470 S.E.2d 355 (Ct. App. 1995) which provided that constructive possession required dominion and control over either the drugs or the premises where the drugs were found *as well as knowledge of the presence of the drugs*. R. 236, ll. 20 – R. 237, ll. 7.

Defense counsel argued that it still seemed to indicate that if the jury believed Travas Jones was the person in control of the property through the lease, that jury instruction seemed to say that was it. The judge disagreed and denied his request. Counsel asked that his objection be noted for the record. R. 237, ll. 1 – 22.

Later during the discussion of jury charges, defense counsel again argued against the constructive possession charge. He argued that if the jury read the instruction literally, the

jury could believe that if Jones was just present there, he might not be guilty. But if he owned the premises, then he had to be guilty. R. 238, ll. 20 – R. 239, ll. 14.

The judge said except for the language on knowledge of the drugs. There followed a lengthy discussion of the charge. The judge finally said he was “sticking” with his charge, but that defense counsel was protected on the record. R. 239, ll. 15 – R. 244, ll. 22.

The judge instructed the jury with the charge as he stated initially above. R. 288, ll. 10 – R. 289, ll. 5. Defense counsel objected to the jury charge on constructive possession. The judge again told him he was protected on the record. R. 295, ll. 24 – R. 296, ll. 297, ll. 4.

During deliberations, the jury sent the judge a note asking if the gun had to be in direct possession or in his dominion of the premises of the house to be considered in his possession. The judge said he would charge the jury again on constructive possession. R. 297, ll. 9 – R. 298, ll. 5.

Defense counsel objected stating this was the issue he had been concerned about with the judge’s charge on constructive possession. Counsel argued again that the jury seemed to believe that if Jones was in control of the property, then he was responsible for everything on the premises. Counsel asked the judge to incorporate into the constructive possession charge the language he had requested earlier that mere ownership of the premises or control of the premises was not sufficient in and of itself for possession. R. 298, ll. 1 – 18.

The judge recharged the same language in his constructive possession charge. R. 303, ll. 23 – R. 304, ll. 18. Defense counsel objected again after the recharge. R. 306, ll. 15 – R. 307, ll. 17.

After the verdict, defense counsel moved for a new trial based on his motions and objections. He renewed his objection to the court's refusal to charge his requested charge on constructive possession. The judge denied the motion. R. 309, ll. 1 – R. 310, ll. 25.

In State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (Ct. App. 2012), the Court of Appeals held that law on which the jury is instructed must be determined from the evidence presented at trial. The Court also wrote that when reviewing the circuit court's refusal to deliver a requested jury charge, the appellate court must consider the evidence in a light most favorable to the defendant.

In State v. Hudson, 27 S.C. 200, 284 S.E.2d 773 (1981), the Supreme Court held that to prove constructive possession, the state must show the defendant had dominion and control, or the right to exercise dominion and control over the drugs (heroin). The drugs were found at the home husband and wife shared but husband not at home when police found drugs. Husband found guilty of constructive possession of the heroin.

In State v. Hernandez, 382 S.C. 620, 677 S.E.2d 605 (2009), the Supreme Court held that knowledge can be proven by evidence of acts, declarations, or conduct of the accused from which the inference may be drawn that the accused knew of the existence of the prohibited substance.

In State v. Cheeks, Op. No. 27211 (Filed January 16, 2013), the Supreme Court held that a jury instruction that "actual knowledge of the presence of a drug is strong evidence of intent to control its disposition or use" is improper as an expression of the judge's view of the weight of certain evidence, and the "bench is to no longer use the instruction."

The trial judge in Jones' case used the very same instruction in his charge to the jury on constructive possession which was in error. The trial judge told the jury: "Actual

knowledge of the presence of the crack cocaine is strong evidence of the defendant's intent to control its disposition." R. 233, ll. 6 – R. 234, ll. 9.

Defense counsel, on the other hand, submitted a request to charge that was free of error. Defense counsel's Request to Charge #2 provided:

Proof of possession of an item requires more than proof of control over the premises where the item was found or control over the vehicle in which the item was found. It is also necessary to show that Defendant knew of the item and that Defendant had dominion and control over the item or had the right to exercise dominion and control over it and show that the defendant had the intent to control the disposition and use of the item.

There were no acts or evidence that Jones had knowledge of the presence of the drugs in his home. The only evidence linking him to the drugs was the rental lease. The state did not prove that he had knowledge of the drugs. The judge used the language in his charge that the Supreme Court now has instructed judges not to use. This way prejudicial to Jones.

CONCLUSION

Based on the above, the conviction and sentences should be reversed, and the case remanded for a new trial.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of August, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 20th, 2013


LaNelle Cantey DuRant
Appellate Defender

**S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1343**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

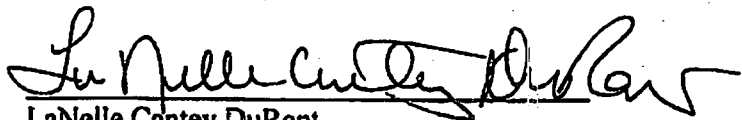
TRAVAS D. JONES,

APPELLANT

APPELLATE CASE NO. 2012-211992

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of August, 2013.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of August, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023

**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.

Travas D. Jones, Appellant.

Appellate Case No. 2012-211992

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2014-UP-180
Heard April 9, 2014 – Filed April 30, 2014

REVERSED AND REMANDED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General David A. Spencer, both of
Columbia, for Respondent.

PER CURIAM: Travas D. Jones appeals his convictions for trafficking crack cocaine, possession with intent to distribute cocaine, and possession of a weapon during a crime of violence, arguing the circuit court erred in charging the jury on

constructive possession. We reverse and remand pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Cheeks*, 401 S.C. 322, 328-29, 737 S.E.2d 480, 484 (2013) (holding a jury charge including the language "actual knowledge of possession of drugs is strong evidence of intent to control its disposition or use" is erroneous because it largely negates a mere presence charge and is an improper expression of the circuit court's view of the weight of certain evidence); *State v. Stanko*, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013) ("Errors, including erroneous jury instructions, are subject to a harmless error analysis."); *State v. Buckner*, 341 S.C. 241, 247, 534 S.E.2d 15, 18 (Ct. App. 2000) ("[I]n determining whether the error was harmless, [a reviewing court] must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict."); *Taylor v. State*, 312 S.C. 179, 183, 439 S.E.2d 820, 822 (1993) ("While there was sufficient evidence from which the jury could have inferred the [defendant]'s intent to distribute the cocaine and marijuana, we cannot say beyond a reasonable doubt the jury did not base its verdict on the erroneous jury charge.").

REVERSED and REMANDED.

WILLIAMS, KONDUROS, and LOCKEMY, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**Appeal from Lexington County
R. Knox McMahon, Circuit Court Judge**

THE STATE,

Respondent,

vs.

TRAVAS D. JONES,

Appellant.

PETITION FOR REHEARING

Pursuant to SCACR Rules 221 and 224, the State of South Carolina respectfully asks for rehearing on the following points that this Court may have overlooked or misapprehended in its decision:

This Court found the trial court erred when it instructed the jury: "Actual knowledge of the presence of the crack cocaine is strong evidence of the defendant's intent to control its disposition or use." R. p. 288, lines 20-23. Subsequent to the trial of this case, but prior to briefing in this court, the Supreme Court found this instruction was improper in State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013). However, this Court should not reverse Appellant's conviction and sentence because (1) the issue was not properly raised to this Court as it was not contained in the statement of issues; (2) the issue was not raised to the trial court; and (3) the instruction was not prejudicial and therefore constitutes harmless error under the facts of the present case.

The complaint was not raised in Appellant's Statement of Issues.

Appellant did not raise the Cheeks issue in his statement of issues and made short reference to the issue in the last pages of his brief. The issue raised by Appellant in his brief set forth the following Statement of Issues:

The trial court erred in denying Jones' request that the jury charge on constructive possession contain the language that proof of possession of an item requires more than proof of control over the premises where the item is found.

Final Br. of App. p. 5. The statement of issue is not a complaint about the trial court's instruction on "actual knowledge." Instead it is a complaint about the trial court's instruction on whether "control over the premises" is sufficient to prove constructive possession of the contraband. That is a completely separate legal question than the one addressed by this Court.

This Court has previously stated, "In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal." State v. Culbreath, 377 S.C. 326, 332, 659 S.E.2d 268, 271 (Ct. App. 2008) (quoting Lengehans v. Smith, 347 S.C. 348, 352, 554 S.E.2d 681, 683 (Ct. App. 2001)).¹

Under Rule 208(b)(1)(B), SCACR, the Brief of Appellant shall contain:

A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.

(Emphasis added).

In Culbreath, also a drug prosecution, Culbreath, in his statement of issues, raised a complaint about testimony by Gaines concerning previous drug dealings with

¹ The State cited Culbreath for this exact proposition in its brief. Final Br. of Resp. p. 4, n. 1.

Culbreath. However, in the body of his brief, Culbreath complained about the prosecution's phrasing of a question to Gaines. This Court found: "While Culbreath's appellate brief recounts the question asked by the solicitor, the legal argument presented applies only to the statements made by Gaines." Id., 377 S.C. at 332, 659 S.E.2d at 271.

Similarly, this Court strictly applied the rule in the prosecution of a special education student for assaulting a school safety resource officer. State v. Moses, 390 S.C. 502, 524, 702 S.E.2d 395, 407 n.8 (Ct. App. 2010). The Court found that Moses' argument regarding the introduction of bad character evidence should not be reviewed because "[w]hile this argument appears in Moses' brief, we note it is not mentioned in the issues on appeal." Id.²

An exception to application of Rule 208(b)(1)(B) exists when the issue is reasonably clear from the appellant's argument. Eubank v. Eubank, 347 S.C. 367, 555 S.E.2d 413 (Ct. App. 2001). That is not the case here. Reference in Appellant's brief to Cheeks does not occur until the fifth page of argument. Final Br. of App. p. 9. Appellant then comments that defense counsel's request to charge did not contain the same language, but Appellant does not mention whether or not defense counsel asked that the offending language be removed from the trial court's instruction. Id. at p. 10.

As Culbreath concluded: "It is error for the appellate court to consider an issue not properly raised to it." Culbreath, 377 S.C. at 332, 659 S.E.2d at 271. The rule applied to Mr. Culbreath and Mr. Moses should also be applied to Appellant. It is far from clear that Appellant was raising this argument, although it is clear Appellant is avoiding the problem that the issue was never raised to the trial court. This Court's failure to address Rule 208 in its opinion rewards Appellant for making an end-run

² Further, separate issues should be set forth and argued separately. State v. Burroughs, 328 S.C. 489, 492, S.E.2d 408 (Ct. App. 1997). Of course, Appellant could have raised the issue separately, but that would serve to highlight the failure to preserve the issue at trial.

around Appellant's error preservation issues.

The issue was never raised to the trial court.

Undeniably, Appellant never requested that the trial court remove the "strong evidence" language from the trial court's instruction. "An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court's opinion should be vacated to the extent it addressed an issue that was not preserved." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). The issue actually raised by trial counsel is well-stated in Appellant's statement of issue, as quoted above. However, trial counsel never asked for the trial court to remove the "strong evidence" language from the instruction. In fact, trial counsel never argued the instruction was improper. In order to preserve for review an alleged error in admitting evidence, the objection must sufficiently bring into focus the precise nature of the alleged error so the error may be understood by the trial judge. State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001). The party may not argue one ground at trial and another on appeal. Id.

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373 628 S.E.2d 902, 919 (Ct. App. 2006). An objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error. State v. Byers, 392 S.C. 438, 446, 710 S.E.2d 55, 59 (2011). "[I]t is the responsibility of trial counsel to preserve issues for appellate review." Jackson v. Speed, 326 S.C. 289, 306 S.E.2d 750, 759 (1997); see also, Johnson v. Lloyd, Op. No. 27383 (S.C. Sup.Ct. filed April 23, 2014) (finding appellate court error in addressing the merits of the case where the issue clearly was not preserved for review). Appellant never argued that the issue was raised below in

his brief and avoided highlighting that problem by not even raising the argument in the statement of issues.

Counsel's objection was based on his worry that the jury would conclude Appellant had control over the contraband based on the abundant evidence that Appellant had control over the premises. R. p. 235, lines 17-21. The following exchange occurred:

Court: My charge has: Constructive possession means the defendant had dominion and control or the right to exercise dominion and control over the crack itself or the property on which the crack was found.

Then I go to mere presence which means he could have control over the property but he could still be merely present at the scene where the drugs were found. It's not enough to prove possession.

Prosecution: There is nothing in there as far as knowledge?

Court: Actual knowledge of the presence of the crack is strong evidence of the defendant's intent to control its disposition or sue.

Prosecution: That seems to cover what Mr. Floyd is saying.

Defense counsel: The problem I have kind of with it is if you take that little phrase in there, it's almost saying if they prove he controlled the property then he controlled the drugs. It seems to say that in that charge.

Court: Well, I was reading State versus Ballinger straight out of this case. Proof of constructive possession requires a showing that the accused had dominion and control over either the drugs or the premises upon which the drugs were found, as well as knowledge of the presence of the drugs. Mere presence in that area where drugs is found does not constitute constructive possession.

Defense counsel: I appreciate that, Your Honor. I still think it seems to indicate that if they believe [Appellant] was the person in control of the property through the lease, that instruction seems to say that's pretty much it.

R. p. 236 , line 4 – p. 237, line 12.

In other words, trial counsel was concerned that the jury would assume guilty knowledge from the abundant evidence of Appellant's control of the premises where the contraband was found. In contrast, the apparent danger of the "strong evidence" instruction is that a jury will find guilt based on knowledge alone even if proof of control of the contraband is lacking. Trial counsel was focused on the opposite problem from the concern presented in Cheeks which explains the objection he made at trial instead of an objection to the "strong evidence" instruction.

There is a substantial chance that the trial court would have complied with a request to remove the "strong evidence" language if defense counsel asked. At trial, defense counsel complained that the original proposed constructive possession instruction implied "mere ownership of the place where it was found creates an inference." R. p. 235, lines 3-5. The trial court complied with defense counsel's request and removed that language. R. p. 235. Had Appellant asked, the offending language likely would have been removed by the trial court, perhaps without objection from the State. See Stephens v. CSX Transportation, Inc., 400 S.C. 503, 735 S.E.2d 505 (Ct. App. 2012) (finding "[b]ecause Stephens did not present this argument to the trial court, the court was not given the opportunity to exercise its discretion as to that argument, and the argument is not preserved for appeal."); State v. Sosebee, 284 S.C. 411, 413, 326 S.E.2d 654, 655 (1985) (finding "[n]o objection was made to either of these alleged errors nor was a motion for a new trial made such that the judge might have an opportunity to correct a mistake if there be such."); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724-25 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. . . It prevents a party from keeping an ace card up his sleeve – intentionally or

by chance – in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.”) (Emphasis added, citations omitted).

Any error is harmless.

In Cheeks, the concern was that the instruction would undermine the mere presence instruction. However, the Supreme Court found the error harmless because Cheeks was found by law enforcement in the act of cooking crack cocaine. Cheeks, supra. In the instant case, there was no direct evidence presented that Appellant had actual knowledge. Instead, actual knowledge was proved by circumstantial evidence based on Appellant’s control of the premises. Any error was harmless based on the relation of the instruction to the facts of the case. The “materiality and prejudicial character of the error must be determined from its relationship to the entire case.” State v. Thompson, 352 S.C. 552, 575 S.E.2d 77, 83 (2003).

CONCLUSION

For all of the foregoing reasons, the State would respectfully request this Court to grant this petition for rehearing, address the error preservation issues, find the issue was not properly raised on appeal and not properly preserved for review, and affirm the conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

BY: 

DAVID SPENCER

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

ATTORNEYS FOR RESPONDENT

May 12, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**Appeal From Lexington County
Honorable R.Knox McMahon, Circuit Court Judge**

THE STATE,

RESPONDENT,

vs.

TRAVAS D. JONES,

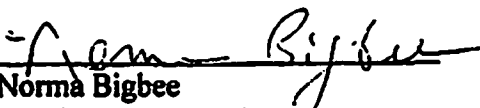
APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the State's Petition for Rehearing on Appellant's Attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to Lanelle C. Durant, Esquire, Appellate Defender, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

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

This 12th day of May, 2014.


**Norma Bigbee
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727**

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

TRAVAS D. JONES,

APPELLANT

APPELLATE CASE NO. 2012-211992

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

Opinion No. 2014-UP-180

RETURN TO PETITION FOR REHEARING

The Court of Appeals reversed the above named appellant's conviction and sentence on April 30, 2014. In support of this return to the state's petition for rehearing, which is being submitted pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, Appellant submits the following:

The Court of Appeals correctly relied on State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013) in ruling that a jury instruction that "actual knowledge of the presence of a drug is strong evidence of intent to control its disposition or use" is improper as an expression of the judge's view of the weight of certain evidence, and the "bench is to no longer use the instruction." The trial judge

in Jones' case used the very same instruction in his charge to the jury on constructive possession which was in error. The trial judge told the jury: "Actual knowledge of the presence of the crack cocaine is strong evidence of the defendant's intent to control its disposition." R. 233, ll. 6 – R. 234, ll. 9.

The Court also correctly found that this error was not harmless relying on Taylor v. State, 312 S.C. 179, 183, 439 S.E.2d 820, 822 (1993).

The state argues in its petition for rehearing that this complaint was not raised in Appellant's Statement of Issues. This is in error because the issue was clearly included in the statement of issues because the statement involved the jury charge request that had the same purpose as the issue in State v. Cheeks, supra. Defense counsel, on the other hand, submitted a request to charge that was free of error. Defense counsel's Request to Charge #2 provided:

Proof of possession of an item requires more than proof of control over the premises where the item was found or control over the vehicle in which the item was found. It is also necessary to show that Defendant knew of the item and that Defendant had dominion and control over the item or had the right to exercise dominion and control over it and show that the defendant had the intent to control the disposition and use of the item.

R. 233, ll. 6-11.

In State v. Lemire, 406 S.C. 558, 753 S.E.2d 247 (Ct. App. 2013), this Court held that when a jury charge is inadequate as given, a party must request further instructions or object on the grounds of incompleteness to preserve the issue for appellate review. Defense counsel did.

The state also argued that the issue was never raised to the trial court. This is in error as seen by the jury instruction requested by defense counsel which charge very obviously omits the erroneous language as stated in State v. Cheeks, supra. By its omission, defense counsel was clearly

raising the issue. At R. 236, ll. 4 – 24, defense counsel is shown responding to the erroneous language. The trial judge and counsel stated:

Mr. Scott: There is nothing in there as far as knowledge?

Court: Actual knowledge of the presence of the crack is strong evidence of the defendant's intent to control its disposition or use.

.....

Mr. Floyd: The problem I have kind of with it is if you take that little phrase in there, its almost saying if they prove he controlled the property, then he controlled the drugs. It seems to say that in that charge.

R. 236, ll. 13 – 24.

At the time of Jones' trial, State v. Cheeks, id. had not been decided. Counsel did not have the benefit of that ruling but still had the foresight to understand the prejudicial and harmful effect of that language. Cheeks, id. would still apply to Jones' case pursuant to Griffith v. Kentucky, 479 U.S. 314 (1987) which held that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases pending on direct review.

The state's third argument was that the error was harmless. The error was not harmless as the Supreme Court held in Taylor v. State, supra. The Supreme Court wrote: "While there was sufficient evidence from which the jury could have inferred the defendant's intent to distribute the cocaine and marijuana, we cannot say beyond a reasonable doubt the jury did not base its verdict on the erroneous jury charge."

In Lowry v. State, 376 S.C. 499, 657 S.E.2d 760 (2008), the Supreme Court held that a jury instruction violates due process if it is reasonably likely that the jury understood the charge to create a mandatory presumption requiring it to infer an element of the offense if the state proved certain predicate facts, thereby relieving the state's burden of proof on an element of the offense. The Court also wrote that when conducting a harmless error analysis, in order to conclude that the error

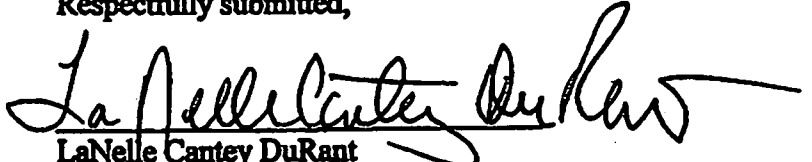
did not contribute to the verdict, the court must find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.

There were no acts or evidence that Jones had knowledge of the presence of the drugs in his home. The only evidence linking him to the drugs was the rental lease. The state did not prove that he had knowledge of the drugs. The judge used the language in his charge that the Supreme Court has instructed judges not to use. This way prejudicial to Jones.

In State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (Ct. App. 2012), the Court also wrote that when reviewing the circuit court's refusal to deliver a requested jury charge, the appellate court must consider the evidence in a light most favorable to the defendant.

WHEREFORE, Appellant respectfully requests this Court to deny the state's petition for rehearing, and affirm the Court's decision to reverse appellant's conviction and sentence and remand his case.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

This 20th day of May, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVAS D. JONES,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Return to the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, and Mr. Travas Jones, #305010, McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 20th day of May, 2014.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 20th day
of May, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

as
win

The South Carolina Court of Appeals

The State, Respondent,

v.

Travas D. Jones, Appellant.

Appellate Case No. 2012-211992

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.

H. Benn Wilson

J.

A. Ke

J.

James E. ...

J.

Columbia, South Carolina

cc:

LaNelle Cantey DuRant, Esquire

Alan McCrory Wilson, Esquire

David A. Spencer, Esquire

FILED

June 19, 2014