

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Abbeville County

R. Lawton McIntosh, Circuit Court Judge

2009-CP-01-00105

MARSHALL MILLER, #249557,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2013-001076

APPENDIX

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VOLUME I OF V

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (January 20, 2004) (Volumes I-VIII).....	1
SENTENCING TRANSCRIPT (August 24, 2004)	1827
DIRECT APPEAL RECORDS	
REMITTUR	1832
ORDER DENYING PETITION FOR WRIT OF CERTIORARI.....	1833
RETURN TO PETITION FOR WRIT OF CERTIORARI	1835
PETITION FOR WRIT OF CERTIORARI	1854
FINAL BRIEF OF RESPONDENT	1881
FINAL BRIEF OF APPELLANT	1905
PCR RECORDS	
APPLICATION FOR POST-CONVICTION RELIEF	1934
RETURN.....	1986
MOTION FOR DISCOVERY.....	1993
REPLY TO MOTION FOR DISCOVERY	1996
PROTECTION ORDER.....	1998
POST-CONVICTION RELIEF TRANSCRIPT (November 30, 2012).....	2002
FORM 4 JUDGMENT – MOTION FOR RECONSIDERATION DENIED.....	2116
ORDER OF DISMISSAL.....	2118
RULE 59e SCRPC – MOTION TO ALTER OR AMEND JUDGMENT	2131
RETURN AND MOTION TO DISMISS MOTION TO ALTER OR AMEND.....	2137
FORM 4 JUDGMENT – MOTION FOR RECONSIDERATION DENIED.....	2140
INDICTMENT/SENTENCING SHEETS	2142
ORDER SETTING BOND.....	2151
MISCELLANEOUS DOCUMENTS.....	2152
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS RECORDS.....	2162

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
CASE NO. 2002-GS-47-32

COUNTY OF ABBEVILLE

STATE OF SOUTH CAROLINA,)

-vs-)

MARSHALL MILLER and)
BILLY MOORE,)

Defendants.)

B E F O R E:

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VOLUME I of VIII

JANUARY 20, 2004

1	I-N-D-E-X	
2		<u>PAGE</u>
3	Jury Voir Dire	32
4	Jury Selection	76
5	Jackson-Deno Hearing	123
6	Preliminary Charge to the Jury	227
7	Opening Statement by Mr. Crout	239
8	Opening Statement by Mr. Varner	248
9	Opening Statement by Mr. Wise	259
10	Motions for Directed Verdict	1453
11	Motions for Directed Verdict	1636
12	Closing Argument by Mr. Hood	1649
13	Closing Argument by Mr. Varner	1666
14	Closing Argument by Mr. Wise	1705
15	Final Closing Argument by Mr. Hood	1726
16	Jury Instructions	1768
17	Exceptions to Jury Instructions	1803
18	Jury Verdict	1820
19	<u>WITNESSES:</u>	
20	FRANK O'NEIL	
21	Direct Examination by Mr. Crout	123
22	Cross Examnation by Mr. Warner	127
23	Redirect Examination by Mr. Crout	134
24	JENNIFER EVANS	
25	Direct Examination by Mr. Court	136
26	Cross Examination by Mr. Varner	144
27	Redirect Examination by Mr. Crout	157
28	CHESTER BRAGG	
29	Direct Examination by Mr. Crout	158
30	Cross Examination by Mr. Varner	170
31	CONSTANCE SONNEFELD	
32	Direct Examination by Mr. Crout	180
33	Cross Examination by Mr. Varner	189
34	KIM BARNER	
35	Direct Examination	194
36	Cross Examination by Mr. Crout	205
37	CONSTANCE SONNEFELD:	
38	Direct Examination by Mr. Crout	268
39	Cross Examination by Mr. Varner	340
40	Cross Examination by Mr. Wise	361
41	Redirect Examination by Mr. Crout	373

1	BRANDON SCOTT:	
	Direct Examination by Mr. Hood	390
2	Cross Examination by Mr. Varner	406
	Cross Examination by Mr. Wise	423
3	RONNIE McALLISTER:	
4	Direct Examination by Mr. Hood	429
	Cross Examination by Mr. Varner	481
5	Cross Examination by Mr. Wise	492
	Redirect Examination by Mr. Hood	509
6	GENE D. SAYLORS:	
7	Direct Examination by Mr. Crout	531
	Cross Examination by Mr. Varner	566
8	Cross Examination by Mr. Wise	582
	Redirect Examination by Mr. Crout	591
9	QUINCY FORD:	
10	Direct Examination by Mr. Hood	596
	Cross Examination by Mr. Wise	604
11	MICHAEL MILLER:	
12	Direct Examination by Mr. Crout	612
	Cross Examination by Mr. Varner	629
13	Cross Examination by Mr. Wise	640
14	DANIEL RUSTSHACK:	
	Direct Examination by Mr. Crout	649
15	Cross Examination by Mr. Varner	665
	Further Cross by Mr. Varner	706
16	TROY CAIN:	
17	Direct Examination by Mr. Crout	677
	Cross Examination by Mr. Varner	684
18	ERNEST COVAN:	
19	Direct Examination by Mr. Hood	711
	Cross Examination by Mr. Varner	752
20	Cross Examination by Mr. Wise	763
	Redirect Examination by Mr. Hood	778
21	JULIE PRINCE:	
22	Direct Examination by Mr. Crout	785
	Cross Examination by Mr. Varner	817
23	Cross Examination by Mr. Wise	827
	Redirect Examination by Mr. Crout	829
24		
25		

1	JASON ANDREW DAVIS:	
	Direct Examination by Mr. Crout	840
2	Cross Examination by Mr. Varner	857
	Cross Examination by Mr. Wise	860
3		
4	TOMMY J. STEWART:	
	Direct Examination by Mr. Hood	873
	Cross Examination by Mr. Varner	890
5	Cross Examination by Mr. Wise	904
6	BONNIE SUE SAYLORS:	
	Direct Examination by Mr. Crout	938
7	Cross Examination by Mr. Varner	962
	Cross Examination by Mr. Wise	966
8		
9	JAMES DAVID CUMMING:	
	Direct Examination by Mr. Hood	974
	Cross Examination by Mr. Varner	996
10	Cross Examination by Mr. Wise	999
11	TINA STEVENSON:	
	Direct Examination by Mr. Hood	1003
12	Cross Examination by Mr. Varner	1023
	Cross Examination by Mr. Wise	1028
13		
14	SAMMY McNEIL:	
	Direct Examination by Mr. Hood:	1035
	Cross Examination by Mr. Varner	1054
15	Cross Examination by Mr. Wise	1057
16	MARTHA LOUISE ELLIS:	
	Direct Examination by Mr. Crout	1066
17	Cross Examination by Mr. Varner	1095
	Cross Examination by Mr. Wise	1108
18	Redirect Examination by Mr. Crout	1111
19	JAMES RAY POWELL:	
	Direct Examination by Mr. Hood	1117
20	Cross Examination by Mr. Varner	1149
	Cross Examination by Mr. Wise	1156
21	Redirect Examination by Mr. Hood	1161
22	TONYA MICHELLE MADDEN:	
	Direct Examination by Mr. Crout	1170
23	Cross Examination by Mr. Varner	1196
	Cross Examination by Mr. Wise	1211
24	Redirect Examination by Mr. Crout	1226
25		

1	CHESTER BRAGG:	
	Direct Examination by Mr. Crout	1246
2	Cross Examination by Mr. Varner	1339
	Cross Examination by Mr. Wise	1409
3	Redirect Examination by Mr. Crout	1418
4	JAMES HEATHERLY:	
	Direct Examination by Mr. Wise	1467
5	Cross Examination by Mr. Crout	1479
	Cross Examination by Mr. Varner	1488
6	JAMES RAY MADDEN:	
7	Direct Examination by Mr. Wise	1498
	Cross Examination by Mr. Hood	1509
8	Cross Examination by Mr. Varner	1519
9	WAYNE HUGHES:	
	Direct Examination by Mr. Wise	1525
10	Cross Examination by Mr. Crout	1530
	Cross Examination by Mr. Varner	1541
11	CHRISTY HUGHES MOORE:	
12	Direct Examination by Mr. Wise	1549
	Cross Examination by Mr. Hood	1559
13	Cross Examination by Mr. Varner	1567
14	BILLY WAYNE MOORE:	
	Direct Examination by Mr. Wise	1577
15	Cross Examination by Mr. Crout	1607
	Cross Examination by Mr. Varner	1630
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1

2

E-X-H-B-I-T-S

3

Court No. 1	(Jury Note)	266
Court No. 2	(Requested Charge)	1819
Court No. 3	(Requested Charge)	1819
Court No. 5	(Requested Charges)	1819

5

STATE EXHIBITS

6

No. 1	(Best kit and attachments)	282
No. 2-ID	(Audio Tape)	302
No. 3	(Photo Board)	551
No. 4	(Photo Board)	316
No. 5	(Three Photographs)	326
No. 6	(Best kit and attachments)	330
No. 7	(Best kit and attachments)	332
No. 8	(Mason Jars)	554
No. 9	(Box of Salt)	554
No. 10	(Coffee Filters and rags)	554
No. 11	(Ziplock Bags)	554
No. 12	(Coffee Bean Grinder)	554
No. 13	(Wrench)	554
No. 14	(Latex Gloves)	554
No. 15	(Consent to Search Form)	436
No. 16	(Photo Board)	440
No. 17	(Photo Board)	448
No. 18	(Scales)	456
No. 19	(Plastic Wrap)	458
No. 20	(Plastic Bag Containing Debris)	460
No. 21	(Plastic Bag)	463
No. 22	(Purple Zip Bag)	465
No. 23	(Sudafed Bag)	467
No. 24	(Black Marlboro Bag)	468
No. 25-ID	(B.J.'s Wholesale Card)	479
No. 26-ID	(Index Book)	479
No. 27	(Gene Saylor's Affidavit)	561
No. 28	(Package Containing Ephedrine)	603
No. 29-ID	(Measurements Chart)	625
No. 30	(B.J.'s Sales History Sheets)	664
No. 31	(C.C. Dickson Invoices)	736
No. 32	(Photo Board)	743
No. 33	(Ernest Covan Affidavit)	749
No. 34	(Julie Prince Affidavit)	833
No. 35	(Photograph)	1074
No. 36	(Martha Ellis Affidavit)	1143
No. 37	(Martha Ellis Statement)	1145
No. 38	(Lab Report)	1256

1	No. 39	(Green Bag)	1256
	No. 40	(Scales)	1260
2	No. 41	(Tylenol Bottle)	1260
	No. 42	(Syringes)	1262
3	No. 43	(Plastic Sandwich Bag)	1262
	No. 44	(Alcohol Swabs)	1263
4	No. 45	(Unidentified Item in Bag)	1263
	No. 46	(Small Spoon)	1263
5	No. 47	(Plastic Cup)	1264
	No. 48	(Plastic Baggies)	1264
6	No. 49	(Business Card)	1264
	No. 50	(Plastic Bag)	1265
7	No. 51	(Plastic Bag)	1266
	No. 52	(Medicine Bottle)	1265
8	No. 53	(Plastic Bag)	1266
	No. 54	(Plastic Bags)	1267
9	No. 55	(Plastic Capsule)	1267
	No. 56	(Hotel Room Key)	1268
10	No. 57	(Band-Aids)	1268
	No. 58	(Plastic Capsule)	1262
11	No. 59	(Not offered)	
	No. 60	(Black Pouch)	1277
12	No. 61	(Note Pad)	1280
	No. 62	(Note Pad)	1279
13	No. 63	(Syringes)	1278
	No. 64	(Storage Rental Agreement)	1278
14	No. 65	(Plastic Bag)	1279
	No. 66	(Advance Auto Parts Receipt)	1282
15	No. 67	(B. J.'s Envelope)	1280
	No. 68	(Paper With Name and Date)	1281
16	No. 69	(Paper With Cell Phone Number)	1281
	No. 70	(Vehicle Registration)	1281
17	No. 71	(Marshall Miller Statement)	1289
18	DEFENDANT MOORE EXHIBITS:		
19	No. 1	(Aerial Map)	1499
	No. 2	(Photograph)	1589
20	No. 3	(Photograph)	1590
	No. 4	(Photograph)	1595
21	No. 5	(Photograph)	1595
	No. 6	(Photograph)	1596
22			
23			
24			
25			

1 P-R-O-C-E-E-D-I-N-G-S

2 (The Court finds on the record that the jury
3 panel is qualified.

4 MR. VARNER: Your Honor, before we do the
5 actual selection of the jury I do have a matter to
6 bring up outside the presence of the jurors, I
7 don't know how you want to handle it.

8 THE COURT: We're going to take a short break
9 anyway, then you tell me what it's about and we'll
10 decide how to handled it.

11 MR. VARNER: I will, Your Honor.

12 THE COURT: Ladies and gentlemen, some
13 guidelines for your jury service are please do not,
14 and you are instructed and directed, ordered not to
15 bring into the courtroom any audible devices such
16 as beepers or cell phones. Your Chief Justice has
17 made it clear that she does not expect you to bring
18 any such things into the courtroom, so it's best
19 that you leave them in your vehicle or if you
20 absolutely must bring such things into the
21 courtroom be absolutely sure that it does not make
22 any noise and it is on a moot mode, so to speak.

23 Now, I don't know if the Chief Justice's
24 order is still on the door. Is it still out there,
25 Madam Clerk?

1 THE CLERK: Yes.

2 THE COURT: If you wish, you can take the
3 time to read her order but she means for you to be
4 sanctioned if such a device goes off. Now, frankly
5 it happens from time to time and, to be very
6 honest, it's happened to me but it's never happened
7 in the experience of this judge during a trial.
8 Now, you can imagine that during a trial a witness
9 is on the stand being examined by an attorney, the
10 jurors are paying close attention, the other
11 attorney or attorneys are paying close attention in
12 preparation for their examinations of that witness,
13 the Court is paying attention, so everybody's
14 concentration level is acute and all of a sudden a
15 cell phone rings. That's a very disastrous thing
16 because the witness may forget what he or she was
17 about to say, the questioner may forget what he or
18 she was about to question, and everybody else may
19 think of how that may or may not have been
20 important on their position in the matter.

21 So, it's a disastrous thing and every time
22 it's ever happened before to this judge it's been
23 maybe while we were doing jury qualifications or
24 while we were having a recess, it's never happened
25 during a period of actual trial of the case, and it

1 is the conviction of this judge that the Chief
2 Justice really had in mind the critical moment of
3 trial when everyone is doing their very best, and
4 it's hard work, don't let the Court mislead you, if
5 you are chosen as a juror you're going to find that
6 it's tough going, it's mental work and it's hard
7 work and you need to listen to everything and pay
8 attention to everything that is said in this
9 courtroom during the trial or everything by way of
10 exhibits that are introduced, so it's tough going,
11 it's tough work. If you have never done it before,
12 then -- how many of you have ever served on a trial
13 jury in your life?

14 We have four hands, four of you, there is
15 approximately a hundred of you here, maybe eighty,
16 but four of you have served on a trial jury, so you
17 may not ever be picked again to even come to be a
18 venire person and you may never serve as a juror in
19 a court of law to determine the facts, that's what
20 jurors do, is determine the facts, they don't
21 determine, they don't do anything about sentencing,
22 they don't sit in judgment. A lot of jurors feel
23 that that's what they do, but that's not what they
24 do. Jurors determine facts, jurors are the sole
25 and only judges of the facts.

1 At any rate, don't keep any cell phones that
2 make any noise, don't keep any beepers. Please
3 keep in mind, too, that you have taken on a special
4 persona, we expect to select and seat a jury today
5 in the trial that will be tried this week, but when
6 we have a break, when you are at your leisure to be
7 in and about the courthouse area be on guard for
8 any strangers who may approach you, whom you do not
9 know to be one of your number, to be a fellow
10 venire person. Be on guard for that because if
11 somebody comes up to you and says where is the post
12 office, or where is the Village Grill, of course
13 you being a good citizen you would want to respond
14 to that. That person may be a defendant in the
15 case and you don't know it. It may be a member of
16 the defendant's family or a witness for a
17 defendant. The person may be a victim in the case
18 or a member of the victim's family. Of course, the
19 person may be a law enforcement officer. The
20 person could be someone who is involved in this
21 trial and you don't know it, innocent enough, until
22 you realize that that confrontation may be observed
23 from some distance by somebody on the other side of
24 the case and they don't hear the question of where
25 is the Village Grill or where is the post office.

1 They will presume that the remark to you has
2 concerned your jury service in this case and your
3 absolute impartiality and fair balance of mind will
4 have been interfered with in the opinion of the
5 observer of that confrontation. You will be
6 compromised.

7 Do not talk to anyone whom you don't know to
8 be a member of your venire, a member of the persons
9 sitting around you. Don't do it, because we want a
10 fair and impartial trial, and expect you to give a
11 fair and impartial trial to anyone who is on trial
12 in this courtroom. So, be aware that you are
13 special persons and that you are venire persons and
14 you are subject to be a trial juror, and don't
15 interact with any strangers at all under any
16 circumstances.

17 After we have seated a trial jury, then the
18 remainder of you as aforesaid will be excused.
19 Even the most innocent of conversations, if
20 observed from afar by a person on the other side of
21 a trial before the Court will be misconstrued.

22 Please be here on time if you are chosen as a
23 juror and you will be shown to the jury room, it is
24 through the door to your right front here, the jury
25 room is through that door and immediately to the

1 right, and if you are chosen as a juror, trial
2 juror, you will report to the jury room. When you
3 come in don't speak to anybody, don't stop, don't
4 tarry, don't wait. Come from where you park your
5 car and go into the jury room and your Clerk of
6 Court Miss King will have supplied for you
7 refreshments there and you can visit with your
8 fellow jurors and take your time but be here on
9 time because sometimes we need you right when we
10 say we do. Other times there are unforeseen
11 motions and discussions that have to take place
12 with regard to exhibits or procedure but sometimes
13 we need you on time.

14 Now, if you do have an inadvertent delay do
15 not call the call-in number. Each of you should
16 have a juror information sheet which has two
17 numbers on it, one of which is a call-in number and
18 this term of court you're not going to need that
19 because we only have one case for trial. But there
20 is another number on there and that is the Clerk of
21 Court number. I believe that appears, does it not,
22 Madam Clerk?

23 THE CLERK: Yes.

24 THE COURT: It's the Clerk of Court office
25 number and if you are chosen as a trial juror and

1 you are inadvertently delayed for any reason, if
2 you have a problem with the car, if you have a
3 problem of any sort, you're going to be here but
4 you're going to run late, please let us know, don't
5 keep us in suspense wondering. Please call us and
6 let us know, but you will have to call a real
7 person at the Clerk of Court's office and that
8 person will come up here and say that juror number
9 so and so has been delayed and will be here in
10 fifteen minutes or ten minutes or whatever the case
11 may be. Please let us know. Otherwise we'll
12 expect you to be prompt, and we'll understand
13 emergencies that may come up that cause you to be
14 tardy but please try to be here on time. Any
15 emergency or anything happens, just let us know.

16 Again, if you are chosen as a trial juror you
17 will not stop in this room and gather as you are
18 gathered, you won't sit in one of those chairs but
19 you will go into the jury room.

20 If you are chosen as a trial juror and during
21 the course of the trial one of the attorneys were
22 to stand and ask that the jury be excused for
23 something to be taken up outside the presence of
24 the jury, do not hold that against the attorney nor
25 his or her client, because that's an ordinary

1 common motion. These attorneys are trained,
2 skilled advocates. They're professionals and they
3 know that when some matter may be about to come up
4 that does not need to necessarily fall upon the
5 ears of the jurors until the Court has ruled upon
6 the issue, whether one of introduction of evidence
7 or a matter of procedure, so you don't think and
8 don't worry, there is no effort to hide anything or
9 keep anything secret from you. On the contrary,
10 every effort is going to be made to reveal
11 everything to you but sometimes we need for Mr.
12 Young to have a place where he can make a record
13 and the attorneys can be heard about how we're
14 going to reveal that to you or whether it is going
15 to be done by the Court, the Court sometimes needs
16 to rule. It is important that you understand that
17 because an attorney may ask that you be excused for
18 something to be taken up outside the presence of
19 the jury, do not hold that against the attorney nor
20 his or her client, because they are trying to
21 protect the record and let us make a record of what
22 we're doing here and that also gives you an
23 opportunity, by the way, to relax your mind and to
24 visit with each other and maybe have a refreshment
25 while we take up a matter outside your presence.

1 There is no effort to keep anything from the jury,
2 ever, so disregard that completely and don't hold
3 it against anybody if that occurs.

4 We will generally start court at about 9:30
5 in the morning, sometimes we start at 10:00,
6 depending upon the situation, but usually from 9:30
7 and we will run until about 1:00 o'clock. We will
8 start back about 2:30 and we will run until about
9 5:00 or 5:30.

10 Now, all of these estimated times that you
11 have just heard stated are for this reason. If a
12 witness is on the stand and we feel that that
13 witness can be completed by going over the lunch
14 hour a little bit, 10 or 15 minutes, maybe by
15 finishing at 10 after 1:00 or 15 after 1:00, we
16 will try and finish that witness' testimony so that
17 the jury hears that witness all at one time.
18 Sometimes we go over more than that because some of
19 these witnesses may be from far away places and
20 they may have to catch an airplane, they may have
21 to go to Columbia, to Greenville or Spartanburg
22 Airport, or even Charlotte to get an airplane to go
23 back to somewhere where they came from, so some of
24 them have airplane appointments, deadlines that
25 they have to meet, particularly with all this

1 security business that's going on now, and we may
2 have to get that witness' testimony and cause us
3 all to run over. That sometimes happens and we
4 will do what we have to do to get the witness'
5 testimony.

6 Other times a witness may finish early before
7 the lunch hour or before our recess hour in the
8 evening and we don't have any short witnesses, the
9 next witness is going to take a long time, too, so
10 we will take an early lunch or we will recess
11 early, as the case may be. So, all these times are
12 general and estimated but from about 9:30 to 1:00,
13 from about 2:30 to 5:00, 5:30, give or take.

14 Hopefully that gives you a general outline
15 and general information about how the court will
16 operate. We will take a recess at this time.
17 There are restrooms, and I think the restrooms are
18 downstairs, are they not, Madam Clerk? And you may
19 go outside the courthouse if you please. You may
20 stay in your seats if you wish, you may mill out
21 and about the lobby area, downstairs or upstairs.
22 Keep on your minds not to interact with anyone whom
23 you do not know to be a member of your venire.
24 Don't talk to anybody who's not a member of your
25 venire. But you can relax, you're expected to walk

1 around, if you please, take it easy, go outside,
2 but stay within call of the bailiff's voice, stay
3 within call of the bailiff's voice even if you go
4 outside, because we're coming back into session in
5 a little while.

6 So, everybody take a few minutes and be
7 relaxed, we are in recess.

8 (Brief recess).

9 THE COURT: Ladies and gentlemen of the
10 venire, thank you for your patience. We would like
11 you to know we have been doing some things back in
12 chambers and some other areas back behind this wall
13 here in preparation for the commencement of the
14 trial.

15 The next part of the process would be to ask
16 you some individual questions such as do you know
17 any of the witnesses or know any of the defendants,
18 know any of the attorneys? There are a number of
19 other questions, and this qualification process for
20 the individual trial will take about the same
21 amount of time as was taken for your qualification
22 as venire persons. Therefore, it being almost the
23 1:00 o'clock hour, it's about four minutes until
24 1:00, we'll take a break until -- let me consult.
25 We just may as well take a break until 2:30, 2:30.

1 That will give some of you time to go to your homes
2 to have your lunch, where you don't have to
3 purchase lunch anywhere. Of course you can have
4 lunch anywhere you wish, but be back in this room
5 at 2:30, 2:30. Does anyone have any questions,
6 please?

7 Everyone else remain seated, the venire is
8 excused to return to this room at 2:30. You are
9 excused.

10 (Jury panel left the courtroom at 12:55
11 p.m.).

12 THE COURT: The record remains open. Is
13 there anything from the State before we break for
14 the lunch period?

15 MR. HOOD: Yes, sir, Your Honor, just one
16 thing. Mr. Varner is not in here, I'm not sure
17 where he is, but this concerns him.

18 THE COURT: He was to consult with certain
19 individuals during the break. I don't know, Mr.
20 Fisher will try to find him, and if you will hold
21 that thought, then --

22 MR. HOOD: Yes, sir.

23 THE COURT: Mr. Wise, anything for the record
24 before we take a recess?

25 MR. WISE: Nothing for the record, Your

1 Honor.

2 MR. WISE: Nothing.

3 THE COURT: Mr. Wise, Mr. Callison is not
4 present either?

5 MR. HOOD: He just spoke with me, Your Honor,
6 but he is here. I'm not sure where he is at this
7 moment.

8 THE COURT: All right, let's just rest at
9 ease now just a minute and see where Mr. Varner is.

10 Mr. Callison, anything you wish to place on
11 the record before we take a recess?

12 MR. CALLISON: No, sir.

13 THE COURT: We're going to recess until 2:30.

14 MR. CALLISON: Okay.

15 THE COURT: We need Mr. Varner. Did you see
16 him in and about the area?

17 MR. CALLISON: No, sir, I didn't see him.

18 MR. HOOD: Lieutenant O'Neil went to look for
19 him, Your Honor.

20 THE COURT: The record is closed.

21 (Brief recess).

22 MR. HOOD: He wasn't in the room, Your Honor,
23 the bailiffs and SLED is looking for him.

24 THE COURT: The record is closed.

25 (Brief recess).

1 MR. HOOD: Do you want to go on the record,
2 Your Honor, we will just clear it up, he will be on
3 in a little bit?

4 THE COURT: The record is open.

5 MR. HOOD: Thank you, Your Honor. Mr. Varner
6 made me aware last week that he planned on filing a
7 motion to enforce a, for lack of a better term, a
8 plea agreement between the State and his client
9 Marshall Miller. Your Honor, I was not involved in
10 any of these negotiations that he is talking about.
11 In fact, I wasn't even part of the case at this
12 time. Assistant Deputy Attorney General Jennifer
13 Evans was involved in these negotiations, Your
14 Honor. I asked her to come up here today in case
15 Mr. Varner did make that motion so that she could
16 properly address the Court as to what happened. It
17 is the State's position, Your Honor, at this time
18 that since his client Mr. Miller is not here, that
19 the argument itself is essentially moot. He
20 doesn't have a client here to plead guilty even if
21 you ordered that we were to follow along with that
22 plea agreement, and he is not here.

23 THE COURT: There he is. The record will
24 show Mr. Varner just entered the room and, Mr.
25 Varner, Mr. Hood has just addressed the record

1 briefly, and Mr. Hood, would you repeat as best you
2 can what you just said for the benefit of Mr.
3 Varner who just came in?

4 MR. HOOD: Yes, sir. Your Honor, in my
5 communications last week with Mr. Varner he said
6 that he may plan on making a motion this morning to
7 move before the Court to order the State to enforce
8 a, for lack of a better term, plea agreement
9 between the Attorney General's office and his
10 client Mr. Miller where the number eight to twelve
11 years was represented. The person who dealt with
12 that from the Attorney General's office is present
13 here today, that's Assistant Deputy Attorney
14 General Jennifer Evans. Your Honor, I'm not aware
15 of this, I had nothing to do with it and neither
16 did Mr. Crout, that is why I felt it was important,
17 Miss Evans was nice enough to come up here today in
18 this case, this did become an issue over the
19 alleged twelve year negotiations, to address the
20 issue before Your Honor because I simply do not
21 know anything about it. My only seeking of any
22 type of plea agreement was a written plea offer in
23 writing from the Attorney General to his client Mr.
24 Miller, of fifteen years.

25 Our position, the State's position at this

1 time is that since his client is not here this is a
2 non issue. I just want to be able to let Mrs.
3 Evans go back to Columbia if, you know, this is not
4 going to be an issue in this trial. If it is, I
5 will be happy to ask her to stay around and to
6 address the Court on it later. If she can go back
7 to Columbia, if we don't need her, I just don't
8 want it to become an issue later where you are
9 looking at Mr. Crout and I as to what we did in
10 this and we simply do not know the correspondence
11 that took place between the parties.

12 THE COURT: Yes, sir, thank you, Mr. Hood.
13 And in that regard, in the period of recess Mr.
14 Varner has apparently used his good offices to try
15 to locate Mr. Miller. Are there any possibilities
16 that he will appear?

17 MR. VARNER: Your Honor, I made a phone call
18 to the last number I knew, someone did answer that
19 phone but it was a female, she immediately hung up,
20 but I did leave a message to call back. Both of
21 his parents have gone, they have contacted all the
22 relatives, literally they are beating the bushes.
23 I desperately want to talk to him.

24 THE COURT: Do you have a cell phone or way
25 that they can contact you?

1 MR. VARNER: I have it but it's turned off
2 while we're in the courtroom, Your Honor.

3 THE COURT: Yes, but when we break, do they
4 know the number?

5 MR. VARNER: Yes, sir.

6 THE COURT: Miss Evans, will you stay with us
7 until after lunch?

8 MS. EVANS: Yes, sir.

9 THE COURT: I know this is an imposition but
10 were Mr. Miller to appear, then there may be some
11 possibility of at least discussion.

12 MR. HOOD: Your Honor, the only other thing I
13 would have is would you like for us to wait to move
14 for a bench warrant for Mr. Miller's arrest until
15 we call our case?

16 THE COURT: Yes, sir.

17 MR. HOOD: Okay.

18 THE COURT: Yes, sir, there will be no bench
19 warrant issued until jeopardy attaches.

20 MR. HOOD: Yes, sir.

21 THE COURT: Anything further for the record
22 from anyone?

23 MR. WISE: No, sir.

24 MR. VARNER: Nothing further.

25 THE COURT: We are in recess until 2:30.

1 (Recessed at 1:10 p.m.).

2 (Reconvened at 4:25 p.m.).

3 THE COURT: Before the jurors are shown in,
4 are there requests for voir dire, from Mr. Miller?

5 MR. VARNER: None, Your Honor.

6 MR. WISE: I have reviewed Mr. Hood's
7 requests for voir dire, I don't have any objection
8 to them. I do have one matter, Your Honor, I would
9 like to address the Court with.

10 THE COURT: All right, let's introduce the
11 case, we are moving into another phase, and this is
12 the State of South Carolina versus -- and you
13 represent Billy Moore?

14 MR. WISE: Billy Moore, that's correct.

15 THE COURT: Billy Moore. Actually it's State
16 of South Carolina versus Marshall Miller, Tracy
17 Davis, Jeff Frye and Billy Moore. Tracy Davis and
18 Jeff Frye have been adjudicated guilty, with Miss
19 Davis having been sentenced and Mr. Frye's sentence
20 having been deferred. So, that leaves us in this
21 particular trial of four of the defendants in
22 2002-GS-47-32, with two defendants being Mr. Miller
23 and Mr. Moore.

24 Mr. Miller is represented by Kim Varner,
25 Esquire, of the Greenville Bar, and Mr. Moore by

1 Rauch Wise, Esquire, of the Greenwood Bar. Mr.
2 Wise, you had something to say concerning Mr.
3 Moore?

4 MR. WISE: Yes, Your Honor, and probably on
5 behalf of Mr. Miller, too. When I get through he
6 will probably join in. Upon reviewing Section
7 14-7-1110, which deals with peremptory challenges
8 in criminal cases, it says that for crimes as
9 diverse as murder and forgery, that you get ten
10 strikes, for all others you get only five. I would
11 make a motion before the Court to quash that
12 statute on the grounds that it denies equal
13 protection under the Fourteenth Amendment to the
14 United States Constitution and Article I, Section 3
15 of the South Carolina Constitution, and also denies
16 due process, in that the crime which Mr. Moore is
17 now facing carries 25 years, a very, very serious
18 offense, and to provide him with only five strikes,
19 while allowing someone who is charged with perjury
20 and forgery, which carry considerably less time, I
21 believe seven years maximum sentence, for which he
22 would be parole eligible, and the offense my client
23 is facing is a non parole eligible offense, is to
24 deny him due process and equal protection of the
25 law because there is no rhyme or reason for giving

1 such a benefit to someone accused of perjury or
2 forgery, while denying it to someone who is charged
3 with trafficking in meathamphetamine more than 100
4 grams.

5 MR. VARNER: Your Honor, I would join in that
6 motion on behalf of Mr. Miller. It is my general
7 understanding that the defendants would have twenty
8 strikes, I would have assumed and had assumed that
9 twenty strikes would extend to the two of us.
10 I did not necessarily equate it with five strikes
11 to each of the four of us but I thought it was a
12 cumulative twenty and would request we be allowed
13 those strikes under the same argument of equal
14 protection and due process, Your Honor.

15 THE COURT: The Court has not red 16-1-10,
16 whatever it is.

17 MR. WISE: 14-7-1110. I can pass up a copy.

18 THE COURT: I'm talking about the difference
19 between felonies and misdemeanors. There is a
20 statute 16-1-10 that, I believe that's the statute,
21 it may not be the exact one, but it states what a
22 felony in this state is. Is the crime for which
23 Mr. Miller and Mr. Moore being charged a felony, or
24 a misdemeanor?

25 MR. WISE: It's a felony, in that it carries

1 more than three years.

2 THE COURT: Mr. Hood, do you have any remarks
3 or comments on the motion?

4 MR. HOOD: Yes, sir, I would. The State goes
5 by the statute. Under Section 14-7-1110, I mean,
6 it's very clear that they have five strikes each in
7 this case. That's ten strikes between them and we
8 also have ten strikes. Trafficking in
9 methamphetamine by conspiracy is not enumerated in
10 the statute as a crime that they are allowed ten
11 strikes per defendant on. I believe the
12 Legislature has spoken and I don't know that Mr.
13 Wise has any cases to state the
14 unconstitutionality.

15 MR. WISE: This issue didn't really come up
16 until, I don't think a valid constitution argument
17 arose until we eliminated two defendants, as long
18 as we had twenty and ten that is basically all the
19 rule called for, and even though we could argue
20 differently, as long as there were four defendants
21 it was, it worked out the same way but now that
22 we're down to two defendants I think it does impact
23 our ability to select a jury in a very serious
24 case.

25 THE COURT: Well, let's look at the statute.

1 There is a stand alone sentence, which is the
2 second sentence from the end of the statute, which
3 says, "In no case where there is more than one
4 defendant jointly tried are more than twenty
5 peremptory challenges allowed in all to the
6 defendants, and in misdemeanors when there is more
7 than one defendant tried jointly no more than ten
8 peremptory challenges are allowed to all
9 defendants. In felonies, when there is more than
10 one defendant tried jointly the State has ten
11 challenges." That's the last sentence.

12 So, taking those two sentences standing
13 alone, the defense has twenty, the State ten. This
14 is a felony.

15 MR. HOOD: May I be heard on that, Your
16 Honor?

17 THE COURT: You certainly may.

18 MR. HOOD: It is our position that in going
19 above where you just read, Your Honor, it says any
20 person who is indicted for any crime other than
21 those enumerated has a right to peremptory
22 challenges not exceeding five, and the State gets
23 five. And then it says in no case where there is
24 more than one defendant, and what I take that
25 sentence to mean, Your Honor, if there were seven

1 of them sitting over there, or five or ten or
2 fifteen, then they can't get more than twenty among
3 the seven of them or the ten of them or the fifteen
4 of them, but since there is two of them the
5 appropriate strikes, if we were trying them
6 individually the appropriate strikes would be five
7 for us and five for them. Now, that's my
8 interpretation of the statute.

9 THE COURT: Very well, Mr. Hood. However, it
10 says in no case where there is more than one
11 defendant jointly tried, and you do concede that
12 two is more than one?

13 MR. HOOD: Yes, sir.

14 THE COURT: Twenty for the defense, ten for
15 the State.

16 MR. HOOD: Yes, sir.

17 THE COURT: I have the State's voir dire and
18 witness list. I do not have voir dire or witness
19 list from the defendants.

20 MR. WISE: I didn't know the defendants were
21 required to give a witness list but I can give you
22 one, I can provide a witness list. I didn't
23 realize we were required to but no problem.

24 THE COURT: If you want to voir dire, if you
25 want, if you are going to call a witness the Court

1 is going to ask you to voir dire this panel.

2 MR. WISE: Right.

3 THE COURT: This venire about them.

4 MR. VARNER: Your Honor --

5 THE COURT: Yes, sir.

6 MR. VARNER: We do not have a witness list.

7 My client isn't here, it is my understanding at
8 this point in time we will not be calling any
9 witnesses.

10 THE COURT: Very well. The record is open.
11 The Court has ruled contrary to the State's
12 position with regard to strikes. Mr. Wise, will
13 you withdraw your motion?

14 MR. WISE: I think it's a moot question if
15 you rule we get twenty strikes, I agree with you.

16 THE COURT: Well, is your motion withdrawn?

17 MR. WISE: It's withdrawn, then.

18 THE COURT: Very well, the record is clear.
19 Is the State ready?

20 MR. HOOD: The State's ready, Your Honor.

21 THE COURT: Is the defense ready?

22 MR. WISE: The defense is ready, Your Honor.

23 MR. VARNER: Ready, Your Honor.

24 THE COURT: All right. Mr. Bailiff, show the
25 venire in, please. Be at ease momentarily.

1 (Jury venire present).

2 THE COURT: Ladies and gentlemen of the
3 venire, your time is appreciated and has been
4 appreciated. It has not been that we have been
5 idle. We have been doing a good deal of work here
6 and frankly we have disposed of some things with
7 which you might have been involved were we not to
8 have had the time that you so graciously allowed us
9 to have.

10 The Court cannot go into the business that
11 was conducted outside your presence other than to
12 tell you that because you allowed us to do that,
13 you were ready to go to work as you are now, that
14 we were able to do some additional things that we
15 would not have been able to do. But for your
16 kindness and your understanding things would not
17 have happened but we have been busy the whole time
18 that you have been absent after you returned from
19 lunch. Believe me, we have been very busy and a
20 lot of things have transpired.

21 But now we are preparing to try the case of
22 the State of South Carolina versus Marshall Miller
23 and Billy Moore. Jurors in this and every case
24 must be fair both to the State of South Carolina
25 and to the defendants, and jurors must decide this

1 and every case based only and exclusively upon the
2 evidence as presented during the course of the
3 trial and upon nothing else whatsoever. To that
4 end it's necessary to determine if any member of
5 the jury panel has heard anything or knows anything
6 about this case and whether any such knowledge, if
7 it exists, would affect your ability to be
8 absolutely fair and impartial both to the State of
9 South Carolina and to the defendants Marshall
10 Miller and Billy Moore.

11 Now, this is the indictment in this case and
12 it is not evidence. An indictment is a charging
13 paper. It simply states for the information of the
14 defendants and the Court and anyone else who is
15 interested what a defendant might be charged with
16 so that he or she may prepare themselves to defend
17 against the charges. In this matter this
18 indictment in this particular case says that a
19 session of the State Grand Jury of South Carolina
20 convened in Columbia, South Carolina on March 11th,
21 2003. The State Grand Jurors present upon their
22 oath the following.

23 That Marshall Miller and Billy Moore,
24 together with others who are named in the
25 indictment, and other persons whose names are both

1 known and unknown to the State Grand Jury did in
2 Abbeville County, Greenwood County and Anderson
3 County of South Carolina during the period of time
4 extending from on or about November, 1999, until
5 the present, keeping in mind that that was the 11th
6 of March, 2003, conspire to sell, manufacture,
7 deliver, purchase or bring into this state more
8 than 100 grams of methamphetamine, a controlled
9 substance under the provisions of laws of this
10 state, such conduct not having been authorized by
11 law and such activity occurring and/or having
12 significance in more than one of the counties of
13 this state, against the laws of this State,
14 contrary to the statutes of this state, such being
15 made and provided by the General Assembly.

16 That's signed by the foreman of the grand
17 jury.

18 Again, this indictment is not evidence.
19 What's been said to you by the Court relating to
20 what's in this indictment is not evidence. It's
21 just simply said to you to determine if any of you
22 have heard anything or knows anything about this
23 case. Now, it may be wise for the Court to read
24 the names of all of the named defendants. Is there
25 any objection to that from the State so that the

1 venire persons will know every person who is named
2 and, if so, will be able to divulge that?

3 MR. HOOD: No objection, Your Honor.

4 THE COURT: Any objection, Mr. Varner?

5 MR. VARNER: None, Your Honor.

6 MR. WISE: No objection, Your Honor.

7 THE COURT: All right. Now, again, the
8 indictment is not evidence and the allegations
9 named therein are related to you just to alert you
10 and advise you of what the charges are and to
11 determine if you know anything about this case.

12 Now, the defendant Marshall Miller is
13 represented by Kim Varner, Esquire, and Mr. Varner
14 practices law in Greenville, South Carolina. And
15 the defendant Billy Moore is represented by Rauch
16 Wise of Greenwood, and Billy Moore sits beside him
17 in the green shirt. Mr. Moore stands right here,
18 so you can look at him.

19 Thank you, Mr. Moore.

20 Now, Mr. Miller is not present, Mr. Marshall
21 Miller represented by Mr. Varner is not present but
22 Mr. Moore is present. The Court questions you,
23 after having introduced to you the parties and
24 their attorneys, as follows.

25 Is there any member of the venire who is

1 related by blood or marriage or in any way
2 acquainted with either Marshall Miller or Billy
3 Moore? If so, please stand if you know either of
4 those two people.

5 Has any member of the jury venire ever been
6 represented by Kim Varner or Rauch Wise? Anybody
7 know either of those two attorneys? If you know
8 them stand, please. If you know either Mr. Varner
9 or Mr. Wise stand up.

10 We have one response. If you will, state
11 your name and juror number, please.

12 JUROR: Lucia Bishop, and I'm really not sure
13 what my number is.

14 THE COURT: What is Miss Bishop's number?

15 THE CLERK: Number 7.

16 THE COURT: Number 7. Yes, ma'am.

17 JUROR: I do know Mr. Wise on a social basis.

18 THE COURT: Would your knowing Mr. Wise in
19 any way affect or impair your ability to be fair
20 and impartial both to the defendant Marshall Miller
21 and the defendant Billy Moore were you to be
22 selected as a trial juror in this case?

23 JUROR: It would not.

24 THE COURT: Thank you, madam. Be seated.

25 Is there any one of the jury venire ever been

1 on the other side of any issue or any legal
2 question or ever consulted someone on the other
3 side of a matter that was being represented by Mr.
4 Varner or Mr. Wise? If so, please stand.

5 There are no responses.

6 Now, at this time the Court will read the
7 names of all of the persons who have been charged,
8 and this does not mean any of these individuals may
9 be guilty of anything -- let me return to another
10 important matter.

11 The State of South Carolina is represented by
12 Mr. Hood from the Attorney General's office, Mr.
13 Hood, if you will stand, and by Mr. Crout of the
14 Attorney General's office, if you will stand, sir.

15 Is there any member of the jury venire
16 related by blood or marriage or in any way knows
17 either of those attorneys or have you ever been
18 associated with anybody that was employed by, as
19 attorney or otherwise, the Attorney General's
20 office of the State of South Carolina? If so,
21 please stand.

22 Have any of you ever had any association with
23 the Attorney General's office in any capacity? If
24 so, please stand.

25 There are no responses to either of the prior

1 two questions.

2 Anybody ever been involved in any kind of
3 litigation wherein the other side was represented
4 by the Attorney General's office? If so, please
5 stand.

6 There are no responses.

7 Now returning after having digressed on that
8 point, the Court will read the names of the
9 defendants who are named in this indictment, who
10 are not before the Court for trial. And the name
11 and the importance of this is to determine whether
12 any of you know by any association or by any way,
13 social, business or otherwise, any of the persons
14 whose names are about to be read to you.

15 Tina Stevenson?

16 Julie Prince?

17 Martha Ellis?

18 David Cumming?

19 Tony Howard?

20 Remain standing but keep on your mind what
21 your response would be, because there is a number
22 of them.

23 Sandra Jo Hughes?

24 Jason Davis?

25 Ernest Covan?

1 Bonnie Saylors? S-a-y-l-o-r-s, Saylors?

2 Ashley Bannister?

3 Scottie Prince?

4 Samuel McNeil?

5 Tracy Davis?

6 Ray Powell?

7 Jeff Frye?

8 Jeff Horne?

9 Tonya Michelle Madden?

10 We'll take the gentleman who stood first,
11 your name and juror number please?

12 JUROR: Number 18, Hugh Larry Brown, and I'm
13 a first cousin of David Cumming.

14 THE COURT: Now, Mr. Cumming is not on trial
15 during this trial, he is a named defendant in this
16 indictment, which is not evidence in this case. He
17 is named as a witness. How says the State with
18 regard to this juror?

19 MR. HOOD: No objection, Your Honor.

20 THE COURT: To keeping him or excusing him?

21 MR. HOOD: To keeping him, Your Honor. I
22 think he needs to be asked if he can be unbiased
23 and unprejudiced and set aside --

24 MR. VARNER: The fact he is in fact a
25 relative of one of the State's witnesses, I think

1 he should be excused under the Court's own motion.
2 He is, I believe he said, a nephew or cousin.

3 MR. WISE: Cousin.

4 THE COURT: I think you said he's your first
5 cousin?

6 JUROR: Yes, sir.

7 THE COURT: Were he to testify in this
8 matter, and the Court is not familiar about which,
9 about what subject he may testify, would that in
10 any way affect or impair your ability to be fair
11 and impartial to the defendants Marshall Miller and
12 Billy Moore?

13 JUROR: No, sir.

14 THE COURT: Mr. Wise, do you have anything?

15 JUROR: I will listen to the evidence that's
16 presented.

17 MR. WISE: I agree with Mr. Varner's
18 position, first cousin, he ought to be excluded,
19 that is within the sixth degree.

20 THE COURT: This juror will be removed from
21 the box. Thank you. Because of your close
22 relationship with that potential witness, you will
23 not stay with us. However, for a moment -- well,
24 there is no need for you to stay with us because we
25 are not going to try any other cases. You may

1 leave the building.

2 JUROR: Okay. Thank you.

3 THE COURT: He's excused for cause by the
4 Court.

5 Your name and juror number, sir, on the
6 front?

7 JUROR: Me?

8 THE COURT: Yes, sir.

9 JUROR: 118, Jim Porter. Mr. Cumming, if
10 it's the one I'm thinking about from Calhoun Falls,
11 I was his nextdoor neighbor for about ten years.

12 THE COURT: Well, the Court doesn't know
13 which, what this Mr. Cumming is, where he may have
14 lived or ever lived, but were it to be the same do
15 you feel that you could be fair and impartial both
16 to the State and to the defendants Marshall Miller
17 and Billy Moore?

18 JUROR: Yes, sir, if the evidence --

19 THE COURT: Even if he were to testify in the
20 matter?

21 JUROR: Yes, sir.

22 THE COURT: Do you feel you could be fair and
23 impartial to the State and to the defendants
24 Marshall Miller and Billy Moore?

25 JUROR: Yes, sir, I would use the evidence

1 for my decision.

2 THE COURT: Very well. And your name again,
3 and juror number?

4 JUROR: 118, Porter, Jim H. Porter.

5 THE COURT: Very well, thank you, sir. Be
6 seated.

7 The gentleman in the, looks like a denim
8 jacket.

9 JUROR: Number 69.

10 THE COURT: And your name?

11 JUROR: John Holley.

12 THE COURT: Yes, sir.

13 JUROR: I know Ray Powell.

14 THE COURT: You know which one?

15 JUROR: Ray Powell.

16 THE COURT: Ray Powell?

17 JUROR: Yes, sir.

18 THE COURT: Would your knowledge of that
19 potential witness, and that is a potential witness
20 and a co-defendant, would your knowledge of that
21 individual in whatever way it exists in any way
22 affect or impair your ability to be fair and
23 impartial both to the State of South Carolina and
24 to the defendants Marshall Miller and Billy Moore?

25 JUROR: Yes, sir, I can do it.

1 THE COURT: You could do what?

2 JUROR: Be fair.

3 THE COURT: You could be fair to both Mr.
4 Miller and Mr. Moore and the State of South
5 Carolina?

6 JUROR: Yes, sir.

7 THE COURT: Thank you, sir. Be seated.
8 Yes, ma'am?

9 JUROR: Juror number 61, Ann Haynes, I worked
10 with Martha Ellis, Tina Stevenson, I worked with
11 her at Hardee's up in Abbeville. Sandy Stevenson
12 was her boyfriend, that is how I knew him. Julie
13 Prince, if I'm not mistaken, was from the same
14 hometown, along with Jeff Horne.

15 THE COURT: Now, those persons whom you named
16 are co-defendants and some of them, at least two of
17 them are named as potential witnesses, maybe all of
18 them as potential witnesses, there being quite a
19 list here. But whether they be co-defendants or
20 potential witnesses and testify in the case,
21 knowing them in whatever fashion you do, and one,
22 you were, I think you worked with them or were
23 employed by them, in whatever fashion you know
24 those persons, could you be fair and impartial both
25 to the State of South Carolina and to the defendant

1 Marshall Miller and to the defendant Billy Moore
2 were you to be selected as a trial juror in this
3 case?

4 JUROR: Yes, sir, I could be fair, yes, sir.

5 THE COURT: Thank you, madam. Be seated,
6 please.

7 Yes, sir, the gentleman in the wine sweater,
8 or wine colored, yes, sir?

9 JUROR: Ray Powell is my second cousin.

10 THE COURT: Just a moment, sir. Your name
11 and juror number?

12 JUROR: Arthur Evans, 44.

13 THE COURT: Thank you, Mr. Evans. If that
14 individual, he is a named co-defendant, whether
15 he's involved or not, we don't know but he is named
16 as a potential witness. That means he may or may
17 not testify. Would his being involved in the way
18 that the Court has explained to you and your being
19 a second cousin to that person, would that in any
20 way affect or impair your ability to be fair and
21 impartial both to Marshall Miller and Billy Moore
22 and the State of South Carolina if you are selected
23 and seated as a trial juror in this case?

24 JUROR: Would it affect me?

25 THE COURT: Would it affect your fairness and

1 impartiality?

2 JUROR: No, sir.

3 THE COURT: Very well, sir, be seated. Thank
4 you.

5 Yes, sir your name and juror number?

6 JUROR: Kenneth Paige, juror 109.

7 THE COURT: Yes, sir?

8 JUROR: I know David Cumming.

9 THE COURT: That individual is a named
10 co-defendant who may or may not be guilty, and he
11 is, that he's named doesn't mean anything. The
12 indictment is not evidence and none of you should
13 take that as evidence and none of you should take
14 the fact that these persons are named as evidence
15 at all. It's just simply that they are named in
16 the indictment, which is a charging paper and is
17 not evidence.

18 However, that person may testify. In
19 whatever capacity you know that person, could you
20 be fair and impartial both to the State of South
21 Carolina and to the defendants Marshall Miller and
22 Billy Moore were you to be selected and seated as a
23 trial juror in this case?

24 JUROR: Yes, Your Honor, I could.

25 THE COURT: Thank you very much, sir. Be

1 seated.

2 Yes, sir, your name and juror number?

3 JUROR: My name is Stephen Lancaster, my
4 juror number is 82.

5 THE COURT: Yes, sir, MR. Lancaster?

6 JUROR: I believe I'm acquainted with Julie
7 Prince as well as Jeff Horne, they were a couple
8 grades ahead of me in school. Ray Powell, if he is
9 who I think he is, I had business dealings with him
10 less than about six months ago.

11 THE COURT: All three of those persons are
12 named co-defendants, which as you have already
13 heard, doesn't mean anything, they are just named
14 as co-defendants and the indictment is not evidence
15 of anything at all. You are all instructed again
16 as to that point. Two of the three whom you named
17 are potential witnesses in the matter. That means
18 they may or may not testify, because the parties
19 are required to name anyone who they perhaps will
20 call. So, that the persons whom you just named are
21 co-defendants and that they may, two of the three
22 of them may testify, would that in any way affect
23 or impair your ability to be fair and impartial
24 both to the State of South Carolina and to the
25 defendants Marshall Miller and Billy Moore?

1 JUROR: No, sir, it would have no effect.

2 THE COURT: Thank you, sir. Be seated,
3 please.

4 The gentleman in the down jacket in the back?

5 JUROR: Juror 129, Cody Simmons.

6 THE COURT: You are way back there, you have
7 to speak louder.

8 JUROR: Cody Simmons, number 129.

9 THE COURT: Yes, sir.

10 JUROR: I know Martha Ellis.

11 THE COURT: That person is a named
12 co-defendant, which again for the record the Court
13 must tell you that that does not mean anything,
14 that she's named, this is a charging paper only,
15 it's not evidence against that individual but she
16 is named as a potential witness and that means that
17 she may or may not testify in the case. Now, in
18 whatever way that you know that person, would it
19 affect or impair your ability to be fair and
20 impartial both to the State of South Carolina and
21 to the defendants Marshall Miller and Billy Moore
22 if you are called and seated as a trial juror?

23 JUROR: No, sir.

24 THE COURT: Thank you sir. Be seated.

25 Yes, madam, your name and juror number,

1 please?

2 JUROR: Teresa S. Copelan, number 30.

3 THE COURT: And how do you respond?

4 JUROR: I know Tina Stevenson, she's my
5 ex-sister-in-law, and Martha Ellis.

6 THE COURT: Martha Ellis is what?

7 JUROR: My Godson's great aunt.

8 THE COURT: Would either of those
9 relationships with co-defendants and potential
10 witnesses in this matter in any way affect or
11 impair in any way your ability to be absolutely
12 fair and impartial both to the State of South
13 Carolina and to the defendants Billy Moore and
14 Marshall Miller were you to be selected as a trial
15 juror in this case?

16 JUROR: No, sir.

17 THE COURT: Thank you, madam. Be seated.

18 There are some additional potential
19 witnesses, ladies and gentlemen, who were
20 overlooked. They are these people.

21 Chris Moore -- if any of you know any of
22 these people in any capacity whatsoever, either
23 socially or through work or through church or in
24 any way whatsoever, let it be known by standing.

25 Chris Moore?

1 Jimmy Ray Madden?

2 Wayne Hughes?

3 James, is it Jane or James, Heatherly.

4 MR. WISE: James, excuse me.

5 THE COURT: James Heatherly?

6 Traivs Snipes?

7 Tracy Davis?

8 Is any one of the venire aware of any
9 relationship or knowledge of any of those people
10 whatsoever? If so, please stand.

11 There are no responses to the additional
12 potential witnesses who were just called.

13 We have other additional witnesses. To the
14 extent that any of these names repeat the names
15 that were called as co-defendants, if any of you
16 responded to the call of the name of a co-defendant
17 and identified your relationship to that person
18 there is no need for you to stand, or perhaps you
19 better stand and say, "I have already responded to
20 that person before," so we can be sure that we are
21 complete and the record is clear. The reason for
22 that is some of these names are intertwined and a
23 little bit mixed up with other names and the Court
24 doesn't want to fail to advise you of all of the
25 potential witnesses who may testify on this stand,

1 so there is going to be some duplications. The
2 Court is aware of that but where they may appear
3 would take a good deal of time to strike through
4 those that have already been called, so this is as
5 if we were doing this anew and you can respond with
6 your juror number and your name and say, "I
7 responded as to that person," giving their name,
8 and the question will not be asked you again.

9 Here are some additional potential witnesses.

10 SLED Agent Chester Bragg?

11 SLED Agent Connie Sonefeld?

12 SLED Agent Tom Darnell?

13 SLED Agent Joe Leatherman?

14 Melissa Horn with the Lexington County
15 Sheriff's Department?

16 Ronnie McAllister with the Greenwood County
17 Sheriff's Department?

18 David King with the Honea Path Police
19 Department?

20 SLED Agent Bill Kimble, spell his name
21 K-i-m-b-l-e?

22 Brandon Scott with the Abbeville County
23 Sheriff's Department?

24 Betty Minyard?

25 Ray Powell?

1 Martha Ellis?
2 Ashley Bannister?
3 David Cumming?
4 Jason Davis?
5 Lorie Gedist, spell her last name
6 G-e-d-i-s-t?
7 Steven Hodges?
8 Michelle Madden, also known as Tonya Lee
9 Michelle Madden.
10 Sammy McNeil?
11 Julie Prince?
12 Tina Stevenson?
13 Gene Saylor?
14 Bonnie Saylor?
15 Quincy Ford, Special Agent with SLED?
16 Chris Benson with the Abbeville County
17 Sheriff's Department?
18 Ed Farr, spell his last name F-a-r-r.
19 Michael Miller with the Anderson/Oconee
20 Regional Forensic Laboratory?
21 Jimmy Powers, with the Greenwood City Police
22 Department?
23 Daniel Rustchak, spell his last name
24 Rustchak, R-u-s-t-c-h-a-k. He's associated with B.
25 J.'s Wholesale Club.

1 Troy Cain?

2 C. C. Dickerson?

3 Vincent Bartley? What is the designation
4 DOR?

5 MR. HOOD: Department of Revenue, Your Honor.

6 THE COURT: Department of Revenue.

7 Ernest Covan, C-o-v-a-n

8 Thomas Stewart?

9 G. Frank O'Neil, Special Agent with SLED?

10 Is there any one of the jury panel related by
11 blood or marriage or in any way know any of those
12 potential witnesses who were just called? If so,
13 please stand if you haven't already.

14 Now, as aforesaid, some of you may have
15 responded because some of the persons who are on
16 this list were also named as co-defendants in the
17 indictment, which is not evidence and does not mean
18 that these people have done anything wrong because
19 they are named as co-defendants, but if you have
20 already responded solely and only because a person
21 is a co-defendant after having stated your name and
22 juror number, please say that so we won't just have
23 an additional report that's unnecessary.

24 Yes, sir, your name and juror number?

25 JUROR: 118, Jim H. Porter, yes, sir, I

1 responded to David Cumming.

2 THE COURT: And that was to which person,
3 David Cumming?

4 JUROR: Yes, sir.

5 THE COURT: And would you be able to be fair
6 and impartial both to the State and to the
7 defendants Marshall Miller and Billy Moore --

8 JUROR: Yes, sir.

9 THE COURT: -- if you are seated as a trial
10 juror?

11 JUROR: Yes, sir.

12 THE COURT: Thank you very much. Be seated,
13 sir.

14 Yes, sir?

15 JUROR: Alice Pursley, 120, I taught Chris
16 Benson in the fourth grade.

17 THE COURT: Your name?

18 JUROR: Alice Pursley.

19 THE COURT: Would your having taught that
20 potential witness, as you state, in any way affect
21 or impair your ability to be fair and impartial
22 both to the State of South Carolina and to the
23 defendants Marshall Miller and Billy Moore were you
24 to be seated as a trial juror in this case?

25 JUROR: No, it wouldn't.

1 THE COURT: Thank you, madam, be seated. The
2 gentleman in the denim jacket.

3 JUROR: 69, John Holley, I responded to Ray
4 Powell.

5 THE COURT: You responded to which one?

6 JUROR: Ray Powell.

7 THE COURT: Again, would your knowledge of
8 that potential witness, whatever it may be, in any
9 way affect or impair your ability to be fair and
10 impartial both to the defendants Marshall Miller
11 and Billy Moore and to the State of South Carolina
12 were you to be seated as a trial juror?

13 JUROR: I could be fair.

14 THE COURT: Could you be fair and impartial
15 to all parties?

16 JUROR: Yes, sir.

17 THE COURT: Thank you, sir, be seated. The
18 lady on the extreme right?

19 JUROR: Ann Haynes, 61. Martha Ellis, Tina
20 Stevenson, Sammy McNeil, Julie Prince, I forgot who
21 else.

22 THE COURT: Were those all --

23 JUROR: I know them.

24 THE COURT: Did you respond to all of those
25 before when you were questioned?

1 JUROR: Uh-huh (affirmative).

2 THE COURT: Would your relationship and
3 knowledge of those persons in the way you explain
4 it in any way affect or impair your ability to be
5 fair and impartial both to the defendants Marshall
6 Miller and Billy Moore and to the State of South
7 Carolina if you were seated as a trial juror?

8 JUROR: I could be fair.

9 THE COURT: Thank you very much. Be seated,
10 please, ma'am.

11 Yes, sir?

12 JUROR: Kenneth Paige, juror 109. I
13 responded to David Cumming and also Brandon Scott.

14 THE COURT: And the second name you gave was?

15 JUROR: Brandon Scott.

16 THE COURT: Brandon Scott? What name did you
17 say?

18 JUROR: Is it Brandon Scott?

19 THE COURT: Brandon Scott? He's right there.
20 Yes, number 109.

21 JUROR: I may not have heard you.

22 THE COURT: You heard correctly. Would your
23 knowledge and/or association with those two
24 potential witnesses in any way affect or impair
25 your ability to be absolutely fair and impartial

1 both to the defendants Billy Moore and Marshall
2 Miller and to the State of South Carolina were you
3 to be seated as a trial juror in this case?

4 JUROR: No, Your Honor, it would not.

5 THE COURT: Thank you very much, sir. Thank
6 you. Name and juror number?

7 JUROR: Arthur Evans, juror 44. Brandon
8 Scott, and I responded to Powell, Ray Powell
9 before. I know Brandon.

10 THE COURT: That was Ray Powell?

11 JUROR: Yes, sir.

12 THE COURT: Then, your association, knowledge
13 of those two witnesses whom you just described,
14 number eleven is Ray Powell, is that to whom you
15 were responding, about whom you were responding?

16 JUROR: Yes.

17 THE COURT: However those associations exist,
18 in whatever kind they are, would that in any way
19 affect or impair your ability to be fair and
20 impartial both to the State of South Carolina and
21 to the defendants Billy Moore and Marshall Miller
22 were you to be seated as a trial juror in this
23 case?

24 JUROR: No, it won't.

25 THE COURT: Thank you, sir. Be seated,

1 please.

2 The next gentleman?

3 JUROR: 82, Stephen Lancaster. I responded
4 earlier to Julie Prince and Ray Powell but I also
5 know the potential witness Ronnie McAllister. My
6 father serves as a police officer in Greenwood with
7 him. And Ed Farr, I know his son, went to school
8 with his son.

9 THE COURT: Would the relationship that you
10 expressed and the knowledge of the witnesses which
11 you expressed in any way affect or impair your
12 ability to be fair and impartial both to the
13 defendants Marshall Miller and Billy Moore and to
14 the State of South Carolina if you are selected and
15 seated as a trial juror in this case?

16 JUROR: No, sir, it would have no effect.

17 THE COURT: Thank you, sir. Be seated.

18 Yes, sir, your name and juror number?

19 JUROR: Number 15, Bert Brantley. Ed Farr is
20 the head trustee of where I work, Ware Shoals
21 School District.

22 THE COURT: Would your knowing that potential
23 witness in the way that you do in any way affect or
24 impair your ability to be fair and impartial both
25 to the State of South Carolina and to the

1 defendants Marshall Miller and Billy Moore if you
2 were selected as a trial juror in this case?

3 JUROR: No, it would not.

4 THE COURT: Thank you, sir. Be seated.

5 The man on the extreme left?

6 JUROR: Juror 27, Brian Chrisley. Brandon
7 Scott, I graduated high school with Brandon.

8 THE COURT: Would your knowledge of that
9 witness in that capacity in any way affect or
10 impair your ability to be fair and impartial both
11 to the defendants Billy Moore and Marshall Miller
12 and to the State of South Carolina if you are
13 selected and seated as a trial juror in this case?

14 JUROR: No, sir.

15 THE COURT: Thank you, sir. Be seated.

16 Yes, sir?

17 JUROR: James Turner, juror number --

18 THE COURT: 132 -- 142, excuse me, 142.

19 JUROR: I know Brandon Scott, went to high
20 school with him.

21 THE COURT: Would your association and/or
22 knowledge of that potential witness in any way
23 affect or impair your ability to be fair and
24 impartial to the defendants Billy Moore and
25 Marshall Miller and to the State of South Carolina

1 were you to be seated as a trial juror in this
2 case?

3 JUROR: No, sir.

4 THE COURT: Thank you, sir. Be seated.

5 The gentleman in the black tee-shirt with the
6 white writing on it?

7 JUROR: Martha Ellis, 129, I responded
8 earlier.

9 THE COURT: Would your knowledge of that
10 potential witness in any way affect or impair your
11 ability to be fair and impartial both to the State
12 of South Carolina and to the defendants Billy Moore
13 and Marshall Miller were you to be seated as a
14 trial juror in this case?

15 JUROR: No, sir.

16 THE COURT: Thank you, sir. Be seated.

17 MR. CROUT: Your Honor, if I may, I think he
18 stated he had responded to Martha Ellis but he
19 didn't say the new witness.

20 THE COURT: Okay. I'm sorry, Mr. Crout, I
21 did not hear him. Would you stand back up, and you
22 said you responded to Martha Ellis, let's see, to
23 Martha Ellis, and did you have another person that
24 you know?

25 JUROR: No, sir.

1 THE COURT: Mr. Crout, did you, what did you
2 think that he said?

3 MR. CROUT: I misunderstood, I thought that
4 he had another individual who he had said that he
5 knew, not Martha Ellis, I'm sorry, Your Honor.

6 THE COURT: Mr. Juror, do you know anybody
7 else that was named as a potential witness?

8 JUROR: No, sir.

9 THE COURT: Thank you, sir. Be seated.
10 Yes, madam?

11 JUROR: Teresa Copelan, 30, I responded to
12 Martha Ellis.

13 THE COURT: Martha Ellis and whom else?

14 JUROR: Tina Stevenson.

15 THE COURT: Would your knowledge in whatever
16 way it exists as to either or both of those
17 individuals, potential witnesses in this case, in
18 any way affect or impair your ability to be fair
19 and impartial to the State of South Carolina and to
20 the defendants Billy Moore and Marshall Miller were
21 you to be seated as a trial juror?

22 JUROR: No, sir.

23 THE COURT: Thank you, madam, be seated.

24 MR. CROUT: Your Honor, if I may, one more
25 thing regarding Mrs. Copelan, if you could inquire

1 as to how she knows Tina Stevenson, and I only do
2 this out of an abundance of precaution because we
3 have information they may be related through
4 marriage.

5 THE COURT: Very well, madam witness, excuse
6 me, madam juror, if you would stand back up. Your
7 knowledge of the potential witness Tina Stevenson,
8 how does that exist?

9 JUROR: She was married to my brother.

10 THE COURT: And when you say was, are they
11 now divorced or one of them deceased or what?

12 JUROR: Divorced.

13 THE COURT: Divorced? Would that in any way
14 affect or impair your ability to be fair and
15 impartial both to the State of South Carolina and
16 to the defendant Billy Moore and Marshall Miller
17 were you to be seated?

18 JUROR: No.

19 THE COURT: Thank you. Be seated, please.

20 MR. HOOD: Your Honor, out of an abundance of
21 precaution, could we find out what her brother's
22 name is that Tina Stevenson was married to?

23 THE COURT: All right. Madam juror, if you
24 would stand again, and the question, for the
25 benefit of everybody here, both the defense and

1 State, what is the brother's name?

2 JUROR: Tommy Stevenson.

3 THE COURT: Thomas or Tommy?

4 JUROR: Tommy, his name is Thomas.

5 THE COURT: And he goes by Tommy?

6 JUROR: Yes, sir.

7 THE COURT: It's difficult to hear.

8 JUROR: He goes by Tommy, James Thomas
9 Stevenson.

10 THE COURT: James Thomas Stevenson is his
11 name and he goes by Tommy Stevenson?

12 JUROR: Thomas, and they have a daughter.

13 THE COURT: What is her name?

14 JUROR: Niki Stevenson.

15 THE COURT: Niki?

16 JUROR: Uh-huh (affirmative).

17 THE COURT: All right. Any inquiry, Mr.
18 Wise, any further inquiry?

19 MR. WISE: No.

20 THE COURT: Any further inquiry?

21 MR. VARNER: No, sir.

22 THE COURT: Any further inquiry?

23 MR. HOOD: No, sir, thank you.

24 THE COURT: Thank you very much, madam juror,
25 be seated.

1 Is there any member of the jury venire or any
2 member of your family or any of your close friends
3 or persons of whom you are aware in any capacity
4 believe that illegal narcotics should be legalized?
5 Do you or any member of your family or any person
6 who is a friend of yours, of whom you might be
7 aware, feel or believe that illegal narcotics
8 should be legalized? If so, please stand.

9 There are no responses.

10 Have any of the venire members, that means
11 any of you, or any of your family or any of your
12 close friends of whom you may be aware ever been
13 arrested or charged or indicted or accused of a
14 drug related offense? If so, please stand.

15 Your name and juror number please?

16 JUROR: Ronnie Pless, juror number 116. My
17 uncle was convicted of possession of marijuana.

18 THE COURT: Who was?

19 JUROR: My uncle.

20 THE COURT: Would that event in any way
21 affect or impair your ability to be fair and
22 impartial both to the State of South Carolina and
23 to the defendants Marshall Miller and Billy Moore
24 were you to be seated as a trial juror in this
25 case?

1 JUROR: No, sir.

2 THE COURT: Thank you, sir. Be seated.

3 Yes madam?

4 JUROR: 135, Nita K. Sullivan. My
5 brother-in-law is currently in jail for crack
6 cocaine.

7 THE COURT: Would that circumstance in any
8 way affect or impair your ability to be fair and
9 impartial both to the State of South Carolina and
10 to the defendants Marshall Miller and Billy Moore
11 were you to be selected and seated as a trial juror
12 in this case?

13 JUROR: I would like to be honest, I really
14 don't know, I really -- it hurts the family a lot,
15 so I really would have to say I really would like
16 to feel like I could be honest but I really can't
17 say for certain.

18 THE COURT: Well, it's entirely up to you,
19 madam juror, and the question is, do you feel that
20 hearing the evidence, and you can only decide, any
21 juror can only decide a case on the evidence that's
22 presented in this courtroom in front of you, could
23 you, after having heard, seen and considered the
24 evidence, be fair and impartial both to the
25 defendants Billy Moore and Marshall Miller and to

1 the State of South Carolina were you to be seated
2 as a trial juror?

3 JUROR: Yes, sir.

4 THE COURT: Very well. Be seated, please.
5 Your name and number, please?

6 JUROR: Robert Trego, 141. My wife was
7 convicted of a methamphetamine deal before I met
8 her.

9 THE COURT: Would that history in any way
10 affect or impair your ability to be fair and
11 impartial both to the State of South Carolina and
12 to the defendants Marshall Miller and Billy Moore
13 were you to be selected as a trial juror?

14 JUROR: It wouldn't bother me at all.

15 THE COURT: Do you think you could be fair
16 and impartial?

17 JUROR: Absolutely.

18 THE COURT: Thank you, sir. Be seated.

19 Yes, sir, the gentleman on the left, in the
20 blue?

21 JUROR: Number 27, Brian Chrisley, I have a
22 couple friends that have been charged with
23 possession of marijuana.

24 THE COURT: Would that history of your
25 friends in any way affect or impair your ability to

1 be fair and impartial both to the defendants Billy
2 Moore and Marshall Miller and to the State of South
3 Carolina if you were selected and seated as a trial
4 juror in this case?

5 JUROR: No, sir.

6 THE COURT: Thank you, sir. Be seated.
7 Your name and juror number, please?

8 JUROR: 142, David Turner, I was convicted of
9 simple possession of marijuana.

10 THE COURT: Would that in any way affect or
11 impair your ability to be fair and impartial in
12 this case both to the State of South Carolina and
13 to the defendants Marshall Miller and Billy Moore
14 if you were selected and seated as a trial juror?

15 JUROR: No, sir.

16 THE COURT: Thank you very much. Be seated,
17 sir.

18 There are no additional responses.

19 Returning to the attorneys and being more
20 cautious and thorough with regard to them, has any
21 member of the jury venire or any of your close
22 friends and/or family members ever been associated
23 and/or represented or in any way know Kim Varner
24 and/or Rauch Wise either as clients, employees or
25 socially or business wise or in any way do you know

1 either of these attorneys, Mr. Varner, stand again,
2 please, or anybody that is now or formerly
3 associated with them? Do you have anybody
4 associated with you, Mr. Varner?

5 JUROR: Mr. James Segura.

6 THE COURT: Mr. Segura, Mr. James Segura of
7 the Greenville Bar, anybody know him, associated
8 with him or any of his family members?

9 Thank you, Mr. Varner.

10 And Mr. Wise, anybody on the venire, any
11 family member or friend or anybody whom you have
12 ever known ever been associated or ever been
13 represented by or done any business with or in any
14 way know Mr. Wise? If so, please stand.

15 I believe you already responded, madam juror,
16 this is Lucia Bishop, juror number?

17 JUROR: Seven.

18 THE COURT: Number seven, she already
19 responded. Thank you, be seated, please.

20 Has any member of the jury venire or any
21 member of your family or any close friend of whom
22 you are aware ever been employed in any federal,
23 state or local public defender's office or by any
24 lawyer or law firm that represents citizens charged
25 with criminal offenses? If so, please stand.

1 JUROR: My husband is a former attorney and
2 public defender of the City of Abbeville.

3 THE COURT: And state your name and juror
4 number?

5 JUROR: Lucia Bishop, juror seven.

6 THE COURT: Would your relationship with that
7 individual as you describe it in any way affect or
8 impair your ability to be fair and impartial both
9 to the State of South Carolina and to the
10 defendants Marshall Miller and Billy Moore were you
11 to be seated as a trial juror in this case?

12 JUROR: It would not.

13 THE COURT: Thank you, ma'am.

14 Yes, sir, your name and juror number?

15 JUROR: Number 24, Randy Cain. My son is a
16 part-time employee in the law office of McCravey &
17 Newlon in Greenwood.

18 THE COURT: That's a proper response, thank
19 you for it. Would that employment by your son in
20 any way affect or impair your ability to be fair
21 and impartial both to the defendants Billy Moore
22 and Marshall Miller and to the State of South
23 Carolina were you to be seated as a trial juror in
24 this case?

25 JUROR: No, sir.

1 THE COURT: Thank you, sir. Be seated.

2 Yes, sir, your name and juror number?

3 JUROR: Juror number 51, my name is Steve
4 Hall, and my sister-in-law worked for Nicholson &
5 Anderson in Greenwood.

6 THE COURT: Would that relationship and
7 employment by a family member as you describe it in
8 any way affect or impair your ability to be fair
9 and impartial both to the State of South Carolina
10 and to the defendants Marshall Miller and Billy
11 Moore were you to be selected as a trial juror in
12 this case?

13 JUROR: No, sir.

14 THE COURT: Thank you, sir. Be seated.

15 There are no additional responses.

16 Ladies and gentlemen, it is important in this
17 and every criminal case that any jury selected and
18 seated to hear the case be absolutely fair and
19 impartial and have no bias either against or for
20 the State of South Carolina or against or for any
21 defendant or defendants on trial during that case.

22 Does any member of the venire in any way have
23 any feeling of bias or prejudice based upon any
24 reason whatsoever for or against the State of South
25 Carolina, for or against the defendants Marshall

1 Miller and Billy Moore, or have any reason to have
2 any bias, prejudice or feeling for or against the
3 prosecution and/or against or for law enforcement
4 in general? If you have any response to that
5 inquiry or any question about the response please
6 stand.

7 Your name and juror number, please?

8 JUROR: Number 24, Randy Cain.

9 THE COURT: How do you respond?

10 JUROR: I have been involved for many years
11 in the treatment of drug addicts as a physician,
12 specifically addiction medicines specialist at the
13 Recovery Center in Greenwood.

14 THE COURT: That's a proper response. Would
15 that evoke any bias or prejudice for or against the
16 defendants or for or against law enforcement, for
17 or against the State of South Carolina, or in any
18 way cause you to be biased or prejudiced in this
19 case?

20 JUROR: No, sir.

21 THE COURT: Thank you, sir. Be seated.

22 Has any member of the jury venire formed or
23 expressed any opinion as to the guilt or as to the
24 innocence of the defendants Marshall Miller and
25 Billy Moore? If so, please stand.

1 There are no responses.

2 The following question is somewhat similar to
3 the next preceding question. Is there any member
4 of the jury panel, jury venire, conscious or aware
5 of any interest, any bias or any prejudice for or
6 against the State of South Carolina or for or
7 against the defendants Marshall Miller or Billy
8 Moore? If so, please stand.

9 There are no responses.

10 Is there any member of the jury venire who
11 feels that he or she would be unable to give both
12 the State of South Carolina and the defendants
13 Billy Moore and Marshall Miller a fair and
14 impartial trial? If so, please stand.

15 That's based upon anything whatsoever, if you
16 feel you can't give these defendants Billy Moore
17 and Marshall Miller and the State of South Carolina
18 a fair and impartial trial if you are selected and
19 seated as a trial juror please stand now.

20 There are no responses.

21 Is there any further or additional inquiry
22 requested of the venire by the State, Mr. Hood?

23 MR. HOOD: No, sir, Your Honor.

24 THE COURT: Any further or additional inquiry
25 requested of the venire by the defendant Miller,

1 Mr. Varner?

2 MR. VARNER: None, Your Honor.

3 THE COURT: By the defendant Moore?

4 MR. WISE: None, Your Honor.

5 THE COURT: Thank you.

6 Ladies and gentlemen, when you are called you
7 will come up, Mr. Manning is going to stand right
8 beside the podium there. Just take a station right
9 up there, Mr. Manning, right beside the lecturn,
10 and what you will please do is bring your
11 belongings with you, your purses, wraps and so
12 forth, and come up and stand right in front of that
13 lecturn and turn and face the door of the
14 courtroom.

15 Now, what will happen is that the State will
16 accept you or reject you, sometimes called swear
17 the juror or excuse the juror, or accept the juror,
18 or we don't want this juror, something. Whatever
19 they say, this is the point. This is a very great
20 and important strategic time in the trial of any
21 case. If you are not accepted please do not hang
22 your head, because that does not mean that you are
23 not thought to be fair and impartial. It does mean
24 that the parties may be waiting for another juror
25 to possibly be drawn. Strategy is at hand here, so

1 if you are excused from the trial of this case by
2 one or both sides it does not in any way mean you
3 are not a good juror and should not serve on this
4 or any case, but it does mean that for some reason
5 the parties are, you might know somebody, you might
6 be related to somebody, or they simply may be
7 trying to use a peremptory challenge, which is a
8 free challenge for no reason whatsoever, to see
9 what other name might come out of the box. If you
10 are accepted Mr. Manning will show you where to be
11 seated in the jury box, and when you come up, Mr.
12 Manning, give them a nice smile so they will feel
13 comfortable, not be so embarrassed.

14 Now, are there any objections from either or
15 any party to the names not being in capsules?
16 These names are not in capsules but they are in
17 small strips of paper. As you know, they are
18 usually prepared to put in capsules but they are
19 not in capsules. Any objection to them not being
20 in capsules, from the State?

21 MR. HOOD: No, sir, Your Honor.

22 THE COURT: From the defendant Miller?

23 MR. VARNER: None, Your Honor.

24 THE COURT: From the defendant Moore?

25 MR. WISE: No, Your Honor.

1 THE COURT: Is there any objection to the
2 Clerk's drawing the names, from the State?

3 MR. HOOD: No, sir, Your Honor.

4 THE COURT: The defendant Miller?

5 MR. VARNER: None, Your Honor.

6 THE COURT: From the defendant Moore?

7 MR. WISE: None, Your Honor.

8 THE COURT: All right. Close the box.

9 Ladies and gentlemen, all of your names, stand up,
10 please, Miss McMahan, all of your names are in this
11 box. Now, a lot of times we have a bingo roller
12 which sometimes is called a random roller box.
13 Now, I want you to stand up again, Madam Clerk. A
14 lot of times the random roller box, which is
15 actually bought and supplied by a bingo supply
16 company is seen in every courthouse all over this
17 state. Indeed I think all the attorneys will agree
18 it is seen in many courthouses all over the nation.
19 This judge has seen it in state and federal
20 courthouses in many states, so it's a very common
21 device for the random selection of anything,
22 including bingo numbers and names of jurors, but in
23 Abbeville County we have a Swisher Sweets cigar box
24 and your name is in that box, so the Court will
25 request Miss McMahan to stand and turn the box

1 upside down and backwards, shake it vigorously so
2 that everybody can see you do that. See that being
3 done. So, she doesn't know who's going to come
4 out, but when your name is called come forward and,
5 Mr. Manning, give them a nice bright smile, and
6 turn around and face Mr. Simpson in the back of the
7 courtroom, and the State will strike first. The
8 State has ten strikes, the defense, between and
9 among them, twenty. Is that correct, Mr. Varner?

10 MR. VARNER: That's correct, Your Honor.

11 THE COURT: Is that correct, Mr. Wise?

12 MR. WISE: That's correct, Your Honor.

13 THE COURT: Regardless of which defendant
14 exercises such peremptory challenge, it's twenty
15 for both.

16 MR. WISE: That's correct.

17 MR. VARNER: That's correct.

18 THE COURT: The State has ten, the defense
19 twenty. We will draw -- how many alternates do you
20 believe we need, Mr. Hood?

21 MR. HOOD: Either one or two, Your Honor.

22 Based on the fact we could be here most of the
23 week, Your Honor, we may need two.

24 THE COURT: Let's have two. The State will
25 have one strike on each alternate and the defense

1 will have two between them, regardless of who
2 exercises them. Is that acceptable, Mr. Varner?

3 MR. WISE: That's correct.

4 THE COURT: Mr. Wise?

5 MR. VARNER: Fine, Your Honor.

6 THE COURT: Very well. Let's have a jury,
7 please.

8 THE CLERK: Juror 57, Mary A. Hawkins.

9 THE COURT: This is the Clerk of the State
10 Grand Jury, Miss Lisa Dunbar, who is calling the
11 names.

12 THE CLERK: What says the State?

13 MR. HOOD: Please seat Miss Hawkins.

14 THE CLERK: What says Mr. Miller?

15 MR. VARNER: Please seat the defendant,
16 excuse me, the juror.

17 THE CLERK: What says Mr. Moore?

18 MR. WISE: Please seat the juror.

19 THE CLERK: Have a seat in the jury box.

20 THE COURT: Now, once one challenge is
21 exercised, that will be a challenge whether by the
22 defendant Miller or the defendant Moore, we have
23 agreed upon that, have we not, Mr. Varner?

24 MR. VARNER: That's correct.

25 THE COURT: And Mr. Wise?

1 MR. WISE: That's correct.
2 THE COURT: Very well, continue.
3 THE CLERK: Juror 47, Santana D. Freeman.
4 What says the State?
5 MR. HOOD: Please seat Mr. Freeman.
6 THE CLERK: What says the defendant Mr.
7 Miller?
8 MR. VARNER: Please excuse the juror.
9 THE CLERK: Juror number 116, Ronnie P.
10 Pless?
11 JUROR: Pless.
12 THE CLERK: Sorry. What says the State?
13 MR. HOOD: Please excuse Mr. Pless.
14 THE CLERK: Juror 75, Jessica K. Jenson.
15 What says the State?
16 MR. HOOD: Please seat Miss Jenson.
17 THE COURT: What says Mr. Miller?
18 MR. VARNER: Seat the juror.
19 THE COURT: What says Mr. Moore?
20 MR. WISE: Seat the juror.
21 THE CLERK: Have a seat in the jury box.
22 Juror 130, Jimmy C. Smith.
23 What says the State?
24 MR. HOOD: Please seat Mr. Smith.
25 THE CLERK: What says Mr. Miller?

1 MR. VARNER: Please excuse the juror.
2 THE CLERK: Juror 117, Randall J. Pomacille.
3 What says the State?
4 MR. HOOD: Please seat Mr. Pomacille.
5 THE CLERK: What says Mr. Miller?
6 MR. VARNER: Excuse the juror.
7 THE CLERK: Juror 99, Kenneth D. Mullins.
8 What says the State?
9 MR. HOOD: Please seat Mr. Mullins.
10 THE COURT: What says Mr. Miller?
11 MR. VARNER: Seat the juror.
12 THE COURT: What says Mr. Moore?
13 MR. WISE: Swear the juror.
14 THE CLERK: Have a seat in the jury box.
15 Juror 146, Leisa D. Wideman.
16 What says the State?
17 MR. HOOD: Please seat Miss Wideman.
18 THE CLERK: What says Mr. Miller?
19 MR. VARNER: Excuse the juror.
20 THE CLERK: Juror number 121, Marilyn D.
21 Rayford.
22 What says the State?
23 MR. HOOD: Please seat Miss Rayford.
24 THE CLERK: What says Mr. Miller?
25 MR. VARNER: Seat the juror.

1 THE CLERK: What says Mr. Moore?
2 MR. WISE: Swear the juror.
3 THE CLERK: Have a seat in the jury box.
4 Juror number 24, Bibb R. Cain.
5 What says the State?
6 MR. HOOD: Please seat Dr. Cain.
7 THE CLERK: What says Mr. Miller?
8 MR. VARNER: Please excuse the doctor.
9 THE CLERK: Juror number 40, Ruthie A.
10 Edmunds.
11 MR. VARNER: What was the juror number?
12 THE CLERK: 40.
13 What says the State?
14 MR. HOOD: Please seat Miss Edmunds.
15 THE CLERK: What says Mr. Miller?
16 MR. VARNER: Please excuse her.
17 THE CLERK: Juror 31, Michelle D. Cox.
18 What says the State?
19 MR. HOOD: Please excuse Miss Cox.
20 THE CLERK: Juror number 41, Jimmy J. Ellis.
21 What says the State?
22 MR. HOOD: Please seat Mr. Ellis.
23 THE CLERK: What says Mr. Miller?
24 MR. VARNER: Seat the juror.
25 THE CLERK: What says Mr. Moore?

1 MR. WISE: Swear the juror.

2 THE CLERK: Have a seat in the jury box.

3 Juror 69, John H. Holley.

4 What says the State?

5 MR. HOOD: Please excuse Mr. Holley.

6 THE CLERK: Juror number 129, William C.

7 Simmons.

8 What says the State?

9 MR. HOOD: Please excuse Mr. Simmons.

10 THE CLERK: Juror 127, Geraldine Sawyer.

11 What says the State?

12 MR. HOOD: Please excuse Miss Sawyer.

13 THE CLERK: Juror number 33, Cory M.

14 Crawford.

15 What says the State?

16 MR. HOOD: Please excuse Mr. Crawford.

17 THE CLERK: Juror number one, Andrea J.

18 Aiken.

19 What says the State?

20 MR. HOOD: Please seat Mr. Aiken.

21 THE CLERK: What says Mr. Miller?

22 MR. VARNER: Seat the juror.

23 THE CLERK: What says Mr. Moore?

24 MR. WISE: Excuse the juror from this trial.

25 THE CLERK: Juror number 72, Allyson B.

1 Huskey.

2 What says the State?

3 MR. HOOD: Please seat Mrs. Huskey.

4 THE CLERK: What says Mr. Miller?

5 MR. VARNER: Please excuse the juror.

6 THE CLERK: Juror number 32, Antonio M.
7 Crawford.

8 What says the State?

9 MR. HOOD: Please seat Mr. Crawford.

10 THE CLERK: What says Mr. Miller?

11 MR. VARNER: Seat the juror.

12 THE CLERK: What says Mr. Moore?

13 MR. WISE: Swear the juror.

14 THE CLERK: Have a seat in the jury box.
15 Juror number 141, Robert Trego.

16 What says the State?

17 MR. HOOD: Please excuse Mr. Trego.

18 THE CLERK: Juror number 104, Janet Nix.

19 What says the State?

20 MR. HOOD: Please seat Mrs. Nix.

21 THE CLERK: What says Mr. Miller?

22 MR. VARNER: Please excuse the juror.

23 THE CLERK: Juror number 51, J. S. Hall.

24 What says the State?

25 MR. HOOD: Please seat Mr. Hall.

1 THE CLERK: What says Mr. Miller?
2 MR. VARNER: Seat the juror.
3 THE CLERK: What says Mr. Moore?
4 MR. WISE: Swear the juror.
5 THE CLERK: Have a seat in the jury box.
6 Juror number 20, Christine T. Bryant.
7 What says the State?
8 MR. HOOD: Please seat Mrs. Bryant.
9 THE CLERK: What says Mr. Miller?
10 MR. VARNER: Seat the juror.
11 THE CLERK: What says Mr. Moore?
12 MR. WISE: Swear the juror.
13 THE CLERK: Have a seat in the jury box.
14 Juror number 38, Patricia R. Duncan.
15 What says the State?
16 MR. HOOD: Please seat Mrs. Duncan.
17 THE CLERK: What says Mr. Miller?
18 MR. VARNER: Please excuse the juror.
19 THE CLERK: Juror number 27, Brian N.
20 Chrisley.
21 What says the State?
22 MR. HOOD: Please excuse Mr. Chrisley.
23 THE CLERK: Juror number 29, Howard J. Cook.
24 What says the State?
25 MR. HOOD: Please seat Mr. Cook.

1 THE CLERK: What says Mr. Miller?
2 MR. VARNER: Seat the juror.
3 THE CLERK: What says Mr. Moore?
4 MR. WISE: Swear the juror.
5 THE CLERK: Have a seat in the jury box.
6 Juror number 101, Larry O. Newell.
7 What says the State?
8 MR. HOOD: Please excuse Mr. Newell.
9 THE CLERK: Juror number 22, Joy Burdette.
10 What says the State?
11 MR. HOOD: Please seat Miss Burdette.
12 THE CLERK: What says Mr. Miller?
13 MR. VARNER: Please excuse her.
14 THE CLERK: Juror number 17, Donna W. Brown.
15 What says the State?
16 MR. HOOD: Please seat Mrs. Brown.
17 THE CLERK: What says Mr. Miller?
18 MR. VARNER: Seat the juror.
19 THE CLERK: What says Mr. Moore?
20 MR. WISE: Excuse the juror from this trial.
21 THE CLERK: Juror number 50, Darlene C. Hall.
22 What says the State?
23 MR. HOOD: Please seat Mrs. Hall.
24 THE CLERK: What says Mr. Miller?
25 MR. VARNER: Seat the juror.

1 THE CLERK: What says Mr. Moore?
2 MR. WISE: Excuse the juror from this trial.
3 THE CLERK: Juror number 9, Fred H. Blakely.
4 What says the State?
5 MR. HOOD: Please seat Mr. Blakely.
6 THE CLERK: What says Mr. Miller?
7 MR. VARNER: Seat the juror.
8 THE CLERK: What says Mr. Moore?
9 MR. WISE: Excuse the juror from this trial.
10 THE CLERK: Juror number 140, Joseph B.
11 Thomason, Jr.
12 What says the State?
13 MR. HOOD: Please seat Mr. Thomason.
14 THE CLERK: What says Mr. Miller?
15 MR. VARNER: Seat the juror.
16 THE CLERK: What says Mr. Moore?
17 MR. WISE: Excuse the juror from this trial.
18 THE CLERK: Juror number 49, Donald Hackett.
19 What says the State?
20 MR. HOOD: Please seat Mr. Hackett.
21 THE CLERK: What says Mr. Miller?
22 MR. VARNER: Seat the juror.
23 THE CLERK: What says Mr. Moore?
24 MR. WISE: Excuse the juror from this trial.
25 THE CLERK: Juror number 13, Brent T. Bowers.

1 What says the State?

2 MR. HOOD: Please seat Mr. Bowers.

3 THE CLERK: What says Mr. Miller?

4 MR. VARNER: Seat the juror.

5 THE CLERK: What says Mr. Moore?

6 MR. WISE: Swear the juror.

7 THE CLERK: Juror number 114, Delories L.

8 Peterson.

9 What says the State?

10 MR. HOOD: Please seat Mrs. Peterson.

11 THE CLERK: What says Mr. Miller?

12 MR. VARNER: Seat the juror.

13 THE CLERK: What says Mr. Moore?

14 MR. WISE: Swear the juror.

15 BAILIFF: Have a seat over in the jury box.

16 THE CLERK: Juror number 82, Stephen C.

17 Lancaster.

18 What says the State?

19 MR. HOOD: Please seat MR. Lancaster.

20 THE CLERK: What says Mr. Miller?

21 MR. VARNER: Seat the juror.

22 THE CLERK: What says Mr. Moore?

23 MR. WISE: Excuse the juror.

24 THE CLERK: Juror number 44, Arthur W. Evans.

25 What says the State?

1 MR. HOOD: Please seat Mr. Evans.
2 THE CLERK: What says Mr. Miller?
3 MR. VARNER: Seat the juror.
4 THE CLERK: What says Mr. Moore?
5 MR. WISE: Excuse the juror from this trial.
6 THE CLERK: Juror 39, Georgia B. East.
7 What says the State?
8 MR. HOOD: Please seat Mrs. East.
9 THE CLERK: What says Mr. Miller?
10 MR. VARNER: Seat the juror.
11 THE CLERK: What says Mr. Moore?
12 MR. WISE: Excuse the juror from this trial.
13 THE CLERK: Juror number 15, Bert A. Brantly.
14 What says the State?
15 MR. HOOD: Please seat Mr. Brantly.
16 THE CLERK: What says Mr. Miller?
17 MR. VARNER: Seat the juror.
18 THE CLERK: What says Mr. Moore?
19 MR. WISE: Seat the jury, swear the juror.
20 THE COURT: We will have two alternates. The
21 strikes are one for the State, two for the defense
22 on each alternate. Is that agreed?
23 MR. HOOD: Yes, sir, Your Honor.
24 MR. WISE: Yes, Your Honor.
25 MR. VARNER: Yes, Your Honor.

1 THE COURT: By all, let the record reflect.

2 THE CLERK: Juror number 135, Nita K.

3 Sullivan.

4 What says the State?

5 MR. HOOD: Please excuse Miss Sullivan.

6 THE CLERK: Juror number 30, Teresa S.

7 Copelan.

8 What says the State?

9 MR. HOOD: Please seat Miss Copelan.

10 THE CLERK: What says Mr. Miller?

11 MR. VARNER: Swear the alternate.

12 THE CLERK: What says Mr. Moore?

13 MR. WISE: Swear the alternate.

14 THE CLERK: Juror number 54, Lilla Y. Hanna.

15 What says the State?

16 MR. HOOD: Please seat Mrs. Hanna.

17 THE CLERK: What says Mr. Miller?

18 MR. VARNER: Please excuse her.

19 THE CLERK: Juror number 59, Rodney W.

20 Hawthorne.

21 What says the State?

22 MR. HOOD: Please seat Mr. Hawthorne.

23 THE CLERK: What says Mr. Miller?

24 MR. VARNER: Seat the alternate.

25 THE CLERK: What says Mr. Moore?

1 MR. WISE: Swear the alternate.

2 Ladies and gentlemen of the trial jury and
3 alternates, you will please go to the jury room.
4 Mr. Busby will show you into the jury room. You
5 will then know how to get there, it is a rather
6 simple route, but just retire to the jury room. Do
7 not discuss the case.

8 Now, you and I know the same amount about
9 this case, all of us, the fifteen of us, if you
10 will, and that's simply the allegations that are
11 set out in the indictment, which are bare and
12 minimal and is not evidence. The fact that a
13 person is indicted is not evidence, it doesn't mean
14 anything. The evidence will be presented during
15 the course of the trial. However, you are
16 instructed, directed and ordered not to discuss
17 this case by, between and among yourselves and
18 retire to the jury room and take your time, young
19 lady, if you want to wait until everybody else is
20 in there, or you can go now so you have plenty of
21 time so everybody else will have plenty of time.
22 Take your time, and all else will follow.

23 (Jury excused from the courtroom).

24 THE COURT: Is there any objection to the
25 selection or compilation of the jury, from the

1 State?

2 MR. HOOD: May we have just one minute, Your
3 Honor?

4 THE COURT: Of course. Take your time. And
5 the question will be the same for both defendants,
6 take your time.

7 Yes, sir?

8 MR. HOOD: Nothing from the State, Your
9 Honor.

10 THE COURT: Any objection to the selection or
11 compilation of the jury from the defendant Miller?

12 MR. VARNER: None, Your Honor.

13 THE COURT: Thank you. Any objection to the
14 selection or compilation of the jury, from the
15 defendant Moore?

16 MR. WISE: None, Your Honor.

17 THE COURT: Very well, thank you. Ladies and
18 gentlemen of the venire, this is the only case
19 that's scheduled during this term of court, so it
20 is my pleasure to excuse you for the balance of the
21 week. However, it is with some chagrin that the
22 Court says to you that you may never have the
23 opportunity to be a juror in your life. When it
24 was asked of all of you how many had been jurors
25 there were four hands that were raised. So, it is

1 a high, serious responsibility and very difficult
2 work that is done by jurors in this courtroom and
3 in courtrooms throughout the nation. We are the
4 only nation that maintains and keeps inviolate the
5 right of the State and defendant to trial by jury
6 just as you have seen drawn and seated at this
7 case. However, few of our citizens, relatively,
8 ever discharge that responsibility, which is the
9 highest and greatest responsibility that any
10 citizen can have outside of wartime, is to listen
11 to the evidence, testimony, which we are both
12 familiar with is evidence, and the exhibits which
13 are introduced during the course of the trial, and
14 to make a decision as to the facts. That's what a
15 jury does, is they decide the facts, and for twelve
16 people to come to a decision as to the facts of a
17 case is a difficult assignment. It's a lot, there
18 is a lot of give and take, a lot of discussion,
19 it's difficult work. But the main point that this
20 judge wishes to make to each and every one of you
21 is that you had, you have had a chance to do
22 something that you may not ever have a chance to do
23 again. Hopefully you have learned somewhat the,
24 the delicate way that we go about having you come
25 here as a venire, you know that you are on three

1 lists, those lists are combined and computerized
2 and you are here by happenstance, and then you
3 additionally saw that each name was called by
4 chance and each party had an opportunity to accept
5 or reject each individual who came up.

6 So, it's done this way and came and
7 incorporated itself from England when we separated
8 ourself as a separate country from that country,
9 which we call our mother country, and to some
10 extent they have amended and compromised the jury
11 system in large measure in many ways. We have not.
12 We have continued it at the expense that it is,
13 your time, the time of all the persons and parties
14 here as you can see because of the importance and
15 the seriousness of a trial of cases.

16 Now, the court system and the jurisdiction,
17 and the jurisprudence system of this nation is
18 under attack. It's under attack to keep you out of
19 the courthouse, to settle your differences with
20 each other. Keep that in mind as you read the
21 reports in the newspaper about various views and
22 attitudes toward the court system and our system of
23 justice. Keep in mind what you have seen, although
24 this is a criminal trial, civil trials are similar
25 in the way that jurors are selected. Keep in mind

1 what you have seen. It is important to your life
2 and to the lives of your children and grandchildren
3 and great grandchildren down the line. It's the
4 fairest way that there has ever been devised that
5 we know of to solve disputes. Keep that in mind as
6 you read the newspaper and look at television and
7 hear reports about the jury system. It's
8 important. You may see it differently. However
9 you see it, that's your right, but you have seen a
10 fair and impartial jury seated in the box and are
11 now in the jury room waiting for opening arguments.
12 The effort that's been taken is to seat a fair and
13 impartial group of citizens to hear the evidence in
14 this case and to decide the facts. And that
15 system, that system that you just saw works and
16 those twelve people, probably the twelve jurors in
17 chief, will decide the facts of this case, and
18 there are those forces at work, both above and
19 below the radar screen, to do away with this
20 system. So, keep that in mind as you leave this
21 place, this house of justice and think about it
22 when you read those articles and see those articles
23 on the TV about the jury system.

24 Thank you very much. You are excused for the
25 balance of the week. Wait just a minute, you might

1 be interested in the question of money. Do we have
2 checks for them now?

3 THE CLERK: No, sir, their check will be in
4 the mail.

5 THE COURT: It will be in the mail, and that
6 is on the word of your Clerk of Court.

7 Thank you very much. You are excused.
8 Everyone else remain seated.

9 The record is open in State of South Carolina
10 versus Marshall Miller and others, case number
11 2002-GS-47-32. This case is the State versus
12 Marshall Miller and Billy Moore, among several
13 defendants named in the indictment.

14 What's the pleasure of the State? The hour
15 is 6:00 o'clock, the Court would feel the better
16 part of discretion would be to instruct the jurors
17 according to the situation and have openings in the
18 morning and call your first witness.

19 MR. HOOD: We agree, Your Honor.

20 MR. WISE: No objection from this defendant.

21 THE COURT: For Mr. Miller?

22 MR. VARNER: We concur, Your Honor.

23 MR. WISE: I will be happy to go home at 6:00
24 o'clock.

25 THE COURT: All right, ask the jury back in.

1 MR. HOOD: Your Honor, if we could, before
2 they come in, I don't know if there is a way to
3 stop them.

4 THE COURT: Mr. Manning, hold it, Mr. Busby.

5 MR. HOOD: Your Honor, we do have a statement
6 given by defendant Miller which we are making the
7 assumption that there will be a Jackson versus Deno
8 hearing on that statement. I don't know when you
9 want to address that. If we're going to do that
10 first thing in the morning I need to make sure I
11 have those personnel present for the Jackson v.
12 Deno hearing.

13 THE COURT: Are the people here now?

14 MR. HOOD: They are not here now, Your Honor,
15 they can be here in the morning.

16 THE COURT: All right. How long will it
17 take, approximately?

18 MR. HOOD: I'm assuming you want a Jackson v.
19 Deno on Marshall Miller's statements?

20 MR. VARNER: If you intend to use them, most
21 certainly.

22 MR. HOOD: Your Honor, that will probably
23 necessitate Jennifer coming back, it is in regard
24 to Jackson v. Deno. One of the things, one of the
25 questions is voluntariness and whether he

1 detrimentally relied on other factors. There is a
2 key element on that issue if we're going to do a
3 Jackson v. Deno, if they intend to use it.

4 THE COURT: Well, if the Court understands
5 the State correctly, they do intend to use it.

6 MR. HOOD: Yes, sir.

7 THE COURT: So the question to you is do you
8 want a hearing on the admissibility of the
9 statement?

10 MR. VARNER: Yes, sir.

11 MR. WISE: As far as this defendant is
12 concerned, there are some motions we would object
13 to on the ground there would be some Burton
14 problems. There are some things that allegedly
15 implicate my client that easily can be excised, but
16 if they are going to put in my client I'm going to
17 have to raise an objection about that.

18 MR. HOOD: I can address both of those at the
19 same time, Your Honor. We are not going to be
20 starting our case with Mr. Miller's statement so it
21 is really, if you don't, whenever you want to do
22 the hearing, Your Honor, we will do it. We just
23 need to know so we can have the personnel here to
24 do it. We will not be starting our case with Mr.
25 Miller's statement. It will be closer toward the

1 end of our case, so if you would like to do it at a
2 later date that's fine with us. As regard to Mr.
3 Miller's statement against Mr. Moore, we have a
4 proposed redaction for that. We understand the law
5 of Bruton versus United States.

6 MR. WISE: I have reviewed the entire 26
7 pages and I think it will be very easily done
8 without destroying any meaning of the statement.

9 MR. HOOD: And we have been working on that
10 and we do have something to show Mr. Wise. You
11 know, as to where Mr. Miller implicates Mr. Moore,
12 we will not try to get into that.

13 MR. WISE: Okay.

14 MR. HOOD: From the Bruton issues.

15 THE COURT: It's hoped that the Bruton matter
16 can be --

17 MR. WISE: It can be.

18 THE COURT: -- can be settled by agreement.

19 MR. WISE: I think so. I would be shocked if
20 it can't.

21 THE COURT: However, now, it is assumed also
22 that when you say that we can have the hearing on
23 the admissibility of Mr. Miller's statement at
24 anytime, that your strategy so far as tomorrow's
25 proceedings will not be affected. If so, the Court

1 would suggest that we meet at 9:30 and have the
2 hearing so that if there is any issue as to the
3 Court's ruling and how it may affect your
4 presentation of the case in chief, then you would
5 know that.

6 MR. HOOD: Yes, sir.

7 THE COURT: It's up to you, we can have it in
8 the morning and have the jury come in a little
9 later, if it is material to the, to the sequence of
10 calling witnesses or what will be asked of
11 witnesses.

12 MR. HOOD: May I have just one moment, Your
13 Honor?

14 THE COURT: Yes, sir, take your time.

15 MR. VARNER: Your Honor, while they're
16 conferring --

17 THE COURT: Wait just a minute, he may want
18 to hear what you're saying.

19 MR. VARNER: While they are conferring, that
20 has now concluded, if they intend to use his,
21 quote, quote, confession or statement, I need to
22 have that matter resolved before I do my opening
23 statement, because that is going to affect how I
24 have my opening statement. It also is directly
25 tied into the motion that I told him about and

1 there will be testimony on that because on the one
2 hand if he was made a certain promise and made
3 statements in reliance on that, then he gets the
4 benefit of the bargain, but the State can't win
5 both ways. Not only do they not give the deal, but
6 they get to use all the information. Those two
7 issues are necessarily tied together.

8 MR. HOOD: And the opening argument, it had
9 slipped my mind at 6:00 o'clock on the first night
10 of trial, Your Honor, I do apologize. I do agree
11 we need to do the Jackson v. Deno first thing in
12 the morning and I will have my people here for that
13 hearing.

14 THE COURT: Now, the Court has not seen this
15 statement but from the remarks of Mr. Wise, this
16 statement is lengthy.

17 MR. VARNER: Yes,.

18 MR. WISE: Twnty-six handwritten pages.

19 MR. HOOD: Your Honor, he gave an interview
20 to law enforcement which is approximately sixteen,
21 sixteen to eighteen pages long, a report of an
22 interview done by a SLED agent, we have somewhere
23 twenty to thirty handwritten single spaced pages
24 from Mr. Miller.

25 THE COURT: What impact on time for

1 consideration and presentation of the State's
2 position for introduction of it after redaction on
3 the Bruton matter? What is your estimate of time
4 for argument both by the State and by Mr. Miller
5 and Mr. Moore, after redaction? Will you have any
6 input?

7 MR. WISE: No, sir.

8 THE COURT: So, we're really essentially
9 talking about the State and Mr. Miller?

10 MR. WISE: Just him.

11 THE COURT: It was unknown as to whether Mr.
12 Moore wanted to have any position taken, so he's
13 not taking a position one way or the other after
14 redaction, if it's agreeable to him under Bruton.
15 So, are we talking thirty minutes, an hour? I know
16 this is guesswork.

17 MR. CROUT: Your Honor, if I may address the
18 issue since it's a matter I will be handling, I
19 think we may very well take up an hour. The State,
20 and it appears from listening to Mr. Varner's input
21 regarding this matter, that we will be looking at
22 having at least four witnesses testify. One will
23 be Special Agent Chester Bragg who was involved in
24 the taking of the statement, one will be Special
25 Agent Connie Sonnefeld who was involved in the

1 taking of the statement, and one will be Special
2 Agent Frank O'Neil who was involved as far as
3 taking the statement is concerned, as far as the
4 agreement behind taking the statement was
5 concerned, and then there is also Assistant
6 Attorney General, Deputy Attorney General Jennifer
7 Evans who will be speaking on that matter as far as
8 that agreement is concerned. I believe the
9 position that Mr. Varner is taking, of course, is
10 that the statement was given in agreement for a
11 deal, so it's kind of a bifurcated hearing we have
12 got to have to the extent that deal relates to the
13 voluntariness of the statement itself. So, we have
14 two issues to deal with. One is the deal as it
15 relates to the giving of the statement, and then
16 the second one is the voluntariness of the
17 statement with or without the understanding of the
18 deal. So, we at least have four witnesses to
19 address that issue.

20 MR. VARNER: Your Honor, there is an
21 immediate issue which is whether it's a question of
22 detrimental reliance on giving the statement. I
23 think those are the parameters, detrimental
24 reliance.

25 MR. CROUT: I don't disagree with the context

1 in which that hearing would take place. I just
2 bring that up because it goes beyond what I think
3 would be considered the scope of a traditional
4 Jackson v. Deno hearing as I have at least been
5 involved in them.

6 MR. VARNER: I agree, Your Honor, I think one
7 hour may be a little conservative.

8 THE COURT: We'll start at 9:30, we'll ask
9 the jurors to come at 11:00.

10 MR. VARNER: I think that would be
11 appropriate, Your Honor.

12 THE COURT: Anything further before the
13 jurors are shown in?

14 MR. HOOD: No, sir.

15 THE COURT: Mr. Varner, Mr. Wise?

16 MR. VARNER: Nothing further Your Honor.

17 MR. WISE: Nothing further.

18 THE COURT: Show the jury in, Madam Clerk.

19 Is that a difficult time --

20 MR. HOOD: We can start earlier, Your Honor.

21 THE COURT: -- for your people to come?

22 MR. HOOD: No, sir, that's fine.

23 (The jury returned to the courtroom).

24 THE COURT: Ladies and gentlemen of the trial
25 jury, thank you very much for your patience. We

1 have had things to take up outside your presence.
2 You will notice that your colleagues of the venire
3 have been dismissed, they have left and we have had
4 several motions to consider while you were in the
5 jury room getting to know each other. The Court
6 will give you just a few brief guidelines and
7 ground rules.

8 The first and most important is that you are
9 not to talk with anyone about this case, and that
10 means with each other. You cannot discuss anything
11 about this case by, between or among yourselves,
12 and you cannot discuss anything about this case or
13 what you think this case may be about with anyone
14 at all.

15 Now, at this point, as aforesaid, we only
16 know what is set out in the allegations contained
17 in this very short concise bare indictment, which
18 is not evidence. That's all you know about it and
19 that's all this judge knows about it. But when you
20 get home the first thing that people are going to
21 do, particularly when you get home at this hour,
22 which is later than we expect to run generally, is
23 to ask you, "Well, what did you do down there," and
24 you will say, "Well, I'm a juror." And they are
25 going to say, "What kind of case is it, what are

1 you dealing with, what is it?" You have to say, "I
2 can't tell you." You have to say, "I'm not
3 permitted to discuss it at all, I can't even tell
4 you what it's about." If you turn it around, if
5 you were to be a defendant would you want a jury or
6 a juror discussing your case with a family member,
7 neighbor, friend, spouse? No, you wouldn't. And,
8 so, you can't do that.

9 Now, we're not going to swear you until in
10 the morning but the Court is directly ordering you
11 not to discuss this case with anyone, even between
12 yourselves. Now, if anyone attempts to discuss
13 this case with you it's your responsibility to say
14 to them, "I'm sorry, I can't discuss this case, I
15 am a juror in the case. "

16 If any person persists in trying to discuss
17 the case with you after you tell that person or
18 persons that you're a juror, you're dealing with a
19 highly improper situation and you should use every
20 measure and means at your disposal to identify that
21 person or persons and report that to one of the
22 bailiffs or to the court clerk who will sit
23 directly in front of the Court and that will be
24 investigated because that's wrong and you know
25 that's wrong. You're telling this person, "I'm a

1 juror and I can't discuss it with you," and they
2 continue to ask you questions or try to talk with
3 you about the case, then you should, all red flags
4 should be waving and you should try to get that
5 person or persons, however many there are, try to
6 find out something about how to identify them so we
7 can look into that, because that wouldn't be right.

8 Now, also this judge does not appoint a
9 foreperson. A foreperson has no more authority or
10 say-so than any other juror but the foreman will
11 preside over the deliberations when that time comes
12 and will on behalf of all the jurors communicate
13 with the Court in writing.

14 Now, we will communicate in writing from this
15 point forward unless you are all seated in the jury
16 box and the alternates are properly seated and the
17 Court is directly speaking to all of you at once.
18 If you have a question as a body, as a jury body,
19 your foreperson will communicate that question to
20 the Court in writing and the Court will do one of
21 two things, either respond in writing and ask you
22 to hand that paper back out to the bailiff so it
23 can be given to the court reporter as a Court's
24 exhibit and preserved so if anybody wants to know
25 what we communicated about they can look at that

1 paper and see. And if you are here as a group, you
2 can see that the court reporter is taking down
3 every word that's said, and we can respond to your
4 question. So, if you were to have a question at
5 anytime, or concern, you're going to have to decide
6 which among you or whom among you you want to be
7 your foreperson.

8 Madam Clerk, where does the foreman generally
9 sit in this courtroom?

10 THE CLERK: Okay, Judge, in the seat this
11 gentleman is sitting in right here.

12 THE COURT: The right front seat of the box
13 is where the foreman will sit. Now, you don't have
14 to be in a hurry about that. It is suggested that
15 unless you have an immediate question, which is not
16 anticipated, that you wait and get to know each
17 other, that you talk to each other, you're
18 certainly members of the same community, all live
19 and reside in the same county, some of you may have
20 seen each other in and about the area, shopping or
21 going here or there, but get to know each other and
22 then decide which among you you want to be the
23 foreperson, and it doesn't matter who it is. Just
24 somebody you all feel would be a good person to
25 communicate and preside over your deliberations

1 when that time comes and then when you do that,
2 write that person's name down on a piece of paper,
3 we'll be sure there is paper and writing instrument
4 back in the jury room, and hand it to the bailiff
5 and the Court will say that, put it on the record
6 and hand that piece of paper to the court reporter
7 for his marking it, he will put a sticker on it and
8 mark it as a Court's exhibit and then that person
9 will sit in the right front seat of the jury box
10 from that point forward. There is no need to be in
11 a rush but the Court is just advising you of the
12 road map of how we will go about this.

13 The most important thing of all is not to
14 talk about this case at all with anyone under any
15 circumstances at anytime, not even by, between or
16 among yourselves or while you take a break or
17 overnight while you go home. Each of these
18 defendants is entitled to a fair trial at your
19 hands and any communication that you have with
20 anyone about this case may upset your mental
21 balance. You have to keep your mind balanced
22 throughout this thing because something that
23 happens on the back of a case may be as important
24 or more important than something that happens on
25 the front of a case. So, you have to keep an open

1 mind, keep your mind open, not be influenced.

2 If there were to be any media coverage such
3 as newspaper, television or radio you can't take
4 that into consideration. As soon as you realize
5 that what you're hearing, seeing or reading has to
6 do with this trial you have to disabuse yourself of
7 it immediately, completely disregard it and realize
8 that you have to determine the case on the
9 testimony which is evidence and any exhibits that
10 may be introduced in the trial, and the Court will
11 tell you about that further. But if there were to
12 be any media coverage at all don't pay any
13 attention to it. It's not even important, but
14 ignore it completely as soon as you realize it has
15 to do with this trial.

16 Now, we have some things to do in the morning
17 and some of the reason that you waited in the jury
18 room was for us to discuss what we have to do in
19 the morning, so we are going to start early but we
20 aren't going to need you until 11:00 o'clock. We
21 think we can finish what we need to do by 11:00
22 o'clock. So, do we have a place where they can
23 gather.

24 THE CLERK: Yes, sir, they can go in the
25 conference room just outside the courtroom.

1 THE COURT: All right. When you come
2 upstairs the bailiff will show you to another room,
3 a comfortable room, we sometimes use it as an
4 alternate jury room, frankly, it's a comfortable
5 room and you can just sit there and visit with each
6 other and talk about the weather and hope for warm
7 weather the rest of the year. If you have noticed
8 your utility bills, the cost of heating your home,
9 we don't want it to get down real low anymore, but
10 anyway, talk about things other than this trial,
11 anything other than this trial. Visit with each
12 other, it's important that you know each other,
13 because this is an experience you're going to have
14 together, an experience that you are never going to
15 forget. It's your duty to be fair and impartial,
16 to listen, and it's hard work and we will start
17 tomorrow at 11:00 o'clock.

18 I remind you you are under a direct order of
19 the Court, do not discuss this case at all with
20 anyone at anytime. If anyone tries to discuss it
21 with you get their names.

22 Thank you very much. You are excused, and be
23 back in the conference room and if we're through,
24 then the bailiff will show you on into the jury
25 room, if we're finished at 11:00 o'clock, whenever

1 you report.

2 Thank you very much. Take your time,
3 everyone else remain seated, the jurors are
4 excused. 11:00 a.m.

5 (Jury was excused from the courtroom
6 at 6:20 p.m.).

7 THE COURT: Anything further from the State?

8 MR. HOOD: At this time, Your Honor, the
9 State would move for a bench warrant for Marshall
10 Miller due to his failure to appear upon his notice
11 from the State Grand Jury of this trial.

12 THE COURT: Call him three times out and
13 about the courthouse, Mr. Bailiff.

14 BAILIFF: What is his name?

15 THE COURT: Marshall Miller.

16 THE COURT: Anything from the defendant
17 Miller?

18 MR. VARNER: Your Honor, due to the fact the
19 jury has not been sworn in the case, it has not
20 been commenced, I would assert it is not
21 appropriate to issue the bench warrant until such
22 time as the jury is sworn, which would be tomorrow
23 morning.

24 MR. HOOD: I'll leave that in the discretion
25 of the Court.

1 MR. VARNER: The trial doesn't actually
2 commence until the jury is sworn and double
3 jeopardy attaches. That has not been done.

4 THE COURT: That is correct, we will go
5 ahead, he may be here, I'm sorry to put Mr. Busby
6 to that trouble.

7 Mr. Hood, the Court will defer until in the
8 morning but certainly, counsel, if you have any
9 contact with him please encourage him with every --

10 MR. VARNER: I will do all I can, Your Honor.

11 THE COURT: -- with every ounce of ability to
12 get here. It's in his best interest to be here, no
13 question about it.

14 MR. VARNER: I agree.

15 THE COURT: But we'll let Mr. Busby report
16 and the motion will pend but we will recall the
17 pending motion, Mr. Hood. Just remind me that the
18 motion is before the Court and after the jury is
19 sworn, you remind me that the motion is before the
20 Court, renew it and we will take care of that
21 matter, but we will recall him in the morning.

22 MR. VARNER: Thank you.

23 MR. HOOD: Thank you, Your Honor.

24 THE COURT: Anything from Mr. Moore?

25 MR. WISE: No, sir.

1 THE COURT: All right. We'll be at ease,
2 then, until Mr. Busby comes in.

3 Mr. Busby, do you swear to tell the truth?

4 BAILIFF: Yes, sir.

5 THE COURT: Did you call Marshall Miller out
6 and about the courthouse area, including outside,
7 three times?

8 BAILIFF: Yes, sir.

9 THE COURT: Did you call it where if he had
10 been present he would have heard his name and
11 responded?

12 BAILIFF: Yes, sir, anywhere on the square he
13 would have heard it.

14 THE COURT: And did he respond?

15 BAILIFF: No, sir.

16 THE COURT: Thank you very much for doing
17 that. The motion pends and is continued.

18 MR. HOOD: Thank you, Your Honor.

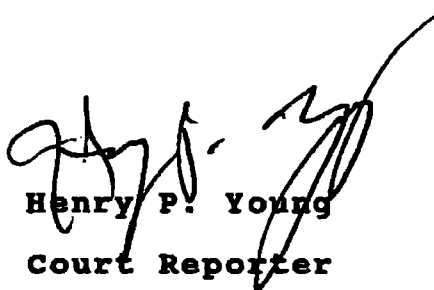
19 THE COURT: Very well. We are in recess
20 until 9:30.

21 (Recessed at 6:24 p.m., January 20, 2004).
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4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Abbeville County,
11 South Carolina, on the 20th day of January, 2004.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 January 8, 2005

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18 
19 Henry P. Young
20 Court Reporter
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22
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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
CASE NO. 2002-GS-47-32

COUNTY OF ABBEVILLE

STATE OF SOUTH CAROLINA,)

-vs-)

MARSHALL MILLER and)
BILLY MOORE,)

Defendants.)

B E F O R E:

HONORABLE WYATT T. SAUNDERS, JR.

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

JOHN K. CROUT, Esquire
ROBERT E. HOOD, Esquire
Attorneys for the State

KIM R. VARNER, Esquire
Attorney for the Defendant Marshall Miller

C. RAUCH WISE, Esquire
Attorney for the Defendant Billy Moore

Henry P. Young
Court Reporter

VOLUME II of VIII

JANUARY 21, 2004

1 (Resumed at 10:15 a.m., January 21, 2004).

2 THE COURT: The record is open, we're in
3 session in the matter of State of South Carolina
4 versus Marshall Miller and others, in indictment
5 2002-GS-47-32.

6 When we recessed on yesterday evening the
7 matter of business to be taken up this morning
8 included a Jackson v. Deno hearing concerning an
9 alleged statement that may or may not incriminate
10 Marshall Miller. Now, Mr. Varner you have a
11 motion?

12 MR. VARNER: Your Honor, I think it can be
13 heard simultaneously with part and parcel of the
14 Jackson v. Deno, the same witnesses, same
15 testimony, and it is a motion to enforce the plea
16 agreement. Quite obviously, without my client
17 here, I understand the practical problems of it but
18 I think from, I told my client I was going to
19 present this, and even though he is not here I am
20 presenting that motion, but I think the crux of our
21 argument will be the Jackson v. Deno although there
22 are related issues that go with that, Your Honor.

23 THE COURT: All right. We will attend to
24 this matter momentarily, but there is a pending
25 motion for a bench warrant and the Court has

1 considered that motion and perhaps it should have
2 been granted upon call of the case but to be frank,
3 when Mr. Varner indicated that he objected because
4 actually the jury had not been sworn, in an
5 abundance of precaution the Court did not, did not
6 grant the motion at that time, but the case is
7 called, the defendant is required to be here upon
8 call of the case by the State, and although the
9 jury has not been sworn, do I hear a renewed
10 motion?

11 MR. HOOD: Yes, sir.

12 THE COURT: Mr. Simpson, call Marshall Miller
13 out and about the area three times, including
14 outside.

15 Now, returning while Mr. Simpson is calling
16 Mr. Miller, do you want to be heard on the motion
17 to enforce the plea agreement?

18 MR. VARNER: No, sir, but for purposes of the
19 record I still have to object as to the issuance of
20 the bench warrant prior to the jury being sworn.

21 THE COURT: That's overruled. The case has
22 been called for trial.

23 MR. VARNER: I understand, Your Honor. As I
24 told the Court, I think this motion to enforce the
25 plea agreement will come out in the Jackson v.

1 Deno, I think that would be the appropriate time,
2 the same witnesses, the same testimony almost,
3 because they are related issues and I think if we
4 do the Jackson v. Deno motion that will
5 simultaneously dispose of the motion to enforce.

6 THE COURT: Do you concur, Mr. Hood?

7 MR. HOOD: Mr. Crout is going to be handling
8 this. Mr. Crout is going to handle these issues,
9 Your Honor.

10 THE COURT: Thank you, Mr. Hood. Mr. Crout,
11 do you concur that if we get into the Jackson
12 versus Deno type hearing on the alleged statements
13 or statement, as the case may be, of Mr. Miller
14 that we will cover the information necessary for
15 the Court to rule upon this motion?

16 MR. CROUT: Yes, Your Honor, I agree we will
17 cover the same information. However, I would for
18 purposes of preserving the record still like to
19 state that we would object to any enforcement of
20 the plea agreements, plea agreement, based on two
21 factors. One, the nonpresence of the defendant,
22 and number two, the fact that the defendant had not
23 pled guilty based upon any promises or any
24 information that was provided to him or any acts
25 that were requested of him from the State, and we

1 will make those arguments later but I just want to
2 make sure all the State is agreeing is that we will
3 cover the same witnesses.

4 THE COURT: Yes, sir. And your remarks are
5 well taken but the Court will defer ruling until we
6 have heard some information about this.

7 MR. CROUT: Yes, Your Honor.

8 THE COURT: Mr. Simpson, do you swear or
9 affirm to tell the truth?

10 BAILIFF: Yes, sir.

11 THE COURT: Did you call Marshall Miller out
12 and about the courthouse area, including outside,
13 where if he had been present he would have heard
14 his name called?

15 BAILIFF: He would have.

16 THE COURT: Did he respond?

17 BAILIFF: No, sir.

18 THE COURT: Thank you. The record will
19 reflect the report of Mr. Simpson, our bailiff, and
20 the motion for bench warrant for Mr. Miller is
21 granted. It can be prepared, Madam Clerk.

22 Mr. Varner, on your next motion, do you have
23 a motion to suppress?

24 MR. VARNER: Yes, sir, in regard to the
25 statements and/or confession of Mr. Miller I do

1 have a motion to suppress, and I think that goes
2 with the Jackson v. Deno.

3 Also I have a motion in limine in regard to
4 Mr. Miller's nonpresence, is the term I would like
5 to use in the courtroom. I would like a motion in
6 limine in regard to preventing the State from
7 inferring or alluding to the fact that he has
8 escaped or run to avoid justice, because the truth
9 of the matter is we don't know where he is, none of
10 us.

11 THE COURT: The truth of the matter is he has
12 a right not to be present, he doesn't have to be
13 present here. He has an absolute constitutional
14 right not to speak and not even to be here if he
15 doesn't want to but he's being tried anyway.

16 MR. VARNER: I understand that.

17 THE COURT: And, Mr. Hood, you understand
18 there wouldn't be any inference to be drawn from
19 anything that you may imply that would allow the
20 jury to infer that he does not have a right to be
21 absent?

22 MR. HOOD: Your Honor, I think I can speak
23 for Mr. Crout, too, it is my normal spill in every
24 statement, argument that I make before a jury that,
25 you know, the defendant doesn't even have to be

1 present, and I would not allude to anything about
2 him not being here. Now, however, he brought up
3 the word flight. There may be potentially a flight
4 issue on his arrest. The day he was arrested in
5 Greenwood County Marshall Miller did run and SLED
6 did have to track him down in the woods. I don't
7 want to lose the ability to make that argument but
8 we're not going to make any argument that because
9 he's not here today, you know, that he's committed
10 some other crime or anything like that.

11 THE COURT: Well, do you concur, Mr. Varner,
12 that if he were to have tried to avoid arrest, and
13 as Mr. Hood just stated, that that is not what
14 we're talking about here, you're talking about his
15 right not to be present and not to be prejudiced by
16 his right not to be present?

17 MR. VARNER: At this trial, that's what I'm
18 referring to.

19 THE COURT: As far as the facts are concerned
20 of the case, whether before, during or after his
21 arrest, that's fair play but it's not fair play for
22 him to be in any way criticized or held accountable
23 for any wrongdoing because he's not here. In fact,
24 the Court is going to tell the jury that they can't
25 hold that against him in any way, he has a right

1 not to be here.

2 MR. VARNER: That's correct, Your Honor, I
3 understand.

4 MR. HOOD: We agree with that, Your Honor.

5 THE COURT: Very well. Now let's get into
6 the motion with regard to these statements or
7 statement. I think we talked yesterday that there
8 may be two different ones, Mr. Crout, I'm not
9 certain.

10 MR. CROUT: That is correct, Your Honor.
11 There is one statement that was taken as a result
12 of Mr. Miller's meeting with SLED agents, in which
13 they wrote down that statement and the information
14 in that statement as he gave it to them. This
15 interviewing process took place over a number of
16 days, three days, to be exact. During that time
17 period Mr. Miller had given to Special Agent
18 Chester Bragg, who we will be hearing from, a
19 handwritten statement that he wrote while he was at
20 the jail, and what I mean by that is, for purposes
21 of these interviews the defendant was transported
22 from the jail that he was in to a local hotel and
23 the interviews actually took place at that hotel.
24 When Special Agent Bragg picked the defendant
25 up for one of these interviews the defendant handed

1 him a piece of paper which is approximately 33
2 pages, a 33 page document that contained his own
3 handwritten statement about his involvement. Those
4 are the two items that we intend to introduce
5 against Mr. Miller.

6 THE COURT: Thank you, Mr. Crout. And Mr.
7 Miller's position with regard to them, Mr. Varner?

8 MR. VARNER: Your Honor, we are taking the
9 position under the Jackson v. Deno that those,
10 neither of those are admissible because one is a
11 confession made to the SLED agents, the
12 voluntariness of which is obviously the subject of
13 the motion. The other one is, for lack of a better
14 term, a summary to speed up the process, which he
15 provided to the agents, which is basically an
16 outline of what he had already covered and what he
17 had been able to think about to help them. I mean,
18 it was part of not just compliance, but his best
19 effort at compliance, and under Jackson v. Deno I
20 understand it will be, and it will be my position
21 after we have taken the testimony on the motion,
22 that the same rule will apply to the handwritten
23 document also because that is a waiver of a
24 constitutional right, the right to remain silent
25 and the facts and circumstances under which it was

1 exercised.

2 So, I will at this point in time take the
3 position that Jackson v. Deno would extend to both
4 the agents' notes of what came out of his mouth,
5 and the actual written that is part of his thought
6 process that came from his hand, so to speak, it's
7 one and the same.

8 THE COURT: Very well. There is motion to
9 suppress. There are two statements allegedly made
10 by the defendant Miller. Call your first witness,
11 Mr. Crout.

12 MR. CROUT: May it please the Court, the
13 State calls Special Agent Frank O'Neil of the South
14 Carolina Law Enforcement Division.

15 THE COURT: The witness will be sworn.

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FRANK O'NEIL - DIRECT

1 FRANK O'NEIL,
2 after being first duly sworn testified as follows:

3 THE CLERK: Have a seat and state your full
4 name for the record.

5 THE WITNESS: Frank O'Neil.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. CROUT:

8 Q Agent O'Neil, where are you employed now?

9 A State Law Enforcement Division.

10 Q And were you employed in that capacity during
11 the investigation of the State Grand Jury
12 investigation which is commonly referred to as
13 Crankdown?

14 A I was.

15 Q And what was your role in that investigation?

16 A I was a supervisor but I assisted Agent
17 Sonnefeld and Agent Bragg in any area they needed a
18 little assistance.

19 Q Were you involved in the arrest of one of the
20 individuals in this case, a Mr. Marshall Miller?

21 A Yes, I did, on September 24th, 2002.

22 Q Prior to that day had you had any contact
23 with Marshall Miller?

24 A No.

25 Q During the course of that arrest did Mr.

FRANK O'NEIL - DIRECT

1 Miller make any statements or say anything to you?

2 A Prior to the arrest?

3 Q No, during the course of the arrest or
4 immediately after the arrest.

5 A After he was arrested I took him to the side
6 and tried to take a statement. It wasn't very
7 fruitful, he was trying to tell me about other
8 people he knew, not his actual involvement.

9 Q After that did you have any contact with Mr.
10 Miller directly?

11 A No.

12 Q When is the next time that you spoke with or
13 that you saw Marshall Miller?

14 A I didn't speak to him any more. I spoke to
15 his attorney concerning Mr. Miller.

16 Q And without going into what the attorney told
17 you, what was the nature of that conversation?

18 A It was about his, about Marshall Miller's
19 willingness to cooperate. His attorney indicated
20 that he was willing to cooperate fully by giving us
21 information concerning his involvement and others
22 involved in the conspiracy.

23 Q And during that time did you make any
24 promises about a sentence or about any kind of deal
25 that could be worked out if he was able to

FRANK O'NEIL - DIRECT

1 corroborate or if he was able to give you any
2 information?

3 A No, I did not.

4 Q As a result of that conversation with Mr.
5 Miller's attorney what did you do?

6 A I contacted Agent Bragg and Agent Sonnefeld
7 about arranging for a time that they could
8 interview Mr. Miller, that would include picking
9 Mr. Miller up and taking him to a location other
10 than the jail to take a complete statement from Mr.
11 Miller.

12 Q And did that meeting or did those meetings
13 occur, as far as you know?

14 A Yes. On February 13th, February 25th and
15 March of 2003 they had conversation with Mr. Miller
16 about his involvement.

17 THE COURT: Do you have a date in March?

18 A March the 4th.

19 MR. CROUT: Your Honor, I would let the
20 record reflect that as he is testifying Special
21 Agent O'Neil is referring to some notes relative to
22 this case.

23 THE COURT: Thank you.

24 Q After you had arranged for that meeting to
25 take place did you ever speak with Marshall Miller

FRANK O'NEIL - DIRECT

1 again?

2 A No.

3 Q Did you ever speak with his attorney again?

4 A I don't believe so. I tried to call Kim
5 Varner, his attorney, probably six or seven times,
6 left messages, I never got a response from Mr.
7 Varner.

8 MR. CROUT: Your Honor, I have no further
9 questions of this witness.

10 THE COURT: Thank you. Mr. Varner, the
11 witness is with you.

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FRANK O'NEIL - CROSS

CROSS EXAMINATION

1
2 QUESTIONS BY MR. VARNER:

3 Q Agent O'Neil, could I look at the notes
4 you're referring to?

5 These are the same documents that have
6 already been supplied in discovery?

7 A Yes.

8 Q All right. Let's look up here just a little
9 bit. The night of the arrest, that is September, I
10 believe September 24th, when you initially sat down
11 with Mr. Miller, not saying there was an agreement
12 or anything, but was there a general discussion
13 with Mr. Miller that if he would admit his
14 involvement and fully cooperate that it was a
15 possibility, not an agreement, that he could get a
16 sentence of approximately fifteen years?

17 A No.

18 Q Okay. Was there any discussion of fifteen
19 years at that point in time? I'm not saying an
20 agreement, but a general discussion?

21 A I told Mr. Miller that all he could do by
22 cooperating was help himself, it was not going to
23 hurt him. I did not refer to a particular time or
24 to a sentence that he could possibly receive. I
25 repeated several times, as I always do, that it's

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1 up to the judge that handles the case.

2 Q Okay. And you knew from the very beginning
3 Mr. Miller has a rather extensive criminal record?

4 A That's correct.

5 Q As a matter of fact he served time in prison
6 on two different occasions?

7 A I believe so.

8 Q And for lack of a better term, did he have
9 what they call the jailhouse lawyer type mentality?

10 A Probably.

11 Q Okay. And as a matter of fact did you even
12 refer to him as, of all the people in the group, he
13 was probably one of the smarter ones in the group?

14 A I think I did tell him that I thought he was,
15 that he was more intelligent than a lot in the
16 group and that he could help himself if he
17 cooperated.

18 Q Okay. Subsequent to that you and I began
19 talking and we talked on many occasions?

20 A That's correct.

21 Q And as a matter of fact you made it very
22 clear to me and I think you clearly understood I
23 knew you were not in a position to offer any kind
24 of deal or cut any kind of deal. That was
25 understood between the two of us in all of our

FRANK O'NEIL - CROSS

1 discussions, wasn't it?

2 A That's correct.

3 Q As a matter of fact you made a point of
4 bringing that out to me and I did in fact
5 acknowledge that we knew that?

6 A Yes.

7 Q And in regard to the general parameters of
8 the discussion and as a result of that
9 understanding did the Attorney General come with
10 you and we had, for lack of a better term, a
11 preliminary meeting in my office?

12 A That's correct, in Greenville.

13 Q Okay. And at that point in time, without
14 having an agreement, we discussed general
15 parameters of what were the possibilities and what
16 Marshall could or could not do and what you did or
17 did not expect and what we were wanting in general
18 terms?

19 A Yes, that's correct.

20 Q All right. Now, subsequent to that did you
21 and I have some conversations in which you were
22 advised that Mr. Miller had information on Ray
23 Powell, and numerous other individuals, including
24 gambling operations, guns, stolen goods and
25 information that he could possibly deliver to you,

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1 to ascertain the value of his potential testimony?

2 A I don't remember information pertaining to
3 guns. What I remember, what I remember is it
4 pertaining to people that were involved in this
5 drug conspiracy. I'm not saying it wasn't said but
6 that's all I recall.

7 Q Well, at that point in time what's called
8 Little Ray, Ray Powell, wasn't even part of this
9 charge, was he?

10 A I don't believe so.

11 Q Okay. And as a matter of fact part of our
12 discussions were, "Why isn't Ray Powell in this, we
13 can help you bring in three or four other people,"
14 is that correct?

15 A I remember you talking about Ray Powell
16 specifically but I don't remember about any other
17 people.

18 Q Okay. And thereafter is it a fair statement
19 you didn't participate in any further negotiations
20 nor contact with me?

21 A That's correct.

22 Q Okay. And shortly after that did you make me
23 aware that to a certain extent that Chester was
24 going to be handling the case, that you were moving
25 on to something else or moving in another direction.

FRANK O'NEIL - CROSS

1 and that Chester would be my contact thereafter?

2 A I believe I said Agent Bragg would be
3 handling the interview.

4 Q Excuse me, I didn't mean to show disrespect
5 by calling him by his first name. Agent Bragg was
6 who I was to talk to thereafter, is that correct?

7 A That's correct.

8 Q Okay. So, you were not present nor did you
9 participate in any further negotiations, you were
10 not present when he talked and you were not present
11 to hear any deal or purported deal on behalf of Mr.
12 Miller?

13 A No, I did not. All I heard after that was
14 what was relayed to me from Agent Bragg after the
15 interview was completed.

16 Q Okay. Well, let's talk about that for half
17 a second. Did Agent Bragg relate to you that they
18 initially met Mr. Miller down at the Laurens County
19 facilities, I believe the Sheriff's office down
20 there?

21 A I don't recall what facility they met at, at
22 which location. I just got the general, a general
23 synopsis of what Marshall Miller had said in his
24 interview or debriefing.

25 Q Did he tell you anything about the facts or

FRANK O'NEIL - CROSS

1 circumstances or my participation?

2 A He pretty much told me that he had come clean
3 and admitted his involvement in the conspiracy.
4 The exact details, I would have to look over the
5 interview gain to tell you all that, but he was,
6 Agent Bragg was basically telling me what he had
7 recorded and I don't know if he was reading from
8 his reports, I talked to him on the phone and I
9 talked to him in my office.

10 Q Did you not ask the proverbial question of
11 what kind of deal was cut?

12 A No.

13 Q Okay. Did he give you any indication that
14 when I was sitting in there before Marshall started
15 talking that I had advised Marshall of what my
16 understanding of what their deal was, so to speak,
17 or what his deal was in any way, shape or form?

18 A Agent Bragg didn't discuss any kind of deal.
19 Agent Bragg knows, as I know, that most of those
20 discussions are handled through the AG's office.
21 We would not have, we would not have told Marshall
22 Miller what he was going to get or what he could
23 get or all that. That, I believe that would have
24 been turned over to the Attorney General handling
25 it at that time, which was Jennifer Evans.

FRANK O'NEIL - CROSS

1 Q Well, your answer may be the same but I'm not
2 asking you what the AG's office did or did not
3 discuss, but did I give you any indication of what
4 Marshall thought his deal was?

5 A No.

6 Q Or what I indicated to Marshall his deal was?

7 A No, he did not.

8 MR. VARNER: That's all the questions I have.

9 THE COURT: Mr. Crout?

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FRANK O'NEIL - REDIRECT

REDIRECT EXAMINATION

QUESTIONS BY MR. CROUT:

Q Mr. O'Neil, would it be customary for you to even cut a deal or discuss a deal?

A I can't cut any deal.

MR. CROUT: Thank you. No further questions, Your Honor.

THE COURT: Anything further, Mr. Varner?

MR. VARNER: Nothing further.

THE COURT: Now, Mr. Wise, do you have any questions?

MR. WISE: I don't have any interest in this, no, sir.

THE COURT: Let's have this agreement. Thank you very much, Mr. Witness. If you have any questions raise your hand and/or let it be known, otherwise during these preliminary hearings on the subjects that we have discussed it is assumed that you will not have questions, but were a question to occur to you and you want to pose it, the Court will not foreclose the record and you will be able to get on the record and make such request.

MR. WISE: Thank you.

(Witness excused).

THE COURT: Call your next witness, Mr.

1 Varner.

2 MR. CROUT: At this time the State would call
3 Assistant Deputy Attorney General Miss Jennifer
4 Evans.

5 THE COURT: Thank you, Mr. Crout. Excuse the
6 Court's being confused. Come up and be sworn,
7 please, ma'am.

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JENNIFER EVANS - DIRECT

1 JENNIFER EVANS,
2 after being first duly sworn testified as follows:
3 THE CLERK: Have a seat and state your full
4 name for the record.

5 THE WITNESS: Jennifer Evans.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. CROUT:

8 Q Miss Evans, where are you employed?

9 A The Attorney General's office.

10 Q And were you involved in a case with the
11 Statewide Grand Jury which is commonly referred to
12 as Crankdown?

13 A Yes, sir.

14 Q And what was your involvement in that case?

15 A When the case was initiated I was the
16 attorney that was assigned to the case when I was
17 in the State Grand Jury.

18 Q And did you ever have the opportunity to have
19 conversations with Marshall Miller's attorney Mr.
20 Kim Varner?

21 A Yes, I did.

22 Q And could you tell us how you made contact
23 with Mr. Varner?

24 A Well, as is the course of action with a Grand
25 Jury case what we do is, there is a lot of

JENNIFER EVANS - DIRECT

1 investigation that goes on. At some point there is
2 a case initiation and we gather evidence and then
3 we would present an indictment. At that point
4 people are arrested on the indictment, and Marshall
5 Miller was arrested on the indictment, I believe
6 Kim Varner was his attorney from the beginning and
7 might have appeared at the bond hearing but it's
8 been awhile so I can't say necessarily.

9 And normal course of action, what we could
10 do, we would try to get individuals to cooperate
11 with the Grand Jury case, and that is normal course
12 of action, the way our investigation is. We find
13 out information, we approach that person and get
14 them to cooperate, and so I believe at some point
15 after Marshall Miller was arrested we did indicate
16 that we would like Mr. Marshall Miller to cooperate
17 with our investigation.

18 Q Did you ever speak with Marshall Miller
19 outside the presence of his attorney?

20 A No. I don't think I have ever had a
21 conversation at all with Marshall Miller.

22 Q So, you never even had a face to face meeting
23 or conversation?

24 A I have met Marshall but just in the courtroom
25 at two different bond hearings and then when he

JENNIFER EVANS - DIRECT

1 came for other court but I don't, I have never sat
2 down and discussed anything with Marshall Miller
3 directly.

4 Q But you did sit down and discuss this case
5 with his attorney?

6 A Yes, Lieutenant O'Neil and I did go up to
7 Greenville and meet Mr. Varner at his offices.

8 Q At that time did you make any plea offer?

9 A No. The only time we ever make plea offers
10 is when we send out formal written plea offers.
11 What we do, we explain to them what we expect with
12 cooperation, which is full cooperation, full
13 debriefing, cooperation throughout the
14 investigation, and at that point there is nothing
15 promised except for the fact that we will take that
16 cooperation into account.

17 Mr. Miller was indicted for a 25 year
18 offense, and as Lieutenant O'Neil just testified,
19 we do explain to them there is really no way you
20 can hurt yourself at this point, that we will take
21 cooperation into account in determining a sentence,
22 but I don't discuss sentencing and I don't discuss
23 what they would be, because I don't know at that
24 point what they know and if they are going to be
25 fully honest with us.

JENNIFER EVANS - DIRECT

1 Q So, it would be safe to say, then, you have
2 to get all the information from the defendant
3 before you can even determine what offer you want
4 to make to them?

5 A That is certainly the course of action that
6 we do in all our Grand Jury cases.

7 Q And in this particular instance did you make
8 a written plea offer?

9 A Yes, I did.

10 Q And was that the plea offer in this case?

11 A Yes, I sent the letter to Mr. Varner
12 regarding what the State, after Mr. Miller
13 cooperated, and I will explain how that plea offer
14 came about, is that after we had the people that
15 were going to cooperate and the schedule was set
16 and we knew plea dates were coming up, I believe it
17 was Lieutenant O'Neil, Connie, Special Agent Connie
18 Sonnefeld, Special Agent Chester Bragg, there was
19 two police officers from Honea Path P.D., Abbeville
20 Police Department, excuse me, Abbeville Sheriff's
21 Department, the Sheriff, the Lieutenant, Brandon
22 Scott, and Chris Benson, and I believe Ronnie
23 McAllister and Doug Gunter was at that meeting, and
24 what we did, we sat down, and there might have been
25 some other local law enforcement that I'm

JENNIFER EVANS - DIRECT

1 forgetting and I apologize, we sat down at that
2 meeting and I believe it was at the narcotics
3 location at the Abbeville Sheriff's Annex, sat down
4 after everybody had cooperated and gone over what
5 the AG was willing to offer and to get law
6 enforcement's input because they do know better,
7 but ultimately I sent out an offer letter based
8 upon our discussions, to Kim Varner on behalf of
9 Marshall Miller, and which there was two different
10 plea dates that if he pled we would recommend
11 fifteen years.

12 Q But that decision to offer the fifteen years
13 came after any statements were made by Marshall
14 Miller?

15 A I believe I have right here the same thing
16 that Lieutenant O'Neil had, the dates of the
17 interviews, and I don't recollect the date of my
18 letter but if you have something that could refresh
19 my memory.

20 MR. CROUT: Do you mind if I show her that?

21 Q Okay. Miss Evans, I'm showing you a letter
22 now and I would ask you if you would identify that
23 without telling us what it is?

24 A Yes.

25 Q And how do you identify it?

JENNIFER EVANS - DIRECT

1 A It's a letter that I wrote.

2 Q What's the date on that letter?

3 A April 29th, 2003.

4 Q And is that the letter that you have referred
5 to previously as far as your written plea offer is
6 concerned?

7 A Yes. This is when, this is after our
8 meeting, shortly after the meeting. We had the
9 meeting I think like the week before these plea
10 offers were sent out, and this is where we offered
11 the fifteen years for him to plead guilty on June
12 2nd, 2002.

13 Q And I believe you have discussed there was
14 also another date he could have pled guilty, is
15 that correct?

16 A There was subsequent, there were so many
17 individuals involved in this case, it is not in
18 this letter and I don't remember the date, I'm sure
19 it's on the scheduling order, but it was subsequent
20 to this June 2nd date that we had in Laurens County
21 in which, although this letter said the plea offer
22 would expire by May 30th, we did allow Marshall, if
23 Marshall Miller wanted to come in that second plea
24 date, which I believe was in July or August of
25 2002, excuse me, 2003, it is incorrect in this

JENNIFER EVANS - DIRECT

1 letter, I put 2002 on the deadline for it but it
2 was 2003, that we did extend that, but that Laurens
3 County date came and went and after everybody left
4 I put on the record in front of this judge that all
5 plea offers were now withdrawn because if they
6 didn't plead guilty by that date because we were
7 scheduled to go to trial and we needed to know who
8 we were going to prepare to go to trial against and
9 what we had.

10 Q Did you ever make any specific offer to
11 Marshall Miller's attorney that he could plead to a
12 sentence with a range between eight and twelve
13 years?

14 A No. Mr. Varner did bring that range up to me
15 and I said that we would never offer that and he
16 said something, I don't know if I can go into what
17 he said, but he was the one that brought that up
18 and I said our offer has always been fifteen years.

19 Q And did Mr. Varner ever provide any plea
20 agreement or any definition of his terms of a plea
21 agreement to you in writing?

22 A Not that I'm aware of or that I can remember
23 off the top of my head.

24 Q On that first date that you refer to where
25 individuals who were involved in this conspiracy

JENNIFER EVANS - DIRECT

1 could plead guilty did Mr. Varner file a motion to
2 plead, to enforce a plea agreement at that time?

3 A Not that I'm aware of.

4 Q How about the second date?

5 A Not that I'm aware of. Both times Mr. Miller
6 came and did not want to plead guilty to our offer.

7 Q And what offer was that?

8 A The fifteen years.

9 MR. CROUT: I have no further questions of
10 this witness, Your Honor. I would like the record
11 to reflect, though, that the other item that Miss
12 Evans referred to I believe are the notes that we
13 have agreed are already in the discovery package
14 that was provided.

15 THE COURT: So noted, and cross-examination,
16 Mr. Varner.

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JENNIFER EVANS - CROSS

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CROSS EXAMINATION

3

QUESTIONS BY MR. VARNER:

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Q Miss Evans, would you agree that you and I had numerous conversations, particularly kind of at the beginning of this case, correct?

7

A Uh-huh (affirmative).

8

Q And that at that stage of the case you didn't know all the facts of it and the cast of characters, so to speak, at that stage and that I correspondingly had a lot of conversations with Frank O'Neil, even though you weren't privy to them, you knew Frank O'Neil and I were talking back and forth about what potential or possible information Marshall may have?

16

A Yes, I believe so.

17

Q Okay. In other words, for lack of a better term, you were getting, Frank was getting some ticklers as to what information he might be able to do and what value he might be able to give to the Attorney General's office to help your case or help bring in other people, not firm, but he might, he knows things about different people, you were getting that information?

25

A I don't want to say value but I believe he

JENNIFER EVANS - CROSS

1 was telling Lieutenant O'Neil some of the
2 information that if he cooperated he may be able to
3 provide to our office.

4 Q Okay. I said ticklers, maybe the better word
5 would be teasers, but that wasn't coming from
6 Marshall Miller, that was coming from me, I was
7 telling Frank potentially what kind of information
8 or what kind of individual he might be able to
9 deliver if we could work something out?

10 A To tell you the truth, I really don't believe
11 that Lieutenant O'Neil and I would have those
12 discussions. Usually the investigation is left up
13 to SLED, and so I don't believe -- he would only
14 have told me after we actually got the concrete
15 evidence but we might have had a discussion or two
16 about some things he might have known.

17 THE COURT: The question referring to Frank
18 was referring to Frank O'Neil?

19 MR. VARNER: That's correct, Your Honor.

20 THE COURT: Thank you. Excuse the
21 interruption.

22 BY MR. VARNER:

23 Q And you do recall, I believe it was February
24 the 13th, that was the date that Marshall was
25 actually being transported down to Laurens County

JENNIFER EVANS - CROSS

1 facilities for his initial or first debriefing?

2 A According to the report by Special Agent
3 Bragg, yes, on Thursday, February 13th is when they
4 did, but once again that's more of a SLED function,
5 they don't call me and tell me that they are
6 debriefing Marshall Miller that day necessarily, so
7 I don't know if I had knowledge of that or not.

8 Q Okay. And do you recall a phone call I made
9 to you that day where I indicated to you I was on
10 my way to Laurens?

11 A Was that the one about your driver's license?

12 Q No, it was just a couple months ago.

13 A I know we had numerous discussions. I can't
14 deny you called me that day but I don't
15 specifically recollect that.

16 Q Well, do you recall statements to the effect,
17 "I am on my way to meet with agents, I believe
18 Agent Sonnefeld and Agent Bragg, they have him in
19 Laurens or they are going to transfer him to
20 Laurens," and the meeting was going to occur at
21 3:00 or 4:00 in the afternoon and I had to talk to
22 you on the way down there? It was about a 28
23 minute phone call on my cell phone.

24 A I'm sure that it occurred. I do remember
25 you talking to me while you were going down to go

JENNIFER EVANS - CROSS

1 visit Marshall Miller. Like I said, we had other
2 conversation at another time you were down there
3 and some difficulty you had seeing him, so we did
4 have numerous discussions about when you were going
5 down to talk to Marshall.

6 Q Okay. And do you recall my relaying to you
7 that Marshall wanted to get under five years?

8 A Yes -- well, no, I shouldn't say I remember
9 that, but if you had said that I know I would have
10 laughed that off and said there was no way.

11 Q Well --

12 A But I don't remember you saying Marshall
13 wanted under five years.

14 Q Well, that was going to be my next question.
15 You found that proposition to be preposterous,
16 there is no way you would have even considered
17 giving him under five years?

18 A Well, I don't remember you offering that,
19 saying that Marshall wanted under five years, but I
20 know from what I knew of his involvement that, and
21 his record, that I would not have offered five
22 years. But as I repeatedly told you, because you
23 did throw out a lot of numbers while we were
24 talking, that we are not giving him anything, all I
25 can tell you is that we will consider his

JENNIFER EVANS - CROSS

1 cooperation, and this happens all the time in these
2 cases, defense attorneys try to throw out numbers,
3 and all the numbers could have been thrown out to
4 me but I know that we never offered him anything
5 and I told you the official plea offer would come
6 after a full debriefing and we would send it out in
7 letter form as we do in all our cases.

8 Q Didn't you in fact, reiterating what you
9 said, you said you couldn't get into a specific
10 number at this time, depending on what Marshall
11 said?

12 A There was no specific offer made except for
13 the fact that if he fully cooperated and continued
14 to cooperate we would take that into account in
15 giving a plea offer.

16 Q So, the eight to twelve number was just
17 something I mentioned?

18 A I believe at some point you did mention an
19 eight to twelve number.

20 Q Okay.

21 A But once again, if you, when you did mention
22 that number I repeated again that we have not made
23 any official offer and we don't, and I don't like
24 to talk about numbers.

25 Q I'm not talking about a specific number, I'm

JENNIFER EVANS - CROSS

1 talking about a range.

2 A I remember you saying that range.

3 Q Are you taking the position you didn't even
4 agree to a range?

5 A I did not agree to a range, no.

6 Q Okay. Do you recall making a statement to me
7 to the effect that, "Kim, I can give you the names
8 of other defense lawyers, they will tell you I'm
9 good for my word, I always treat them fairly"?

10 A I told you that we will treat people fairly
11 and that if people fully cooperate, that there will
12 be a plea offer and I will take that into
13 consideration, but I never discussed specific
14 numbers.

15 Q Would you answer my question, then?

16 A I did say that.

17 Q No, my question to you was, do you recall
18 telling me that I could check with other lawyers
19 you have dealt with before to confirm you are good
20 for your word, or statement to that effect?

21 A I can't remember that specific one but like I
22 said, these Grand Jury cases are a little bit
23 different than your normal prosecution, and that I
24 know that I have dealt with these cases, and most
25 attorneys that I have dealt with I believe would

JENNIFER EVANS - CROSS

1 have said at the end that I treated them fairly
2 and, I mean, I can say now that I would live up to
3 my word of what I would have said.

4 Q Okay. Do you recall we were down in Laurens
5 with Mr. Hood, standing outside, when he had first
6 been appointed in the case, do you recall us
7 walking outside?

8 A Yes, we walked outside.

9 Q And do you recall me saying to you,
10 "Jennifer, we had a deal in the eight to twelve
11 range, fifteen is not in the range"? Do you recall
12 me making that statement?

13 A I don't recall you making that statement. I
14 do remember you telling me that your client told
15 you that Frank O'Neil made some sort of offer to
16 him when he was originally arrested but, no, I have
17 never made an eight to twelve year offer to you at
18 all.

19 Q Well, let's go back to that, to the Frank
20 O'Neil thing. What I had indicated to you or what
21 you were aware of was that Marshall had an
22 understanding the first time he was arrested that
23 if he had cooperated then that he could get
24 fifteen, he didn't have it necessarily in a deal,
25 but that is what they were offering at the very

JENNIFER EVANS - CROSS

1 beginning, was fifteen?

2 A Well, I don't know what was in Marshall
3 Miller's mind. I know what you told me he told
4 you.

5 Q Okay. Was that the essence of what I told
6 you, Marshall thought he was starting at fifteen, a
7 worst case scenario, so to speak?

8 A Yes, but that was never, as you just heard
9 from the testimony of Lieutenant O'Neil, that was
10 something that Marshall Miller made up and it was
11 never offered, the fifteen years, when he was
12 originally arrested.

13 Q You weren't there.

14 A No, but you just heard from Lieutenant
15 O'Neil.

16 Q You weren't there?

17 A No, I certainly was not there.

18 Q And do you recall a statement to the effect,
19 that you made in front of Mr. Hood out there in
20 Laurens, "Kim, fifteen is in the twelve, eight to
21 twelve range"?

22 A You were saying that Marshall Miller was
23 hoping to get twelve years, and this was all the
24 time, of what you said Marshall Miller wanted, and
25 I --

JENNIFER EVANS - CROSS

1 MR. VARNER: Your Honor, if you could
2 instruct her just to answer the question, she can
3 explain it later.

4 A Yes.

5 Q My question was, do you recall making a
6 statement, "Kim, fifteen is in the eight to twelve
7 range"?

8 A I didn't, no, I did not say that. But I can
9 explain what I did say. You said, "My client was
10 hoping to get about twelve years," and I said,
11 "Well, fifteen years is close to what he was hoping
12 for," but it was clearly at all times something
13 that your client wanted and never anything that was
14 offered by the State, nor did he even live up to
15 his end of what we had offered him when we offered
16 him this plea offer.

17 Q All right. How did he not live up to it?

18 A Well, for one thing, I hate to bring it up,
19 one part of cooperating with our office is that,
20 and part of the written plea agreement we have in
21 all these cases is that individuals would agree to
22 take a polygraph. Lieutenant O'Neil tried to
23 contact you several times but Marshall Miller
24 refused to do that.

25 Q Do you recall having him examined by a SLED

JENNIFER EVANS - CROSS

1 doctor, or doctor on behalf of SLED who said he was
2 medically unable to take it?

3 A Yes.

4 Q And you recall he was taken in front of a
5 polygraph examiner and the polygraph examiner
6 wouldn't give it to him because he was afraid of
7 the medical risk?

8 A Right. That was when he was in jail, and
9 after he got out of jail that's when Lieutenant
10 O'Neil tried to give you phone calls about that.
11 Additionally, there was information that
12 subsequently we found out has not been true, that
13 Marshall Miller -- well, not true, but individuals
14 that we know he had information on, and one of them
15 being Tracy Davis, who admitted her involvement
16 yesterday, Marshall Miller said adamantly she was
17 not involved one bit whatsoever and subsequently we
18 found out that not to be true.

19 Q Are you taking the position that of all the
20 people who cooperated, everybody told 100 percent
21 of the truth?

22 A I haven't been involved in this case since
23 Laurens County but --

24 Q Okay.

25 A What I'm saying is as far as knowing that one

JENNIFER EVANS - CROSS

1 person knew a specific thing such as that when we
2 knew they had the information, I'm saying that I
3 did not personally believe he was being honest when
4 it came to what he was talking about with Tracy
5 Davis. That is just one specific. I have not read
6 his statement or anything in a long time but that
7 is just one specific that stands out in my mind.

8 Q You are talking about him not following the
9 agreement. You had numerous statements that people
10 were dealing drugs and doing drug deals in 1998 to
11 the early part of 1999?

12 A What, now?

13 Q You had statements from other people that
14 they were doing drug deals with Marshall in '98 and
15 the early part of 1999?

16 A I specifically can't remember what you're
17 talking about with those statements.

18 Q Well, we don't need to try the whole case.
19 You don't dispute there were people saying they had
20 drug deals with Marshall during that period of
21 time?

22 A If that's what's in the discovery, I'm not
23 disputing it. It's been a long time since I have
24 read this discovery. I don't remember the specific
25 time dates but if that's what's in the discovery,

JENNIFER EVANS - CROSS

1 I'm not trying to dispute that.

2 Q Do you remember a discussion you and I had
3 over the fact that he was in jail during that
4 period of time, that those statements couldn't
5 possibly be true, the guy was in jail, he wasn't in
6 Abbeville, he wasn't out running the streets?

7 A I don't, I honestly don't remember that
8 conversation.

9 Q Okay. Well, the last part was you said, and
10 the question was had I ever filed a motion. Didn't
11 you know and didn't you make the statement you were
12 painfully aware that at the hearing down in Laurens
13 on the plea agreement that Marshall and I were
14 having a conflict? If you don't recall --

15 A I don't -- what do you mean, you and Marshall
16 were having a conflict?

17 Q Over the argument of the eight to twelve
18 versus him accepting fifteen.

19 A I believe you were trying to get him to plead
20 guilty but I don't know what you and Marshall
21 Miller specifically talked about, no.

22 Q Didn't I make you aware that he was going to
23 hire another lawyer to file a motion?

24 A Yes, you did say you weren't getting along.
25 Well, I think it was more his family you were

JENNIFER EVANS - CROSS

1 having problems with than it was specifically
2 Marshall Miller at that point.

3 Q Okay. And didn't I advise you at that time
4 that, because I was a potential witness, that I
5 advised him he needed to get a separate lawyer to
6 file that motion to enforce the plea agreement?

7 A To be honest, the only time I remember you
8 saying you informed him to get another lawyer was
9 on a forfeiture matter. You asked his mother to
10 hire another lawyer on a forfeiture matter. I
11 don't know you said you told him to hire another
12 lawyer in regard to the criminal case.

13 Q That was in regard to his mother's case?

14 A Right. That is the only conversation I
15 remember about him hiring another lawyer.

16 MR. VARNER: That's all I have.

17 THE COURT: Redirect examination, Mr. Crout?

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JENNIFER EVANS - REDIRECT**REDIRECT EXAMINATION****QUESTIONS BY MR. CROUT:**

Q Mrs. Evans, did you obtain a statement from Marshall Miller ultimately?

A Law enforcement, prior to any plea agreement, obtained a statement from Marshall Miller, yes.

Q And you had indicated he was looking at a 25 year sentence if he was convicted?

A Yes.

Q And you took that statement into consideration in offering the fifteen, is that correct?

A Exactly.

MR. CROUT: No further questions from this witness.

THE COURT: Anything on recross?

MR. VARNER: Nothing further, Your Honor.

THE COURT: Thank you very much, madam, come down.

(Witness excused).

THE COURT: Call your next witness.

MR. CROUT: Your Honor, at this time the State would call Special Agent Chester Bragg of the South Carolina Law Enforcement Division.

THE COURT: Come around, please.

CHESTER BRAGG - DIRECT

1 CHESTER BRAGG,
2 after being first duly sworn testified as follows:

3 THE CLERK: Have a seat and state your full
4 name for the record.

5 THE WITNESS: Chester Bragg.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. CROUT:

8 Q Special Agent Bragg, where are you employed?

9 A State Law Enforcement Division.

10 Q And have you had the opportunity to be
11 involved in the case that is commonly referred to
12 as Crankdown?

13 A Yes, sir.

14 Q And is that a case, does that case involve an
15 individual by the name of Marshall Miller?

16 A Yes, sir.

17 Q What was your involvement, what was your role
18 in that particular case?

19 A I was the co-agent with, along with Agent
20 Sonnefeld.

21 Q And how did you have the opportunity to come
22 in contact with Mr. Miller initially?

23 A He was arrested in reference to indictments
24 in reference to his case.

25 Q And is that the first time that you had seen

CHESTER BRAGG - DIRECT

1 Marshall Miller?

2 A Yes, sir.

3 Q Were you subsequently contacted by anyone
4 about taking a statement from Marshall Miller?

5 A Yes. By Lieutenant Frank O'Neil.

6 Q And how was it arranged that that statement
7 would be taken?

8 A We were to transport Marshall Miller from
9 Abbeville Jail where he was being housed and take
10 him to another location for reference to
11 interviewing him.

12 Q Did you meet with Marshall Miller in Laurens
13 County at the jail, at the jail in Laurens County?

14 A It was at the Laurens City Police Department.

15 Q At the Laurens City Police Department, and is
16 that the first meeting that you had with him?

17 A Yes, sir.

18 Q And who was present at that meeting?

19 A Agent Sonnefeld and Marshall Miller's
20 attorney Kim Varner.

21 Q And at that meeting did you make any plea
22 offer or any representation of a plea offer to Mr.
23 Miller or to Mr. Varner?

24 A No, sir.

25 Q Did you take any statements from Marshall

CHESTER BRAGG - DIRECT

1 Miller during that meeting?

2 A Yes, sir, we did.

3 Q And was his attorney present when you took
4 that statement?

5 A Not when we started taking the statement. He
6 left prior to us starting to take a statement.

7 Q And at that time did you provide him with his
8 Miranda rights as far as his rights regarding
9 giving a statement are concerned?

10 A Yes, sir, we advised him of his rights.

11 Q And during that interview was Mr. Miller
12 relaxed?

13 A Yes, sir.

14 Q Was he coherent?

15 A Yes, sir.

16 Q Did he seem to be aware of what was taking
17 place?

18 A Yes, sir.

19 Q Did you threaten him in any way?

20 A No, sir.

21 Q Did you offer any bodily harm to him
22 whatsoever?

23 A Not at all, no, sir.

24 Q And is it your understanding that his
25 attorney was aware that you were interviewing him

CHESTER BRAGG - DIRECT

1 on that date?

2 A Yes, he was.

3 Q And did you receive information that you
4 ultimately used in his statement or used in the
5 document, the materials that you prepared for this
6 case?

7 A Yes, sir.

8 Q How long did that interview last?

9 A That initial interview lasted, I'm not sure
10 exactly, approximately a couple hours.

11 Q And was Agent Sonnefeld in the same room with
12 you?

13 A Yes, sir.

14 Q Was she in the same room with you during the
15 entire interview?

16 A Yes, sir.

17 Q Who was taking notes?

18 A I was.

19 Q Was anybody else in the room while this was
20 taking place?

21 A I'm not sure. I believe Bill Wilhite was
22 there, he was a detective with Laurens City Police
23 Department.

24 Q Did he speak to or have any conversations
25 with Marshall Miller?

CHESTER BRAGG - DIRECT

1 A No, sir.

2 Q Could you describe the room where this
3 interview took place?

4 A The room where we interviewed Mr. Miller, I
5 believe it was in their, where they hold their city
6 court, just like a courtroom but it's not as big as
7 this room.

8 Q And was he sitting down while you interviewed
9 him?

10 A Yes, sir.

11 Q What kind of chair, do you recall what kind
12 chair it was?

13 A I can't recall exactly.

14 Q What was he wearing?

15 A He was wearing the Abbeville Detention
16 jumpsuit, orange in color.

17 Q At that time did he ask you for any, did he
18 need anything, cigarettes, food, anything like
19 that?

20 A I believe we fed him, I believe Agent
21 Sonnefeld ordered pizza and we fed him.

22 Q At that time?

23 A Yes, sir.

24 Q Now, you indicated that you had interviewed
25 him on two other occasions. On the second occasion

CHESTER BRAGG - DIRECT

1 how did that interview take place?

2 A He was still being housed at the Abbeville
3 City Jail and I would go down and pick him up, and
4 for the second and third interview we took him to a
5 hotel in Greenwood County.

6 Q And did you transport him in your law
7 enforcement vehicle?

8 A Yes, sir.

9 Q And what is that vehicle?

10 A It's a Dodge Durango.

11 Q Was he handcuffed while you were transporting
12 him?

13 A Yes, he was handcuffed to the front.

14 Q When you say to the front, do you mean his
15 hands were in front of him?

16 A In front of him.

17 Q Was he in the back seat or --

18 A Front seat.

19 Q Was he relaxed?

20 A Yes.

21 Q Calm?

22 A Yes, sir.

23 Q Did he understand what was taking place?

24 A Yes.

25 Q And that's when you transported him to a

CHESTER BRAGG - DIRECT

1 motel, is that correct?

2 A That's correct.

3 Q How did you get him in and out of the motel?

4 Were you concerned about anybody seeing you taking
5 a prisoner in a motel?

6 A Agent Sonnefeld went and secured the room,
7 the room was in the back of the hotel, there were
8 no cars back there, so when I pulled up, you can
9 pull directly in front of the room that you will be
10 in and no one else was around, so we got him out of
11 the car and took him into the hotel room.

12 Q During that interview did you provide him
13 with cigarettes or food or anything of that nature?

14 A Yes, sir, I believe he smoked a couple
15 cigarettes.

16 Q And was he handcuffed, or did you take the
17 handcuffs off?

18 A Once we got in the room I took the handcuffs
19 off.

20 Q What was he wearing?

21 A The same, jail jumpsuit.

22 Q Did he sit on the chair, or bed?

23 A He sat in the chair. He could have sat on
24 the bed if he wanted.

25 Q And you had made him aware of his Miranda

CHESTER BRAGG - DIRECT

1 rights at that time?

2 A He was aware of his Miranda rights, yes.

3 Q During that second interview did you offer
4 him any deals for the information that he was
5 providing you?

6 A No, sir.

7 Q Would you have even been in a position to
8 offer him any deals?

9 A No, sir.

10 Q Then the second interview, outside the
11 information that he provided to you orally, did he
12 give you any other information?

13 A Yes, sir. When I picked him up from the
14 jail, I can't remember exactly, it was either the
15 second or the third time we interviewed him, when I
16 picked him up he handed me some legal size paper
17 and he said he had written it out, written what was
18 on it while he was in jail.

19 Q Did you ask him to do that?

20 A No, sir.

21 Q During the second interview, from the time
22 you picked him up, until the time you took him back
23 to the jail, did you threaten him in any way?

24 A No, sir.

25 Q Did you use any type of physical coercion

CHESTER BRAGG - DIRECT

1 against him at all?

2 A No, sir.

3 Q Psychological coercion?

4 A No, sir.

5 Q Did he appear to be afraid?

6 A No, sir.

7 Q Did his statement appear to not be voluntary?

8 A No, sir.

9 Q The third interview that took place, did you
10 follow that same process?

11 A Yes. I would pick him up at the Abbeville
12 Jail and take him to a hotel in Greenwood County.

13 Q And during that interview was he aware of,
14 did you make him aware of his Miranda rights?

15 A I can't recall if I did but he was aware of
16 it. We had mirandized him prior.

17 Q And as far as the interviews that were taking
18 place, was it your understanding that they were at
19 the direction of and with the understanding and
20 support of his attorney?

21 A Yes, sir.

22 Q Did you ever speak with his attorney directly
23 during any of these other interviews that you
24 referred to?

25 A Yes, sir. I think after the first interview,

CHESTER BRAGG - DIRECT

1 when I took Mr. Miller back, I believe at some
2 point in time I called Mr. Varner and told him that
3 we had spoken with Mr. Miller.

4 Q And did he agree for you to continue in that
5 interviewing process?

6 A Yes, sir.

7 Q During the third interview, once again just
8 to be on the safe side, did he appear to be
9 relaxed?

10 A Yes, sir.

11 Q Did he understand what was going on?

12 A Yes, sir.

13 Q You didn't threaten him with bodily harm in
14 any way?

15 A No, sir.

16 Q Psychological persuasion?

17 A No, sir.

18 Q Did you provide him with food?

19 A I can't recall if we did. If he had wanted
20 something to eat we would have given him something
21 to eat.

22 Q All right. And did you allow him to smoke?

23 A Yes, sir.

24 Q Did you allow him to smoke in your car?

25 A Yes, sir, and I don't let people smoke in my

CHESTER BRAGG - DIRECT

1 car.

2 Q Why was it necessary to take him out of the
3 jail that he was in, in order to interview him?

4 A Mr. Miller indicated that he did not want to
5 be interviewed in Abbeville anywhere for fear of
6 someone knowing him, seeing him with law
7 enforcement, so we decided to take him outside of
8 Abbeville County for the reasons of this interview.

9 Q And at anytime during any of these three
10 interviews that you're referring to, that you have
11 referred to in your testimony, did he ever say,
12 "Stop, I don't want to do this anymore"?

13 A No, sir, he didn't.

14 Q After the third interview took place did you
15 have any contact with Marshall Miller after that?

16 A Yes, sir. I believe it was after his bond
17 hearing, I believe. I had to transport him to
18 Columbia for his bond hearing.

19 Q But none of the information you had in either
20 the letter he provided or the statement you
21 prepared involves any conversations that took place
22 during that transport, is that correct?

23 A That's correct.

24 Q And after that third interview did you speak
25 with Mr. Varner?

CHESTER BRAGG - DIRECT

1 A I'm sure I probably have spoken with him,
2 yes, at some point.

3 Q And I want to go back, you had indicated that
4 you had transported him for his bond setting. Was
5 that a bond setting or bond reduction?

6 A Bond reduction.

7 Q Bond reduction?

8 A Yes.

9 MR. CROUT: Your Honor, I have no further
10 questions.

11 THE COURT: Cross-examination, Mr. Varner.
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CHESTER BRAGG - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. VARNER:

Q Agent Bragg, it's a fair statement I never discussed or tried to negotiate with you in any way, shape or form about Marshall's sentence?

A No, sir.

Q You clearly knew you didn't have the authority to do that and in discussions you and I even talked about I knew you didn't have that authority?

A That's correct.

Q There wasn't any question about that between me and you, was there?

A That's correct.

Q And wasn't it a further statement that, or further understanding that for whatever reason, Marshall trusted you and liked you and he got along with you?

A For whatever reason, it appeared that way.

Q For whatever reason that was, he thought you were a good guy, as far as he could think a SLED agent was a good person?

A I guess so, yes.

Q Okay. And isn't it a fair statement that Marshall not only gave the statements but Marshall

CHESTER BRAGG - CROSS

1 was a rather eager participant?

2 A He voluntarily gave a statement to us.

3 Q Okay. Well, how many of these other people
4 who were interviewed not only gave you statements
5 but gave you handwritten stuff on top of it, how
6 many of them did that?

7 A No one gave us handwritten statements, to my
8 knowledge.

9 Q So, Marshall was the only one who not only
10 sat down and told you everything, but he even wrote
11 it down and gave you more detail to make sure he
12 had gotten it all out so that he didn't forget it
13 or so he may give you extra information and speed
14 up the process?

15 A He was the only one that gave me a
16 handwritten statement, yes.

17 Q Okay. One of the things that Marshall wanted
18 to do, Marshall, number one, wanted to get out on
19 bond but he wanted to go be wired and he said he
20 could deliver several other crank cooks, didn't he?

21 A He indicated that, yes.

22 Q Okay. But he further indicated to you he
23 would have to be out and be wired and he could go
24 get other people for you?

25 A Yes, sir.

CHESTER BRAGG - CROSS

1 Q And as part and parcel of that, when you went
2 down to Columbia to his bond reduction hearing you
3 in fact gave some testimony to the Court, didn't
4 you?

5 A Yes, sir.

6 Q And one of the things you indicated to Judge
7 Floyd was that you had felt Marshall had been very
8 forthright and very forthcoming and had volunteered
9 a lot of information, had even given a statement
10 and wanted to go out and actually be wired and bust
11 some big time crystal meet dealers, that is what
12 Marshall had expressed to you, you told that to the
13 Court, didn't you?

14 A I don't remember those exact words. I also
15 don't remember testifying that he can go out and do
16 other people. I don't remember testifying to that.

17 Q Well, not to pin you down to words but do you
18 remember indicating to the Court, first off, that
19 Marshall had fully cooperated, he had given useful
20 and full information?

21 A Yes, sir.

22 Q And Marshall had indicated, whether you
23 agreed or not, he had indicated he wanted to go out
24 on bond and be wired and bust other people? That
25 is what Marshall was saying to you, whether true or

CHESTER BRAGG - CROSS

1 not true, that is what he was indicating to you?

2 A Yes, sir.

3 Q Okay. And at the point in time when this
4 interview began, the first interview on February
5 the 13th, do you recall me coming in late?

6 A Yes, sir.

7 Q And did I explain to you and Agent Sonnefeld
8 that I was still in the parking lot talking to the
9 Attorney General's office, that is why I was a few
10 minutes late, that I was still negotiating back and
11 forth with Jennifer?

12 A I believe you said that, yes, sir.

13 Q Okay. And when I initially, I don't know
14 where the actual interview took place, but when we
15 initially met at the Laurens County Sheriff's
16 Department, I guess, or city police, as you face
17 the front of it, everybody pulls in to I guess what
18 you and I would refer to as the back of the parking
19 lot?

20 A There is only one parking lot and I'm not
21 sure if that's the back.

22 Q Well, just so we get the bearings, would you
23 call that the back of the building, or the front?

24 A I believe it's the back, yes.

25 Q And you come around to the side to go into a

CHESTER BRAGG - CROSS

1 side door, you go down a little hallway, is that
2 correct?

3 A Yes, sir.

4 Q And there is a small office on the right, as
5 a matter of fact I believe it was, it might have
6 been Wilhite's office, where we initially met?

7 A That's correct.

8 Q Okay. And after I left did you take him down
9 the hall a little bit into a larger room, the
10 courtroom, is that where you actually interviewed
11 him?

12 A I believe that is where we interviewed him,
13 yes.

14 Q When I first got there you and Agent
15 Sonnefeld were present with Marshall Miller, is
16 that correct?

17 A That's correct.

18 Q And I asked to speak to Marshall privately
19 for just a few moments?

20 A That's correct.

21 Q And the two of you left. And when you came
22 back in do you recall me going through what I call
23 the ground rules with you and Agent Sonnefeld and
24 Marshall all present so that everybody had a clear
25 understanding of what the, quote, ground rules were

CHESTER BRAGG - CROSS

1 going to be, what the risks were, and things of
2 that nature?

3 A Yes, sir.

4 Q And whether I misunderstood it or whether it
5 was correct or not, do you recall me telling
6 Marshall Miller, "Marshall, I just got off the
7 phone with Jennifer. If you testify or you give
8 cooperation," that, "you are in an eight to twelve
9 range and expect the twelve, you're in an eight to
10 twelve range, you don't have to do this, this is
11 your choice, you're freely and voluntarily entering
12 into this, this is going to be your decision if you
13 will take that range," whether I misunderstood my
14 statement with Jennifer or whether that was correct
15 or even if that was a lie, do you recall me making
16 the statement to Marshall to that effect?

17 A I do not recall any numbers being mentioned
18 at all.

19 Q Okay, all right. And after that you did
20 advise Marshall of his rights?

21 A Yes, sir.

22 Q He signed a waiver and I left --

23 A Yes, sir.

24 Q -- shortly thereafter. Do you recall me
25 coming back?

CHESTER BRAGG - CROSS

1 A (No response).

2 Q I'll help your memory. Didn't Marshall ask
3 me to get a particular brand of cigarettes for him
4 and I went and got him a pack of cigarettes and
5 like a Honeybun or something?

6 A I can't remember if you did or not.

7 Q Okay, fair enough. And the other meeting, I
8 was not actually present at the beginning, the
9 middle or the end in any way, shape or form,
10 correct?

11 A Correct.

12 MR. VARNER: That's all the questions I have.

13 THE COURT: Redirect?

14 MR. CROUT: Your Honor, I don't have any, I
15 may not have any questions but I do have to inquire
16 of the Court. At this point I would regularly have
17 the agent actually read the entire statement. It
18 is rather lengthy, it also involves some Bruton
19 issues as it relates to Mr. Wise's client. It
20 also, as I discussed with Mr. Varner, may involve
21 some Lyle issues to the extent that the handwritten
22 letter refers to other activities that Mr. Miller
23 was involved in relating to, or not relating to
24 this particular case. At this time I would have
25 the agent read the statement in the record but if

CHESTER BRAGG - CROSS

1 the Court would prefer to do that at another time
2 in order to expedite the voluntariness
3 determination, I will do that, and I would not be
4 adverse to doing that because as I indicated, the
5 statement still needs to be modified to some degree
6 by Mr. Wise and by Mr. Varner.

7 THE COURT: So, those steps have not been
8 taken yet?

9 MR. CROUT: Not yet, Your Honor, that's
10 correct.

11 THE COURT: Any other questions of the
12 witness, Mr. Varner?

13 MR. VARNER: None, Your Honor.

14 THE COURT: Then, thank you, Mr. Crout. Mr.
15 Varner, would you address the Court with regard to
16 your position on the admissibility of these two
17 documents?

18 MR. CROUT: Your Honor, there is one thing.
19 I will be calling one more witness but I, as to the
20 voluntariness, so that's a determination we're
21 handling here.

22 THE COURT: Very well.

23 MR. CROUT: But since Agent Bragg actually
24 took the statement and obtained the letter, he's
25 the person that I would enter them in through, but

CHESTER BRAGG - CROSS

1 since Agent Sonnefeld was also present during the
2 interview, I would like to have her testify, too,
3 because she will have some knowledge.

4 THE COURT: All right. The court does not
5 feel that it's necessary that Agent Bragg read the
6 statements. The jury is not present here, he could
7 do that, but it would be time consuming and there
8 have not been redactions and/or other things done
9 to the statements that will have to be done before
10 they are actually introduced. If you want him to
11 read the statements in their entirety, Mr. Varner,
12 the Court will have him do that. That's your
13 privilege, we will leave that to you.

14 MR. VARNER: Your Honor, my position is, and
15 I dare say it will take an hour to read all that, I
16 don't see the necessity for it at this point in
17 time and I would be willing to so stipulate the
18 statements being referred to are in fact a
19 handwritten statement and notes of the agent
20 contained in the discovery, for purposes of
21 identification. We're talking about the same
22 statements themselves, but depending on the ruling
23 from this Court, we will deal with which part of
24 the purported confession, statements, come in and I
25 think it would be more appropriate to handle it in

CHESTER BRAGG - CROSS

1 that way rather than take up an hour of the Court's
2 time on that issue. I think we're all referring to
3 the same document.

4 MR. CROUT: That is correct, Your Honor.

5 THE COURT: Very well. And thank you, Mr.
6 Varner, thank you, Mr. Crout. The Court was
7 unaware that you intended to call an additional
8 witness. The Court should have been aware that you
9 would do that.

10 Anything else of this witness, Mr. Varner?

11 Anything else?

12 MR. VARNER: Nothing further of this witness,
13 Your Honor.

14 THE COURT: Mr. Crout?

15 MR. CROUT: Nothing further, Your Honor.

16 THE COURT: Thank you, Mr. Witness. Come
17 down, and watch your step.

18 (Witness excused).

19 THE COURT: Call your next witness.

20 MR. CROUT: Yes, Your Honor. May it please
21 the Court, the state calls Special Agent Connie
22 Sonnefeld of the South Carolina Law Enforcement
23 Division.

24

25

CONSTANCE SONNEFELD - DIRECT

1 **CONSTANCE SONNEFELD,**
2 **after being first duly sworn testified as follows:**

3 **THE CLERK: Have a seat and state your full**
4 **name for the record.**

5 **THE WITNESS: My name is Constance Sonnefeld.**

6 **DIRECT EXAMINATION**

7 **QUESTIONS BY MR. CROUT:**

8 **Q Agent Sonnefeld, where are you employed?**

9 **A State Law Enforcement Division.**

10 **Q And were you involved in the State Grand Jury**
11 **investigation referred to for purposes of this area**
12 **as Crankdown?**

13 **A Yes, sir, I am.**

14 **Q And as a result of your -- excuse me. And**
15 **what exactly was your involvement in that case?**

16 **A I was the co-case agent.**

17 **Q Who's the other case agent?**

18 **A Special Agent Bragg.**

19 **Q As a result of your involvement did you have**
20 **the opportunity to interview an individual by the**
21 **name of Marshall Miller?**

22 **A I was present during the interview.**

23 **Q And when you say you were present during the**
24 **interview, did you ask any questions?**

25 **A No. Chester did, Special Agent Bragg asked**

CONSTANCE SONNEFELD - DIRECT

1 most of the questions.

2 Q Were you present at the first meeting on
3 February 13th at the Laurens County Detention
4 Center, Laurens County facilities, were you present
5 there?

6 A Yes, sir.

7 Q And how was your presence there, or how did
8 your presence there come about?

9 A Special Agent Bragg and I were both asked to
10 go, asked by Lieutenant Frank O'Neil to go to
11 interview Marshall Miller.

12 Q And prior to that meeting had you spoken with
13 Mr. Varner?

14 A I don't believe that I did.

15 Q And prior to that meeting have you ever had
16 any conversations with Marshall Miller?

17 A No, sir.

18 Q So, outside of the direction of, I believe,
19 who you referred to as your supervisor, Frank
20 O'Neil, you had had no contact with Mr. Varner or
21 Mr. Miller?

22 A I had seen them at bond hearings but as far
23 as one on one conversations, like that, no, sir.

24 Q And were you present with Mr. Miller, with
25 his attorney and Special Agent Bragg when the

CONSTANCE SONNEFELD - DIRECT

1 meeting took place in Laurens County?

2 A Yes, sir.

3 Q And were you present for that entire meeting?

4 A Yes, sir.

5 Q Did you make any promises of a plea agreement
6 in exchange for Marshall Miller's cooperation?

7 A No, I did not.

8 Q Did you make any promises relative to
9 Marshall Miller's cooperation?

10 A That it would be taken into consideration.

11 Q During the time that you were in Laurens
12 County was Mr. Miller's attorney with you all the
13 whole time?

14 A Not the entire time, no, sir.

15 Q And outside of the presence of Mr. Miller's
16 attorney did you make any promises to Mr. Miller
17 directly --

18 A No, sir.

19 Q -- about a plea agreement, any time period?

20 A No, sir.

21 Q Would you have even been in a position to do
22 that?

23 A No, sir.

24 Q During the process in which Mr. Miller was
25 interviewed did he appear relaxed?

CONSTANCE SONNEFELD - DIRECT

1 A Yes, sir.

2 Q Did he appear coherent?

3 A Yes, sir.

4 Q Did he understand what was taking place?

5 A Yes, sir.

6 Q Did he understand, in your mind, why he was
7 there?

8 A Yes, sir.

9 Q And as far as you know, was he made aware of
10 his Miranda rights?

11 A Yes.

12 Q And did you all provide him with cigarettes
13 or food or anything of that nature?

14 A Yes, sir.

15 Q And did he ask you for those things?

16 A He didn't ask. I ordered a pizza and he had
17 some.

18 Q So, you ordered it for yourself and you
19 shared it with him?

20 A Yes, sir, I did.

21 Q And did you use any type of physical
22 persuasion --

23 A No.

24 Q -- to make him provide you information?

25 A No, I did not.

CONSTANCE SONNEFELD - DIRECT

1 Q Any type of psychological persuasion?

2 A No, sir.

3 Q Was he -- where was he sitting?

4 A In a chair next to the table.

5 Q All right. And how long did you all
6 interview him?

7 A A couple hours.

8 Q Is there any question in your mind that the
9 information he was providing was not being provided
10 voluntarily?

11 A No, sir.

12 Q Were you with him the second time that he was
13 interviewed, I believe as Agent Bragg referred to,
14 in the motel?

15 A Yes, sir, I was.

16 Q Did you transport him from the jail to the
17 motel?

18 A No, I did not.

19 Q What was your role before he got to the
20 motel?

21 A To rent the hotel room.

22 Q Did you ask any questions when, or did you
23 ask, excuse me, did you interview him or did you
24 handle the interview, the first interview that took
25 place at the motel?

CONSTANCE SONNEFELD - DIRECT

1 A No, I did not.

2 Q Did you ask him any questions?

3 A Not that I can recall.

4 Q Did you observe the entire interview from
5 start to finish?

6 A Yes, sir, I did.

7 Q And is it your understanding he was made
8 aware of his Miranda rights?

9 A Yes, he was aware.

10 Q In your mind he knew why he was there?

11 A Yes, sir.

12 Q The best you could tell?

13 A Yes, sir.

14 Q And did he appear relaxed?

15 A Yes, sir.

16 Q What was he wearing?

17 A Jail outfit.

18 Q Was he handcuffed?

19 A No, he was not.

20 Q Did he sit in a chair?

21 A Yes, he did.

22 Q Did he sit on the bed?

23 A On occasion.

24 Q Did he smoke?

25 A Yes, he did.

CONSTANCE SONNEFELD - DIRECT

- 1 Q Did he have something to eat?
- 2 A Yes, he did.
- 3 Q Did you coerce him to give you any
- 4 information?
- 5 A No, I did not.
- 6 Q No physical coercion?
- 7 A No, sir.
- 8 Q No psychological coercion?
- 9 A No, sir.
- 10 Q And did you transport him back to the jail
- 11 when that interview concluded?
- 12 A I did not.
- 13 Q At anytime during that interview did he say,
- 14 "I don't want to do this anymore, I don't want to
- 15 talk to you, I don't want to give you any more
- 16 information, please take me back"?
- 17 A No, he did not.
- 18 Q Who made the decision to terminate the
- 19 interview?
- 20 A We went through the process and we were
- 21 finished. He didn't have any further information
- 22 he wanted to give.
- 23 Q And you were present the third time he was
- 24 interviewed, is that correct?
- 25 A Yes, sir.

CONSTANCE SONNEFELD - DIRECT

1 Q And did it take place similar to the way the
2 second interview took place?

3 A Yes, sir.

4 Q You rented a room?

5 A Uh-huh (affirmative).

6 Q Special Agent Bragg transported him?

7 A Yes, sir.

8 Q When he appeared that time, as for as you
9 know, was he made aware of his Miranda rights?

10 A He was aware.

11 Q Was he relaxed?

12 A Yes, he was.

13 Q Did he smoke?

14 A Yes, he did.

15 Q Did he have something to eat?

16 A I believe he did.

17 Q Did you use any kind of physical coercion to
18 make him give you information?

19 A No, sir.

20 Q Did you give him any, did you apply any kind
21 of psychological persuasions or psychological
22 influence to make him give you a statement?

23 A No, I did not.

24 Q And who decided to terminate the last
25 interview?

CONSTANCE SONNEFELD - DIRECT

1 A We were finished. It was just, it was a
2 natural conclusion to the interview.

3 Q Did you, did you stay at the hotel after he
4 was transported back, or did you, I guess you were
5 supposed to check out?

6 A I checked out, yes, sir.

7 Q Subsequent to those three meetings did you
8 have any further contact with Marshall Miller?

9 A I don't believe I spoke with him, no, sir.

10 Q And who actually wrote the report of those
11 three meetings?

12 A Special Agent Bragg.

13 Q And the letter that has been referred to in
14 Special Agent Bragg's testimony, did Special Agent
15 Bragg show you that letter?

16 A Yes, sir.

17 Q He had already received it from Marshall
18 Miller?

19 A Yes, sir.

20 MR. CROUT: Your Honor, I have no further
21 questions of this witness.

22 THE COURT: Cross-examination, Mr. Varner.
23
24
25

CONSTANCE SONNEFELD - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. VARNER:

Q Is it a fair statement, Agent, nobody ever talked to you about negotiations whatsoever?

A No, sir.

Q Not me, not Marshall, nobody, you were not involved in any negotiation process?

A That's correct.

Q And you also know this guy, he's the jailhouse lawyer, he's been in jail before, Marshall knew the ropes, he knew what he was getting into, he did this freely and voluntarily?

A It appeared so.

Q Then, who and why would you say his statement would be taken into consideration, if that was never discussed, who did you make that statement to?

A To Marshall.

Q Knowing he had a lawyer and everything?

A Yes, sir.

Q What prompted you to make that statement?

A You were present.

Q Okay. So -- all right. Let's back up. Do you agree with Agent Bragg that this conference occurred in a courtroom, or did it occur in a small

CONSTANCE SONNEFELD - CROSS

1 officers' room?

2 A While you were there it was in the, I think
3 it was Detective Wilhite's office.

4 Q You guys subsequently moved to a courtroom?

5 A Yes. There was more room.

6 Q Well, do you recall me going to get Marshall
7 a particular brand of cigarettes and bringing them
8 back, I don't know, a Twinkie and, it's a special
9 type of hard top cigarettes, you know, with a
10 cardboard box, he wanted a cardboard box, so to
11 speak?

12 A I remember he wanted cigarettes, yes, sir.

13 Q Do you recall me coming back and bringing
14 them to him?

15 A I believe so, yes, sir.

16 Q Okay. And when I first got there do you also
17 recall that I was about five minutes late and
18 apologized, saying I was in the parking lot talking
19 to Jennifer?

20 A Yes, sir.

21 Q And --

22 THE COURT: Meaning?

23 Q The Attorney General's office.

24 THE COURT: Assistant Attorney General Evans?

25 Q Right, Attorney General Evans. Were you

CONSTANCE SONNEFELD - CROSS

1 present when I told Marshall I just finished
2 talking to Jennifer Evans and had been talking to
3 her since I had left Greenville, for about 30
4 minutes?

5 A I believe you said something like that.

6 Q Okay. And did you and Agent Bragg walk
7 outside and allow me to talk in private to Mr.
8 Miller for a few minutes?

9 A Yes, sir, we did.

10 Q And then when the two of you came in I
11 started talking to him again and you and Agent
12 Bragg offered to leave at that time and I made the
13 statement to the effect, "No, I wanted you here so
14 everybody understands the ground rules," so to
15 speak?

16 A Right.

17 Q I had made Mr. Miller aware he did not have
18 to do this?

19 A That's correct.

20 Q I made him aware, even though you may have
21 done it, of what his Miranda rights were, is that
22 correct?

23 A Yes, sir.

24 Q And do you recall me making him aware, even
25 if I had gotten it wrong, even if I was lying to

CONSTANCE SONNEFELD - CROSS

1 him, do you recall me telling him that we had an
2 eight to twelve year range but could expect the
3 twelve, don't count on the eight?

4 A I don't remember numbers. I remember that if
5 he cooperated it would be taken into consideration.

6 Q Okay. Well, do you recall me mentioning any
7 numbers, whether it was eight to twelve, six to
8 ten, or any numbers, do you remember me talking
9 about numbers in front of you?

10 A No, sir.

11 Q You had never met me before that day,
12 correct?

13 A Not that I can recall, no, sir.

14 MR. VARNER: That's all the questions I have.

15 THE COURT: Any on redirect, Mr. Crout?

16 MR. CROUT: Nothing on redirect, sir.

17 THE COURT: Thank you very much. Come down,
18 please, madam witness.

19 (Witness excused).

20 THE COURT: Any additional witnesses, Mr.
21 Crout?

22 MR. CROUT: None from the State, Your Honor.

23 THE COURT: Thank you. Any witnesses?

24 MR. VARNER: Against my better judgment, I
25 have to call myself as a witness, Your Honor.

CONSTANCE SONNEFELD - CROSS

THE COURT: Very well. Be sworn.

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KIM VARNER - DIRECT

1 KIM ROBIN VARNER,
2 after being first duly sworn testified as follows:

3 THE CLERK: Be seated and state your full
4 name for the record.

5 THE WITNESS: My name is Kim Robin Varner,
6 I'm a practicing attorney in Greenville, South
7 Carolina, and have been practicing since 1979. I
8 did not represent Mr. Miller at the initial bond
9 hearing. He was without counsel. I was retained
10 by Mr. Miller shortly after the arrest.

11 I had numerous conversations with Attorney
12 General Jennifer Evans and with Special Agent Frank
13 O'Neil in the preliminary stages of Marshall's
14 arrest. Many of those conversations concerned the
15 possibility of Mr. Miller getting a bond and also
16 as to any potential cooperation or compliance that
17 he would have.

18 I had indicated to both Agent O'Neil and to
19 Attorney General Jennifer Evans that Mr. Miller had
20 information potentially about a murder for hire of
21 a police officer in the Ware Shoals area, about
22 several arson cases, about a potential underground
23 bunker of many stolen weapons and, for lack of a
24 better term, an underground stolen goods pawn shop
25 in the area. Also an indication that there were

KIM VARNER - DIRECT

1 numerous weapons that had been used in violent
2 crimes and some murders, and that he could give
3 information on that. That he further had
4 information on numerous other individuals that
5 could be brought into this conspiracy charge and
6 that he was potentially ready, willing and able to
7 be wired and go out and in fact make controlled
8 buys and deliver at least two, possibly as many as
9 three major crystal meth cooks.

10 It was clear to me that they were interested
11 in that but it was also very clear to me they
12 weren't willing to give up the ship, so to speak,
13 to get that information. I had many conversations
14 later, and when I say later, I mean several months,
15 particularly with Frank O'Neil, concerning Ray
16 Powell and some other individuals. During this
17 period of time my client was in jail from September
18 24th, through February, through the point that the
19 statements were made. I had talked with Jennifer
20 Evans several times. She had indicated to me that
21 this was not solely her decision.

22 The term I use is they had to roundtable it,
23 that there were many individuals that were going to
24 be involved in this, Brandon Scott and several
25 other people. As a matter of fact, part of our

KIM VARNER - DIRECT

1 conversations were the difficulty she was having in
2 dealing with the different personalities, that
3 there were people who wanted, who thought 25 years
4 was not enough for Mr. Miller, and that this was
5 not a decision solely on her part, that she did
6 have to, again this is my term, roundtable it with
7 other people.

8 I asked her to do that. I asked her, I
9 wanted to discuss parameters, and she had given me
10 indications she still needed to talk to one or two
11 other people in one of our conversations, and I
12 think one of the times she told me, "I need to talk
13 to Frank O'Neil a little more to try to firm up
14 kind of where we are."

15 On February --

16 MR. CROUT: Your Honor, at some point, I know
17 this is somewhat odd in terms of the way this
18 testimony is being presented, I don't want to
19 inhibit Mr. Varner's ability to testify to what it
20 is he's testifying to, but as far as the hearsay
21 that's coming in, if you could admonish him just to
22 talk about what he said and perhaps general
23 representations of what were made to him, but if we
24 get into she said this to me, she said this to me,
25 he said this to me, word for word, I think we're

KIM VARNER - DIRECT

1 going to run into a problem as to what will
2 otherwise be improper hearsay objection from any
3 witness who is testifying.

4 THE WITNESS: Your Honor, thus far, I'm not
5 trying to rule on it, but I would like to argue,
6 thus far I have not said anybody said anything who
7 hasn't already been a witness. It's not hearsay if
8 they are here and they have already testified. I
9 haven't mentioned anybody's name who has not
10 already testified.

11 THE COURT: Well, you are inviting a reply,
12 if nothing else, but try and not involve any
13 hearsay. If a person has testified, then you're an
14 attorney, Mr. Varner, you understand that Mr. Crout
15 can recall that person and they can speak to the
16 issue of whatever it is that you have testified
17 they said or did.

18 THE WITNESS: I understand.

19 THE COURT: Continue.

20 THE WITNESS: In February, it was getting, to
21 use the proverbial expression, late in the game,
22 Jennifer Evans was indicating to me that many other
23 people were cooperating and if Marshall wanted to,
24 quote, close quote, I'm not using her quote, get on
25 the train, those are my terms, that he was going to

KIM VARNER - DIRECT

1 wait too long, that it was the time to move.

2 They had scheduled Mr. Miller to be in
3 Laurens County on February the 13th. Jennifer
4 Evans, the Attorney General, and I had not firmed
5 anything up. I got in the car to go down there to
6 make Mr. Miller aware that at that point in time we
7 did not have a deal, and I do want to bring out Mr.
8 Miller, I think it's clear from his record, has
9 been in jail a couple times, this gentleman is very
10 jailhouse smart, he does know how to handle himself
11 in that respect, he's very familiar with the
12 system, so to speak, and Mr. Miller had emphasized,
13 you know, that he wanted to talk with me.

14 On the way down there I got on the phone and
15 talked to Jennifer Evans, the Attorney General, and
16 I got her on the line and she and I had had some
17 trouble catching one another because of her
18 schedule and mine, but I caught her on the line
19 just a few miles from my office and was still
20 speaking with her after I got into Laurens and even
21 in the parking lot.

22 I initially began my discussion with her
23 indicating that Mr. Miller had wanted a sentence
24 under five years. Her response to that was she
25 felt that was ludicrous. In honesty, I didn't

KIM VARNER - DIRECT

1 argue her point because I fully understood five
2 years wasn't a possibility, I knew that but I have
3 an obligation to my client to ask for what he had
4 requested.

5 At that point in time she told me that she
6 could not make a commitment, and I told her the
7 nature of the beast, so to speak, I was dealing
8 with, I have been doing this 25 years, Mr. Miller
9 is in jail twice, he's not going to talk based on a
10 hope, a promise and a kiss, and I asked her could
11 she give me a sentence in a range under ten years.
12 She said no, she couldn't.

13 She came back with, "We can do something in
14 the eight to twelve range," and I said, "I know
15 what that translates into, that translates into
16 twelve," and she kind of laughed and said, "Well,
17 in all probability it's going to be twelve," but a
18 statement to the effect, and I think I made this
19 statement, "Well, if he could deliver Osama Bin
20 Laden or something like that, something phenomenal,
21 is it possible to get under that range?" And she,
22 I believe, took that statement in jest, which is
23 the way it was intended, and she said, "If he
24 delivers something phenomenal, sure, we're looking
25 in the eight to twelve range."

KIM VARNER - DIRECT

1 At that time she told me, she said, because I
2 asked her, I said, "Look, I don't want to put
3 Marshall in a bad situation, I don't want to put
4 myself in a bad situation, I'm in the car on the
5 way." At that time she told me, she said, "Kim,
6 you can check with any of the lawyers I have dealt
7 with before, I do what I say I'm going to do,
8 provided Marshall does what he's going to do."

9 I went down to the detention facilities, I
10 did in fact get there a few minutes late because I
11 was in the parking lot still talking to Attorney
12 General Evans. I walked in, Agents Sonnefeld and
13 Bragg were in what I understood to be Lieutenant
14 Frank Wilheit's, Bill Wilheit's office, which is
15 right there, it's the office to the right before
16 you go into the actual courtroom. As I recall, it
17 was, the meeting was scheduled for either 3:00
18 o'clock or 4:00 o'clock, it was late in the
19 afternoon, I was a few minutes late.

20 When I went in I initially talked to Mr.
21 Miller confidentially for about probably five
22 minutes and then I asked the two SLED agents to
23 come back in and I went over what I call the ground
24 rules, and I wanted them present for this so there
25 would not be a misunderstanding. I explained to

KIM VARNER - DIRECT

1 Mr. Miller in front of the agents that he did not
2 have to make a statement, that this was his choice,
3 and I reiterated to him that we had a deal of eight
4 to twelve years. His response was, "You got a deal
5 for twelve years, I'll never get the eight, I'll
6 never get ten, I'm going to get twelve," and I
7 said, "Plan on the twelve."

8 Based on his understanding, he relied on
9 getting a twelve year sentence. He not only
10 cooperated, he gave written statements, he fully
11 cooperated and offered to do even more, to go
12 outside and tell them of other criminal activity.
13 I have a newspaper article, he gave them
14 information on a big gambling operation down in
15 Georgia. As I recall, there were at least four
16 other people brought into the conspiracy after
17 Marshall gave the information.

18 When we initially got the call to come down
19 to Laurens on the first plea date I was upset, very
20 much upset with Attorney General Jennifer Evans
21 because I did not feel that she and I were doing
22 what was the appropriate thing, so to speak. As a
23 matter of fact, I was upset because I thought she
24 had misrepresented herself and I told her in polite
25 and appropriate conversation.

KIM VARNER - DIRECT

1 She and I walked outside, at that point in
2 time Mr. Hood had just taken over the case, or had
3 just started, and we were standing outside the
4 courtroom area out on the sidewalk because I'm a
5 smoker, and she was standing out there with me.
6 Mr. Hood, I don't know if he was able to hear what
7 was said or not said, but he was standing along
8 side there, and I looked at Jennifer Evans, I said,
9 "Jennifer, fifteen years is not in the eight to
10 twelve range, that's what we agreed to." Her
11 statement was, "Kim, fifteen is in the eight to
12 twelve range."

13 And I kind of looked at her and I did not say
14 this in a smart alec way but I said it to
15 demonstrate a point, "If you're in the third grade
16 and a teacher tells you to pick a number between
17 eight and twelve, fifteen is a wrong answer." And
18 she kind of looked at me and said, "Well, fifteen
19 is in the eight to twelve range the way I look at
20 it." And I made a statement, I made a statement,
21 to be honest with you at that point in time it was
22 a little bit of an inappropriate statement but it
23 wasn't said in a nasty tone, but I made a statement
24 something to the effect of, "I don't know where you
25 get your math."

KIM VARNER - DIRECT

1 I walked off. I went and talked to Mr.
2 Miller for an extended period of time, I came back
3 to both Jennifer and to Mr. Hood and advised them
4 that I was having a conflict with my client and
5 with his family, it was a mess. I said my problem
6 was I had told him twelve, they were counting on
7 twelve, and that, you know, the family was hoping
8 for eight but Marshall understood an eight to
9 twelve, he was going to get twelve, and that he was
10 not going to accept fifteen, fifteen was not in the
11 range. And I advised her that he said he was going
12 to get another attorney, not to fire me, but get
13 another attorney to bring an action to enforce the
14 plea agreement.

15 At that point in time Miss Evans and Mr. Hood
16 basically said, "Well, we're going to have another
17 plea date, if he wants to do it at that point in
18 time or if he changes his mind and wants to plead,
19 that's fine." That's where it was left.

20 But there is no question whatsoever I very
21 clearly indicated to Mr. Miller that he had a plea
22 agreement of eight to twelve, there is no question
23 in my mind that that's what he relied on to his
24 detriment and that he gave up his constitutional
25 right to remain silent based on that, and there is

KIM VARNER - DIRECT

1 no question in my mind, after doing this for 25
2 years, I don't go in and make people blind
3 promises, I had an eight to twelve agreement.

4 MR. CROUT: May it please the Court, Your
5 Honor.

6 THE COURT: Yes, sir.
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KIM VARNER - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. CROUT:

Q Mr. Varner, you have been practicing law 25 years now, is that what your testimony is?

A Yes, sir, since 1979.

Q You indicated that it is your understanding for purposes of the information that Marshall Miller provided to SLED, that he was under the impression that he was going to get an eight to twelve sentence?

A There is no question about that.

Q In fact it was critical to the information he was providing?

A I'm sorry, I didn't hear you.

Q It was critical to him providing this information, is that correct?

A I don't understand. What was critical?

Q The eight to twelve years that he thought he was going to get.

A If he didn't think he had a deal of eight to twelve he would not have done this and he clearly said sitting in there, "I was offered fifteen to begin with, I will sit in jail for fifteen, no if's, and's or but's about that."

Q So, you don't take the position that outside

KIM VARNER - CROSS

1 of that belief this statement was voluntary, you
2 are not telling us today you believe he was
3 physically coerced or psychologically coerced, is
4 that correct?

5 A I wasn't there for the actual interview
6 process. I couldn't tell you what went on after I
7 left.

8 Q Did he ever relate to you he was physically
9 coerced, "They were mean to me, beat me," any kind
10 of statements along those lines?

11 A Thereafter many of my discussions were with
12 Miss Evans over the fact in Abbeville Jail I was
13 being denied access to see my client. I played the
14 dickens getting to see him, so I can't tell you we
15 even talked about the nature of his statements
16 thereafter in any way, shape or form.

17 Q But to that extent you don't dispute that
18 outside of this recommendation or his belief in
19 this recommendation, that his statements were
20 voluntary?

21 A I have no way of knowing either way, he and I
22 did not discuss that.

23 Q But you did testify that his belief in that
24 recommendation was the most critical, or excuse me,
25 was important in him giving this information?

KIM VARNER - CROSS

1 A Sitting there in that room, referring to
2 Laurens?

3 Q Yes, sir.

4 A He had made it very clear that he had been
5 offered, his understanding, he had been offered
6 fifteen from the get-go, he would continue to sit
7 in jail forever and a day. He was not interested
8 in fifteen. I made him aware that he had an eight
9 to twelve range, nobody could lock in the numbers
10 but he had a range. No question in my mind.

11 Q In your mind?

12 A That he relied on that.

13 Q In giving this information?

14 A Yes, sir.

15 Q Did he rely on it 20 percent, 50 percent? I
16 mean, how --

17 A Your guess would be as good as mine.

18 Q But it was very important?

19 A Yes, I think it was.

20 Q But after 25 years of practicing law it
21 wasn't important enough to send a letter in
22 writing, was it?

23 A You know, when you trust someone's integrity
24 and someone vouches for it, no. You know what, I
25 made a terrible mistake by trusting somebody.

KIM VARNER - CROSS

1 Q You did get a plea offer in writing, though,
2 didn't you?

3 A Some three months later I got a plea offer
4 that was totally contrary to what we had discussed.
5 I don't consider it to be a plea offer.

6 Q And that plea offer was for fifteen years, is
7 that correct?

8 A Yes, and according to her definition, fifteen
9 years was in the eight to twelve range.

10 Q And as it relates to the motion to enforce
11 the plea agreement, that motion was not made, for
12 whatever reason, at either of the dates in which
13 guilty pleas were taken, is that correct?

14 A I outlined the reason, because I was
15 concerned I would be a potential witness. Mr.
16 Miller had indicated he was going to get an
17 independent lawyer to do that. Another lawyer did
18 in fact contact me concerning that but I don't know
19 if Mr. Miller was able to come up with the money to
20 pay that lawyer or not, so ultimately I was put in
21 a situation where I had to make this motion. It
22 was not my choice.

23 Q Stepping away from the motion to enforce the
24 plea agreement and going back to the Jackson v.
25 Deno motion, realizing, as we are both aware, they

KIM VARNER - CROSS

1 are so interrelated we can deal with both of them
2 with the same set of testimony, your issue, is it
3 your sole issue over the voluntariness of the
4 statement, the state of mind that Marshall Miller
5 was in when he gave the statement?

6 A Due to the fact that my client is not here to
7 testify as to what went on in those meetings, as to
8 how they were handled, the only information that I
9 have that I can present to the Court is the fact
10 that he detrimentally relied on the eight to twelve
11 year representation of the deal.

12 MR. CROUT: Thank you. No further questions,
13 Your Honor.

14 THE COURT: Anything else, Mr. Varner, that
15 you want to say after having been questioned by Mr.
16 Crout?

17 THE WITNESS: Nothing further, Your Honor.

18 THE COURT: Thank you very much. Come down.
19 (Witness excused).

20 THE COURT: Any additional testimony or
21 evidence that you wish to present, Mr. Varner?

22 MR. VARNER: None, Your Honor.

23 THE COURT: Anything in reply from the State?

24 MR. CROUT: Nothing from the State, Your
25 Honor.

1 THE COURT: Mr. Varner, we will hear you, a
2 statement of your position.

3 MR. VARNER: Your Honor, if I may, I would
4 refer the Court to the State versus Becka,
5 B-e-c-k-a, that's a January the 18th, 1999 case.
6 It is 511 Southeast 2d 396, 333 SC 676, a South
7 Carolina Court of Appeals, 1999.

8 And what it's referring to is the
9 enforcibility of an agreement, so to speak, and
10 what the Court talks about is a plea agreement,
11 it's not an agreement until the Court approves it.
12 In other words, until the plea is actually made.
13 As a matter of fact, that is in line with what the
14 Attorney General initially said, there in fact was
15 no plea.

16 What the Court says, this is not actually
17 part of the holding, it's part of the discussion,
18 it states that the general rule, which is the plea,
19 is not a binding agreement until such time as the
20 person pleads, you can't change it later, it says
21 the general rule is subject to a detrimental
22 reliance exception. What he goes on to say is that
23 these are very important fundamental constitutional
24 rights that people have, the right to remain
25 silent, the right not to self incriminate. It even

1 goes so far as to say he has the right even not to
2 be present if he so chooses.

3 This, Your Honor, was a gentleman who was,
4 he's been down the road, he's been in jail twice,
5 he is very much a jailhouse lawyer. He's very road
6 smart or street smart, and when he initially was
7 arrested he sat in the jail from September through
8 October, November, even through the Christmas
9 season of December and even through January,
10 whether right or wrong, under his impression that
11 the best deal he could get was fifteen years.
12 While this was going on I was negotiating back and
13 forth with the Attorney General's office and with
14 the agents, and to a certain extent giving them
15 teasers of what potential information this man may
16 have so we could determine what value he may have
17 on either side as to what they would do.

18 Thereafter, my testimony, I think is clear,
19 and I assure you I have been doing this for 25
20 years, Marshall has been in jail two separate
21 occasions for a couple years, but the Attorney
22 General's office and I, Jennifer Evans, talked for
23 almost 30 minutes on the way down there. When I
24 walked in, either right or wrong, whether I
25 miscommunicated or she miscommunicated, I relayed

1 to him he had an eight to twelve year deal, no if's
2 and's or but's.

3 He made it very clear in there if this was a
4 fifteen year thing, he had that from the very
5 beginning, he wasn't going to do anything. He very
6 much relied on the fact he had an eight to twelve
7 year agreement, whether that's right or wrong, it's
8 not even an issue for the purposes of Jackson v.
9 Deno, because the question is was the statement
10 made freely and voluntarily without any force,
11 threats, coercion or promises, and I emphasize the
12 word promises. This man believed, right or wrong,
13 that he had a promise, a promise had been made to
14 him. It was represented to him, and the agents
15 verified, when I came in I apologized to them that
16 I was a few minutes late, I indicated to them that
17 I was just talking to the Attorney General's
18 office, everybody in that room knew I had been
19 talking to the person who in fact had the authority
20 to make a deal, maybe not a specific number, but a
21 range, depending on what he did say or didn't say
22 or depending on his degree of cooperation. That
23 was, that's the one thing everybody agrees to.

24 There is no dispute that Marshall Miller,
25 when sitting in that room, knew and believed, and

1 correctly, and so did the lead agents, that I had
2 just finished talking to the Attorney General's
3 office and it had been extensive and caused me to
4 be late walking in there. Subsequently he was
5 advised that the Attorney General's office had
6 agreed to a range of eight to twelve years. His
7 belief was, as I testified that he indicated, they
8 translated into twelve years.

9 Your Honor, that being the indication, that
10 is a promise, that is not a free, voluntarily,
11 without threats coercion, but without promises. He
12 believed he had a promise, right or wrong, we don't
13 even have to address that issue. But if he thought
14 he was making those statements and cooperating
15 fully based on his belief that the promise had been
16 made to him, not only a promise, but a promise
17 relayed to him through his lawyer and through the
18 Attorney General's office who in fact had the
19 authority to enter into that agreement, that takes
20 away from the voluntariness of it because that is
21 not a free and voluntary waiver, that is made under
22 a promise, and therefore both statements should be
23 excluded because that was the basis for providing
24 them, Your Honor.

25 THE COURT: Thank you, Mr. Varner. Mr.

1 Crout?

2 MR. CROUT: May it please the Court, I would
3 like to trace the plea agreement issue first, Your
4 Honor, as it relates to Reed v. Becka and prior
5 cases from which the rationale in Reed v. Becka is
6 derived. I think there are several issues or
7 several facts that have occurred in this court that
8 prevent any enforcement of any plea agreement that
9 may or may not have been entered into in this
10 particular case. We submit, of course, from the
11 State's position that the only offer that has been
12 made has been a fifteen year offer and that the
13 agreement does not even ripen to a point of
14 enforcibility until the defendant pleads guilty
15 based upon a representation made by the State and
16 then the State fails to, excuse me, not based upon
17 a recommendation, but based upon a promise made by
18 the State and then the State fails to fulfill that
19 promise. I don't think the remedy in this case
20 would even be appropriate, if Mr. Miller were to
21 appear, to somehow allow him to plead to an eight
22 to twelve sentence based upon his own
23 misunderstanding of what the parameters of any deal
24 may have been. Detrimental reliance on the
25 representation of another party is one thing.

1 Detrimental reliance on your own understanding of
2 the facts of the case and what has been offered to
3 you is quite another.

4 Secondly, I think that without Mr. Miller
5 being present, which we do not disagree he has a
6 constitutional right not to be present for the
7 trial of this case, I don't think that that
8 constitutional right extends to his failure to be
9 present to enforce some activity or some action,
10 i.e., the plea, that he could not even conduct,
11 could not even enter into because of the fact that
12 he's not here.

13 Lastly, as we have already discussed in this
14 case, the time for filing motions, even with
15 respect to the fact that there have been two
16 occasions in which he could have pled guilty, the
17 time to file any motions, specifically a motion to
18 plead guilty, a motion to enforce a plea agreement
19 has already passed. So, with respect to that
20 issue, there is no remedy available that would, in
21 our opinion, allow the Court to force the State at
22 this stage in this process to make any offer, to
23 accept any offer or to do anything for the benefit
24 of a misunderstanding that was possessed by Mr.
25 Miller.

1 That is our response as it relates to the
2 plea agreement. However, there is, as Mr. Varner
3 has indicated, another dimension or another aspect
4 of this case as it relates to Mr. Miller's state of
5 mind at the time he was providing information to
6 the State. That information that he provided, even
7 if it was based on his state of mind, would not be
8 information or would not be an act in and of itself
9 that he could say he did or that he participated in
10 that would warrant an enforcement of any agreement
11 that was later made to him.

12 But more importantly, what we have occurring
13 here today is Mr. Varner stating that because of
14 his possible misunderstanding, because of his
15 interpretation of what was represented as a plea
16 offer, because that was given to his client, his
17 client gave the information, the incriminating
18 information, the statement against himself based on
19 a misunderstanding and therefore it was not
20 voluntary but for the offer, but for his state of
21 mind as to the offer he would not have given the
22 statement.

23 Once again, not disagreeing with his right
24 not to be here, it is impossible for Mr. Varner,
25 for myself or for anybody else in this courtroom to

1 state what it was Mr. Miller understood when he
2 gave this information. Mr. Varner can say, "I told
3 him this." He could even say as far as he knows he
4 heard what he told him, but as far as passing on
5 what Mr. Miller's state of mind was, the
6 voluntariness of his statement, without him sitting
7 here telling us that, we have no idea. We have no
8 sure and conclusive idea, and based upon that,
9 based upon the conflicting evidence that was given
10 as it relates to the plea agreement, as it relates
11 to the information that was conveyed to Mr. Miller,
12 I do not think that a defendant who is not present,
13 at least for this portion of the hearing, can have
14 his state of mind represented by someone else based
15 purely upon a statement that that person says they
16 made to them. And as a result, there has been no
17 evidence presented here today that the information
18 that Marshall Miller provided in his statement was
19 involuntary, and more important, any information
20 provided here today that he had any agreement
21 outside of the offer of fifteen years made in the
22 letter from Mrs. Evans to Mr. Varner.

23 Thank you, Your Honor.

24 THE COURT: Thank you. Anything further, Mr.
25 Varner?

1 MR. VARNER: I will be brief, Your Honor.
2 Take the State's position number one, they say no
3 one can read his mind but yet everybody else got up
4 here and they somehow or another have the ability
5 to say it was free and voluntary. I don't have the
6 right to say that.

7 But number two, what the State is asking for,
8 they want their cake and eat it, too. They don't
9 want to go through with an agreement but they want
10 to get the fruits of the agreement, and it's one or
11 the other. They either have an agreement, and if
12 you don't have an agreement, then you don't get the
13 fruits of what the agreement yielded.

14 You know, it's kind of the fruit of the
15 poisonous tree, and I don't mean in the legal
16 doctrine sense but, Your Honor, if you own the tree
17 you get the fruit. If you don't own the tree you
18 don't get to eat the fruit. They want it both
19 ways, they want their cake and eat it, too, and
20 that is patently unfair to a criminal defendant,
21 particularly when we're talking about a waiver of
22 his constitutional rights, Your Honor.

23 THE COURT: Thank you. The evidence
24 preponderating toward Mr. Miller's misunderstanding
25 based upon an inadvertent representation by his

1 attorney, if any, in fact was made within the
2 attorney-client relationship or upon his own
3 misunderstanding, of his own misunderstanding of
4 any representations by the State. Argument having
5 been made in the range of eight to ten years was
6 within the attorney-client relationship as
7 testified to by Mr. Varner, and related by the
8 attorney to the defendant and that has not been
9 testified to by the defendant. The Court may not
10 and will not invade the attorney-client
11 relationship and the confidentiality thereof and
12 cause that to preponderate in favor of the
13 defendant when he is not here to state what he
14 understood there to be in existence which caused
15 him to make any such statement and to allow himself
16 to be cross-examined concerning his understanding
17 of any offer was made before him or causing him to
18 say what he did say.

19 Now, this judge is also aware of the policy
20 and procedures followed in such matters as we now
21 are considering, and the Court fully and completely
22 embraces the testimony of Agent, excuse me, of
23 Assistant Attorney General Jennifer Evans with
24 regard to there is no plea agreement offered to any
25 defendant until after that defendant has been

1 debriefed, and the offer in this matter was written
2 and forwarded to the defendant Miller and contained
3 a fifteen year offer. The Court finds that that is
4 credible evidence in the matter and accepts it as
5 such and preponderates in favor of the State and
6 preponderates in favor of the voluntariness of the
7 statement.

8 The Court cannot conclude that the statements
9 to Agents Bragg and Sonnefeld were not freely and
10 voluntarily given after Mr. Miller was afforded all
11 of his rights, warnings and safeguards pursuant to
12 the case law in such cases made and provided, or
13 that the handwritten statement was not freely and
14 voluntarily given.

15 The Court denies the motion to enforce any
16 plea agreement in the eight to twelve year range
17 and the Court will permit the introduction of the
18 statements, both written and oral, of Mr. Miller.

19 Is there anything further from the State?

20 MR. CROUT: Nothing from the State, Your
21 Honor.

22 THE COURT: From the defense?

23 MR. VARNER: Nothing except note the
24 exception, Your Honor.

25 THE COURT: The exception is noted. Mr.

1 Wise, do you have any remarks or comments?

2 MR. WISE: No, sir, we don't.

3 THE COURT: Is there anything we need to take
4 up before the jurors come in? We will show them
5 into the jury room first.

6 MR. CROUT: Your Honor, there is one matter.
7 The State intends to call as its first witness
8 Agent Sonnefeld. One of the pieces of evidence
9 that she will be introducing is a video cassette of
10 a controlled purchase of methamphetamines that
11 occurred. I bring this to the Court's attention
12 because chronologically in the series of events in
13 which this case was investigated that happened
14 early on, and as she would be going through her
15 testimony it would be one of the first things that
16 she would refer to in her examination. Because of
17 the size of the courtroom and it's necessary to set
18 up a television set and actually have the video
19 reviewed, what I would like to do, if the Court is
20 intending on going ahead and starting now, is let
21 her testify, and if counsel does not disagree, have
22 her, perhaps at the end of her testimony, if she
23 initially refers to the fact that a video cassette
24 was made, she can continue with her testimony and
25 then we could show the video before she steps down.

1 Just wherever in her testimony it's convenient to
2 set that up.

3 THE COURT: Before she is subject to
4 cross-examination?

5 MR. CROUT: Yes, exactly, before, and I said
6 step down, I apologize, before she's subject to
7 cross-examination, and I only say that because it's
8 just a logistics issue because I realize we have
9 this TV here, we're in the process of getting a
10 VCR, I had hoped one would be here, but I'm getting
11 one of those, I didn't want to interrupt the flow
12 of the case as I foresee that as being the only
13 issue that may cause a little bit of conflict with
14 her testimony.

15 THE COURT: Very well.

16 MR. WISE: It would seem to me, from looking
17 at the clock, Your Honor, we would be about 12:30
18 starting with her testimony. It seems like, if you
19 want to deal with flow, just break for lunch at
20 that time, they can set up all this equipment
21 during the lunch hour and have it ready to go when
22 we get back.

23 MR. CROUT: We're not adverse to that either,
24 whatever the remedy is, I just wanted to bring the
25 issue to the Court's attention.

1 MR. WISE: I can understand the logistics of
2 having to set everything up. It is going to take a
3 little time to do it.

4 THE COURT: All right. We will ask the jury
5 in and take them into the jury room momentarily.
6 The record in this matter, civil action 2002,
7 excuse me, criminal action 2002-GS-47-32, is closed
8 at this time for the jury to be shown into the jury
9 room, unless there are further remarks from any
10 quarter?

11 MR. HOOD: No, sir, Your Honor.

12 MR. VARNER: Your Honor, just a question.
13 Are we going to take a break before we do opening
14 statements?

15 THE COURT: Yes, we will take a break now.
16 We are in recess at this time.

17 (Recessed at 11:46 a.m.).

18 (Reconvened at 12:05 p.m.).

19 THE COURT: The record will open, State of
20 South Carolina versus Marshall Miller and others,
21 of whom Marshall Miller and Billy Moore are the
22 defendants at trial, among the several named
23 defendants in criminal action number 2002-GS-47-32.
24 Before the jurors are in for opening statements,
25 Mr. Varner, do you concede that Mr. Miller was

1 advised and knew that this case would commence on
2 yesterday?

3 MR. VARNER: Yes, sir, no dispute as to that.

4 THE COURT: The record will so reflect. Is
5 the State ready?

6 MR. CROUT: The State's ready.

7 MR. WISE: Not relevant to opening
8 statements, I think that's as far as we're going to
9 get, but after lunch we would ask that the
10 witnesses be sequestered.

11 THE COURT: Any objection to that?

12 MR. CROUT: None from the State, Your Honor.

13 MR. HOOD: We just ask for reciprocal on
14 that, Your Honor, any defense witnesses also be
15 sequestered.

16 THE COURT: Very well.

17 MR. HOOD: I'm assuming that the witnesses
18 can stay in during opening statements?

19 MR. WISE: Right, that's fine.

20 THE COURT: All right. Now, the court will
21 have a brief preliminary charge and then the
22 opening statement will be by the State, then by Mr.
23 Miller's counsel, then by Mr. Moore's.

24 MR. WISE: Correct.

25 THE COURT: So, show the jury in, Mr. Busby,

1 please.

2 (The jury returned to the courtroom).

3 THE COURT: Ladies and gentlemen, we are
4 commencing the trial of the case of the State of
5 South Carolina versus Marshall Miller and Billy
6 Moore. The Court apologizes to each and every one
7 of you for misassessing the time that would be
8 necessary for us to take up preliminary matters
9 this morning. We started shortly after 9:30 and we
10 have been busy ever since, so thank you very much
11 for your patience but in these matters it's always
12 an estimate of time. It could have been we would
13 have needed you before 11:00 and had to wait for
14 you, that sometimes happens, too, but we do the
15 best we can when we estimate time, and please
16 understand that that's what it is, is an
17 estimation. Sometimes things have to be done that
18 we don't anticipate and on other occasions we
19 anticipate we have to do something and then some
20 matter comes up that makes that a non-necessity so
21 we can move faster than we think.

22 But we're beginning to try the case, as I
23 just said to you, and the Court wishes to give you
24 a brief preliminary instruction.

25 First the Court wishes to thank each of you

1 for your service as jurors during this week and in
2 this particular matter. The Court fully
3 understands that each of you are here under varying
4 degrees of hardship. You're here away from your
5 jobs, away from your friends, away from your homes,
6 away from your families and your hobbies and other
7 things that you would rather be doing. But you're
8 serving in the highest possible civic capacity that
9 a citizen can serve. It's often been said that
10 there is no higher duty a citizen can give to the
11 United States of America, other than war time, than
12 being a juror in a trial. We certainly and
13 genuinely appreciate your service.

14 Now, in our system of justice the right to a
15 jury trial and the right to a jury trial of one's
16 peers, one's fellow citizens and by a fair and
17 impartial jury is a guaranteed, valuable and
18 important right. Our Constitution guarantees a
19 right to a trial by a jury in a case like this, and
20 you should not hold it against the State or the
21 defendant Marshall Miller or Billy Moore that it is
22 you who are the jurors in this case.

23 You will now be sworn. Madam Clerk.

24 THE CLERK: Ladies and gentlemen of the jury,
25 I'm going to ask you to please stand and raise your

1 right hand to be sworn.

2 (Jury sworn).

3 THE COURT: Thank you, you may be seated.

4 Ladies and gentlemen, before opening statements,
5 the Court has a very brief preliminary charge to
6 you that will give you some general information
7 which you may find valuable as you hear the case
8 and the case unfolds before us, because as you were
9 told on yesterday you know no more than I about
10 this case. We're all in the same situation so far
11 as our knowledge about the case. All we know are
12 the mere allegations of the indictment, which is
13 not ever evidence and it is not to be construed to
14 be evidence.

15 You have just taken an oath to well and truly
16 try this case. At the conclusion of the trial the
17 Court will charge you, that simply means to tell
18 you or instruct you or let you know what the law is
19 as it applies to this case. The Court is the judge
20 and the only judge of the law. However, you are
21 the most important judges in this case because you
22 and only you are the judges of the facts.

23 No one can invade the province of the jury
24 and determine the facts, because the jury is the
25 only determiner of the facts. As judges of the

1 facts you will determine the credibility, that
2 simply means the believability, of each witness who
3 testifies before you under oath on this witness
4 stand.

5 In accordance with your oath you must decide
6 this case only and exclusively upon the evidence
7 that's presented during the course of the trial in
8 the walls of this room. As judge of the law the
9 Court may be called upon to determine the
10 admissibility of evidence, that is, whether under
11 our law certain evidence sought to be introduced is
12 allowed to be introduced for your consideration.

13 Now, evidence comes from three sources and
14 only three sources. The one with which we are most
15 familiar is the testimony of witnesses sworn to
16 tell the truth on this witness stand.

17 Another source of evidence are exhibits that
18 may be introduced during the course of the trial.
19 That's the second source of evidence.

20 And the third source of evidence is known as
21 stipulations, and that is simply a big word that
22 means both parties have agreed to a fact, and many
23 times the Court will read that statement or
24 agreement of fact to you. That's known as a
25 stipulation and that's evidence. It means the

1 parties have agreed that the sun rose this morning
2 at 7:46 or whatever time it rose, or that it was
3 daylight or it was dark when a certain event
4 happened. Whatever the parties stipulate to, and
5 that will be clearly stated to you, is evidence.

6 To restate, evidence is testimony, exhibits
7 and stipulations, if any are made.

8 What the attorneys say to you in opening
9 statements, in questioning witnesses, in closing
10 statements and in objecting, if they do object, or
11 anything else is not evidence. What the Court says
12 to you during the course of the trial is not
13 evidence. Evidence is solely and exclusively
14 testimony, exhibits and any stipulations. It is
15 nothing else and you should not consider anything
16 else to be evidence.

17 While the Court will rule upon any questions
18 as to the admissibility of evidence, you and you
19 alone will determine what weight or importance to
20 give to any evidence that is admitted.

21 Ladies and gentlemen, as judges of the facts
22 it's important for you to understand now the legal
23 yardstick which you will use in measuring or
24 judging the evidence. In this criminal case the
25 State has the burden of proof to prove the guilt of

1 the defendants beyond a reasonable doubt, or either
2 of them, as the case may be. The burden is upon
3 the State to prove the guilt of the defendants or
4 either of them beyond a reasonable doubt. The
5 defendants are not required to prove anything, but
6 the burden is upon the State.

7 The first part of any trial is opening
8 statements. The attorneys will make brief
9 statements to you about these cases, about the
10 cases involving these two defendants, and the
11 opening statements, as you know, are not evidence.
12 Remember that the evidence is testimony, exhibits
13 and stipulations. The opening statements are
14 intended to give you and the Court an outline or an
15 idea about the case and what we are about to learn.
16 An effort is going to be made honestly and flat out
17 by the State and by the defendants, and the
18 defendants may or may not present any evidence,
19 they don't have to, but if they do, the effort will
20 be to reveal all of the facts to you.

21 Keep in mind that the defendants don't have
22 to present evidence and they don't have to be here.
23 It's not necessary that they are even here, because
24 the burden is upon the State to prove the guilt of
25 both of the defendants or either of them beyond a

1 reasonable doubt. So, that they may or may not
2 present evidence or they may or may not testify or
3 they may or may not be present is of no concern
4 whatsoever to you because the burden is upon the
5 State as aforesaid.

6 After the attorneys come before you in their
7 opening statements, after which you will know more
8 about the case and the Court will know more about
9 the case, then the witnesses will be called. And
10 the State will call witnesses first and after they
11 call witnesses you will hear the State's attorney
12 state to the Court and to you and to everybody here
13 something like, "That's our case, the State rests,
14 we don't have anything else", or something to that
15 effect. Now, that means that the case for the
16 State has ended. We call that the case in chief,
17 so the case in chief, that means the main case has
18 been presented to you.

19 Now, the defendants then will be called upon,
20 and if they wish and if they want to they can
21 present evidence to you. They don't have to
22 present evidence to you because they have no burden
23 to bear at all, and you may not hold against any
24 defendant the fact they do not testify or they are
25 not present, because they have a right not to

1 testify and they have a right not to be present
2 absolutely guaranteed them by the constitutions of
3 this state and of the United States.

4 But at any rate, if the defendants or either
5 of them does present a defense, at the end of that
6 proceeding, if it ensues, you will hear the
7 attorneys say, "That's the defense," or, "That's
8 all we have," or, "That's the last witness," and
9 that's what we call the defense in chief, if any is
10 presented.

11 Now, if any is presented there is the small
12 possibility that there will be new information
13 presented in the defense in chief, or the defense
14 case. And if there is, the State, which has the
15 burden of proof to prove the guilt of the
16 defendants or both or either of them beyond a
17 reasonable doubt, has an opportunity to respond to
18 any new information that may be presented to you in
19 the defense case. That's called reply and it's
20 very limited. The State cannot come back and
21 present a whole new case but they are very limited
22 and the Court will keep them on a very short leash
23 to only reply to new testimony in a very limited
24 way so that there is a complete presentation of all
25 of the facts to the jury and to the Court. That's

1 the reason for reply, so that something that's
2 brought up that's new is responded to. Sometimes
3 there is reply and sometimes there is not reply.
4 We don't know that.

5 After the end of all of the evidence the
6 attorneys will come before you and sum up, and
7 that's sometimes called final argument or
8 summation, and that means they will point out
9 things to you that they feel are important. You
10 may not think they are, you may think they are, but
11 the attorneys are going to point out the evidence
12 that they feel you should consider during your
13 deliberations, and at the end of that time then the
14 Court will charge you, that means just tell you or
15 instruct you what the law is as it applies to this
16 case, and then the matter will be in your hands for
17 you to go into the jury room and deliberate toward
18 the end of reaching a verdict in this case.

19 The verdict, as you already know, it is
20 believed the Court told you when you were sitting
21 there as a venire, the word verdict simply comes
22 from a Latin term meaning to speak the truth. So,
23 that's what your job is, is to find the truth from
24 whatever source you may find it comes from or
25 whatever you may find from the evidence in the

1 case, and bring back a verdict that speaks the
2 truth.

3 The excellent attorneys in this case are
4 advocates for their clients. They are representing
5 their client to the absolute best of their
6 abilities. The attorneys will ask questions of
7 witnesses and assist in the presentation of the
8 evidence.

9 Now, you and I are not advocates. We have no
10 friends to reward, we have no enemies to punish.
11 As a trial judge it's the duty of the Court to
12 preside over the case, to rule upon the
13 admissibility of any evidence that may be moved
14 into evidence by either party, and to tell you what
15 the law is as it may apply to this case. Your duty
16 as jurors lies essentially in the oath that you
17 have taken to well and truly try this case and
18 determine the facts in this case. You are not
19 advocates. It's your responsibility to listen, to
20 pay attention, and you must know that the Supreme
21 Court has spoken to the fact you must stay alert.
22 Sometimes that's difficult, and if after lunch the
23 Court sees that someone is having a problem or
24 struggling with paying attention we'll take what is
25 called in baseball a seventh inning stretch.

1 Believe me, that sometimes happens to the best of
2 us, it happens to this judge. Sometimes you become
3 a little worn, because this is mental work and it's
4 stressful work, to pay attention and to listen.

5 In a case before the Supreme Court one of the
6 attorneys noted that a juror was sleeping. That
7 case was reversed and had to come back and be tried
8 all over again because the juror was asleep.
9 Everybody has to pay attention at all times. So,
10 we're all human, though, and you will notice that
11 the Court will be surveilling you and if it appears
12 that somebody is struggling we'll stop, we'll take
13 a break, we'll take a stretch, we'll do anything
14 necessary to rejuvenate our attention ability and
15 come back and continue, because it's important that
16 everybody hear and see everything that happens.

17 And with regard to that, if you cannot hear
18 or you cannot see please raise your hand, because
19 each of you must see and hear everything that is
20 involved in the trial of this case. Don't be
21 bashful. If you can't hear or you can't see, let
22 it be known, because we'll fix that situation.
23 It's imperative that each of you hear and see all
24 of the proceedings.

25 It is important that you understand, as you

1 were told before you left on yesterday, that you
2 not discuss this case until you are permitted to do
3 so at the end of the case. You are not to discuss
4 the case by, between or among yourselves nor with
5 any other person under any circumstance until the
6 end of the case.

7 Now, we will prepare a verdict form for you
8 which will make the answers to the questions that
9 may be presented easier, and the Court does not
10 know now whether the verdict form will be simple or
11 complicated. However, we will prepare a verdict
12 form and at the end of the case the verdict form
13 and all of the evidence will be sent into the jury
14 room. That is the signal, the signal that you may
15 commence discussion of this case, but until you
16 receive the signal you may not, you must not, you
17 are absolutely ordered not to discuss this case at
18 all with anyone, even between yourselves.

19 Keep in mind, and do not rush, but keep in
20 mind that it is necessary that you select from the
21 twelve of you, your two alternates are not capable
22 of being forepersons, but among the twelve primary
23 jurors who are sitting in the box select one of
24 your persons to be your foreperson. There is
25 pencil and paper, I believe, Madam Clerk, we have

1 pencil and paper in the room?

2 THE CLERK: Yes, sir.

3 THE COURT: There is no need to hurry, get to
4 know each other, you have already had a chance to
5 visit a little bit on yesterday and a little longer
6 today, so take your time but when you're
7 comfortable with the selection of a foreperson
8 write that person's name on a piece of paper, put
9 foreperson under their name and put their juror
10 number, their name, foreperson and juror number,
11 and hand it to the bailiff and then that person
12 will sit in the right front seat of the jury box
13 during the remaining portion of the trial. There
14 is no rush to do that.

15 If any one of you need to bring anything to
16 the attention of the Court during the proceedings
17 and it does not involve the entire jury you will
18 please reduce that to writing, do not tell any of
19 your fellow jurors that you have a concern or
20 you're communicating with the Court, even if they
21 see you writing something, don't let them know what
22 you're writing or why you're writing it, hand it to
23 the bailiff and the Court will respond to you
24 individually if you have an individual concern.

25 Now, if it is a communication on behalf of

1 all of the jury, then you will have to select a
2 foreperson to write that communication, and the
3 Court, as you were told on yesterday, will respond
4 in writing and you will hand that back out to the
5 bailiff and it will be recorded as an exhibit or
6 you will be asked out and the Court will respond in
7 words as we're doing now on the record. If you
8 have an individual concern and you do hand out a
9 writing about it do not mention it to anyone and do
10 not mention the Court's response to anyone.

11 As you were told when you were sitting, as a
12 jury venire there are times when the attorneys may
13 rise and ask that you be excused for something to
14 be taken up outside your presence. There is no
15 intention to hide anything or keep anything from
16 you. On the contrary, the intention is to reveal
17 all the possible facts from the State in its case
18 in chief, and if there is any defense there will be
19 an effort to reveal any facts that are revealed,
20 capable of being revealed by the defense, who have
21 no obligation to present any defense or any
22 evidence at all, but if such a motion is made you
23 should not hold it against the attorney nor his
24 client. We have no female attorneys here today,
25 but sometimes we do and the Court says his or her

1 client.

2 But you're not to hold that against the
3 attorney who says, "We want to excuse the jury to
4 take up a matter outside the presence of the jury,"
5 because this is the only place that we can make a
6 record concerning the admissibility of evidence or
7 some procedural issue. It will give you a time to
8 relax and to maybe have some refreshments and let
9 your brain coast a little bit. You are going to
10 find this is tough work.

11 Thank you for your kind attention to these
12 preliminary remarks. This case is important, this
13 case is important to the State of South Carolina,
14 this case is important to the defendant Marshall
15 Miller, this case is important to the defendant
16 Billy Moore. Each party is entitled to a fair and
17 impartial trial at your hands.

18 We will now have opening statements. Mr.
19 Hood, you're recognized, sir. The jury is with
20 you.

21 MR. CROUT: May it please the Court, Your
22 Honor, I will be giving the opening statement.

23 THE COURT: Yes, sir, Mr. Crout, you're
24 recognized and the jury is with you.

25 MR. CROUT: Thank you very much, Your Honor.

1 Ladies and gentlemen of the jury, once again we do
2 appreciate your time that you have taken to be here
3 today to listen to the evidence that's going to be
4 presented in this case. My name is John Crout, I'm
5 an Assistant Attorney General with the Attorney
6 General's office here in South Carolina, and along
7 with my co-counsel Mr. Robert Hood we will be
8 presenting the State's case regarding the matters
9 that will be presented to you today.

10 This case involves a conspiracy. What is
11 important about that is that a conspiracy is an
12 agreement between two or more people to break the
13 law, to do an illegal act. The crime itself is the
14 agreement. And I want to talk to you a little bit
15 about conspiracy, and the reason I want to do that
16 is because if I tell you this case is about an
17 armed robbery you know somebody was armed and they
18 rob somebody. If I tell you it's about driving
19 under the influence, you know that somebody was
20 driving a car and they were under the influence of
21 alcohol. But when somebody uses the term
22 conspiracy it's hard to tell what exactly it is
23 they're talking about when they use that term. It
24 doesn't necessarily describe itself.

25 As I indicated, it's an agreement between two

1 parties to break the law. It could be more than
2 two, the parties don't have to know each other, the
3 parties simply must participate in the activity
4 that is the agreement process, the agreement
5 itself.

6 Now, why would that be illegal, why would the
7 agreement itself, why would entering into an
8 agreement with someone else to break the law be
9 illegal? Well, the law and reason recognize that
10 two people can do perhaps more than one person can
11 do. Three people can do more than perhaps two
12 people could do. I will give you a little example
13 of what I'm talking about, I thought of an analogy
14 I could give you today that would kind of explain
15 this process.

16 There is something happened to me when I was
17 a little boy. You know, when you're little and
18 there is something going on at home, your mom and
19 dad, they are talking, they are not talking to you
20 but there is something going on. We had something
21 like that going on for a whole week. That Tuesday
22 night we sat down for dinner, I finally figured out
23 what it was, my dad made an announcement. He said
24 to me and my brother, "After much discussion your
25 mother and I have decided to buy a new car. This

1 Saturday we're getting a new automobile." My
2 brother and I were very excited about it, we waited
3 all week, all week to go to the dealership. We
4 were getting a new car. We never had new cars,
5 other people got new cars. We knew other people
6 got new cars, we didn't know we did.

7 So, that Saturday we go down to the
8 dealership and my father tells us to sit on a
9 little bench, don't move, sit on this bench. The
10 fellow leaves us there and directs my dad to where
11 the salesman is. My dad said keep an eye on those
12 two boys. We sit there. He goes in the back and
13 talks to a salesman, they walk around on the lot
14 and come back in, we can see them making a phone
15 call and then there is more discussion and people
16 wiping their brows. We were waiting because we're
17 going to get us a new car, we can't wait. Finally,
18 after all of that goes on my dad goes back out and
19 walks around again and comes back, we're getting a
20 new car, he comes over to us, says, "Let's get in
21 the car we're leaving." "Dad, what about the new
22 car, where is the new car?" My dad says, "They
23 don't have the color I want. We'll maybe get it at
24 another day." He had a specific color he wanted.

25 So, we're riding home and out of the blue my

1 brother says, "Well, dad, if you wanted that
2 particular color of car, why didn't you just wait?"
3 My dad says, "What do you mean, wait?" I looked at
4 my dad, I said, "I don't know what he's talking
5 about." "Why didn't you just wait, dad?" "What do
6 you mean, wait, for the color of the car, we would
7 be waiting here for --" "No, dad, they make the
8 cars right there in the back of the dealership,
9 that's where they make them, if you waited they
10 will probably make you one." He said, "I saw guys,
11 mechanics going back there and I saw them working
12 on cars, that is where they make the cars."

13 You see, it never dawned on us that my
14 brother thought that they actually made the cars in
15 the back of the dealership and every car dealership
16 was a self contained entity. We found out later he
17 thought groceries came from the back of the grocery
18 store. We found out a lot of other stuff about him
19 but that's the main thing for this case.

20 On the way home my dad started explaining to
21 him, said, "No, you don't understand, somebody, you
22 see, the car is actually made in a place called
23 Detroit, and other people in other parts of the
24 country make parts for the car, maybe one fellow
25 makes the windshield, someone in California, and

1 somebody in New Jersey makes the lights and
2 somebody else makes the horn, somebody else makes
3 the steering wheel, it's assembled, though, it's
4 assembled in Detroit. Then somebody agrees to
5 drive it to the dealership, on the truck. At the
6 dealership the car is sold."

7 He explained that entire process to him, my
8 brother didn't understand how that worked, how all
9 of these people working together to accomplish the
10 delivery of this particular item, the automobile,
11 to the consumer, the consumer paying for it, that
12 money being used to provide more automobiles, more
13 parts to be put together, back to the consumer,
14 that entire process was explained to him. He
15 didn't understand that.

16 Now, that basically is what we're talking
17 about here today. We're talking about people by
18 agreement working together to create an end product
19 that is eventually delivered to the consumer. Now,
20 when the product is beneficial and when it's done
21 legally we call that synergy. That's a good thing.
22 Synergy provides us with a lot of the things in our
23 life that make us more comfortable.

24 When people work together to deliver a
25 product, an item that is a bad thing, that is

1 illegal, we call that conspiracy. Now, the members
2 of the conspiracy don't all have to know each
3 other. They don't all have to agree with each
4 other. The guy that makes the windshield doesn't
5 know the guy that's going to buy the car, he
6 doesn't know the dealer that's going to sell the
7 car but he knows that a windshield goes on it. The
8 guy that makes the tires doesn't know the dealer
9 but he knows what the tires are made for. All of
10 these people working together with a mutual
11 understanding of what it is they are doing for the
12 desired result that they are seeking to obtain is
13 simply what we're talking about in this case here
14 today.

15 Now, this case, as I have already spoken to
16 you, I want to make sure you're aware, involves
17 drugs. Specifically it involves the drug
18 methamphetamine, commonly referred to as crank. It
19 has as its designation and of no significance for
20 this case, but it has as as its designation an
21 investigation titled Crankdown. You may hear some
22 people refer to that in their testimony today.
23 That's just a name that was given to this
24 particular case, it is of no significance, it just
25 makes it easier for people to refer to it when they

1 talk about it as far as the Attorney General's
2 office and the South Carolina Law Enforcement
3 Division and the other agencies that are involved
4 in the case are concerned.

5 Also I want you to understand what it is you
6 are going to be seeing in this case. You will be
7 seeing some transactions involving drugs. You will
8 be seeing some drugs. You will be seeing some
9 things used in the manufacture of drugs. But more
10 importantly and probably most importantly you will
11 be hearing about the manufacture of drugs. You
12 will be hearing about the conspiracy. You well be
13 hearing from people who were involved in the
14 conspiracy. You will be hearing testimony about
15 what was taking place. That will encompass far
16 more than what are merely being shown through the
17 physical evidence that is presented, that is
18 presented to you.

19 Lastly, before I close, I want you to
20 understand what it is that the State is intending
21 to do here today. The State is intending to show
22 that the gentleman seated before you in the striped
23 shirt, Mr. Billy Moore, and an individual named Mr.
24 Marshall Miller, who is represented by his attorney
25 Kim Varner, were part of that same type of

1 organization that I referred to, the same type of
2 organization that synergy was utilized to produce,
3 develop and deliver an end product to a consumer,
4 in this case it's drugs, therefore it's illegal and
5 the agreement to do that is a conspiracy.

6 You will hear names of people who were part
7 of this conspiracy who may not be appearing before
8 you today. You will be hearing names of people who
9 may perhaps be charged in other conspiracies. What
10 is important is that you be looking for and
11 identifying the relationship between the parties
12 referred to, the parties testifying, the conduct
13 you observe through evidence and in connecting that
14 with the defendants. See how this
15 interrelationship took place.

16 I thank you for taking the time to listen to
17 my opening statement. I ask that you be just as
18 attentive to the testimony that's presented here
19 today. I would admonish you one thing, and that is
20 that while I referred somewhat to the law of
21 conspiracy in my opening statement, while I'm sure
22 the lawyers in this Court will address that issue
23 again with you, the ultimate authority on the law
24 in this case will be Judge Saunders.

25 Thank you very much.

1 THE COURT: Mr. Varner.

2 MR. VARNER: May it please the Court.

3 THE COURT: The jury is with you.

4 MR. VARNER: Ladies and gentlemen of the
5 jury, my name is Kim Varner, I'm an attorney from
6 Greenville, South Carolina and I practice law with
7 Mr. James Segura. I represent Mr. Marshall Miller
8 and I can't point him out to you but the judge told
9 you at the very beginning anyone who is accused of
10 a crime, be it Mr. Miller, any of us, anyone,
11 you're not required to present evidence, you're not
12 even required to be here. And the judge will also
13 tell you you cannot use in this case innuendo,
14 inference, conjecture, speculations as to why he's
15 not here.

16 I want to pick up just a moment on what the
17 prosecutor was telling you when he was talking
18 about conspiracy and synergy. Again I will
19 emphasize to you, you take the law as the judge
20 gives you, gives it to you, but use your good old
21 fashioned common sense. You don't leave your
22 brains parked outside in the street. You bring it
23 in with you. But as you sat and listened to what
24 the prosecutor told you, well, part of that is
25 good, is the synergy, the kids because they wanted

1 the car, mom and dad because they talked about it.
2 Well, if you extend that kind of thinking further,
3 what if ten of those cars were bought and they were
4 all driven by drunk drivers, they were used, you
5 know, illegally or to run people over. Well, I
6 guess that means Lee Iaacoa, who is the president
7 or was the president of Chrysler at one point in
8 time, he is somehow responsible to be in on that
9 drunk driver conspiracy.

10 Let's take it a little more logically. World
11 War II came around. At the end of the World War
12 two certain war criminals were tried in Nurnburg
13 and, you know, the private was not on trial, the
14 guy who used the gun to shoot the Americans was not
15 on trial, he wasn't charged with a crime. The guy
16 that made the bullet or made the guns wasn't
17 charged with the trial. They charged the, quote,
18 close quote, leaders, the guy who actually had the
19 intelligence and who sat down in the war room and
20 put this plan of attack together to kill people
21 unnecessarily. That's what a conspiracy is. It's
22 when people actually get together and think about
23 and plan this is the way to carry out a wrong, an
24 immoral, illegal act. That's what a conspiracy is.
25 That's common sense.

1 As you start this case, you start with a
2 couple things. Number one, anytime any of us are
3 accused of a crime, be it Mr. Miller, this other
4 gentleman or any other person, you have a right to
5 come before a jury of your peers, meaning people
6 who live and work in your community, and you have
7 three coats or cloaks of protection, and the first
8 one is the presumption of innocence.

9 And the judge will tell you, I think has told
10 you a little bit, those aren't just lawyer words,
11 that is a very substantial and important right and
12 it carries with it a great deal of significance.
13 It is the one thing that protects us from the
14 government, so to speak, from imprisonment, the one
15 thing that helps us maintain our liberty, because
16 oddly enough, as you start this case you do start
17 this case with a prejudice, and the prejudice is
18 you are to presume that Marshall Miller is not
19 guilty, he's beyond that, he is innocent,
20 absolutely innocent of any crime whatsoever, and
21 it's the job of the State to take away or strip
22 away that coat or cloak that protects us all, that
23 presumption of innocence.

24 The second coat or cloak that protects us all
25 is what is called the burden of proof. And if you

1 hear during this case, well, if the defendant had
2 just been here, if the defendant had shown me this,
3 or if Mr. Varner had had certain evidence we would
4 have questioned that. You go back to what the
5 rules of law are, because the defendant never has
6 to prove anything, his presumption of innocence is
7 sufficient, because the State must prove each and
8 every element of a crime that it's charged.

9 And the third coat or cloak that protect us
10 all is what is called the degree of proof, and the
11 degree of proof is this. In a criminal case it is
12 the highest standard of proof that is possible
13 under the law. It's not what is called the greater
14 weight or the preponderance of the evidence like
15 you have seen, you know, the scales of justice,
16 it's not weighing evidence in that respect, and
17 it's not like in a fraud case where you have clear
18 and convincing evidence. In a criminal case you
19 put both sides up, the State's case goes all the
20 way down, you can't put a piece of paper underneath
21 it, it doesn't quiver, it doesn't hesitate, it
22 doesn't bounce. In other words, you are so clearly
23 convinced at the conclusion of the case of Mr.
24 Miller's guilt that you would not even hesitate to
25 rely on that in the most important of your affairs

1 on each and every element.

2 Those are important rights and they are not
3 just Mr. Miller's rights, they are all of our
4 rights, and I told you you don't come in here
5 without your common sense, but common sense, you
6 don't use it for conjecture, for inuendo, for
7 speculation. Common sense is to ask a tough
8 question, kind of like the little lady in the
9 Wendy's commercial several years ago that comes up
10 to the window and says where's the beef. Kind of
11 like a juror's job, where's the proof, don't give
12 me an opinion, don't give me what you think, show
13 me the beef, where's the proof. That's what your
14 job is, is to examine it, to look for the, quote,
15 quote, the proof, the proof beyond any reason
16 doubt.

17 It's a tough job to do because sometimes if
18 you're not paying attention you will take things as
19 proof because somebody thinks that way or that's
20 someone's opinion, so to speak, or well, if this
21 happened and Suzzie said this, then that may have
22 happened or that probably happened. It's not about
23 probably, because we're not out on the sidewalk
24 anymore, we're not asking you what you think or
25 what you believe, because when you walk into a

1 courtroom it's different, it's a different way of
2 thinking.

3 If we're out on the sidewalk and I ask you
4 what are two and two you are going to say four.
5 It's the correct answer. But if you come in a
6 courtroom and somebody said what are two and two,
7 if you say four you have used innuendo, conjecture
8 or speculation, because nobody said two plus two
9 equals four, because the way it's said in a
10 courtroom, what are two and two, are numbers,
11 nothing more, nothing less. It could be 22, it
12 could be zero if you're subtracting it, it could be
13 four if you're multiplying, if they are negative
14 numbers it could be minus four. That is kind of a
15 silly example but it demonstrates and illustrates
16 to you what your common sense is for, is it's to
17 look for the proof.

18 And understand what the rules are. I don't
19 think anybody is going to get up here and tell you
20 that Marshall Miller was a Boy Scout. He wasn't
21 out trying out for his Merit Badge. I submit to
22 you that you won't hear that what he was doing was
23 appropriate or good or part of the, quote, close
24 quotes, synergy or that even some of his activities
25 were legal. They were illegal, nobody is going to

1 argue that. But what we're arguing about is this.
2 Was there a conspiracy? Because you can drive a
3 car and if you're drunk in the car you can get
4 charged with drunk driving. But there are other
5 things that could happen in which you have got to
6 say, particularly in a drug case, yes, I did drugs,
7 or yes, I might have sold drugs but I'm arguing
8 what the State has charged me with, I still wasn't
9 involved in a conspiracy.

10 You know, it's kind of like if you shoot
11 somebody. You may have shot somebody, maybe it
12 wasn't right, but it could have been because you
13 were scared and you may have a defense of self
14 defense or what is called voluntary manslaughter,
15 involuntary manslaughter, you have every right in
16 the world, if the State wants to charge you with
17 murder, to say I am not guilty of murder.

18 As we go through this case you are not going
19 to hear what a great person Marshall Miller is,
20 what a great Boy Scout, upstanding citizen, leader
21 of this community. What you are going to hear is
22 there was no conspiracy, and you are going to see
23 people parading in here, you are going to see
24 videotapes, and you use your common sense. Before
25 it's over you're going to find out these people are

1 so whacked out on drugs they couldn't tie their
2 shoes, let alone get together and form this great
3 criminal conspiracy.

4 And it's a very frightening, very
5 intimidating situation. You are going to see a lot
6 of people come up here who are going to spill their
7 guts. What you are going to find out is what did
8 they get? Well, they had a hammer hanging over
9 their heads, they had 25 years hanging over their
10 heads but, no, they got up here and said whatever
11 the State wanted them to say or whatever the agents
12 wanted them to say so they could get a better deal.
13 They would have sold their own mother down the
14 river if that's what it took.

15 And that is what the State is asking you to
16 put your faith and your integrity and take Marshall
17 Miller's liberty based on, because those people,
18 because what they are telling you is we did drugs
19 with Marshall Miller, we bought drugs from Marshall
20 Miller but you know what, we're telling the truth
21 and we're forthright, and they are going to be the
22 darling of the day. And that is what they are
23 going to ask you to rely on and it's not going to
24 be that this stuff necessarily didn't happen, but
25 maybe it didn't happen the way they said, and have

1 they proved it and is it, quote, quote, conspiracy
2 as opposed to a bunch of dopeheads partying
3 together. That's what it boils down to and that is
4 what you're going to be looking at, that's what the
5 distinction is.

6 You're going to find a lot of people told the
7 State exactly what they wanted to hear, even Mr.
8 Miller. You're going to find out something odd.
9 Not only did he give a statement to the agents, he
10 did something that nobody else did. He sat down
11 and wrote out a statement, a very long statement in
12 which he implicated himself in criminal activity
13 and told the State of other people's involvement,
14 because he did what they wanted him to do because
15 when you get the Attorney General's office you get
16 lawyers from Charleston and Columbia and a whole
17 bevy of SLED agents from all over the State and
18 when you're looking at that hammer over your head
19 you'll say anything you need to say, you'll tell
20 them what they want to hear because you're scared
21 to death. It's a very, very powerful weapon they
22 have. It intimidates and frightens people.

23 But as you go through here you are going to
24 hear about all these people who got caught with
25 drugs, you're going to see videos of drug deals,

1 but you are going to see one underlying thing
2 throughout this. All the people that were set up,
3 Marshall Miller, this big kingpin, organized crime,
4 mafia conspiracy guy, you're not going to see him
5 on a video. You're not even going to have him with
6 even a speck of drugs on him. Well, if he is all
7 over the county and throwing this stuff all over
8 and got all the people in this conspiracy and this
9 went on, they were investigating, SLED has been on
10 this for a couple years, they couldn't catch
11 Marshall doing anything? You're entitled to ask
12 why, because they asked all these people to do it,
13 they have got videos of everybody else. Why don't
14 they have that?

15 It leads to, I submit to you what you're
16 going to see in this trial, what logic will tell
17 you, common sense will tell you, they didn't like
18 Marshall because he was one of the smarter ones of
19 the crew of people that probably are not the
20 smartest people you have seen. Maybe they were
21 very bright people but drugs will dumb you down.
22 But they didn't catch him, and they were mad about
23 it, so the whole focus was you catch somebody, I
24 don't really care what you did, tell me about
25 Marshall Miller, tell me anything you can about

1 Marshall Miller, I'll give you the moon and the sun
2 and the stars, because he's not going to make a
3 fool out of me.

4 He made the wrong people mad and it was we're
5 going to get him and we're not just going to charge
6 him with selling some drugs, we're not going to
7 charge him with using drugs, we're going to charge
8 him as the kingpin of conspiracy and we're going to
9 put the anvil, not the hammer, but the anvil down.
10 That's the threat and force, that's the
11 intimidating factor.

12 Ladies and gentlemen, as you listen to this
13 case do use common sense, do use the law as the
14 judge gives it to you. Don't add things up unless
15 they are there. Make the State prove its case on
16 what they charged him with, not that they proved
17 that Marshall Miller would sell drugs or he might
18 use drugs or that he may make some drugs, but that
19 he was part of an ongoing knowing conspiracy,
20 because if you accept the way the State is
21 thinking, you know, people don't even have to know
22 each other, they have to use this common
23 enterprise. That means if you drive home with me
24 tonight and there is four other cars behind me and
25 we're all speeding we're all co-conspirators and

1 don't even know each other, or maybe the guy who
2 built the highway is guilty, too, because he's
3 facilitating us speeding.

4 People can commit crimes, people do commit
5 crimes, but that's not what they are charged with
6 here today. They are charged with a conspiracy and
7 that's a totally different character. Recognize
8 the distinction.

9 I thank you very, very much for your time.
10 We will try to be brief. This case may take
11 several days. We may, unfortunately, you don't
12 want to hear this, we might be here Saturday. I
13 hope not, for all our sakes, but we'll try to be
14 brief, and I thank you very, very much for your
15 time, for your ears, for your patience and for your
16 intellect and your ability to listen and understand
17 and collectively put it together.

18 Thank you.

19 THE COURT: Mr. Wise, the jury is with you.

20 MR. WISE: Ladies and gentlemen of the jury,
21 Billy Moore is 36 years old, he's been married
22 about eleven years, he lives over on Nations Road
23 in Greenwood County and he worked in industry until
24 sometime mid, excuse me, 2001, and then started
25 using his uncle's garage, which was across the

1 street from Billy Moore's single wide trailer, to
2 work on go-carts because his son loved to do
3 go-carts and Billy Moore loves to do go-carts, too.
4 His uncle lived about 300 yards up from the store,
5 up from the garage that Billy Moore was working in.
6 He did that for about a year.

7 About sometime around the 24th of September,
8 excuse me, 14th of September of 2002 he met
9 Marshall Miller for the first time. Marshall
10 Miller also did go-carts and he paid Billy Moore
11 cash money to work on go-carts and there is nothing
12 illegal about that. Billy Moore lived in a single
13 wide trailer across from his garage, his
14 grandmother lived to the right of the trailer,
15 another relative lived nextdoor to him. As I said,
16 his uncle lived up the road, that owned the garage.
17 That is where he lived and that is where he worked.

18 And the only reason Billy Moore is here is
19 because on the 24th of September SLED came to
20 arrest a relative of his nextdoor and Billy Moore
21 saw SLED in the back yard and started a
22 conversation with them and they asked whose truck
23 it was across the street and he said Marshall
24 Miller. They wanted to go talk to him and they
25 left Billy Moore alone and Billy Moore went and ate

1 lunch, came home later and they had arrested
2 Marshall Miller, or were looking for him at that
3 time, asked permission to search the garage, he
4 gave them permission to search the garage, which he
5 didn't have to. And one of his relatives who saw
6 the commotion came down there, pointed out that
7 there was a package on top of the trailer belonging
8 to Marshall Miller, and they, the police got it,
9 found there was some drugs in it and then they
10 arrested Billy Moore, too.

11 Well, you are going to find from this
12 testimony that Billy Moore is not a drug dealer, he
13 ain't out there with Marshall Miller, there was no
14 conspiracy with Marshall Miller, and if Marshall
15 Miller had been somewhere else that day Billy Moore
16 wouldn't be a defendant in this courtroom today.
17 And that's it.

18 You listen to the testimony and you listen
19 for the name Billy Moore and you will see that his
20 involvement is not part of any conspiracy with
21 Marshall Miller to distribute 100 or more grams of
22 methamphetamine and never was. You look, even
23 though they deem this to be a conspiracy, there is,
24 there are nineteen people listed on this indictment
25 of this big conspiracy, nineteen different

1 individuals, and if we had nineteen people on trial
2 here today you would have to look at each
3 individual case individually to determine whether
4 or not they're guilty, and when you look at Billy
5 Moore's individual responsibility, not because he
6 knew Marshall Miller, that doesn't make him guilty
7 of anything, you will find that they have not made
8 out the case.

9 This case is -- let me tell you what this
10 case is also not about. It's not about anybody
11 using methamphetamine, it's not about anybody
12 selling methamphetamine, it's not about anybody
13 possessing methamphetamine. It's about was there
14 an agreement to possess 100 or more grams of
15 methamphetamine. That's what it's about. Listen
16 to the testimony, I think you will find that Billy
17 Moore is not involved in this, not part of this
18 conspiracy and the only reasonable logical verdict,
19 regardless of the burden of proof, is going to be
20 not guilty.

21 Thank you.

22 THE COURT: Ladies and gentlemen, we will
23 take a luncheon recess at this time. Please do not
24 discuss the case by, between and among yourselves
25 nor with any other person. If anyone attempts to

1 discuss the case with you immediately tell that
2 person or persons that you are a juror and it is
3 not proper for you to discuss the case with them.

4 If any person or persons persists in
5 attempting to discuss the case with you after you
6 alert them and make them aware that you are a juror
7 in this case that would be highly improper, wrong
8 and illegal and you should use every reasonable
9 means at your disposal to identify such person or
10 persons and report that to one of the bailiffs or
11 to the court clerk who sits directly in front of
12 the Court, and the Court will have that
13 investigated and dealt with and you will not be
14 named.

15 If there were to be any television, radio or
16 newspaper coverage of this trial, which is not
17 expected but there could be, this is open court.
18 When this judge commenced practicing law a few
19 years ago there would be a lot of people in court
20 to see what was going on. Now we have maybe five
21 people here in the audience and we don't see
22 anybody who appears to be a media individual, but
23 they may come in and make some notes and you may
24 see something in the newspaper. You can't read it
25 because you must decide the case upon the evidence

1 that's presented during the course of the trial.

2 If there were to be any report on any, in any
3 media measure, such as newspaper, radio or
4 television you can't take that into consideration
5 and as soon as you realize that what you're seeing,
6 hearing or reading has to do with this trial you
7 have to immediately disregard it and disabuse
8 yourself of it completely because you must decide
9 the case on the evidence that's presented during
10 the course of the trial.

11 So, with that in mind, you certainly should
12 have a rest, we will get into the testimony
13 immediately after the lunch period, we will start
14 back at 2:30. Please be back in the jury room at
15 2:30. We expect to call the first witness at that
16 time. Keep in mind your oath. You are on your
17 oath and you are directly ordered not to discuss
18 the case with anyone under any circumstances.

19 Please have a pleasant lunch, be back in the
20 jury room at 2:30. Thank you very much. Everyone
21 else remain seated, the jurors are excused.

22 (The jury was excused from the courtroom).

23 THE COURT: Mr. Busby, are all the jurors
24 clear?

25 BAILIFF: Yes, sir, that was the last.

1 THE COURT: Anything further from the State
2 before we take a luncheon recess?

3 MR. HOOD: The only thing we have, Your
4 Honor, the list that Mr. Wise gave yesterday for
5 potential witnesses, he probably doesn't have this
6 on him, I just want to make it known now, if we
7 could have the race, sex and date of birth of each
8 of those witnesses, it doesn't have to be right
9 now, it doesn't have to be today, anytime before we
10 rest our case, we would ask for that.

11 THE COURT: Yes, sir. Mr. Wise, if you could
12 provide that.

13 Anything, Mr. Varner?

14 MR. VARNER: Nothing, Your Honor.

15 THE COURT: Mr. Wise, do you have anything
16 for the record at this time?

17 MR. WISE: Nothing further.

18 THE COURT: Very well. We are in recess
19 until 2:30, please.

20 (Recessed at 1:12 p.m.).

21 (Reconvened at 2:40 p.m.).

22 THE COURT: We're coming into session in the
23 State of South Carolina versus Marshall Miller and
24 others, in which Marshall Miller and Billy Moore
25 are the defendants in this particular trial in

1 criminal action 2002-GS-47-32.

2 The jurors have sent out a note through the
3 bailiffs, and Mary Hawkins, juror number 57, is the
4 foreman. This will be handed to the court reporter
5 and marked as Court's Exhibit Number 1.

6 (Court's Exhibit Number 1 was marked).

7 THE COURT: Anything from the State before
8 the jurors come in, please?

9 MR. HOOD: No, sir, Your Honor.

10 MR. CROUT: No, Your Honor.

11 THE COURT: Anything from the defendant
12 Miller?

13 MR. VARNER: Nothing, Your Honor.

14 THE COURT: Anything from the defendant
15 Moore?

16 MR. WISE: Nothing, Your Honor.

17 THE COURT: Show the jury in, Mr. Busby,
18 please, sir.

19 (The jury returned to the courtroom).

20 THE COURT: All the jurors are present and
21 the forelady, who has been named, is in her proper
22 seat. Are you the foreperson?

23 JUROR: Yes.

24 THE COURT: And the note that was sent out
25 has been marked as Court's Exhibit Number 1. You

1 will occupy that seat during the balance of the
2 trial. All others may sit wherever you are
3 comfortable. Some people like to sit in the same
4 seat throughout the trial and some people, it
5 doesn't matter to them, so wherever you sit is
6 fine, with the exception of our foreperson, and she
7 will sit in that seat for the balance of the trial.

8 The matter lies with the State, call your
9 first witness, please.

10 MR. CROUT: Your Honor, at this time the
11 State would call Special Agent Connie Sonnefeld.

12 THE COURT: Come up, please. Come up and be
13 sworn. I couldn't see you for the machine.

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CONSTANCE SONNEFELD - DIRECT

1 CONSTANCE SONNEFELD,
2 after being first duly sworn testified as follows:

3 THE CLERK: Have a seat and state your full
4 name for the record.

5 THE WITNESS: My name is Constance Sonnefeld.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. CROUT:

8 Q Agent Sonnefeld, where are you employed?

9 A I work for the State Law Enforcement
10 Division.

11 Q And how long have you been working in law
12 enforcement?

13 A Approximately five and a half years.

14 Q And have you always worked for the State Law
15 Enforcement Division, or have you worked for any
16 other agency?

17 A I have worked for another agency.

18 Q What agency was that?

19 A I worked for the University of South Carolina
20 Police Department.

21 Q How long did you work for them?

22 A Approximately two and a half years.

23 Q How far did you go in school?

24 A I graduated from college.

25 Q As far as your law enforcement experience is

CONSTANCE SONNEFELD - DIRECT

1 concerned, what training have you had to prepare
2 you are for your career in law enforcement?

3 A I graduated from the South Carolina Criminal
4 Justice Academy in October, 1998. I have
5 certification in NCIC, which is the National Crime
6 Information Center. I attended a class for the DEA
7 for basic narcotics.

8 Q What are your specific duties in SLED, or
9 with SLED at this time?

10 A Currently I'm assigned to the division called
11 the State Grand Jury. The State Grand Jury
12 investigates large multi-county narcotic
13 conspiracies.

14 Q And as far as the decisions of what cases you
15 will investigate with the State Grand Jury, who
16 makes that decision?

17 A The attorneys at the AG's office, or Attorney
18 General's office, makes that decision, as well as
19 the agents and supervisor, my supervisor.

20 Q Now, you just testified that the State Grand
21 Jury handles multi-county cases. Do these cases
22 usually involve a single drug transaction?

23 A No, sir.

24 Q Do they usually involve a single defendant?

25 A No, sir.

CONSTANCE SONNEFELD - DIRECT

1 Q As far as these investigations that you
2 perform for the State Grand Jury, how do you start
3 an investigation?

4 A The investigation is actually started by a
5 local law enforcement, they gather their suspects
6 and their information, their intelligence and they
7 bring it to us and they ask us for assistance.

8 Q What are some of the first steps that you
9 might take in the investigative process?

10 A Some of the first steps are that you identify
11 your suspect, you gather information on them,
12 meaning you will run a criminal history, driver's
13 history, try to get a federal ID of them so you
14 know what they look like.

15 Q As far as some of the specific techniques
16 that you use, do you ever conduct controlled drug
17 purchases?

18 A Yes, sir, as often as we can we try to make
19 controlled drug purchases. We also do interviews
20 as well as surveillance.

21 Q Can you explain to the jury what a controlled
22 drug purchase is?

23 A It depends on the situation, if you are using
24 a confidential informant for a controlled drug
25 purchase or if you are using a police officer to

CONSTANCE SONNEFELD - DIRECT

1 actually do the undercover work. If you are using
2 a confidential informant that informant has to be,
3 has to meet us at the location and that person is
4 searched, the person is searched, as well as their
5 vehicle, for any type of contraband to make sure
6 that when they leave us that they have no
7 contraband with them. They are fitted with an
8 audio transmitting device as well as an audio
9 recording device. They go in, they do their
10 undercover work, they make a purchase if it's
11 possible, they come back to the agents at a meeting
12 location and the agents again search that person
13 for contraband after we have seized the contraband
14 that they purchased, and their vehicle is also
15 searched and they give us a statement.

16 Q As far as the interview process, how does
17 that process work?

18 A Again it depends on the situation. The
19 majority of the time working at the Grand Jury
20 local law enforcement officers will already have
21 the contacts and they will contact us, the agents
22 that are assigned to the case, and tell us that
23 this particular person wants to talk or that they
24 think that we need to talk to this person. We will
25 go to a meeting location, ask the person that we

CONSTANCE SONNEFELD - DIRECT

1 want to interview to meet with us, we'll identify
2 ourselves and who we work for and what type of
3 investigation we're doing and ask them if they are
4 interested in cooperating.

5 Q And after you interview these people do you
6 make a report of this interview?

7 A Yes, sir, we do.

8 Q Is that report, is it word for word, or what
9 does that report generally contain?

10 A It contains the information they give us but
11 it is not word for word.

12 Q Do you use information from everybody that
13 you interview?

14 A Not always. Sometimes it's not relevant to
15 the case that we're investigating.

16 Q And the cases that you handle, are they based
17 solely on the drug transactions?

18 A No, sir, they are not.

19 Q Are they based solely on the interviews?

20 A No, sir.

21 Q Now, especially with respect to one of these
22 controlled drug transactions, do you make an arrest
23 immediately after they occur?

24 A Not always.

25 Q Why is that?

CONSTANCE SONNEFELD - DIRECT

1 A Sometimes we're trying to work up the chain,
2 we're trying to work up the ladder or the hierarchy
3 of the conspiracy so we continue to make drug
4 purchases in hope we will be able to move up the
5 ladder.

6 Q And do some of the individuals that you
7 purchase drugs from, do they start cooperating with
8 you?

9 A Yes, sir, sometimes they do.

10 Q As far as this particular case is concerned,
11 and I believe this is referred to as, I guess, a
12 code name or an investigation name of Crankdown.
13 Is that correct?

14 A Yes, sir.

15 Q And that name Crankdown, what does that mean,
16 how did it get that name?

17 A We had a meeting with all the local law
18 enforcement agencies in reference to this case and
19 Crankdown was already a name that some of the
20 officers had been referring to for the case, we
21 have a case number but it's much easier to say
22 Crankdown instead of the entire case number.

23 Q How did, as far as this particular case is
24 concerned, how did you get involved in this
25 particular case, Crankdown case?

CONSTANCE SONNEFELD - DIRECT

1 A My lieutenant, Lieutenant Frank O'Neil,
2 advised me that there was local law enforcement
3 agencies that wanted us to come in and assist with
4 a case they had been working on. We met in Laurens
5 County with a variety of agencies and discussed the
6 case.

7 Q And then after that it was adopted by SLED or
8 the State Grand Jury?

9 A Yes, sir, it was.

10 Q And what was your specific role in this case?

11 A I was co-case agent.

12 Q And what did that entail you doing?

13 A It entailed me assisting Special Agent Bragg
14 with gathering information, working in an
15 undercover capacity or doing surveillance.

16 Q And is Special Agent Bragg the other co-case
17 agent --

18 A Yes, sir, he is.

19 Q -- on this particular case?

20 A Yes.

21 Q Now, when did this investigation, when would
22 you say it actually began?

23 A As far as the State Law Enforcement was
24 involved it began December of 2001.

25 Q But does it involve conduct that happened

CONSTANCE SONNEFELD - DIRECT

1 before that?

2 A Yes, sir. I'm sorry, our investigation went
3 back historically to November of 1999.

4 Q All right. Now, I want you to, if you could,
5 going up to the date when some of the defendants in
6 this case were arrested, could you tell, could you
7 kind of tell us when it ended or when it was
8 officially closed as far as the Crankdown case is
9 concerned?

10 A March of 2003.

11 Q And do you recall as a result of this
12 investigation, this conspiracy investigation, the
13 individuals who were arrested?

14 A Yes, sir.

15 Q Would it help if I gave you a copy of the
16 indictment to read the names off?

17 A Yes, sir.

18 MR. CROUT: Any objection?

19 MR. VARNER: I have no objection to you just
20 publishing them.

21 MR. WISE: No objection.

22 MR. CROUT: Let the record reflect that I'm
23 handing the witness a copy of the indictment which
24 has already been published by the Court.

25 BY MR. CROUT:

CONSTANCE SONNEFELD - DIRECT

1 Q The names that appear there, could you read
2 those?

3 A Yes, sir. Marshall Miller, Tina Stevenson,
4 Julie Prince, Martha Ellis, David Cumming, Tony
5 Howard, Sandra J. Hughes, Jason Davis, Ernest
6 Covan, Bonnie Saylor, Ashley Bannister, Scottie
7 Prince, Tonya Lee Michelle Madden, Samuel McNeil,
8 Tracy Davis, Ray Powell, Jeff Frye, Billy Moore and
9 Jeff Horne.

10 Q Were there any other individuals arrested as
11 a result of this investigation?

12 A I believe that was nineteen.

13 Q Thank you. Now, on March 27th, 2002,
14 referring to what you have previously discussed as
15 a controlled purchase, were you involved in a
16 controlled purchase of methamphetamine?

17 A Yes, sir, I was.

18 Q Was that from an individual by the name of
19 Julie Prince?

20 A Yes, sir, it was.

21 Q Could you tell us what happened as far as
22 that controlled drug transaction was concerned?

23 A Yes, sir. For that particular drug
24 transaction Special Agent Bill Kimble made an
25 undercover recorded phone call to Julie Prince.

CONSTANCE SONNEFELD - DIRECT

1 The surveillance agents, I was part of the
2 surveillance team, we set up across the street from
3 the Stop-A-Minute BP gas station on, I believe it's
4 East Greer Street in Honea Path. We sat up to
5 begin our surveillance and a white New Yorker car
6 drove into the parking lot and parked next to,
7 parked on the side of the parking lot, I believe
8 it's next to a phone booth. There were two white
9 females as well as a child in the vehicle. A few
10 moments later Special Agent Kimble drove up and
11 parked behind the white New Yorker, Julie
12 Prince -- I'm sorry. Before Special Agent Kimble
13 actually drove up behind the white New Yorker,
14 Julie Prince, one of the white females in the
15 vehicle had gotten out of the white New Yorker and
16 walked into the gas station. While Julie Prince
17 was in the gas station Special Agent Bill Kimble
18 parked, drove into the parking lot and parked
19 behind the New Yorker. He got out of his
20 undercover vehicle and walked to the New Yorker.
21 It appeared that he spoke to the driver of the
22 white New Yorker, he walked around the back of the
23 New Yorker and then he got back into his undercover
24 car. A few moments later Julie Prince came back
25 out of the Stop-A-Minute gas station, convenience

CONSTANCE SONNEFELD - DIRECT

1 store, and walked over to Special Agent Kimble and
2 spoke with him for a moment and then she got into
3 his undercover vehicle. They were in there for a
4 few minutes, then Julie Prince got out of the
5 undercover vehicle, got back into the New Yorker
6 and the New Yorker left.

7 We followed the white New Yorker to a
8 residence at the intersection of Highway 25 and
9 Ware Shoals Highway, I'm sorry, Hodges Highway.
10 The surveillance team, the undercover team then met
11 back at a meeting location and waited for the white
12 New Yorker with Julie Prince to return. After a
13 period of time and the white New Yorker had not
14 returned Special Agent Kimble made another phone
15 call to Julie Prince. Approximately fifteen
16 minutes after that phone call was concluded the
17 white New Yorker came back to the Stop-A-Minute BP
18 gas station. Julie Prince got out of the vehicle
19 and walked again into the gas station. After she
20 came out of the gas station she walked over to
21 Special Agent Kimble's vehicle that was already
22 parked in the parking lot. She got into the
23 undercover vehicle with Special Agent Kimble, they
24 spoke for a few moments, then she got out of the
25 undercover vehicle and went back to the white New

CONSTANCE SONNEFELD - DIRECT

1 Yorker. The white New Yorker, after a few moments,
2 left the area.

3 Q Did you later determine who the owner of the
4 New Yorker was, that white New Yorker automobile?

5 A Yes, sir, we did.

6 Q And who owns that car?

7 A It's registered to Raymond Miller.

8 Q And where was the next time you saw that
9 white New Yorker, where was it located?

10 A It was parked outside of a residence in
11 Waterloo.

12 Q And whose residence was that?

13 A My understanding it was Tracy Davis and
14 Marshall Miller's residence.

15 Q The drugs that were purchased in that case by
16 Special Agent Kimble, what did you do with those
17 drugs?

18 A I took custody or control of the drugs from
19 Special Agent Kimble, I placed it into what is
20 called a SLED Best Kit, and then I turned it in to
21 a SLED narcotics drop box.

22 Q Did you complete a chain of custody form?

23 A Yes, sir, I did.

24 Q What's the purpose of placing the drugs in a
25 Best Kit?

CONSTANCE SONNEFELD - DIRECT

1 A The Best Kit, it's a kit, it comes with a
2 clear envelope, it's about eight by ten and it has
3 a seal at the top so that you can drop your drug
4 evidence into the bag as well as a request for a
5 drug analysis. You seal the top of that so that
6 nobody can tamper with it or alter it. It also
7 comes with a chain of custody form.

8 Q And what's the purpose of the chain of
9 custody form?

10 A The chain of custody form is so that everyone
11 can see who touched those drugs from the time that
12 it was purchased or seized, until the time that it
13 was turned into the narcotics drop box at SLED.

14 Q And you said that you had requested an
15 analysis of those drugs?

16 A Yes, sir, I did.

17 Q Did you receive that analysis?

18 A Yes, sir, I did.

19 Q And what did that analysis show those drugs
20 to be?

21 A It tested positive for methamphetamine.
22 (State's Exhibit Number 1 was marked
23 for identificaton).

24 MR. CROUT:

25 Q Agent Sonnefeld, I'm going to show you now

CONSTANCE SONNEFELD - DIRECT

1 what has been marked as State's Exhibit Number 1,
2 With accompanying documentation, and ask if you can
3 identify that?

4 A Yes, sir.

5 Q And what is that?

6 A This is the evidence bag that I sealed the
7 meth I received from Special Agent Kimble, and the
8 meth is contained inside, that I turned in to the
9 SLED drop box as well as a copy of the Best Kit or
10 the envelope, the chain of custody form and the
11 analysis.

12 MR. CROUT: Your Honor, at this time I would
13 move those items in evidence as complying with the
14 requirements of Rule 6 of the South Carolina Rules
15 of Criminal Procedure.

16 MR. VARNER: No objection.

17 MR. WISE: No objection.

18 THE COURT: No objection from either
19 defendant. Counsel, would you count the pages that
20 are in addition to the Best pack?

21 MR. CROUT: Yes, sir.

22 THE COURT: So we will know how many pages of
23 things are involved in that exhibit?

24 MR. CROUT: Yes, sir. Your Honor, the
25 exhibit, as stated, contains the Best Kit and one,

CONSTANCE SONNEFELD - DIRECT

1 two, three, four, five, six, seven, eight
2 additional pages of documentation.

3 THE COURT: The record will reflect, all are
4 one exhibit.

5 MR. CROUT: Yes, Your Honor.

6 THE COURT: Is there any objection to their
7 being stapled together at the top?

8 MR. VARNER: No objection.

9 MR. WISE: No objection.

10 THE COURT: Is that all right with you,
11 counsel?

12 MR. CROUT: No objection, Your Honor.

13 THE COURT: All right, Mr. Court Reporter, if
14 you can, staple them together at the top so that
15 all eight pages and the plastic kit stay together.

16 (State's Exhibit Number 1 was received
17 in evidence).

18 BY MR. COURT:

19 Q Agent Sonnefeld, when this transaction was
20 taking place where were you located?

21 A I was across the street, depending on which
22 time, there were two times, at the beginning it was
23 across the street and the second part when she came
24 back we were in the parking lot.

25 Q And were you able to watch the actual video

CONSTANCE SONNEFELD - DIRECT

1 of the transaction that was being made?

2 A Yes, sir.

3 Q And have you had a chance to look at that
4 video before testifying here today?

5 A Yes, sir, I have.

6 Q And does that video accurately reflect what
7 was recorded that day?

8 A Yes, sir.

9 Q Now, you mentioned it was in two parts.
10 Could you explain how it is that there is two
11 different parts to this video, just for
12 clarification purposes?

13 A Yes, sir. In the beginning when we
14 originally, when Special Agent Bill Kimble
15 originally met the white New Yorker and Julie
16 Prince to receive, or to give money to, it was late
17 afternoon and by the time the white New Yorker with
18 Julie Prince in it came back it was evening time,
19 there was a bit of time in between.

20 Q And does the video have marked on there the
21 day and time?

22 A Yes, sir, it does.

23 Q Who else was at that transaction?

24 A Surveillance?

25 Q No, excuse me, as far as who all was with

CONSTANCE SONNEFELD - DIRECT

1 Julie Prince at that transaction?

2 A Tracy Davis.

3 Q Were there any children there?

4 A Yes, there was.

5 Q And how did you determine that Tracy Davis
6 was one of the individuals that was there?

7 A It was a corroborative effort. The local law
8 enforcement agents that were with us were already
9 familiar with Miss Davis and there was a part of
10 the video that you can see her and we compared her
11 driver's license picture to the picture of her from
12 the video, as well as we already understood that
13 Marshall Miller's girlfriend's name was Tracy
14 Davis, as well as the white New Yorker was
15 registered to Mr. Miller's father.

16 MR. CROUT: If there is no objection I would
17 at this time request permission to publish that
18 video to the jury.

19 THE COURT: How says the defendant Miller?

20 MR. VARNER: Your Honor, I don't know if he
21 intends to use the audio portion. The video, there
22 is no problem with it, but if he intends to use the
23 audio I may have some issues. She wasn't there,
24 didn't hear it. I'm sure it talks about other
25 people on it.

CONSTANCE SONNEFELD - DIRECT

1 THE COURT: Does it have audio, counsel?

2 MR. CROUT: Your Honor, it does and I may be
3 able to clarify that through a line of questioning.

4 THE COURT: All right. If you will hold your
5 objection, let's see, if you will continue your
6 direct examination.

7 MR. CROUT: Yes, Your Honor.

8 BY MR. CROUT:

9 Q At the time that you were making the video
10 recording were you also making an audio recording?

11 A Yes, sir.

12 Q And could you hear that audio as it was being
13 made when the video was being made?

14 A Yes, sir.

15 Q And when you reviewed this video prior to
16 trial here today did it contain the audio
17 recordings that you heard when you were making the
18 video?

19 A Yes, sir.

20 MR. VARNER: Your Honor, no objection to
21 those portions pertaining to this purported drug
22 deal but if they discuss other people, particularly
23 my client and other people, I don't think that's
24 proper foundation for it.

25 THE COURT: All right. The objection is

CONSTANCE SONNEFELD - DIRECT

1 whether, is as to any mention of any defendant
2 other than the persons involved in this video?

3 MR. CROUT: Yes, sir.

4 THE COURT: Is there any?

5 MR. CROUT: Not that I'm aware of but let me
6 pursue that line of questioning with Miss Sonnefeld
7 to be sure we're clear on the record.

8 BY MR. CROUT:

9 Q Miss Sonnefeld, in reviewing this video does
10 it contain any information referencing Mr. Marshall
11 Miller?

12 A Not that I'm aware of.

13 Q Does it contain any information referencing
14 Mr. Billy Moore?

15 A Not that I'm aware of.

16 MR. CROUT: Your Honor, at this time I would
17 now move to publish.

18 THE COURT: How says the defendant Miller?

19 MR. VARNER: Based on that representation, I
20 don't have any objection.

21 THE COURT: Very well. How says the
22 defendant Moore?

23 MR. WISE: No objection.

24 THE COURT: Very well. Now, are you
25 admitting this into evidence or is this for

CONSTANCE SONNEFELD - DIRECT

1 information?

2 MR. CROUT: Your Honor, this is for
3 information purposes only. We will not be actually
4 admitting the video in evidence.

5 THE COURT: Very well.

6 BY MR. COURT:

7 Q Agent Sonnefeld, if you will step down,
8 please.

9 MR. HOOD: Judge, if I may, sir, could you
10 inquire as to all the jurors, make sure they can
11 see the video properly?

12 BAILIFF: She can't see.

13 THE COURT: If there is anyone can't see
14 raise your hand. She's having difficulty seeing.
15 Move the lecturn back, please. Anyone have a
16 problem now?

17 No one indicates a problem. Proceed.

18 MR. HOOD: Thank you, Your Honor.

19 (Surveillance video tape played to the jury).

20 THE COURT: Madam Witness, you have been
21 sworn and remain under oath, do you understand?

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you. The witness is with
24 you, sir.

25 MR. CROUT: Thank you, Your Honor. At this

CONSTANCE SONNEFELD - DIRECT

1 point I would like to just let the record reflect
2 that in the interest of saving time we did fast
3 forward the video but the entire video was made
4 available to defense counsel, and for the benefit
5 of the jury we fast forwarded.

6 MR. VARNER: That was without objection, Your
7 Honor.

8 MR. WISE: That's correct, Your Honor.

9 THE COURT: Without objection from either
10 defendant. The witness is with you on direct
11 examination.

12 BY MR. CROUT:

13 Q Agent Sonnefeld, the individual in that video
14 who was driving the black truck, who was that
15 individual?

16 A She was identified as Tracy Davis.

17 Q Excuse me, the individual driving the black
18 truck?

19 A Okay, I'm sorry. That was Special Agent Bill
20 Kimble?

21 Q Is that his voice who we hear on the video?

22 A Yes, sir, it is.

23 Q And the individual driving the white New
24 Yorker?

25 A I'm sorry, Tracy Davis.

CONSTANCE SONNEFELD - DIRECT

- 1 Q All right. Following that controlled
2 purchase did you arrest Julie Prince at that time?
- 3 A Not at that time, no, sir.
- 4 Q And you didn't arrest Tracy Davis either, I'm
5 assuming?
- 6 A No, sir.
- 7 Q Again, did you have a chance to make a
8 controlled purchase of drugs on April 9th, 2002,
9 from Julie Prince?
- 10 A Yes, we did.
- 11 Q Did it follow that same pattern to the extent
12 that the contacting person was Special Agent
13 Kimble?
- 14 A Yes, sir.
- 15 Q On that second purchase was Tracy Davis
16 there?
- 17 A No, sir.
- 18 Q Did you act in the same role as in the first
19 purchase?
- 20 A Yes, sir.
- 21 Q And you made a video of that as well?
- 22 A No, sir, there was not a video. That was an
23 audio recording.
- 24 Q Just an audio recording of that one?
- 25 A Yes, sir.

CONSTANCE SONNEFELD - DIRECT

1 Q Did you obtain any drugs as a result of that
2 sale?

3 A Yes, we did.

4 Q And did you submit those for testing?

5 A Yes, I did.

6 Q And did that test reveal in fact those drugs
7 were methamphetamine?

8 A Yes, sir.

9 Q Then again on April 25th, 2002, you were
10 involved in another controlled purchase of
11 methamphetamine from Julie Prince?

12 A Yes, sir.

13 Q And was that purchase conducted by Special
14 Agent Kimble?

15 A Yes, sir.

16 Q And did it take place under the same or
17 similar set of circumstances?

18 A Yes, sir.

19 Q And was a video recording made, an audio
20 recording made?

21 A Audio recording.

22 Q Just an audio recording?

23 A Yes, sir.

24 Q Did you obtain any drugs as a result of that
25 transaction?

CONSTANCE SONNEFELD - DIRECT

- 1 A Yes, we did.
- 2 Q And did you submit those for testing?
- 3 A Yes, I did.
- 4 Q And did those come back positive for
- 5 methamphetamine?
- 6 A Yes, they did.
- 7 Q And at that time, once again, did you arrest
- 8 Julie Prince?
- 9 A Not at that time.
- 10 Q And what was your purpose for not arresting
- 11 her at that time?
- 12 A We're still trying to move up the ladder.
- 13 Q On the dates of April 25th and April 26th did
- 14 you conduct an interview of an individual by the
- 15 name of David Cumming?
- 16 A Yes, sir, I did.
- 17 Q And how did you make contact with him?
- 18 A Through Abbeville County.
- 19 Q And where were you when you interviewed him?
- 20 A The Abbeville County narcotics office.
- 21 Q Was anybody else with you during that
- 22 interview?
- 23 A Yes, sir.
- 24 Q Who else was with you?
- 25 A Special Agent Bragg, Lieutenant O'Neil and

CONSTANCE SONNEFELD - DIRECT

1 Investigator Brandon Scott from Abbeville County,
2 Investigator Chris Benson from Abbeville County.
3 There were a number of us.

4 Q Did you make a report of that interview?

5 A Yes, sir, I did.

6 Q Now, that report of that interview you made,
7 you testified earlier that's not a word for word
8 report, is that correct?

9 A That's correct.

10 Q An that report is not done to replace his
11 sworn testimony, is that correct?

12 A No, it's not.

13 Q And as far as you know is he scheduled to
14 testify here?

15 A Yes, he is.

16 Q Did you serve a subpoena on him to testify
17 here?

18 A Yes, I did.

19 Q As a result of your interview with him did
20 you receive information that was helpful in this
21 case?

22 A Yes, I did.

23 Q On July 2nd of 2002 did you interview Tina
24 Stevenson?

25 A Yes, I did.

CONSTANCE SONNEFELD - DIRECT

1 Q And once again who all was there when you
2 conducted that interview?

3 A I believe it was myself and Lieutenant
4 O'Neil.

5 Q How did you make contact with her?

6 A Through Abbeville County.

7 Q And did you make a report of that interview?

8 A Yes, sir, I did.

9 Q Did you receive information that was helpful
10 in this case?

11 A Yes, sir, I did.

12 Q Is it your understanding she's going to
13 testify here?

14 A Yes, it is.

15 Q I want to also go back, I'm sorry, I didn't
16 ask you about this before, regarding your interview
17 of David Cumming. When you spoke with him did you
18 promise him anything for giving you information or
19 letting you interview him?

20 A No, I did not.

21 Q Do you know if anybody else who was with you
22 promised him anything in order to give you an
23 interview or give you information?

24 A No, sir, there were no promises made.

25 Q And likewise with Tina Stevenson, did you

CONSTANCE SONNEFELD - DIRECT

1 make a promise to her if she gave you information
2 you would do anything for her?

3 A No, sir.

4 Q Now, on July 25th did you interview an
5 individual by the name of Michelle Madden?

6 A Yes, I did.

7 Q Who was with you when you interviewed her?

8 A I believe it was Special Agent Bragg, David
9 King from the Honea Path Police Department, and
10 Detective Wilhite from Laurens City.

11 Q And did you make a report of that interview?

12 A Yes, I did.

13 Q Did you promise her anything in exchange for
14 giving you any information in this case?

15 A No, I did not.

16 Q Did she give you any information helpful in
17 this case?

18 A Yes, she did.

19 Q As far as you know is she scheduled to
20 testify here this week?

21 A Yes, she is.

22 Q You mentioned earlier that you had
23 interviewed David Cumming. After you spoke with
24 him did you have any other contact with him at a
25 later date regarding this case?

CONSTANCE SONNEFELD - DIRECT

1 A I have had several conversations with Mr.
2 Cumming, yes, sir.

3 Q So, if you interview somebody and you
4 identify yourself do you leave it open for them to
5 contact you later sometimes?

6 A Yes, I do. I give them my phone number so
7 they can call me.

8 Q During the course of your investigation if
9 they have any information that might be helpful
10 they can give it to you?

11 A Absolutely.

12 Q These individuals that we talked about, David
13 Cumming, Michelle Madden, we also talked about Tina
14 Stevenson, at the time you spoke with them did they
15 realize that they were subjects in this case?

16 A Those individuals, yes, sir.

17 Q Now, were they subsequently indicted in this
18 case?

19 A Yes, they were.

20 Q Did Tina Stevenson plead guilty?

21 A Yes, she did.

22 Q What about Michelle Madden?

23 A Yes, sir.

24 MR. WISE: Your Honor, I object on the
25 relevancy of whether or not these people pled

CONSTANCE SONNEFELD - DIRECT

1 guilty. It's not probative against my client.

2 THE COURT: Counsel?

3 MR. CROUT: Your Honor, I offer it as being
4 individuals who were indicted along with these
5 individuals who pled and who will be testifying
6 here and the status as individuals who pled guilty.
7 They can answer that question when they testify.
8 What I'm doing with Miss Sonnefeld is simply
9 setting up the framework of the context in which
10 the case now appears before the Court. I think it
11 would be appropriate to instruct the jury the fact
12 that one person in a conspiracy pled guilty is not
13 to be considered as evidence against the others.

14 THE COURT: That certainly is the case.
15 Ladies and gentlemen, counsel will be permitted to
16 go along this line of questioning so long as the
17 witnesses whom he asks about do testify. And,
18 ladies and gentlemen, in a conspiracy prosecution,
19 that one person may have been convicted and/or pled
20 guilty of the crime is not indicative in any way of
21 the guilt or the innocence of any other in an
22 alleged conspiracy, any other indicted person. One
23 does not relate to the other until the State meets
24 the burden of proving their guilt beyond a
25 reasonable doubt, as you were told.

CONSTANCE SONNEFELD - DIRECT

1 Continue direct examination.

2 BY MR. CROUT:

3 Q Again, then, as you are going through this
4 interview process you're making contacts with these
5 individuals. The lady who was in the video, Julie
6 Prince, did you interview her?

7 A Yes, I did.

8 Q Do you remember when that was?

9 A Not offhand, sir.

10 Q But let me ask you this. Was it before she
11 was indicted?

12 A Yes, it was.

13 Q And did she give you information that was
14 helpful in this case?

15 A Yes, she did.

16 Q And as far as you know she's going to be
17 testifying here today, is that correct?

18 A Yes, sir.

19 Q You served her with a subpoena?

20 A Yes, I did.

21 Q Did you make a report of that interview?

22 A Yes, I did.

23 Q On August 14th of 2002 did you receive any
24 information from a business known as B.J.'s
25 Wholesale Club?

CONSTANCE SONNEFELD - DIRECT

1 A I did receive information, yes, sir.

2 Q And was that pursuant to this investigation?

3 A Yes, it was.

4 Q Do you recall what that information was?

5 MR. VARNER: I'm going to object, Your Honor,
6 if she's going to get into what somebody from
7 B.J.'s Wholesale Club said.

8 MR. CROUT: Your Honor, I'm asking her more
9 along the lines of not what was contained in the
10 information but exactly what the item is that she
11 received from B.J.'s Wholesale Club.

12 THE COURT: The objection is overruled, with
13 those parameters.

14 BY MR. COURT:

15 Q Agen Sonnefeld, could you identify, without
16 telling the information contained in the document,
17 could you identify what documentation you received
18 from B.J.'s Wholesale Club?

19 A I received account information.

20 Q And was that account information relevant to
21 this case, as far as you're concerned?

22 A Yes, sir.

23 Q On August 16th did you have an opportunity to
24 interview an individual by the name of Sammy
25 McNeil?

CONSTANCE SONNEFELD - DIRECT

1 A I was present during the interview.

2 Q But who actually conducted the interview?

3 A Special Agent Bragg.

4 Q And did he write a report up?

5 A Yes, sir.

6 Q Was anybody else present?

7 A I believe Investigator/Sergeant Brandon Scott
8 was, from Abbeville County.

9 Q Did Mr. McNeil plead guilty in this case?

10 A Yes, he did.

11 Q And have you subpoenaed him here to testify
12 today?

13 A Yes, sir.

14 Q Not today, but in this trial?

15 A Yes, sir.

16 THE COURT: Counsel, will cross-examination
17 be considerably more lengthy than direct
18 examination, I'm sorry, will your examination run
19 for a considerable additional time?

20 MR. CROUT: Yes, Your Honor, I believe so.
21 In fact, with all due respect for the jury, it's
22 just cranking up.

23 THE COURT: Well, will you save your thought
24 at the point which you are now questioning this
25 witness?

CONSTANCE SONNEFELD - DIRECT

1 MR. CROUT: Yes, sir.

2 THE COURT: And, Madam Witness, you may not
3 discuss with anyone, including counsel for the
4 State or anyone else, any questions you have been
5 asked or answers you have given or any questions
6 you expect may be asked of you or answers you may
7 give to those expected questions, but you may come
8 down, please, and relax for a few minutes.

9 THE WITNESS: Yes, sir.

10 THE COURT: Madam Forelady, ladies and
11 gentlemen, we will take a break. You have been
12 busy here for over, well over two hours. Do not
13 discuss the case by, between and among yourselves,
14 and retire to the jury room for a few minutes,
15 please.

16 (The jury was excused from the courtroom).

17 THE COURT: Anything from the State before we
18 take a short recess?

19 MR. HOOD: No, sir, Your Honor.

20 THE COURT: Anything from the defendant
21 Miller?

22 MR. VARNER: None, Your Honor.

23 THE COURT: Defendant Moore?

24 MR. WISE: No, sir.

25 THE COURT: We stand in recess momentarily.

CONSTANCE SONNEFELD - DIRECT

1 (Recessed at 3:55 p.m.).

2 (Reconvened at 4:20 p.m.).

3 THE COURT: We're coming back into session in
4 the State versus Marshall Miller and others,
5 defendants in this matter being Marshall Miller and
6 Billy Moore, criminal action is 2002-GS-47-32.

7 We had interrupted Mr. Crout's direct
8 examination of the witness so that everybody could
9 take a break. We had been in session about two
10 hours and fifteen minutes. Is there anything for
11 the record before the jurors come out?

12 MR. HOOD: No, sir, Your Honor.

13 MR. WISE: Nothing for the record but if they
14 can help me real quick, can you find it, Sammy
15 McNeil's statement, where is it in discovery? I
16 had missed that. Do you know which volume?

17 THE COURT: We can perhaps find that. Is
18 there anything from the defendant Miller?

19 MR. VARNER: Nothing, Your Honor.

20 THE COURT: Show the jury in, Mr. Busby,
21 please. Before the jurors come in, any objection
22 to marking the tape recording that was just shown
23 for identification only in the event it's needed?

24 MR. WISE: No objection.

25 MR. CROUT: None from the State, Your Honor.

CONSTANCE SONNEFELD - DIRECT

1 MR. VARNER: None, Your Honor.

2 THE COURT: ID only, sir.

3 (The video tape was marked State's Exhibit 2
4 for Identification).

5 (The jury returned to the courtroom).

6 THE COURT: All the jurors are present, with
7 the foreman properly seated. Mr. Crout, if you
8 will show your witness back up.

9 Madam Witness, have you discussed anything
10 about this case with anyone under any circumstances
11 or has anyone attempted to discuss the case with
12 you while we were in recess?

13 THE WITNESS: No, sir.

14 THE COURT: Very well. The witness is with
15 you on continued direct examination, Mr. Crout.

16 BY MR. CROUT:

17 Q Agent Sonnefeld, during the course of this
18 investigation did you receive any information about
19 some items or some property that was located in the
20 State of Georgia?

21 A Yes, sir, I did.

22 Q Who did you receive that information from?

23 A Abbeville County originally brought the
24 information.

25 Q Do you know who they received that

CONSTANCE SONNEFELD - DIRECT

1 information from?

2 A Yes, sir, I do.

3 Q Is he someone who will be maybe named as
4 initially as a confidential informant?

5 A Yes, sir.

6 Q Has he chosen to, as far as you know, has he
7 chosen to give up that status as a confidential
8 informant and come forward and testify?

9 A Yes, sir, he has.

10 Q And what is that individual's name?

11 A Gene Saylor.

12 Q Without telling us what he said about the
13 property, did he direct you to that property?

14 A Yes, he did.

15 Q And who was with you when he directed you to
16 that property?

17 A Agents from the Georgia Bureau of
18 Investigation, Special Agent Bragg,
19 Investigator/Sergeant Brandon Scott and I believe
20 Investigator Chris Benson from Abbeville County.

21 Q And did you have an opportunity to photograph
22 those items or that property?

23 A Yes, we did.

24 Q Did you seize any of that property?

25 A Some of it, yes, sir.

CONSTANCE SONNEFELD - DIRECT

1 Q The items, the property that you didn't
2 seize, what did you do with those?

3 A We left it with the Georgia Bureau of
4 Investigation agents.

5 Q And what was the purpose in doing that?

6 A Safety.

7 Q When you say safety, what was dangerous about
8 those items?

9 A They were chemicals and I had to drive back
10 to Columbia and I didn't want them in my car for
11 two and a half or three hours.

12 MR. VARNER: Your Honor, for the record, I
13 have no objection to the use of photographs on the
14 agreement that they are not going to be identified
15 as to any particular person, just that the items
16 were seized.

17 THE COURT: How says the State?

18 MR. CROUT: As far as being identified with
19 any particular person, this witness will not do
20 that but the State reserves the right to call a
21 witness that might.

22 THE COURT: Very well. The objection is as
23 to this witness.

24 MR. CROUT: Yes, Your Honor.

25 BY MR. CROUT:

CONSTANCE SONNEFELD - DIRECT

1 Q Agent Sonnefeld, if you will step down from
2 the stand for a moment, please.

3 Can everybody see this?

4 THE COURT: Let's hand her a little stick.
5 That's the best we can do.

6 THE WITNESS: Thank you.

7 BY MR. CROUT:

8 Q Agent Sonnefeld, if you could, looking at all
9 these pictures collectively, could you identify all
10 of these pictures as the ones that were taken of
11 the items in Georgia?

12 A Yes, they were the pictures that were taken.

13 Q All right. Could you tell us what is
14 represented in this picture here?

15 A Yes, sir. In this picture here there is a
16 black container, it's a black plastic folding
17 container, storage container, it has Mason jars
18 inside of it.

19 This is a five gallon, I believe a five
20 gallon gas container containing some chemicals.

21 There is a bag that contains more chemicals.
22 And this red bottle right here.

23 Right here, you can see a little better down
24 here, but right here there is a coffee bean grinder
25 that had some residue in it, and there is coffee

CONSTANCE SONNEFELD - DIRECT

1 filters that are in there as well. You can see the
2 top of the box right here.

3 Q Is this a better picture of the salt box with
4 the Mason jars?

5 A Yes, sir, it is.

6 Q The items that are in this picture, could you
7 describe those for us?

8 A Yes, sir. This right here is the coffee bean
9 grinder, these are the coffee filters, the shop
10 towels, these were some latex gloves, and this is a
11 box of salt and this was a plastics container that
12 had chemicals in it.

13 Q All right. Now, were they all originally in
14 this yellow bag that you see here?

15 A Yes, sir. We took them out so that we could
16 see better.

17 Q All right. Now, you identified this red
18 container as a gas can. Were you sure there was
19 gas in it or did you just identify that as what you
20 thought it was?

21 A We identified it as what we thought it was.

22 Q And are these six pictures all of basically
23 the same items that were retrieved?

24 A Yes, sir, just as we took them out.

25 Q Now, this picture here, could you identify

CONSTANCE SONNEFELD - DIRECT

1 this picture for us?

2 A Yes, sir. This is at a separate location.
3 It was a storage facility for campers, trailers,
4 and this is a black and silver Shadowmaster
5 trailer.

6 Q That Shadowmaster trailer, after you took
7 that picture in Georgia, when was the next time you
8 saw that Shadowmaster trailer?

9 A September 24th, 2002.

10 MR. CROUT: Thank you. At this time I would
11 move this in as State's Exhibit 3.

12 THE COURT: What says the defendant Miller?

13 MR. VARNER: Are you marking it for
14 identification, or in evidence?

15 MR. CROUT: Excuse me, Your Honor, yes, at
16 this point it is for identification purposes.

17 THE COURT: ID only.

18 MR. VARNER: No objection as to ID, Your
19 Honor.

20 MR. WISE: No objection.

21 THE COURT: No objection that it be marked as
22 State's Exhibit Number 3, I believe.

23 MR. CROUT: That's correct.

24 THE COURT: For identification only at this
25 time.

CONSTANCE SONNEFELD - DIRECT

1 (Photo board marked as State's Exhibit 3
2 for identification).

3 THE COURT: The witness is with you.

4 BY MR. CROUT:

5 Q Now, Agent Sonnefeld, you had indicated that,
6 I believe, the coffee grinder had some residue in
7 it. Did you submit that residue for testing?

8 A I submitted the entire coffee bean grinder.

9 Q The entire coffee bean grinder, I'm sorry.

10 A Yes, sir.

11 Q And did you complete a chain of custody form
12 with respect to those items?

13 A There was not a chain of custody initially
14 for the coffee bean grinder itself, I'm sorry, it
15 was when I turned it in.

16 Q All right.

17 A But as for as while we were out there, no,
18 sir.

19 Q But you did request that the contents of that
20 coffee bean grinder be analyzed, is that correct?

21 A Yes, sir, I did.

22 Q And when you submitted that request, when you
23 submitted that coffee bean grinder did you submit
24 that it be analyzed, or just the entire packet of
25 evidence that was submitted be analyzed?

CONSTANCE SONNEFELD - DIRECT

1 A I submitted the entire, the entire package of
2 stuff we took with us, but specifically the bean
3 grinder for one area of the lab.

4 Q Thank you. Were you present when Tracy Davis
5 was arrested on September 24th, 2002?

6 A Yes, sir, I was.

7 Q And what was your role in her arrest?

8 A I was the arresting officer.

9 Q And where was she arrested?

10 A She was arrested in Waterloo, South Carolina.

11 Q Do you know the specific address?

12 A It's the Isle of Palms Circle, I believe.

13 Q And incident to her arrest did you have any
14 photographs of that incident location made?

15 A Yes, we did.

16 MR. VARNER: Your Honor, I would object as to
17 relevance. The location of where Tracy Davis lived
18 or did not live has no relevance in this trial.

19 THE COURT: Mr. Crout?

20 MR. CROUT: Your Honor, the State through the
21 introduction of these pictures specifically intends
22 to demonstrate a certain level of alertness or
23 awareness on the part of the arrested party,
24 perhaps on the part of other parties involved in
25 the case, because of the things that are shown in

CONSTANCE SONNEFELD - DIRECT

1 the picture that are demonstrated in the picture
2 with respect to how the house was maintained and
3 what was taking place around the house when the
4 arrest occurred. I'm being careful with my words
5 here because of --

6 THE COURT: Will the significance of this
7 potential evidence be linked up by other witnesses?

8 MR. CROUT: It may be linked up. I would
9 argue yes, it would be linked up. The reason I was
10 going to admit it through this witness is because
11 she could identify it as what it is and as the
12 photographs that she directed to be taken. Unlike
13 the previous set of photographs we had where we had
14 another witness who would actually tie them in to
15 certain people, in this instance this witness can
16 say, "I had these photographs taken for this
17 purpose and this is what they are."

18 THE COURT: The objection is overruled.

19 BY MR. CROUT:

20 Q Agent Sonnefeld, if you would step down from
21 the stand, please, and I would ask you if you could
22 collectively -- excuse me, before I go on, can
23 everyone see these pictures?

24 I would ask if you could collectively
25 identify these pictures as the ones that you

CONSTANCE SONNEFELD - DIRECT

1 instructed be made on the date of Tracy Davis'
2 arrest?

3 A Yes, they were.

4 Q Could you identify this picture for us,
5 please?

6 A Yes, sir. That is the residence on the Isle
7 of Palms in Waterloo.

8 THE COURT: Point to it with the little stick
9 so everybody can see.

10 A Sorry.

11 Q And the red vehicle that is parked there, was
12 that vehicle seized pursuant to her arrest?

13 A No, it was not.

14 Q It was left there?

15 A Yes, it was.

16 Q Did you make any determination of who owned
17 that vehicle?

18 A I believe it was registered to Raymond or
19 Bobbie Miller.

20 Q And then this next photograph here, if you
21 will point to it and describe what it shows?

22 A Yes, sir. This is just a different view.
23 There were other vehicles that were located on the
24 property and that is just showing the different
25 vehicles that were there.

CONSTANCE SONNEFELD - DIRECT

1 Q And then this photograph here?

2 A Yes, sir, that's the back of the residence,
3 it's shown right here.

4 Q And then this photograph here?

5 A This is like a little shop area that's
6 located behind the residence.

7 Q All right. And this photograph?

8 A It's part of the house.

9 Q And what is this little white object right
10 here?

11 A It's a camera.

12 Q And was that camera significant enough for
13 you to decide to photograph it?

14 A Yes, sir.

15 Q Or have it photographed. And then this next
16 picture here, specifically the little white object
17 with the round black circle on it?

18 A It's another camera on another part of the
19 house.

20 Q And then this item as well?

21 A Two more cameras located on the side of the
22 house.

23 Q And then this photograph here?

24 A Motion sensor, right here.

25 Q And that is the black item that has --

CONSTANCE SONNEFELD - DIRECT

1 A Actually camouflage tape I believe right by
2 it.

3 Q This next item here, what does that indicate?

4 A It's another camera that was on the side of
5 the shop, also right here.

6 Q And then this photograph here?

7 A The monitor that was located inside the
8 residence.

9 Q And when you went in was that monitor on?

10 A Yes, it was.

11 Q And what does that monitor, what was that
12 monitor showing?

13 A It showed, I believe it was four different
14 views from the cameras that were located outside
15 the residence.

16 Q And then this photograph here, the white
17 object, could you identify that?

18 A It appeared to be an alarm that was linked
19 with the motion sensor, I believe.

20 Q When you arrested Tracy Davis where in the
21 house was she located?

22 A We knocked on the door.

23 Q And she came to the door?

24 A She came to this back door.

25 Q And was she alone?

CONSTANCE SONNEFELD - DIRECT

1 A There were two children there.

2 Q And what did you do with those two children?

3 A I took them into emergency protective
4 custody.

5 MR. CROUT: Your Honor, at this time I move
6 this set of photographs in as State's Exhibit
7 Number 4 as an exhibit introduced through this
8 witness.

9 THE COURT: How says the defendant Miller?

10 MR. VARNER: Again the same objection, where
11 Tracy Davis did or did not live has no relevance to
12 Mr. Miller, my client, whatsoever. I mean, what we
13 have are pictures of what appears to be a trailer
14 next to a light with motion detectors and cameras.
15 My objection is there is no relevance as to a
16 conspiracy.

17 THE COURT: The objection is as to relevance.
18 Now, we have already talked about this once and the
19 Court's interest is will this be linked up?

20 MR. CROUT: Your Honor, in this instance the
21 issue is, and let me clarify this with Mr. Varner,
22 I don't believe the fact that Tracy Davis or
23 Marshall Miller lived at this residence is in
24 issue. The State intends to introduce the pictures
25 to show the high degree of security that was

CONSTANCE SONNEFELD - DIRECT

1 utilized in this case as being indicative of a
2 desire to avoid detection, and that's the purpose,
3 so I don't think the issue of was Tracy Davis here
4 when she was arrested is what is being discussed, I
5 don't think the issue that Marshall Miller at some
6 point lived there is the issue being discussed.
7 The issue is, does this security system installed
8 in this house indicate a degree of secretness or a
9 degree of desire to avoid detection beyond what
10 would be normal in this set of circumstances.

11 MR. VARNER: Your Honor, where Marshall
12 Miller lived --

13 THE COURT: They were taken with regard to
14 the person arrested there, Tracy Davis?

15 MR. CROUT: Yes, sir.

16 THE COURT: However, you mentioned something
17 about defendant Miller, who objects to the
18 introduction of this as an item of evidence in this
19 case. Will there be any evidence to show that he
20 was aware, alert, or ever resided there?

21 MR. CROUT: Yes, there will be other
22 witnesses that will testify as to the fact that
23 they knew that he lived at that address and that
24 that was an address where he could be found at.

25 MR. VARNER: Your Honor, the question is

CONSTANCE SONNEFELD - DIRECT

1 anywhere near this time when the pictures were
2 taken. I agree with him, at some point sometimes
3 Mr. Miller and Miss Davis did live together at some
4 point in time. Now, they don't have children, but
5 they also know this, he lived with some other
6 women, and whether or not he lived there at that
7 point in time is very much an issue. They may not
8 think so but I certainly do, and that is part of my
9 objection, unless they can have Mr. Miller there
10 around the time this was done, that has no
11 relevance.

12 THE COURT: The objection is overruled. Is
13 there an objection from the defendant Moore?

14 MR. WISE: No, sir, at this point no
15 objection.

16 THE COURT: The objection is overruled, the
17 exhibit will be marked as Exhibit Number 4.

18 (Photo board marked and received as
19 State's Exhibit Number 4).

20 BY MR. CROUT:

21 Q Now, you indicated that Tracy Davis was
22 arrested on September 24th, 2002. Is it your
23 understanding that Marshall Miller was also
24 arrested on September 24th, 2002?

25 A Yes, he was.

CONSTANCE SONNEFELD - DIRECT

1 Q Do you know where he was arrested?

2 A He was arrested on Morgan Road.

3 Q Were you actually present when he was
4 arrested?

5 A Not at the exact time he was present, no,
6 sir.

7 Q Where were you located when he was arrested?

8 A Down the street.

9 Q And why was it that you were down the street?

10 A We had set up a perimeter.

11 Q And that perimeter, where did you set that up
12 around?

13 A Up and down Morgan Road.

14 Q And what was the purpose of setting up that
15 perimeter?

16 A We were looking for Mr. Miller.

17 MR. WISE: I didn't catch that, looking for
18 who?

19 A Mr. Miller.

20 MR. WISE: I'm sorry, I thought you said Mr.
21 Moore.

22 Q And as you were on the perimeter, did you
23 receive information that he had in fact been
24 arrested?

25 A Yes, sir, I did.

CONSTANCE SONNEFELD - DIRECT

1 Q And what did you do then?

2 A I came back to the incident location.

3 Q And specifically what incident location was
4 that?

5 A I believe the address is 715 Morgan Road.

6 Q Agent Sonnefeld, prior to going out and
7 setting up the perimeter when Marshall Miller was
8 arrested, what were you doing at that time?

9 A I was attempting to serve another warrant.

10 Q And who were you serving that warrant on?

11 A Michelle Madden.

12 Q And what alerted you to the fact that
13 Marshall Miller may be nearby?

14 A There were a couple things, actually. We
15 were walking around Michelle Madden's residence
16 knocking on the doors and we looked across the
17 street, as we drove up, to see who was around as
18 we're trying to serve our warrants, and we noticed
19 a number of vehicles across the street but we
20 continued walking around the trailer and knocking
21 on the doors when Mr. Moore came up on a
22 four-wheeler.

23 Q When you say Mr. Moore, you're referring to
24 Mr. Billy Moore?

25 A Yes, sir.

CONSTANCE SONNEFELD - DIRECT

1 Q Please go ahead.

2 A We spoke with him for a few minutes and asked
3 him who was across the street.

4 Q And did he indicate who was across the
5 street?

6 A He did.

7 Q And who did he say was across the street?

8 A He said there was a man named Marshall Miller
9 that was across the street.

10 Q Was there anything else there that identified
11 Marshall Miller as being there?

12 A Yes, sir, there were a couple vehicles across
13 the street.

14 Q What vehicles were those?

15 A It was a black Shadowmaster enclosed trailer,
16 a black Z71 truck and a four-door Grand Am.

17 Q And did you know Mr. Miller to drive that
18 particular truck?

19 A Yes, sir, I was very familiar with the truck.

20 Q And what about the other vehicle, were you
21 familiar that was a vehicle he drove?

22 A Yes, sir.

23 Q And that black Shadowmaster trailer, was that
24 the, did you identify that as being the same
25 trailer that was photographed in Georgia?

CONSTANCE SONNEFELD - DIRECT

1 A Yes, sir.

2 Q When Mr. Miller was arrested were there any,
3 and let me rephrase this question, when you were
4 out on your, the perimeter when Mr. Miller was
5 arrested, were you awaiting for anyone else to
6 arrive to assist in the arrest?

7 A Yes, sir.

8 Q And who was going to arrive to assist in that
9 arrest?

10 A We called the SLED bloodhounds as well as the
11 SLED helicopter.

12 Q Now, when Mr. Miller was arrested did you
13 direct that any photographs be made of any
14 particular, any particular photographs be made of
15 the scene where he was arrested?

16 A Yes, sir, I asked for photographs.

17 Q And which photographs did you ask for?

18 A Specifically I asked for the pictures of a
19 tank that was located in the truck tool box.

20 Q This photograph I'm pointing to here, did you
21 ask for it to be photographed?

22 A No, I did not.

23 Q And this photograph here, did you ask for it
24 to be photographed?

25 A No, I did not.

CONSTANCE SONNEFELD - DIRECT

1 Q And this photograph here did you ask for it
2 to be photographed?

3 A No, sir.

4 Q If you will step down, please.

5 MR. VARNER: Counsel, before showing that to
6 the jury, she did not direct certain of those
7 photographs be taken and I would object to those
8 being shown to the jury.

9 MR. CROUT: That's fine, Your Honor, I'll
10 make accommodations for that.

11 THE COURT: Turn it around.

12 MR. CROUT: She will be testifying to these
13 three. Outside the presence of the jury I wanted
14 her to identify for purposes of the record that she
15 did not direct these three to be made. I was not
16 going to question her about those but if Mr. Varner
17 would prefer me not to show them, I won't.

18 THE COURT: The Court would inquire as to
19 whether they, those three that you are not going to
20 identify through this witness will be identified
21 through another witness?

22 MR. CROUT: Yes, Your Honor, they will.

23 THE COURT: Does that satisfy you, that you
24 will be allowed to cross-examine the witness who
25 did take those pictures, although this witness did

CONSTANCE SONNEFELD - DIRECT

1 not direct them, but she will not talk about them.
2 If I understand you correctly, Mr. Crout, she's not
3 going to talk about those three.

4 MR. CROUT: Yes, sir. That is why I had her
5 identify these outside the presence of the jury.
6 She will only be referring to these as the three
7 that she directed be taken.

8 THE COURT: But the other three, a witness
9 will identify them and be made available to counsel
10 for cross-examination?

11 MR. CROUT: That is correct, Your Honor.

12 THE COURT: All right, sir. How say you, Mr.
13 Varner?

14 MR. VARNER: Your Honor, just for
15 simplicity's purposes, if he will, I guess, just
16 draw a line down the middle of the page rather than
17 cutting it up or anything, and put A and B, that
18 way it will be properly introduced at a later
19 stage, because I may forget in all honesty tomorrow
20 or two days from now if it comes up, and if he will
21 draw a line and put A and B on it.

22 THE COURT: Put it where you see it, Mr.
23 Crout, and put A on the ones that will be talked
24 about by this witness.

25 MR. CROUT: Yes, sir.

CONSTANCE SONNEFELD - DIRECT

1 THE COURT: That will be three photographs in
2 vertical order, and B will be three photographs in
3 vertical order which this witness will not discuss.

4 Mr. Varner, is that okay?

5 MR. VARNER: Correct.

6 BY MR. CROUT:

7 Q Agent Sonnefeld, if you can --

8 THE COURT: We don't have a pointer. Ladies
9 and gentlemen, sometimes if a witness uses their
10 finger their hand covers up other things that you
11 may be interested in. We don't have a pointer, so
12 to substitute for that we have a little, probably a
13 ten inch piece of wood that's real thin to enable
14 the witness to identify, if necessary, small items
15 in a photograph without obscuring the other part of
16 the photograph. That's the reason the Court asked
17 to use that little piece of wood, so that if the
18 witness, I mean the jurors were looking at
19 something else the witness is not referring to,
20 they are able to look at the entire photograph.

21 MR. CROUT: Thank you, Your Honor. Your
22 Honor, I would also at this time like the record to
23 reflect that the exhibit has a black line down the
24 middle, there are three pictures with the letter B
25 above them that Agent Sonnefeld will not be

CONSTANCE SONNEFELD - DIRECT

1 identifying or testifying to at this point. Then
2 on the other side are three photographs with the
3 letter A written above them that Agent Sonnefeld
4 will be testifying to.

5 THE COURT: Yes, sir, continue your direct
6 examination.

7 MR. CROUT: Yes, sir, Your Honor.

8 BY MR. CROUT:

9 Q Agent Sonnefeld, if you could, describe this
10 top picture here under the letter A to the jury.

11 A Yes, sir. This is the tool box that was in
12 the bed of the Z71 truck.

13 Q And --

14 A This is, I'm sorry, there is some items that
15 are blocking it, but if you see the gray tank that
16 is underneath.

17 Q And was this tank actually placed inside the
18 tool box?

19 A Yes, sir, it was down deep in the tool box.

20 Q Now, these items that are in the first
21 picture, did you move those out of the way for
22 purposes of taking a better photograph?

23 A Yes, sir.

24 Q And could you describe for us what's in that
25 second photograph?

CONSTANCE SONNEFELD - DIRECT

1 A Yes, sir. It's basically the same picture
2 but there are some items that have been moved so
3 you can see the tank better.

4 Q And then this last photograph, did you direct
5 that that picture be made?

6 A Yes, sir. This is actually the end of the
7 tank that has the valve and the hose.

8 Q And where did that hose lead to?

9 A It came out through the bottom.

10 Q Of the truck?

11 A Of the tool box.

12 Q It came out to the bottom of the tool box?

13 A Yes, sir.

14 Q From your observation, could you access that
15 tank or could you access the contents of that tank
16 without opening the tool box?

17 A I'm not sure as to the end of it but I
18 believe there is a valve that you have to turn, but
19 there was the tube that came out through the
20 bottom, that you could access, yes, sir.

21 Q All right. And did you make a determination
22 of what the contents of that tank were?

23 MR. VARNER: Objection. She's not qualified
24 on that.

25 THE COURT: Sustained.

CONSTANCE SONNEFELD - DIRECT

1 Q Was any of the contents of that particular
2 tank submitted for analysis or testing?

3 A I believe it was.

4 Q Thank you.

5 MR. CROUT: Your Honor, at this time -- you
6 may take the stand again. Your Honor, at this time
7 I would move the three photographs marked on the
8 side of the board with the letter A above them in
9 as State's next exhibit.

10 THE COURT: How says the defendant Miller?

11 MR. VARNER: No objection as to A, Your
12 Honor.

13 THE COURT: Defendant Moore as to A?

14 MR. WISE: No objection.

15 THE COURT: Without objection, the three
16 photographs identified on the side of the poster
17 that are marked A are in as a single exhibit. Now,
18 Mr. Court Reporter, if you will put a sticker on
19 that side, we will deal with the other side
20 possibly at a later time. We will see how things
21 go. Let's all stop.

22 THE COURT: State's Number 5.

23 (Three photographs were marked and
24 received as State's Exhibit Number 5).

25 THE COURT: Continue direct examination.

CONSTANCE SONNEFELD - DIRECT

1 BY MR. CROUT:

2 Q Agent Sonnefeld, on the date that Marshall
3 Miller was arrested and on the date that Tracy
4 Davis was arrested was Martha Ellis also arrested?

5 A Yes, she was.

6 Q Did you take part in that arrest?

7 A No, sir, I was not present.

8 Q Did you obtain possession of any drugs from
9 that arrest?

10 A Yes, I did.

11 Q And who gave you those drugs?

12 A Sergeant Brandon Scott from Abbeville County.

13 Q And what did you do with them?

14 A I sealed them in a Best kit and turned them
15 in to narcotics.

16 Q And did you request an analysis be performed
17 on those drugs?

18 A Yes, I did.

19 Q And did you receive a report of that
20 analysis?

21 A Yes, I did.

22 Q And what did that report signify to you?

23 A Both quantities tested positive for
24 methamphetamine.

25 Q Agent Sonnefeld, if you could take a look at

CONSTANCE SONNEFELD - DIRECT

1 this plastic bag and the accompanying paperwork and
2 I ask if you could identify them?

3 A Yes, sir. This is the Best kit I sealed.

4 Q Is the accompanying paperwork the chain of
5 custody, request for testing and the results?

6 A Yes, sir, it's all here.

7 Q And you had indicated that those drugs were
8 given to you by the officer that arrested Martha
9 Ellis, correct?

10 A Yes, sir.

11 MR. CROUT: Your Honor, at this time I would
12 move those in as State's next exhibit, being the
13 Best kit along with the accompanying paperwork
14 satisfying the requirements of Rule 6 of the South
15 Carolina Rules of Civil, excuse me, Criminal
16 Procedure, consisting of one, two, three, four,
17 five, six, seven pages.

18 THE COURT: How says the defendant Miller?

19 MR. VARNER: Your Honor, I don't object to
20 Martha Ellis' drugs but I do think it would be
21 appropriate for her to be asked at what location
22 these drugs were found. Otherwise I have a problem
23 with it if there is no testimony as to where they
24 were found.

25 THE COURT: All right. Continue to lay a

CONSTANCE SONNEFELD - DIRECT

1 foundation with regard to where they were located
2 when seized.

3 BY MR. COURT:

4 Q Agent Sonnefeld, you indicated you were not
5 present when Martha Ellis was arrested, is that
6 correct?

7 A That's correct.

8 Q But did you receive information on where she
9 was arrested?

10 A Yes, sir, I did.

11 Q And where was that?

12 A At her residence.

13 Q And you said that these drugs were given to
14 you by Officer Brandon Scott, is that correct?

15 A That's correct.

16 Q And did he indicate to you where he had
17 seized them from?

18 A At her residence.

19 MR. VARNER: The address is what I'm looking
20 for.

21 Q The address for that residence, do you recall
22 what it was?

23 A I believe her address is on Old Douglas Mill
24 Road outside Abbeville.

25 Q All right, thank you.

CONSTANCE SONNEFELD - DIRECT

1 MR. VARNER: No objection.

2 THE COURT: Without objection, number six is
3 in for defendant Miller. How says the defendant
4 Moore?

5 MR. WISE: No objection.

6 THE COURT: Then number six will become part
7 of the evidence in the case.

8 (The Best kit and accompanying paperwork were
9 marked and received as State's Exhibit 6).

10 MR. CROUT: Your Honor, that exhibit, too,
11 will need to be stapled, if there is no objection
12 from either party.

13 THE COURT: Do you want to do that now, sir,
14 or do it later?

15 Continue direct examination.

16 MR. CROUT: Yes, Your Honor.

17 BY MR. CROUT:

18 Q Did you also receive another amount of drugs
19 or another quantity of drugs relating to the arrest
20 of Martha Ellis?

21 A Yes, sir.

22 Q And what did you do with those?

23 A I sealed them in a Best kit and turned them
24 in to the drug lab.

25 Q And did you receive those from Brandon Scott?

CONSTANCE SONNEFELD - DIRECT

1 A Yes, sir, I did.

2 Q And did you receive those, or is it your
3 understanding that they came from the same location
4 that the previous, the previous quantity of drugs
5 you testified about came from?

6 A Yes, sir, that's my understanding.

7 MR. VARNER: No objection as to Mrs. Ellis'
8 drugs, Your Honor.

9 MR. WISE: No objection.

10 THE COURT: They will be State's Exhibit
11 Number 7.

12 MR. CROUT: Number 7, Your Honor.

13 MR. WISE: Is this the same group of drugs
14 from Martha Ellis?

15 MR. CROUT: No, same thing, just two
16 different quantities in two different locations,
17 the same address.

18 THE COURT: Two different quantities from the
19 same person?

20 MR. CROUT: Yes, Your Honor.

21 THE COURT: At the same address?

22 MR. CROUT: Yes, sir.

23 THE COURT: Very well.

24 MR. CROUT: And for the record, all relating
25 to the, or all obtained from the person or the

CONSTANCE SONNEFELD - DIRECT

1 location that Martha Ellis was in when she was
2 arrested.

3 THE COURT: All right. For the record, how
4 says defendant Miller?

5 MR. VARNER: No objection.

6 THE COURT: Defendant Moore?

7 MR. WISE: No objection.

8 THE COURT: It will be marked as State's
9 Exhibit Number 7.

10 MR. CROUT: Your Honor, likewise State's
11 Exhibit Number 7 is the Best kit, with one, two,
12 three, four, five, six, seven, eight pages that
13 fulfill the requirement of Rule 6 of the South
14 Carolina Rules of Criminal Procedure.

15 THE COURT: All right, Mr. Court Reporter, if
16 you will put your sticker on the plastic portion
17 and we will staple them together later.

18 (The Best kit and accompanying paperwork were
19 marked and received as State's Exhibit 7).

20 THE COURT: Continue direct examination.

21 BY MR. CROUT:

22 Q Pursuant to your investigation in this case,
23 Agent Sonnefeld, was an individual by the name of
24 Jason Davis interviewed?

25 A Yes, sir.

CONSTANCE SONNEFELD - DIRECT

- 1 Q Was that interview on October 7th, 2002?
- 2 A My understanding.
- 3 Q And did you conduct that interview or did
- 4 somebody else conduct it?
- 5 A I did not.
- 6 Q You did not? Do you know who did conduct it?
- 7 A Special Agent Bragg.
- 8 Q And is it your understanding that Mr. Davis
- 9 will be testifying in this case?
- 10 A Yes, sir, that's my understanding.
- 11 Q On October 2nd did you again have the
- 12 opportunity to make contact and interview an
- 13 individual that you had previously identified as
- 14 Michelle Madden?
- 15 A Yes, I did.
- 16 Q And did she give you further information that
- 17 was helpful in this case?
- 18 A Yes, she did.
- 19 Q And as you have already testified, is she
- 20 scheduled to testify here in this case today or
- 21 sometime this week?
- 22 A Yes, sir.
- 23 Q Did you interview an individual by the name
- 24 of James Raymond Powell?
- 25 A Yes, sir, I did.

CONSTANCE SONNEFELD - DIRECT

1 Q And did you conduct that interview?

2 A Yes, sir, I did.

3 Q Did you make a report of that interview?

4 A Yes, sir, I did.

5 Q And did he provide you information that was
6 helpful to this case?

7 A Yes, sir, he did.

8 Q At the time you interviewed him did you make
9 him any promises as far as the information that he
10 provided you?

11 A No, sir, I did not.

12 Q And have you served him with a subpoena to
13 testify here in this case?

14 A Yes, sir, I have.

15 Q Regarding Mrs. Tina Stevenson, I want you to
16 focus on the date of January 24th, 2003. By that
17 date had you all already interviewed, had you
18 already interviewed her?

19 A Yes, sir, I had.

20 Q And on that date did you make a controlled
21 purchase of drugs from her?

22 A Yes, sir, I did.

23 Q Tell the jury what happened in that instance.

24 A She had already been arrested, she was out on
25 bond and I received information that she was

CONSTANCE SONNEFELD - DIRECT

1 selling drugs again, and there was a confidential
2 informant who was able to buy from her, so we set
3 up a controlled purchase.

4 Q And what did she sell you at that time?

5 A Oxycontin.

6 Q Did she sell you any methamphetamine?

7 A No, sir.

8 Q And then of course the individual that you
9 referred to earlier, Michelle Madden, on April 3rd,
10 2003, did you require her to submit to a drug test?

11 A Yes, sir, I did.

12 Q And what was the purpose of that?

13 A She had again been arrested and was out on
14 bond and I had received information that she was
15 using drugs again, so I asked her to submit to a
16 drug test.

17 Q And when you say that she had been arrested,
18 arrested with regard to this case, correct?

19 A Yes, sir.

20 Q That's the same for Tina Stevenson, she had
21 been arrested for this case and was out on bond?

22 A Yes, sir.

23 Q Did Michelle Madden pass that drug test?

24 A No, sir, she did not.

25 Q Regarding Martha Ellis, after she was

CONSTANCE SONNEFELD - DIRECT

- 1 arrested did you have a chance to interview her?
- 2 A Yes, sir, I did.
- 3 Q How did you make contact with her?
- 4 A Her attorney called me.
- 5 Q And did you make a report of that interview?
- 6 A Yes, I did.
- 7 Q Did she provide information that was helpful
- 8 in this case?
- 9 A Yes, she did.
- 10 Q And is she scheduled to testify here in this
- 11 case?
- 12 A Yes, sir, she is.
- 13 Q And then an individual by the name of Bonnie
- 14 Saylor. On May 28th, 2003, did you interview her?
- 15 A No, I did not.
- 16 Q Who interviewed her?
- 17 A Special Agent Bragg.
- 18 Q And is it your understanding she's going to
- 19 testify here --
- 20 A Yes, sir.
- 21 Q -- in this case.
- 22 A Yes, sir.
- 23 Q On January 9th, 2004, did you meet with
- 24 Ernest Covan?
- 25 A Yes, sir, I did.

CONSTANCE SONNEFELD - DIRECT

1 Q And is he subpoenaed to testify here in this
2 case?

3 A Yes, sir, he is.

4 Q And then on January 15th, 2004, did you meet
5 an individual by the name of Tommy Stewart?

6 A Yes, sir, I did.

7 Q Is he subpoenaed to testify in this
8 particular case?

9 A He has not but he will be.

10 Q Now, the individuals during your testimony
11 that you indicated that you had interviewed, those
12 were not the only people you interviewed in this
13 particular case, is that correct?

14 A That's correct.

15 Q In your investigations you don't always use
16 all the information you receive, is that correct?

17 A Yes, sir.

18 Q Now, during the course of this investigation
19 did you make any determinations about the different
20 locations where Marshall Miller was living?

21 A Yes, sir.

22 Q And can you identify those different
23 locations?

24 A Yes, sir.

25 Q What are they?

CONSTANCE SONNEFELD - DIRECT

1 A There was an apartment --

2 MR. VARNER: If she can't lay a foundation as
3 to how she knows where he was living, I'm going to
4 object.

5 THE COURT: The objection is sustained. Lay
6 a foundation for her having such knowledge.

7 Q As a result of the various interviews that
8 you had taken and the people you had spoken with
9 during this case were you able to make a
10 determination of the different residences where
11 Marshall Miller lived?

12 MR. VARNER: That's my objection, Your Honor.

13 THE COURT: Sustained.

14 MR. CROUT: Your Honor, I'll move on from
15 that line of questioning.

16 BY MR. CROUT:

17 Q During the course of this investigation,
18 without telling us where, did you make any
19 determination about where certain activities
20 relating to this conspiracy or certain drug
21 activities were taking place?

22 MR. VARNER: Objection. Again it's hearsay,
23 Your Honor.

24 THE COURT: Overruled. Now he's asking a
25 general question. He's not asking where the

CONSTANCE SONNEFELD - DIRECT

1 information came from at this time. The objection
2 is overruled.

3 Q You may answer the question. The question
4 was, during the course of this investigation did
5 you make any determination about where a particular
6 drug activity was taking place, did you make any
7 determination?

8 A Yes, sir.

9 Q And the determination that you made about
10 that, those locations, was that from the interviews
11 you conducted?

12 A Yes, sir.

13 Q Was it from any surveillance that you
14 conducted?

15 A Not personally but other law enforcement.

16 MR. CROUT: Your Honor, if I may confer with
17 my co-counsel.

18 THE COURT: Yes, sir, take your time.

19 MR. CROUT: Your Honor, at this time I have
20 no further questions for Agent Sonnefeld.

21 THE COURT: Very well, thank you.

22 Cross-examination, Mr. Varner.

23 MR. VARNER: May it please the Court.

24

25

CONSTANCE SONNEFELD - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. VARNER:

1
2
3 Q All right, ma'am, let's go back to this
4 videotape we started with. I want to start with
5 the daytime video. The blonde girl with the
6 ponytail, that's Julie Prince, is that her name?

7 A Yes, sir.

8 Q And the woman in that white car there?

9 A Was identified as Tracy Davis.

10 Q Okay. You identified her as Tracy Davis,
11 correct?

12 A Yes, sir.

13 Q Marshall Miller wasn't at that scene in any
14 way, shape or form, was he?

15 A No, sir.

16 Q All right. And I believe you said that the
17 vehicle she was driving belonged to Marshall
18 Miller's father, I think?

19 A It was registered in Raymond Miller.

20 Q Registered in his name?

21 A Yes.

22 Q Okay. Now, the second drug deal that went
23 down -- let's go back to the first one. The guy
24 who was driving the Dodge Ram, who was that?

25 A Special Agent Kimble.

CONSTANCE SONNEFELD - CROSS

1 Q Okay. So, that is a SLED agent?

2 A Yes, sir.

3 Q And that purchase occurred in about March of
4 2003, is that correct?

5 A I believe it was March of 2002.

6 Q 2002, okay. And how long had Sergeant
7 Kimble, not sergeant, Agent Kimble been involved in
8 this situation?

9 A A few months, I believe.

10 Q Okay. And was he, was his involvement, was
11 he getting to be friends with these people and
12 buddies with these people?

13 A I don't know that you would call them
14 friends. He was acting in an undercover capacity.

15 Q Well, did Julie Prince know him long enough
16 and be acquainted enough with him to view him as a
17 friend?

18 MR. CROUT: Objection, Your Honor. I'm not
19 sure she can testify about what Julie Prince
20 thought of their relationship in terms of friends,
21 things of that nature.

22 THE COURT: The objection is sustained. You
23 might rephrase the question. The objection calls
24 for a subjective interpretation by the witness.

25 MR. VARNER: I understand.

CONSTANCE SONNEFELD - CROSS

1 BY MR. VARNER:

2 Q Based on your observation and your knowledge
3 of the work that had been done on this case, and
4 based on the conversations you heard, did Julie
5 view him as a friend or not?

6 A Acquaintance, friend.

7 Q Acquaintance, okay. And certainly at the
8 very least he had only been on the scene a short
9 period of time?

10 A At this point.

11 Q Okay. And the dope deal that went down at
12 night, again in the dark truck, the Dodge truck,
13 that's the SLED agent again, correct?

14 A Yes, sir.

15 Q And I wasn't able to see it in the video but
16 what kind of car did they drive up in that time?

17 A The SLED agent, or Miss Prince?

18 Q Julie Prince.

19 A It was a white New Yorker.

20 Q Okay. And was Tracy Davis with her on that
21 occasion?

22 A Yes, sir.

23 Q Okay. And again Marshall Miller was nowhere
24 around, correct?

25 A Yes, sir.

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1 Q Now, he made a statement in there, "I got
2 ripped off." What was he referring to?

3 A The quantity that he received was smaller
4 than what we were trying to purchase.

5 Q Okay. And he asked her in the video, "Who do
6 you get your dope from," what did she say?

7 A Her mama.

8 Q Julie Prince got her dope from her mother?

9 A That's what she said.

10 Q And she's one of your witnesses that's going
11 to get up here in a little while and swear to tell
12 the truth, the whole truth and nothing but the
13 truth, the same Julie Prince?

14 A Yes, sir.

15 Q You even have her mother listed here, the
16 same mother that would give her daughter drugs to
17 sell, the same woman?

18 A Yes, sir. I'm not sure what list you're
19 referring to.

20 Q Is her mother named Sandra Jo Hughes?

21 A Yes, sir.

22 Q Okay. And these are the same people that did
23 these dope deals in front of little kids?

24 A That particular one was not in front of
25 children but children were present in the area,

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1 yes, sir.

2 Q Tell me this. Considering all these drug
3 users, all the SLED agents and these guys over
4 here, Abbeville County people, all the witnesses,
5 the people you have talked to, a rough estimate,
6 how many people were involved in this thing going
7 on for two years, seventy, eighty, a hundred
8 people?

9 A There were a number of people.

10 Q Well, is it a fair statement, we went through
11 about forty names yesterday, there are even more
12 than that, aren't there?

13 A Forty names yesterday?

14 Q Or thereabouts?

15 A I'm not sure if you're talking about a
16 witness list or the indictment list.

17 Q Well, let's just do it one at a time. How
18 many SLED agents in all were involved in this?

19 A At which point?

20 Q Throughout the entire investigation, at any
21 point in time, how many were involved in it at
22 different times?

23 A There were a number. We took a number on the
24 raid with us.

25 Q That's what I'm trying to get from you.

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1 What's the number? Give me your best estimate.

2 A I don't know.

3 Q Okay. Go through the ones you know.

4 A Okay. There is myself, Special Agent Bragg,
5 Special Agent Bill Kimble, there was my lieutenant,
6 Frank O'Neil. Those are the names I recall.

7 Q SLED agents?

8 A Yes, sir.

9 Q How many people from Abbeville County?

10 A At least two.

11 Q Who would those be?

12 A Sergeant Brandon Scott and Investigator Chris
13 Benson.

14 Q The Sheriff was involved, too, wasn't he?

15 A He came out sometimes, yes, sir.

16 Q Any other people from Abbeville involved?

17 A I think there was an Abbeville police officer
18 during the initial meeting.

19 Q Okay. And how many from Anderson, any from
20 Anderson?

21 A No, sir, not not that I recall.

22 Q How many are you aware of from Laurens?

23 A Laurens City or Laurens County?

24 Q Both.

25 A There was at least one from Laurens City and

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1 three, I believe, from Laurens County.

2 Q Okay. How about Abbeville City, were there
3 also officers from Abbeville City involved?

4 A I think there was just one during the initial
5 meeting.

6 Q What?

7 A I think there was just the one, he was only
8 there for the initial meeting.

9 Q And were there other jurisdictions also?

10 A Yes, sir.

11 Q Okay. What other jurisdictions? Well, let
12 me make it short. Roughly were there at least
13 twenty police officers, SLED agents, whatever you
14 want to call them, involved in this throughout some
15 stage of this case?

16 A Yes, sir.

17 Q Okay. And you also had confidential
18 informants, correct?

19 A Yes, sir.

20 Q And so the jury knows what confidential
21 informants are, those are people who got caught
22 with drugs and they are trying to work a deal off,
23 they don't want their name revealed but they go out
24 and make drug buys and turn on other people so they
25 don't get charged or get a better deal, that's what

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1 confidential informants are generally, aren't they?

2 A Sometimes, yes, sir.

3 Q Okay. And these people you are talking about
4 who cooperated and gave statements, they didn't
5 know you personally, they didn't know you as their
6 friend, did they, prior to that time?

7 A No, sir.

8 Q In other words, you came out to them, you or
9 other agents, and you made them aware what you have
10 on them and they have got a choice to cooperate, to
11 make it better on themselves or take it into
12 consideration, or they were going to be hauled in.
13 That was the choices they are given, isn't it?

14 A They were made aware that there was an
15 investigation.

16 Q Well, these were not good samaritans who
17 called SLED up on the tip line and wanted to get
18 involved, were they?

19 A No, not always.

20 Q They were people who were trying to save
21 their own skin by giving you names of other people
22 to help themselves, weren't they?

23 A Yes, sir, they did try to help themselves.

24 Q And you know very well a lot of the
25 information that they gave you flat out wasn't

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1 true?

2 A That was their understanding.

3 Q I'm not asking you what their understanding
4 was. You know that a lot of the information these
5 people gave you wasn't truthful information, nobody
6 told 100 percent of the truth, did they?

7 A Everyone remembers things differently.

8 Q That's not what I'm asking you. I'm asking
9 you is it your position these people told the
10 truth, 100 percent of the truth?

11 A That's what I asked of them.

12 Q I didn't ask you what you asked of them. Did
13 you review the statements?

14 A Yes, sir, I've seen the statements.

15 Q Okay. And you do know that a lot of those
16 statements flat out are contradictory with one
17 another, you can't take certain ones of them, two
18 together, they can't be true, can they?

19 A People remember things differently. I don't
20 know that they were lying.

21 Q You don't know? Well, if you don't know if
22 they were lying, you don't know if they were
23 telling the truth either, do you?

24 A We try to corroborate everyone's statement.

25 Q I didn't ask you that, ma'am. If you don't

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1 know when someone is lying, you wouldn't know when
2 they were telling the truth either, if you don't
3 verify, do you?

4 A Yes, sir.

5 Q That's basically what's going to happen when
6 these people get up to testify later on, we're
7 going to have to figure out when they are lying and
8 when they are telling the truth, same as you did,
9 isn't that correct?

10 A Yes, sir.

11 Q And these people, when you talked to them and
12 did their interview, were they still high as kites
13 or going through withdrawal when you talked to
14 them?

15 MR. CROUT: Objection, Your Honor.

16 THE COURT: Sustained.

17 MR. CROUT: That question --

18 THE COURT: Sustained.

19 BY MR. VARNER:

20 Q Do you know whether or not they were still
21 under the influence of drugs?

22 A I didn't ask.

23 Q Did you do drug tests on them like you did on
24 that woman you hauled back in?

25 A No, sir.

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1 Q No? But you did find out when you did drug
2 tests one of them, that one was still under the
3 influence of drugs after she was cooperating with
4 you, too?

5 A Yes, sir.

6 Q And some of them who were cooperating with
7 you, while they were cooperating with you they are
8 still out doing other crimes, aren't they, and got
9 re-arrested?

10 A Yes, sir.

11 Q And these are your trustworthy people you are
12 going to present to this jury here before the
13 week's over, the same people?

14 A Some of them.

15 Q And Gene Saylor, he started out as a
16 confidential informant, right?

17 A Yes, sir.

18 Q He wound up as a defendant, didn't he?

19 A He's not charged in this case.

20 Q Okay, he wasn't charged? Okay. He must have
21 given a lot of good information, not to get
22 charged, didn't he?

23 A No, sir. He didn't give us an interview.

24 Q He didn't what?

25 A He didn't give us an interview. I didn't get

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1 to interview him.

2 Q He took you places, he took you down to
3 Georgia and said, "This isn't mine but I know about
4 it, it belongs to somebody else," that you wanted
5 information on, didn't he?

6 A He did take us there, sir.

7 Q And how is he related to Bonnie Saylor's?

8 A I believe it's her ex-husband, estranged
9 husband.

10 Q How many CI's were involved in this case?
11 CI, for the jurors' information, confidential
12 informants, how many other people got in trouble
13 for drugs and were working off?

14 A Most of the people that gave us information
15 were charged.

16 Q How many of them were confidential informants
17 that didn't get charged? We know of one. How many
18 others were there?

19 A I don't know.

20 Q There was more than one, though, wasn't
21 there?

22 A There was at least one other.

23 Q Okay. So, we know of at least two, could
24 have been more?

25 A I never talked to that confidential

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1 informant, I don't know.

2 Q Okay. So, some of these people were out
3 dealing drugs, getting involved in drug deals and
4 they don't even get charged because they made SLED
5 happy. That's what it boils down to, isn't it?

6 A No, sir.

7 Q Are you the one that made the decision not to
8 bother, to charge or bring these drug dealers
9 before a jury or before a court, was that your
10 decision?

11 A Sir, I don't know that they were drug
12 dealers.

13 Q Okay. Drug users?

14 A I don't know that either.

15 Q Let me ask you about something that was
16 rather curious. In the dark drug deal in that
17 parking lot you could see the two people in the
18 truck. Were the lights left on in that truck so
19 you could video?

20 A I think that he turned on the overhead light.

21 Q Okay. So, Julie Prince, this person who is
22 smart enough to be in this conspiracy did a drug
23 deal in the dark and let the guy turn the lights on
24 so you could sit across in another car and video
25 her face and the other person doing the drug deal?

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1 MR. CROUT: Objection, Your Honor.

2 MR. VARNER: I'll withdraw the question.

3 THE COURT: Very well.

4 BY MR. VARNER:

5 Q Julie Prince is one of the alleged
6 co-conspirators in this big conspiracy you're
7 talking about?

8 A Yes, sir.

9 Q And she was doing a drug deal with somebody
10 she had barely known for a little while?

11 A Yes, sir.

12 Q And she did this drug deal at night and let
13 the guy turn the lights on?

14 A Yes, sir.

15 Q And how far away from her were you?

16 A Twenty-five feet, thirty feet, I'm not sure.

17 Q Sitting in the front seat of a car?

18 A We were sitting in a vehicle.

19 Q Okay. Were you in the front seat?

20 A No, sir.

21 Q You were in the back seat?

22 A Yes, sir.

23 Q Okay. And you have a video camera going?

24 A Yes, sir.

25 Q All right. And there was an audio tape.

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1 That was actually inside the pickup truck, where
2 the SLED agent was, correct?

3 A Yes, sir.

4 Q Okay. Now, you were talking about this
5 coffee grinder and all this evidence that were
6 seized here in Exhibit A, all this stuff here. Did
7 anybody take any fingerprints?

8 A That's not a coffee bean grinder but --

9 Q What?

10 A That's not a coffee bean grinder.

11 Q I'm sorry, I can't hear you.

12 A I said that's not a coffee bean grinder.

13 Q I'm sorry, let me just rephrase it. The
14 stuff in this picture, these tanks, these cans and
15 all this other stuff, even the outside of the truck
16 tool box lid, did anybody take any fingerprints --

17 A No, sir.

18 Q -- to see who had been in there?

19 A We did not.

20 Q No? Did you discover that the truck was in
21 the shop and Ernest Covan was in that shop at the
22 same time, too?

23 A Yes, sir.

24 Q Was he working on this truck?

25 A Not that I can see.

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1 Q Well, now, who is that truck registered to?

2 A I don't recall her name.

3 Q Okay. And you were aware that Marshall
4 Miller had driven up that night but he didn't drive
5 up in that truck, he drove up in another vehicle
6 that was parked outside, didn't he?

7 A I don't know what he drove up in.

8 Q You don't know, okay. So, you have no
9 information to say that Marshall Miller drove that
10 truck there that night or was in possession or use
11 or control of that truck, particularly that night?

12 A No, sir.

13 Q All right. The box with the Mason jars, the
14 box of salt, this tube of whatever chemicals, what
15 looks like a bleach bottle, the gas can, were you
16 the agent in charge of this evidence?

17 A Yes, sir, I turned it in.

18 Q Any fingerprints taken on this?

19 A I think there was one set that was taken.

20 Q And who did they come back to?

21 A I don't know.

22 Q So, as it sits right now we don't know who
23 has been handling this stuff but we do know one
24 person knows where it was, Gene Saylor?

25 A Yes, sir.

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1 Q Okay. You do agree -- well, let me back up.
2 I had asked about the coffee grinder. The coffee
3 grinder is this, so everybody can see, it's this
4 thing here at the bottom, correct?

5 A Yes, sir.

6 Q Okay. And the reason I asked you about that,
7 just to make the record clear, were fingerprints
8 taken of the coffee grinder?

9 A I believe they were attempted but I don't
10 know if they found any.

11 Q And this house or trailer, it looks like, as
12 we look at these pictures here, it looks like there
13 is a big building there on the right. Is that like
14 an apartment or something, or do you know what that
15 is?

16 A I believe it's another residence but I'm not
17 sure if it's apartments.

18 Q The residence we're referring to where Tracy
19 Davis was at that day, that's the little place
20 here, looks like a trailer with a lean-to built
21 onto it?

22 A Yes, sir.

23 Q A small place. And you find it suspicious
24 that people who would have a place on the lake
25 would have a security system at a lake house? Do

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1 you think that's suspicious, does that indicate a
2 dope dealer to you?

3 A It does make me a little suspicious, the
4 number of cameras, yes, sir.

5 Q Do you spend much time on the lake?

6 A No, sir. I don't live around here.

7 Q Do you think it's at all unusual practice,
8 people have lake houses on the lake, to have
9 security systems? That's normal with the lake,
10 isn't it?

11 A I don't know. I don't live on the lake.

12 Q You don't know, okay. Now, we talked about a
13 few of the people who were arrested on the 24th.
14 So the jury understands, it wasn't just pure
15 coincidence a couple of these people were arrested
16 on the 24th, that had nothing to do with what these
17 people did or connection with each other?

18 A I'm sorry?

19 Q When they were arrested on the 24th -- let me
20 rephrase it. Wasn't there a plan that the people
21 would be rounded up basically all at one time?

22 A Yes, sir, we attempted to do that.

23 Q Okay. So, how many people were arrested on
24 the 24th?

25 A Fifteen, I believe.

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1 Q Okay. And let me ask you this. It started
2 out, and you can look at your piece of paper that
3 the prosecutor gave you a few minutes ago, it
4 started out, excuse me, with only fourteen people,
5 is that correct?

6 A What started out with fourteen people?

7 Q It started out with a less number, a lesser
8 number of people, is that correct?

9 A No, sir, there was supposed to be fifteen
10 people arrested that day.

11 Q Okay. I'm talking about in the original
12 indictment.

13 A Yes, sir.

14 Q The original one. Fifteen people were to be
15 arrested, correct?

16 A Yes, sir.

17 Q That's been subsequently changed, correct,
18 Ray Powell has been added?

19 A Yes, sir.

20 Q Mr. Gentry was added?

21 A Yes, sir.

22 Q Mr. Moore was added, he was the next to the
23 last one?

24 A Yes, sir.

25 Q And then a Jeff Horne?

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1 A Yes, sir.

2 Q Okay. And when were those people added as
3 part of this, quote, quote, conspiracy, as you call
4 it?

5 A When were they indicted?

6 Q Yes.

7 A I believe it was March of 2003.

8 Q All right. All these people were originally
9 picked up, I believe, September 24th?

10 A The first fifteen on the original indictment.

11 Q First fifteen?

12 A Yes, sir.

13 Q What year was that?

14 A 2002.

15 Q 2002?

16 A Yes.

17 Q So, the first fifteen were picked up on the
18 24th?

19 A Yes, sir.

20 Q And then some -- well, October, November,
21 December, January, February, March, some six months
22 later four more names are added, correct?

23 A Yes, sir.

24 Q And this investigation had been going on
25 since November of '99, is that correct?

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1 A The conspiracy dated back, yes, sir.

2 MR. VARNER: All right, ma'am, that's all the
3 questions I have. Thank you, ma'am.

4 THE COURT: Cross-examine, Mr. Wise.
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1 CROSS EXAMINATION

2 QUESTIONS BY MR. WISE:

3 Q Miss Sonnefeld, you started your
4 investigation in December of 2001?

5 A Yes, sir, December, 2001.

6 Q And when you say historically, some of the
7 information you obtained starting in December of
8 2001 went back to November of '99?

9 A Yes, sir.

10 Q Okay. How does your office -- once you got
11 on this case was that pretty much a full-time job?

12 A It is, but I do have other investigations.

13 Q Right, but would you say half your time was
14 devoted to this case since December of 2001, up
15 until March of 2003?

16 A There was a lot of time dedicated, yes, sir.

17 Q Okay. And as you investigated this case and
18 you made some buys from some people you would
19 confront them with the fact you had made a buy from
20 them?

21 A Yes, sir.

22 Q And then ask them if they would cooperate?

23 A Yes, sir.

24 Q And you basically would tell these people,
25 "Tell me what you know about methamphetamine

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1 dealing#?

2 A Yes, sir.

3 Q Right. And you talked to Julie Prince in
4 April of 2002?

5 A I believe that's correct.

6 Q Correct?

7 A Yes.

8 Q In the process of some of these interviews
9 you also interviewed a David Cumming?

10 A Yes, sir.

11 Q April 25th, 2002?

12 A Yes, sir.

13 Q All right. And then you also interviewed a
14 Tina Stevenson?

15 A Yes, Stevenson.

16 Q And in July, Michelle Madden in July, 2002?

17 A Yes, sir.

18 Q When did you interview Tommy Stewart?

19 A I was present during an interview last week.

20 Q Okay. That was just recently?

21 A Yes, sir.

22 Q Okay. Now, when you went to arrest Michelle
23 Madden on September 24th you went to a trailer out
24 on Morgan Road?

25 A Yes, sir.

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1 Q That was the address you had, I believe, of
2 her parents?

3 A Yes, sir.

4 Q It was?

5 A That's correct.

6 Q You all were walking around the house trying
7 to find her or if anybody was there?

8 A Yes, sir.

9 Q And coming out of the woods behind the house
10 you saw somebody came up to you?

11 A Yes, sir.

12 Q It turned out to be Billy Moore?

13 A Yes, sir.

14 Q Did you introduce yourself to him?

15 A I did.

16 Q And he basically said, "Can I help you,"
17 something like that?

18 A Yes, sir.

19 Q You told him who you were?

20 A Yes, sir.

21 Q And you told him you were looking for
22 Michelle Madden?

23 A Yes, sir.

24 Q And you were not looking for Billy Moore?

25 A Not at that time.

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1 Q Okay. So, Billy Moore said she wasn't there,
2 I think he said you just missed her?

3 A Something to that effect.

4 Q Right, that she had left. And then you
5 started inquiring about whose truck that was across
6 the street?

7 A Yes, sir.

8 Q Because the truck looked familiar to you?

9 A Very familiar.

10 Q You hadn't run the tag at that point?

11 A No, sir. It was backed in.

12 Q You saw that trailer and you said, "That
13 trailer looks like the one I saw down in Georgia"?

14 A Yes, sir.

15 Q So you asked him who does it belong to?

16 A Yes, sir.

17 Q He told you?

18 A Yes, sir.

19 Q Marshall Miller, correct?

20 A I don't know if he said the first name but he
21 did say Miller.

22 Q Miller?

23 A Yes, sir.

24 Q Then you actually asked permission to go over
25 there and talk to Mr. Miller, didn't you?

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- 1 A Yes, we did.
- 2 Q And he said fine?
- 3 A Yes, sir.
- 4 Q No problem, right?
- 5 A Yes, sir.
- 6 Q He didn't go with you?
- 7 A Not that I'm aware.
- 8 Q He went back to his trailer, correct?
- 9 A I don't know where he went.
- 10 Q Well --
- 11 A I don't recall him walking with us across the
- 12 street.
- 13 Q And he was behind the trailer when you were
- 14 looking for Michelle Madden?
- 15 A Yes, sir.
- 16 Q He wasn't across the street?
- 17 A That's correct.
- 18 Q You all went over there?
- 19 A Yes, sir.
- 20 Q And of course Marshall Miller wasn't there?
- 21 A Yes, sir.
- 22 Q A man named James Heatherly was there?
- 23 A I'm not sure of his name, it was a nickname.
- 24 Q Chip?
- 25 A Yes, sir.

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- 1 Q Okay. And was Ernest Covan there?
- 2 A He was found, yes, sir.
- 3 Q He was found there?
- 4 A Yes, sir.
- 5 Q He was found hiding?
- 6 A Yes, sir.
- 7 Q All right. Chip wasn't hiding?
- 8 A No, sir.
- 9 Q Needless to say, Billy Moore wasn't hiding?
- 10 A No.
- 11 Q So, did Billy Moore come back over there a
- 12 couple hours later?
- 13 A I remember seeing him back over there, yes,
- 14 sir.
- 15 Q And in fact you and he sat down and started
- 16 talking about which tools were Marshall Miller's
- 17 and which tools were his?
- 18 A I did ask him that, sir.
- 19 Q And you all were trying to sort out the tools
- 20 so, excuse me, when you seized the tools you would
- 21 only take Marshall Miller's tools and not his?
- 22 A Correct, yes, sir.
- 23 Q Is that correct?
- 24 A Yes, sir.
- 25 Q Did you ask permission to search the trailer,

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1 or another officer, the garage area?

2 A No, I did not.

3 Q Okay. So, you sat there and talked with
4 Billy Moore --

5 A I did.

6 Q -- at length about whose tools belonged to
7 who?

8 A Yes, sir.

9 Q And to divide them up, correct?

10 A Yes, sir.

11 Q And were you inside the shop at that time or
12 were you outside?

13 A It was kind of in between. They were kind
14 of, the trailer was backed up and I believe the
15 door was down and there was some inside the trailer
16 and there was some in front of it.

17 Q So, you all were kind of right in the
18 doorway?

19 A Yes, sir.

20 Q he Was not obstructing you in any manner
21 about doing what you needed to do to seize these
22 items, correct?

23 A That's correct.

24 Q All right. So, when you interviewed Julie
25 Prince back in April of 2002 and when you

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1 interviewed David Cumming in April of 2002 and Tina
2 Stevenson in July of 2002 and Michelle Madden in
3 July of 2002, none of those people ever mentioned
4 Billy Moore?

5 A Not that I recall, no, sir.

6 Q You would have written it down if you had
7 recalled it?

8 A Yes, sir.

9 Q Because you were after names?

10 A Yes, sir.

11 Q The sole purpose of that interview was to get
12 names and some detailed information?

13 A Yes, sir.

14 Q All right. So, every name you put down, and
15 you basically ask for a description when you put it
16 down, don't you?

17 A Normally, yes, sir.

18 Q Because it's important to know? People have
19 common names?

20 A Yes, sir.

21 Q You don't want to confuse two different
22 people?

23 A That's correct.

24 Q So, when you ask for a name you ask for
25 whether they are male or female?

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1 A Yes, sir.

2 Q You ask for race?

3 A Yes, sir.

4 Q Height?

5 A Yes, sir.

6 Q Approximate age?

7 A Yes, sir.

8 Q Marital status?

9 A Yes, sir.

10 Q And children?

11 A Yes, sir.

12 Q All right. So you will know that you're
13 talking about the same person?

14 A Yes, sir.

15 Q And then after you and Mr. Moore sat down and
16 tried to sort out those tools, is that when you
17 went down and set up the permineter trying to
18 locate Marshall Miller?

19 A I want to say it was. I sat down with Mr.
20 Moore after Marshall was in custody.

21 Q After what?

22 A After Marshall was in custody, Mr. Miller.

23 Q Because you did sit down with him and ask him
24 questions about Marshall Miller in detail?

25 A I did ask him a few questions.

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- 1 Q "How long have you known him?"
- 2 A Yes, sir.
- 3 Q He told you what, about a week or ten days?
- 4 A A couple weeks, I remember.
- 5 Q Something like that, I believe. Well, let's
- 6 see what you put in your statement. I believe you
- 7 took a statement from him in your handwriting?
- 8 A I did.
- 9 Q I believe you said, "Approximately last
- 10 Tuesday, September 17th, a man known to me brought
- 11 a Grand Am to my shop"?
- 12 A Yes, sir.
- 13 Q All right. And he told you what dealings he
- 14 had had with Marshall Miller?
- 15 A Yes, sir.
- 16 Q That he had worked on a car for him?
- 17 A He told me that.
- 18 Q And that they had, had brought his trailer
- 19 over to work on some go-carts?
- 20 A Yes, sir.
- 21 Q Okay. And then you also out of the presence
- 22 of Mr. Moore went and talked to his wife?
- 23 A Yes, sir, I did.
- 24 Q And she was cordial with you?
- 25 A Yes, sir, she was.

CONSTANCE SONNEFELD - CROSS

- 1 Q And you asked her basically the same thing?
- 2 A Yes, sir.
- 3 Q You found out basically the things that Billy
- 4 told you?
- 5 A Yes, sir.
- 6 Q Correct?
- 7 A Yes, sir.
- 8 Q They were interviewed totally independent of
- 9 each other?
- 10 A Yes, sir.
- 11 Q And they were both very cooperative with you?
- 12 A Yes, sir.
- 13 Q They didn't try to hide anything?
- 14 A Not to me.
- 15 Q I mean, I believe his wife welcomed you in
- 16 that trailer?
- 17 A Yes, sir.
- 18 Q All right. And did they tell you who lived
- 19 in the neighborhood around them?
- 20 A I believe they did.
- 21 Q They told you that Michelle Madden's parents
- 22 were kin to them, lived nextdoor?
- 23 A Yes, sir.
- 24 Q And that the grandmother lived across the
- 25 street?

CONSTANCE SONNEFELD - CROSS

1 A Yes, sir.

2 Q And he had an uncle that lived up the street,
3 on the same side of the road as the trailer?

4 A Yes, sir.

5 Q As the garage?

6 A Correct.

7 Q And he told you the garage belonged to his
8 uncle?

9 A He did.

10 Q All right. That he had been -- and you went
11 in the garage?

12 A Yes, sir.

13 Q And it had a lot of go-cart equipment in
14 there?

15 A It did.

16 Q Okay. Which was very consistent with what he
17 told you?

18 A Yes, sir.

19 Q Okay. On September 24th of 2002 you didn't
20 arrest Billy Moore?

21 A No, I did not.

22 MR. WISE: Okay, thank you.

23 THE COURT: Anything on redirect?
24
25

CONSTANCE SONNEFELD - REDIRECT

REDIRECT EXAMINATION

1
2 QUESTIONS BY MR. CROUT:

3 Q Agent Sonnefeld, as far as who decides who is
4 going to be charged in an indictment, who
5 ultimately makes that decision?

6 A It's a collaborative effort but at the last
7 stage the attorneys are.

8 Q And in this present case you had been asked a
9 question about an individual by the name of Sandra
10 Jo Hughes. What is her involvement in this case?

11 A She's the mother of Julie Prince.

12 Q Now, as far as the truck that was at Billy
13 Moore's shop, you didn't see who drove it there,
14 did you?

15 A No, sir.

16 Q So, you don't know if Marshall Miller drove
17 it there?

18 A No, sir, I don't.

19 Q Or anybody else drove it there?

20 A That's correct.

21 Q Any more than anybody else in this room
22 knows, is that correct?

23 A That's correct.

24 MR. CROUT: Your Honor, I have no further
25 questions of this witness.

CONSTANCE SONNEFELD - REDIRECT

THE COURT: Mr. Varner?

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CONSTANCE SONNEFELD - RECROSS

1 **RECROSS EXAMINATION**

2 QUESTIONS BY MR. VARNER:

3 Q In regard to who drove the truck, you do
4 understand the State has the burden of proof,
5 correct?

6 A Yes, sir.

7 Q And you thought what was in that truck was
8 important enough to take pictures of and show this
9 jury?

10 A Yes, sir.

11 Q But it wasn't important enough to find out
12 who drove the truck there? It wasn't, was it?

13 A At that point I couldn't ask anyone.

14 Q Okay. And even now who is that truck
15 registered to, you said some woman, you don't
16 remember who it is?

17 A I can't remember her name.

18 Q Okay. Let's go back to that trailer you were
19 talking about. Does that trailer have a license
20 plate on it?

21 A I believe it did.

22 Q The one down in Georgia, what kind of license
23 plate number did it have on it?

24 A I don't recall seeing it.

25 Q You don't recall seeing that trailer in

CONSTANCE SONNEFELD - RE CROSS

1 Georgia?

2 A The license tag.

3 Q So, how did you see the trailer if you didn't
4 even know whether or not it had a license tag?

5 A You can see the trailer but not necessarily
6 the rear end of it.

7 Q Okay. And this trailer that we're talking
8 about, is it kind of one of these enclosed pull
9 behind trailers?

10 A Yes, sir.

11 Q A million of them just alike?

12 A Yes, sir.

13 Q And what marks did you put on the one in
14 Georgia so that you would know that it was the one
15 that you saw up here, other than maybe the same
16 company made them or twenty companies make them
17 that look alike?

18 A I didn't touch that trailer, sir.

19 Q Okay. So, because it was the same type of
20 trailer -- do you know what brand trailer it was?

21 A Shadowmaster.

22 Q Okay. The one down in Georgia, what kind was
23 it?

24 A Believe it has a sign on the front that says
25 Shadowmaster.

CONSTANCE SONNEFELD - RECROSS

1 Q So, the best you can tell this jury is you
2 saw a Shadowmaster trailer, you saw one in Georgia
3 and you saw one in, wherever this place was here in
4 Abbeville. Was this in Abbeville?

5 A Greenwood County.

6 Q One in Greenwood County?

7 A That's correct.

8 Q Okay. And Sandra Jo Hughes, you said
9 something about her. You do know and so does
10 everybody sitting up here that according to one of
11 your informants, one of your people who you are
12 relying on to get your information, she even told
13 on her own mother that she was dealing dope, didn't
14 she?

15 A Are you referring to --

16 Q Julie Prince. Julie Prince even told you in
17 the course of this investigation, she didn't know
18 she was being recorded, she accidentally spit it
19 out, gave up her own mother, didn't she?

20 A Yes, sir, she did.

21 Q And who is Sandra Joe Hughes getting, who was
22 Tina Prince's mother, Sandra Jo Hughes, correct?

23 A Julie Prince.

24 Q Julie Prince, I'm sorry, I'm getting the cast
25 of characters messed up.

CONSTANCE SONNEFELD - RECROSS

1 A Julie Prince's mother is Sandra Jo Hughes,
2 correct?

3 A Yes, sir.

4 Q Who was Sandra Jo getting her dope from?

5 A Sandra Jo Hughes has not been interviewed.

6 Q Did you attempt it?

7 A I asked.

8 Q Okay. Well, if she's part of supplying Tina,
9 excuse me, Julie dope and Julie supplies SLED with
10 dope and they are all co-conspirators, I thought
11 you told this jury before you were climbing up the
12 ladder?

13 A We were attempting to.

14 Q Okay. Well, wouldn't Sandra Jo Hughes be
15 climbing up the ladder from Julie because that's
16 Julie's dealer, isn't she?

17 A That would be climbing up the ladder, yes,
18 sir.

19 Q That's what climbing up the ladder means, if
20 you get dope from this person, find out who they
21 get dope from?

22 A Yes, sir.

23 Q But you didn't interview her dealer?

24 A She wouldn't grant us an interview.

25 Q Okay. Did you charge her?

CONSTANCE SONNEFELD - RECROSS

1 A Yes, sir.

2 Q Okay. Is she charged?

3 A Yes, sir.

4 Q Sandra Jo Hughes is?

5 A Yes, sir.

6 Q Okay. But she's not going to be here to
7 testify?

8 A No, she's not.

9 MR. VARNER: That's all the questions I have.

10 THE COURT: Mr. Wise?

11 MR. WISE: Nothing further.

12 THE COURT: Redirect?

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CONSTANCE SONNEFELD - RECROSS

FURTHER REDIRECT EXAMINATION

QUESTIONS BY MR. CROUT:

Q Agent Sonnefeld, is Sandra Jo Hughes a
defendant in this conspiracy as well?

A Yes, sir, she is.

Q Is she indicted?

A Yes, sir.

Q Is she awaiting trial herself?

A Yes, sir, she is.

MR. CROUT: Thank you, Your Honor. No
further questions.

THE COURT: Anything further?

MR. VARNER: Just in response to that.

THE COURT: Only that.

MR. VARNER: Only that.

CONSTANCE SONNEFELD - FURTHER RECROSS

1 FURTHER RECROSS EXAMINATION

2 QUESTIONS BY MR. VARNER:

3 Q In regard to trials, this is the only trial
4 you have done so far, correct?

5 A Yes, sir.

6 MR. VARNER: Okay.

7 THE COURT: Mr. Wise?

8 MR. WISE: No.

9 THE COURT: Anything further?

10 MR. CROUT: Nothing from the State, Your
11 Honor.

12 THE COURT: Thank you, madam. Come down, and
13 watch your step.

14 (Witness excused).

15 THE COURT: Madam Forelady and ladies and
16 gentlemen of the jury, we will take a recess at
17 this time. Please do not discuss the case by,
18 between or among yourselves or with any other
19 person at all under any circumstances. Now, the
20 Court is certainly aware that that's a big order
21 now that you know something about the case and you
22 have some idea of what we're talking about here,
23 because when you go home late this afternoon your
24 neighbors, your spouses, your children and friends
25 are all going to be interested in what the case is

1 about that you are a juror on. That's just human
2 nature. Everybody is curious, everybody is going
3 to want to know it, if they know you are a juror
4 they are probably going to be curious about what it
5 is that you are trying. But you can't answer them
6 at this time.

7 Now, the Court will advise you that after the
8 case has been tried and a verdict rendered any one
9 of you is free to talk with anyone you please and
10 you are equally free to refuse, and if anyone
11 bothers you after you tell them you don't want to
12 talk about it, then you call the Sheriff's office
13 and the Sheriff will get in touch with this judge
14 and that will be taken care of.

15 So, after the verdict is over you can talk
16 with anybody you want to or you can talk, refuse to
17 talk with anybody, but until this case is over you
18 must not talk about it at all. This is extremely
19 important, it's elementary and fundamental in order
20 for you to keep that mental balance, that fairness
21 toward the State and toward the defendants, that
22 you not talk with anybody because some little thing
23 that might be said to you, however meaningless it
24 may appear at the time, may stick in your mind and
25 upset your mental balance so that when you commence

1 your deliberations that remark in some way affects
2 your thoughts and what you share with your fellow
3 jurors.

4 So, please don't talk about the case at all
5 with anyone, even by, between and among yourselves.
6 If anyone attempts to talk with you in a normal
7 curiosity please tell them that you are a juror and
8 you may not discuss the case with them. If any
9 person or persons persist in attempting to talk
10 with you about this case after you alert them that
11 you are a juror in this case that would be highly
12 improper, wrong and illegal and you should use
13 every reasonable means to find out who that person
14 or persons is or are, as the case may be, and
15 report it to one of the bailiffs or to the court
16 clerk and let us look into that. We would be very
17 interested in knowing if anybody bothers you after
18 you tell them you're a juror.

19 If there were to be any media coverage such
20 as newspaper, television or radio of this trial, as
21 soon as you realize what you're reading, hearing or
22 looking at has to do with this trial you will
23 immediately ignore it, disabuse yourself of it
24 completely because you must decide the case only
25 and exclusively upon the evidence as presented

1 during the course of the trial.

2 And thank you very much for your patience.

3 We will recess at this time until 9:30 in the
4 morning. The jurors are excused to return, be in
5 the jury room at 9:30. Everyone else remain
6 seated. Thank you very much.

7 (The jury was excused from the courtroom).

8 THE COURT: Clear?

9 BAILIFF: Yes, sir.

10 THE COURT: Anything from the State --

11 MR. HOOD: No, sir, Your Honor.

12 THE COURT: -- before we close for the
13 evening?

14 Anything from the defendant Miller?

15 MR. VARNER: Nothing, Your Honor.

16 THE COURT: From the defendant Moore?

17 MR. WISE: One thing. This is just a little
18 housekeeping thing and I may have misunderstood, it
19 won't be the first thing today I didn't hear
20 correctly. Did Connie testify about an interview
21 with Michelle Madden on October 7th, 2002? I just
22 couldn't find an October statement for her.

23 MS. SONNEFELD: Do you want me to look?

24 THE COURT: Anything before we close the
25 record?

1 MR. HOOD: No, sir.

2 THE COURT: What's the State's position about
3 Mr. Moore remaining at liberty during the course of
4 the trial?

5 MR. HOOD: Your Honor, Mr. Moore has always
6 been at court when he needs to be. His attorney
7 assures me that that is not an issue, and he has
8 been out on bond this whole time. We have not had
9 any problems from him that I am aware of.

10 MR. WISE: His family is on the bond.

11 THE CLERK: He just needs to re-sign.

12 MR. HOOD: Madam Clerk may need him to
13 re-sign something, I'm not sure of that procedure.

14 THE COURT: All he has the to do is sign his
15 name on the same bond form. Is he on a surety?

16 MR. WISE: Well, the surety was here earlier
17 but not here now.

18 THE CLERK: His mother signed, not the
19 father.

20 MR. WISE: We can get her in the morning.

21 THE COURT: You will get her in the morning.
22 However, Mr. Moore, were you to fail to appear and
23 the State moves for a bench warrant to be issued
24 for your arrest it will be granted and you will be
25 arrested?

1 THE DEFENDANT: I'll be here, sir.

2 THE COURT: Everybody seems to be certain you
3 have cooperated, so please continue to do that.
4 You will be at liberty.

5 Anything further?

6 MR. WISE: Nothing further.

7 MR. VARNER: Nothing further, Your Honor.

8 THE COURT: The record is closed until in the
9 morning.

10 (Recessed at 5:45 p.m., January 21, 2004).

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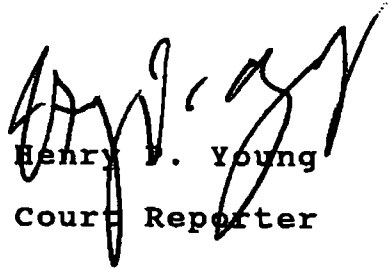
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4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Abbeville County,
11 South Carolina, on the 21st day of January, 2004.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 January 8, 2005

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19 Henry P. Young
20 Court Reporter
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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
CASE NO. 2002-GS-47-32

COUNTY OF ABBEVILLE

STATE OF SOUTH CAROLINA,

-vs-

MARSHALL MILLER and
BILLY MOORE,

Defendants.

B E F O R E:

HONORABLE WYATT T. SAUNDERS, JR.

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

JOHN K. CROUT, Esquire
ROBERT E. HOOD, Esquire
Attorneys for the State

KIM R. VARNER, Esquire
Attorney for the Defendant Marshall Miller

C. RAUCH WISE, Esquire
Attorney for the Defendant Billy Moore

Henry P. Young
Court Reporter

VOLUME III of VIII

JANUARY 22, 2004

1 (Reconvened 10:05 a.m., January 22, 2004).

2 THE COURT: The record is open. This is the
3 State of South Carolina versus Marshall Miller and
4 others in which Marshall Miller and Billy Moore are
5 the defendants during this trial of two defendants
6 in criminal action 2002-GS-47-32.

7 Is there anything from the State before the
8 jurors come in, please?

9 MR. HOOD: No, sir, Your Honor.

10 THE COURT: Anything from the defendant
11 Miller?

12 MR. VARNER: No, Your Honor.

13 THE COURT: From the defendant Moore?

14 MR. WISE: No, sir.

15 THE COURT: Thank you. Show the jury in,
16 please, Mr. Busby.

17 (The jury returned to the courtroom).

18 THE COURT: All the jurors are present, with
19 the foreman and the alternate properly seated. The
20 matter lies with the State. Call your next
21 witness.

22 MR. HOOD: Thank you, Your Honor. May it
23 please the Court, the State calls Brandon Scott.

24 THE COURT: Brandon Scott.
25

BRANDON SCOTT - DIRECT

1 BRANDON SCOTT,
2 after being first duly sworn testified as follows:

3 THE CLERK: Have a seat and state your full
4 name for the record.

5 THE WITNESS: Sergeant Brandon Scott,
6 Abbeville County Sheriff's Department.

7 THE COURT: The witness is with you.

8 DIRECT EXAMINATION

9 QUESTIONS BY MR. HOOD:

10 Q Good morning, Sergeant Scott. Where are you
11 currently employed?

12 A Abbeville County Sheriff's Department.

13 Q How long have you been with the Abbeville
14 County Sheriff's Department?

15 A Seven years.

16 Q What are your current responsibilities with
17 the Abbeville Sheriff's Department?

18 A I manage the narcotics unit.

19 Q Are you actually a supervisor?

20 A Yes, sir.

21 Q Explain to the jury what you do along with
22 your narcotics investigations on a day to day basis.
23 If you weren't in court today what would you be
24 doing?

25 A We receive complaints and so forth from

BRANDON SCOTT - DIRECT

- 1 citizens or complaints that's called in to our
2 Sheriff's office or our Sheriff or whoever, however
3 they may come in, and we're assigned those cases or
4 those bits of information and we will go out and
5 try to corroborate that information or make a case
6 on it if it warrants making a case.
- 7 Q Approximately how many people do you
8 supervise, Sergeant Scott?
- 9 A Myself and Investigator Chris Benson.
- 10 Q Are you aware of a case that is code named
11 Operation Crankdown?
- 12 A I am.
- 13 Q And does that case involve Abbeville County?
- 14 A It does.
- 15 Q Please tell us how this Crankdown name came
16 about.
- 17 A We got numerous complaints of what we would
18 call an organization of methamphetamine
19 distribution and receiving in the county, and it
20 entailed many names, so instead of just calling it
21 a particular name, we would call it an operation
22 name, so we come up with the name Crankdown.
- 23 Q And what is the street name for
24 methamphetamine?
- 25 A Crank.

BRANDON SCOTT - DIRECT

- 1 Q Does it have other names?
- 2 A Yes.
- 3 Q And tell us some of those.
- 4 A Speed, go fast, meth, methamphetamine. There
- 5 is probably dozens of street names.
- 6 Q When did you first become involved with what
- 7 is now known as Operation Crankdown?
- 8 A I believe it was in the year, late year 2000.
- 9 Q And did there come a point in time when you
- 10 realized the case was really bigger than what you
- 11 thought it was?
- 12 A Yes. It came a time when it appeared that it
- 13 was going to entail multiple jurisdictions outside
- 14 of my jurisdiction. The County of Abbeville is my
- 15 jurisdiction.
- 16 Q And what other counties did you foresee it
- 17 involving?
- 18 A At the time it was going to be Laurens
- 19 County, Anderson County, our county and eventually
- 20 actually became others.
- 21 Q And do you have the right or the ability as a
- 22 law enforcement officer to go over to other
- 23 counties and conduct investigations?
- 24 A Not in and of myself, no.
- 25 Q And how can you do that?

BRANDON SCOTT - DIRECT

1 A Either through agreements with that
2 particular county or involve the State Grand Jury
3 and SLED.

4 Q And did there come a time where you made a
5 decision to go to the State Law Enforcement
6 Division?

7 A I did.

8 Q And tell us how that decision was made.

9 A When we discovered that this particular
10 investigation was going to cover multiple counties
11 and that it involved drug offenses I did a little
12 research and discovered that this would come under
13 the jurisdiction of a State Grand Jury and they
14 could assist us in this investigation to help wrap
15 everything up.

16 Q And did you make this decision on your own or
17 was this a collaborative decision in your office?

18 A It was collaborative with my office and my
19 superiors.

20 Q And your superiors being who?

21 A Chief Deputy Marion Johnson and the Sheriff
22 of Abbeville County, Charles Goodwin.

23 Q Did you come in contact with Special Agent
24 Sonnefeld, Special Agent Bragg and Lieutenant Frank
25 O'Neil of SLED?

BRANDON SCOTT - DIRECT

1 A Yes.

2 Q Tell us about that meeting and how it took
3 place.

4 A I had an initial meeting with Frank O'Neil,
5 the lieutenant of the officers, the SLED officers
6 that are involved with the State Grand Jury, and
7 presented what information my office had already
8 obtained and asked him, "Hey, is this something
9 that you can help me with," and they determined it
10 was something we could actually, they could
11 actually assist us with.

12 At that point a second meeting was set up in
13 Laurens County at the Sheriff's office where all
14 the law enforcement agencies that were going to be
15 involved actually come together and met at sort of
16 a roundtable to discuss the case.

17 Q And tell us how you presented your case to
18 SLED.

19 A I basically took all the information that we
20 had obtained so far and made a little over a dozen
21 page synopsis of what we had and presented it to
22 Lieutenant Frank O'Neil, and at that point they
23 decided that it was something they could help us
24 with.

25 Q And that was my next question, did SLED agree

BRANDON SCOTT - DIRECT

1 to take over this case?

2 A They did.

3 Q And what happened once SLED becomes involved,
4 as far as your role in the case and other local law
5 enforcement's role in the case?

6 A Our role become more of a secondary position.
7 Once SLED got involved, naturally they have
8 statewide jurisdiction, we become more of a
9 secondary support type role. If we were working in
10 this particular county, then, you know, I would set
11 up places for us to meet or make sure we were, we
12 had places to meet and do what business we had to
13 do.

14 Q Did you stay involved with the case?

15 A Yes.

16 Q Throughout its investigation?

17 A That's correct.

18 Q And were you made aware of the status of the
19 case throughout the entire time SLED was
20 investigating it?

21 A Pretty much constantly.

22 Q And did you provide SLED with the information
23 that you had on this case once they became
24 involved?

25 A I did.

BRANDON SCOTT - DIRECT

1 Q Are you familiar with a gentleman by the name
2 of Gene Saylors?

3 A I am.

4 Q Who is Gene Saylors?

5 A Gene Saylors is an individual, I think he was
6 living in Georgia at the time, actually contacted
7 me and stated that he had information that may help
8 me in this particular investigation.

9 Q Did Mr. Saylors agree to take you somewhere?

10 A He did.

11 Q And where did he agree to take you?

12 A He took us into Georgia, I'm not exactly sure
13 which county we were in but we got GBI, the Georgia
14 Bureau of Investigation to assist us over there and
15 he took us to a wooded location.

16 Q And did you notify SLED of this?

17 A Yes, I did.

18 Q And was SLED present or SLED agents present
19 actually when you were taken to Georgia?

20 A Yes, they went with us.

21 Q And did you actually go to Georgia?

22 A I did.

23 Q And were you present when all the items were
24 received?

25 A Yes, items from a wooded area.

BRANDON SCOTT - DIRECT

1 Q Were you involved in any arrests that took
2 place after the indictment was returned in this
3 case?

4 A I was.

5 Q Who were you involved in the arrest of?

6 A Directly, Martha Ellis. I was on the team
7 that arrested several individuals, I can't remember
8 exactly who all.

9 Q And were there multiple teams that went
10 out --

11 A Yes.

12 Q -- to arrest these individuals?

13 A Yes. We went to several counties and several
14 different locations.

15 Q And were you present when Martha Ellis was
16 arrested?

17 A I was.

18 Q Did you seize any illegal narcotics from her
19 or her residence?

20 A Yes, I did.

21 Q Did you take those into your control?

22 A I did.

23 Q And who did you turn those narcotics over to?

24 A Special Agent Connie Sonnefeld with SLED.

25 MR. HOOD: No further questions, Your Honor.

BRANDON SCOTT - DIRECT

1 THE COURT: Cross-examination?

2 MR. HOOD: May I have just one minute, Your
3 Honor, I apologize.

4 THE COURT: Take your time in conference.

5 MR. HOOD: May I beg the Court's indulgence,
6 Your Honor?

7 THE COURT: Take your time.

8 BY MR. HOOD:

9 Q Sergeant Scott, were you present when all
10 those items were taken out of Georgia?

11 A I was.

12 Q And did you physically look at each of those
13 items?

14 A Yes, as they were taken pretty much out of
15 boxes and bags, yes.

16 Q Let me show you, Sergeant Scott, what has
17 been marked as State's Exhibit Number 3 for
18 identification purposes only. If you could step
19 down, Sergeant Scott, with the Court's permission?

20 THE COURT: Yes, sir.

21 Q Let me show you this, Sergeant Scott. If you
22 would, grab that pointer with the Court's
23 permission right there off -- here's another one.

24 THE COURT: We have a new pointer, ladies and
25 gentlemen, and it will extend also, if you want to

BRANDON SCOTT - DIRECT

1 extend it out. We are modern today in Abbeville
2 County.

3 Q Sergeant Scott, if you would, please use that
4 pointer and I'm showing you again what is labeled,
5 excuse me, as State's Exhibit Number 3 for
6 identification purposes only for the record. Let
7 me show you these seven pictures on this board. Do
8 you recognize these pictures, and if you could,
9 step back just a little bit so even the jurors in
10 the corner can see it.

11 Do you recognize these pictures?

12 A Yes, sir, I do.

13 Q What do you recognize these pictures to be?

14 A Those appear to be the items we found in the
15 wooded area in Georgia.

16 Q And were you there physically present and
17 observed these with your own eyes that day in
18 Georgia?

19 A Yes, I did.

20 Q And who took you to these items?

21 A Gene Saylor.

22 Q Okay. And did you take these into your
23 control that day?

24 A No.

25 Q And who did?

BRANDON SCOTT - DIRECT

1 A Special Agents with SLED.

2 Q Okay. Sergeant Scott, at this time I'm going
3 to show you a number of items and ask you if you
4 can identify these items and where you can identify
5 these items from?

6 Your Honor, would you like to mark each of
7 these items before we go through them, or as we go
8 through them?

9 THE COURT: Do you intend to introduce them
10 into evidence in the case?

11 MR. HOOD: Your Honor, we only intend to
12 introduce them for identification purposes only at
13 this time.

14 THE COURT: Then mark them for identification
15 so that when and if another witness does come about
16 and you do move them into evidence, that we can
17 identify them, and in the event of an objection we
18 can talk about it and identify the item.

19 MR. HOOD: Yes, sir.

20 THE COURT: Very well. I know it's going to
21 be time consuming on our court reporter but we will
22 mark them individually.

23 (State's Exhibits 8, 9, 10, 11, 12,
24 and 13 were marked).

25 MR. HOOD: Your Honor, in this gym bag will

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1 be what is identified as Mason jars.

2 THE COURT: Mark it as one exhibit.

3 MR. HOOD: Thank you very much, Your Honor.

4 THE COURT: Unless there is some objection,
5 Mr. Varner?

6 MR. VARNER: No objection.

7 THE COURT: Mr. Wise, do you have any
8 objection to marking the bag as one exhibit?

9 MR. WISE: No objection.

10 THE COURT: Mason jars.

11 MR. WISE: No objection.

12 THE COURT: One exhibit, sir.

13 (State's Exhibit Number 14 was marked).

14 BY MR. HOOD:

15 Q Sergeant Scott, let me show you what is
16 State's Exhibit Number 8 for identification
17 purposes only at this time. Do you recognize that
18 item?

19 A Yes.

20 Q And what do you recognize that item to be?

21 A These look like items that came from that
22 area in Georgia.

23 Q Specifically what are the two items or the
24 two groups of items that are in that bag?

25 A These look like coffee filters, and these are

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1 like the blue shop towels used, heavy duty paper
2 towels.

3 Q Okay. Let me show you what has been marked
4 State's Exhibit 9 for identification purposes only.
5 Do you recognize this?

6 A Yes, sir.

7 Q What do you recognize that to be?

8 A A plastic Hefty ziplock bag.

9 Q Where did that item came from?

10 A It's consistent with some that came out of
11 that bag in Georgia.

12 Q Sergeant Scott, let me show you what has been
13 marked as State's Exhibit Number 10 for
14 identification purposes only. What do you
15 recognize that to be?

16 A These are latex gloves like nurses and stuff
17 would use.

18 Q Okay. And did you see, was this item seized
19 in Georgia that day?

20 A Yes.

21 Q And did you seize it?

22 A Yes.

23 Q And, Sergeant Scott, let me show you what has
24 been marked as State's Exhibit Number 11 for
25 identification purposes only. Have you seen this

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1 item before?

2 A I have.

3 Q Where did you see this item?

4 A Among the contents of the items taken in
5 Georgia.

6 Q And what is this?

7 A It's a coffee grinder type deal, spice
8 grinder.

9 Q And where was this located?

10 A It was among the items that was taken from
11 Georgia, in a wooded area.

12 Q And did you see this that day in Georgia?

13 A Uh-huh (affirmative).

14 Q And who took you to all these items?

15 A Gene Saylor.

16 Q Let me show you what has been marked as
17 State's Exhibit Number 12 for identification
18 purposes only, and I apologize, this is real dirty,
19 what do you recognize this to be?

20 A Like a wrench.

21 Q And where was this located?

22 A I believe it was among those items in
23 Georgia, I don't remember it specifically, I
24 remember some tools and stuff but it appears to be
25 one that came from Georgia.

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1 Q And let me show you what has been marked as
2 State's Exhibit Number 13. What do you recognize
3 this to be, Exhibit 13 for identification purposes
4 only?

5 A It appears to be Morton rock salt.

6 Q And where did you see this?

7 A That was also among the items taken in
8 Georgia.

9 Q Did you see it that day?

10 A Uh-huh (affirmative).

11 Q And, Sergeant Scott, do you recognize this?

12 A Yes.

13 Q And what do you recognize this to be?

14 A It's one of the bags that was taken in
15 Georgia, from the wooded area.

16 Q And we're referring to State's Exhibit Number
17 14 for purposes of identification only for the
18 record. And can you describe this bag for us?

19 A It's black and yellow in color, appears to be
20 what, an overnight bag or gym bag.

21 Q Where did you see this bag?

22 A It was among the items taken in Georgia.

23 Q Okay. And let me show you these Brown paper
24 bags. What's inside these Brown paper bags?

25 A It's like wide mouth Mason jars.

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1 Q Okay. And that day in Georgia did you see
2 Mason jars?

3 A I did.

4 Q And were there numerous Mason jars?

5 A There were.

6 Q And are these the Mason jars that you saw
7 that day in Georgia?

8 A They appear to be.

9 MR. HOOD: And for the record, Your Honor, if
10 we may count the Mason jars.

11 Q Sergeant Scott, if you would, look in each of
12 those bags individually. Are you counting?

13 A Yes.

14 Q Okay, good. And the last bag?

15 A Uh-huh (affirmative).

16 Q Now many did you count?

17 A Twelve.

18 Q Is that consistent with your memory of the
19 number of Mason jars recovered the day in Georgia?

20 A I didn't count them at the scene but there
21 were numerous jars.

22 MR. HOOD: Okay. No further questions, Your
23 Honor.

24 THE COURT: Very well, have a seat, Mr.
25 Witness. Cross-examination, Mr. Varner.

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CROSS EXAMINATION

QUESTIONS BY MR. VARNER:

Q All right. Sergeant Scott, how old are you, sir?

A Twenty-nine.

Q And what is your educational background?

A I graduated from Calhoun Falls High School and job related education.

Q What?

A Job related education.

Q What did you do after you graduated high school?

A Well, I was already working, I think, in a local grocery store. I think I continued working there for awhile, then went through two, one or two jobs before I got into law enforcement.

Q When did you get into law enforcement, how old were you?

A I think I was late 21, possibly early 22.

Q Okay. And when you say you got into law enforcement, who all have you worked with?

A Well, I went to work for South Carolina Department of Corrections and then I went to work for Abbeville Sheriff's office.

Q How long did you work for the Department of

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1 Corrections?

2 A I think it was a little over a year.

3 Q Okay. How long have you been with Abbeville
4 County?

5 A March 10th will make seven years.

6 Q Okay. And what's your training background as
7 far as being a police officer?

8 A Well, naturally you have to go through the
9 South Carolina Criminal Justice Academy to be
10 trained. At that time it was eight weeks, I think
11 it is a little longer now.

12 Q Okay. You took an eight week course?

13 A Yes, basic law enforcement.

14 Q Criminal Justice Academy is what it's called?

15 A Correct.

16 Q At that time you're taught weapons, self
17 defense, how to handle situations, defensive
18 driving, target shooting, the law, narcotics, a
19 little bit of everything?

20 A Yes.

21 Q You kind of have to be able to do whatever
22 comes in front of you to a certain extent, correct?

23 A Yes, sir.

24 Q Have you gone back and done any specialized
25 training?

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1 A I have.

2 Q Okay, What is that?

3 A Well, I have took some domestic violence
4 courses while I was still in uniform with the
5 Sheriff's office, and some criminal investigation
6 courses, narcotics courses with the Academy.

7 Q Okay.

8 A Narcotics supervisor school.

9 Q These narcotics courses, how long are these
10 courses normally?

11 A Normally they don't last over a week,
12 anywhere from two days to a week.

13 Q And how long have you been a sergeant?

14 A February 14th will make a year.

15 Q Okay. Now, this stuff you got down in
16 Georgia, the first question, the black stuff that's
17 all over it, that's fingerprint powder where
18 fingerprints were lifted, correct?

19 A It appears to be fingerprint powder.

20 Q All right. Just in case the jury handles it
21 later on, does it stain your clothes?

22 A It can.

23 Q Okay. You need to be careful in terms of
24 wiping it off, correct?

25 A Yes.

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1 Q All right.

2 A It will get on you.

3 Q And this stuff, you said you went down to
4 Georgia, Gene Saylor took you down there, correct?

5 A Myself, along with other agents.

6 Q Okay. And approximately when was that?

7 A I think the first time I spoke to him was
8 late August, 2002, and I think he took us down the
9 day after we initially talked.

10 Q Okay. So, around August of 2002?

11 A Late August.

12 Q How was it you came in contact with Gene
13 Saylor?

14 A I'm trying to recall the exact nature of how
15 it happened. I believe I was given a phone call
16 from the Sheriff's office and a phone number, I
17 can't remember if it was that or if he called the
18 Sheriff's office and they actually put it in my
19 pager. I know I was on the way home from work that
20 particular day. At the time I did not know who it
21 was when I saw the phone number.

22 Q Okay. And he lived down there in Georgia?

23 A I think he was living there at the time but
24 he asked us to speak with him and we met him in
25 Anderson.

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1 Q Okay. And at that time did he have any
2 pending criminal charges hanging over him?

3 A With me?

4 Q With anybody.

5 A None that I knowed of.

6 Q None that you know of?

7 A He had none with me.

8 Q You used him as a confidential informant,
9 didn't you?

10 A Well, he was informing us, I wouldn't say he
11 was necessarily confidential.

12 Q Well, isn't that the same Gene Saylor that
13 we previously talked about was working as a
14 confidential informant and he now decided to reveal
15 his name and come testify?

16 A At that particular time, you know, he was
17 just giving us information. I would just call him
18 an informer.

19 Q Okay.

20 A There is times when people just give us
21 information and, you know, just want to be on the
22 way and so forth.

23 Q So, he was just being a good samaritan?

24 A I didn't really know much about him the first
25 day I met him, to tell you the truth.

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1 Q Well, what have you found out later? Was he
2 being a good samaritan, just a concerned citizen?

3 A No, I wouldn't consider him just a concerned
4 citizen.

5 Q Why don't you tell this jury why he was doing
6 all this?

7 A To be honest with you, I couldn't tell you
8 why. I had no prior knowledge of him. I don't
9 know what possessed him to call me.

10 Q I'm talking about now. Have you found out
11 what his motivation is?

12 A I really --

13 Q You don't know, do you?

14 A I couldn't tell you what his motivation would
15 be.

16 Q This same Gene Saylor, convicted thief?

17 A He may be.

18 Q Have you ever checked his rap sheet? You're
19 a sergeant, you're dealing with this man and you
20 rely on his information and you haven't even picked
21 up the computer in front of you and punched his
22 name in?

23 A The day we took him, he took us to Georgia,
24 after that I did not really handle him any more.

25 Q Okay. You don't know whether he even does

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1 drugs or has drug convictions, you don't know
2 anything about Gene Saylor, do you?

3 A Not much other than what he provided us with.

4 Q Okay. Well, how far did he live from this
5 place in the woods where this stuff was found?

6 A I think it was within several miles. I'm not
7 sure of the exact distance.

8 Q And this stuff, was it just laying on the
9 side of the road?

10 A Yes, it was just barely inside a wooded area,
11 off the side of the road.

12 Q So, due to unknown reasons this man lives in
13 Georgia finds a coffee grinder, a gas can and other
14 stuff and of all the people in the world to call,
15 he picks up the phone and calls Sergeant Brandon
16 Scott in Abbeville County?

17 A That's right.

18 Q Quite a coincidence, wasn't it?

19 A I don't know if it was a coincidence or what.

20 Q Well, he's not charged in any of this, is he?

21 A Not that I know of.

22 Q But his wife was, or is, Bonnie?

23 A I believe that's his ex-wife, yes.

24 Q Well, when did she become his ex-wife?

25 A I'm not sure. It was obviously before I met

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1 him.

2 Q So, you don't know if this is in the middle
3 of a divorce, after she had already, she had gotten
4 custody of the kids or whether he was still in love
5 with her or hated her, you don't know what his
6 motivation was?

7 A I didn't go into his marital status.

8 Q Okay. So this jury understands, generally
9 speaking confidential informants are people who have
10 got caught with drugs themselves or other crimes
11 and are trying to work it off?

12 A Not necessarily.

13 Q Generally speaking that's what they are,
14 isn't it?

15 A I would say it was less than 50 percent of
16 them. There is oftentimes we get complaints from
17 anyone who informs me, I would call it an
18 informant. If they wish to remain private and
19 confidential I would call them a confidential
20 informant, they may be a private citizen or they
21 may be someone --

22 Q Let's don't use your definition. In law
23 enforcement what is a confidential informant? What
24 do you have to go tell a judge to get them to rely
25 on their information? You can't just go in to a

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1 judge and get a search warrant, "An honest citizen
2 down the street called and made a complaint," can
3 you?

4 A Not based on that alone.

5 Q Okay. What you do in an affidavit is, "We
6 have a reliable confidential informant who has
7 given information that we have relied on in the
8 past, it's been found true, they have been in that
9 location or they have seen the drugs within a
10 certain period of time and reasonable cause to
11 believe other drugs are still there." And you let
12 everybody know, you check this confidential
13 informant out, don't you, these are people in the
14 middle of the drug deals, that's what a
15 confidential informant is?

16 A Okay, is that your definition? Mine is what
17 I said it was.

18 Q Okay.

19 A It could be both ways, really.

20 Q So, if I picked up the phone on the way home
21 tonight and said I saw something on the side of the
22 road you would call me a confidential informant?

23 A I would call you an informant.

24 Q Okay.

25 A If you wished to remain confidential or give

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1 me your information, or even did not give me your
2 information, I would say you were an unnamed
3 informant or unidentified informant, tipster maybe.

4 Q Okay. And you were describing what your
5 duties are. A lot of your day is, when you caught
6 somebody, they give you five other people's names
7 and that leads to five other people's names, you're
8 chasing down leads, you're doing what Miss
9 Sonnefeld called climbing the ladder or bringing
10 other people in?

11 A That does happen sometimes.

12 Q That just happens sometimes?

13 A Oftentimes we will make an arrest and it
14 don't go any further.

15 Q But when somebody tells on somebody else,
16 that is just something that sometimes happens,
17 that's an unusual thing to happen in the drug
18 world, isn't it?

19 A It's not unusual but it sometimes happens.

20 Q Well, let's go to sometimes. That's usually
21 what happens, isn't it?

22 A I couldn't really put a percentage on it.
23 Oftentimes it does not happen that way, sometimes
24 it does.

25 Q How long have you been dealing with people

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1 addicted to crank?

2 A Excuse me, addicted to crank?

3 Q Yes, that has a crank problem?

4 A Pretty much my whole career.

5 Q Okay. Well, so the jury knows, when you're
6 giving names for it, crank is also known as speed,
7 isn't it?

8 A Yes.

9 Q And usually when people do crank, what they
10 start out doing is they will snort it?

11 A Yes, I believe that's sometimes the way.

12 Q They crunch it up or shave it up and take a
13 straw an snort the stuff?

14 A That is one way to use it.

15 Q Initially when they start using it it gives
16 them extra energy, it gives them a boost, speeds
17 them up, gives them energy, they feel good and kind
18 of get things done, correct?

19 A Yes.

20 Q All right.

21 A I have heard it described that way.

22 Q All right. And as it progresses, when they
23 get to the point it becomes a habit, it's kind of
24 like a person with ADD, only magnified a bunch of
25 times, they're jumping so fast they get to the

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1 point they are like jittery people, they can't get
2 anything done because they can't stay focused on
3 anything for long, can they?

4 A Sometimes they get that way.

5 Q Okay. And one of the things you will see
6 when people are just getting started, number one,
7 they are pretty messy and they are not real clean
8 people and they get to the point they've got 30
9 projects going on and can't get one of them
10 finished. That's pretty typical, isn't it?

11 A I've seen it happen that way.

12 Q Okay. And as it progresses they will at some
13 stage of the game, they'll start melting this stuff
14 down and shooting it up with a needle?

15 A I've seen users use it that way.

16 Q All right. And as part of this process they
17 also will start picking at their skin because their
18 skin is moving, and you will see little sores all
19 over them, they look like a thirteen year old young
20 man with a bad case of acne, but these are adults
21 and they are constantly picking at themselves.
22 Have you seen that on them and aware of that
23 condition?

24 A Yes, I've heard of that, seen it.

25 Q And per your schooling, one of the things

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1 they teach you is for long use of this stuff it
2 flat out dumbs you down, the only question is
3 whether that lowering of IQ is permanent or
4 temporary, but it dumbs them up, doesn't it?

5 A I don't know if I would say it dumbs them up.
6 I would say they may lose sense of reality
7 sometimes, maybe even hallucinations.

8 Q Okay. And did you participate in gathering a
9 lot of these statements or just some of these
10 statements?

11 A After SLED came on board we primarily let
12 Agent Sonnefeld take the statements, just for
13 consistency and, you know, I would oftentimes just
14 provide a location or a place, a safe place to do
15 it and basically be backup a lot of times, I would
16 come in and out of it, I wasn't necessarily always
17 there.

18 Q You did take some of the statements, though,
19 at the beginning, correct?

20 A Before or after SLED was involved?

21 Q Before SLED was involved.

22 A At the time we took more just what we would
23 call oral statements. We would call it
24 intelligence, really. We had never worked with the
25 State Grand Jury before and we weren't sure of how

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1 their process of taking statements was. After they
2 came on board we let them do it the way that they
3 normally would do it.

4 Q My question was --

5 A We moved to the back burner.

6 Q My question was, before SLED got involved you
7 took statements of people, yes or no?

8 A Yes, I would say oral and some written.

9 Q And since this case has started you have read
10 the other statements that have all come in, whether
11 you got them or SLED got them or whatever?

12 A I wouldn't say I read them all. I read some
13 of them.

14 Q Okay. Are you going to tell this jury that
15 everything all those people said was true in those
16 statements, or do you have to be smart enough to
17 pick and choose which is the truth and which is
18 self serving or flat out lies?

19 A I think some things were investigated and
20 found to be true and some things were not
21 considered pertinent information and may not have
22 went through like other pertinent information.

23 Q Well, did you find some of them to be flat
24 out boldfaced lies?

25 MR. HOOD: Your Honor, Sergeant Scott, you

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1 know, has stated that he didn't take, he didn't
2 conduct every single interview in this case. I
3 mean, I'm not sure how he can answer to a general
4 question of is everybody lying or is everybody
5 telling the truth.

6 MR. VARNER: I would object, he is coaching
7 his own witness right now, if he can state his
8 objection and leave it at that.

9 THE COURT: The objection is sustained so far
10 as the question goes to witnesses or persons who
11 may have given statements who were not interviewed
12 by this witness.

13 MR. VARNER: Okay, I'll focus it in.

14 THE COURT: So, rephrase the question.

15 BY MR. VARNER:

16 Q Let's talka bout Martha Ellis. You know her,
17 don't you?

18 A Yes, sir.

19 Q When did you first arrest her, how long ago
20 was that?

21 A I don't remember the exact date. I believe
22 it was in September. I'm not sure of the exact
23 year. This thing has been going on for quite
24 awhile.

25 Q What all was it you had arrested Martha with,

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1 how much drugs, how much dope did Martha have?

2 A A total of, I believe over two ounces.

3 Q Two ounces?

4 A Yes, sir.

5 Q Of crystal meth, crank?

6 A Crank, methamphetamine.

7 Q Okay. At that time she gave you a written
8 statement, didn't she?

9 A It was oral and I believe it was taken down
10 by my partner Chris Benson.

11 Q She subsequently signed it, didn't she?

12 A I believe she did.

13 Q She said at that point in time she got all
14 that crystal meth from Marshall Miller, that's what
15 she said at that time, wasn't it?

16 A I believe it was, without the statement in
17 front of me to refresh my memory, but that sounds
18 correct.

19 Q And you now know she totally changed that
20 statement, she now says all that dope came from Ray
21 Powell?

22 A I couldn't be sure of that.

23 Q You don't know?

24 A I hadn't been involved with it any more, with
25 any more interviews of her since then.

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1 Q Well, you tell me this. Basically your
2 involvement in this case, have you since discovered
3 that that dope did in fact come from Ray Powell?

4 A I'm not 100 percent sure of that. After that
5 initial interview SLED got involved and they
6 started handling her.

7 Q So, you wouldn't rely on something unless you
8 are 100 percent sure, is that right?

9 A Can you be more specific?

10 Q You said you weren't 100 percent sure, so if
11 you're not 100 percent sure you're not going to
12 rely on it?

13 A I mean, it may or may not have happened, I
14 can't say. I know the statement we took, that's
15 where she said it came from.

16 Q You're a sergeant and you have been involved
17 in this case for two years and you don't know where
18 that dope came from even today, is that what you
19 just told this jury? I just want to make sure I
20 understood it.

21 A I said I did not take part in her subsequent
22 interviews or statements and I don't recall even
23 reading them.

24 Q I'm talking about the arrest you made, the
25 dope you seized some two years ago or however long

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1 ago it was, have you ascertained who that dope came
2 from?

3 A All I can remember is that she told us it
4 came from Marshall Miller.

5 Q That's not what I asked you, I didn't ask
6 what she said. I said have you in your
7 investigation and in SLED's investigation or
8 whatever, have you ascertained where that dope came
9 from yet?

10 A I have not. If it's changed, I don't know
11 about it.

12 MR. VARNER: That's all the questions I have.

13 THE COURT: Mr. Wise?

14 QUESTIONS BY MR. WISE:

15 Q Just a few questions, Sergeant Scott. You
16 made a statement that sometimes in your experience
17 dealing with people who are addicted to
18 methamphetamine there is a loss of sense of
19 reality?

20 A Yes, sir.

21 Q In that they see things that aren't there?

22 A Yes, sir.

23 Q Smell things that aren't there?

24 A I don't know about smell.

25 Q Okay. But you have had experience, though,

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1 with people when they are trying to get off
2 methamphetamine or sometimes when using it they
3 will taste the drug even when they hadn't got it?

4 A I couldn't say for sure on that. I have
5 never heard nobody tell me that.

6 Q Okay. Now, did you do any surveillance of
7 different people's houses during the year 2000,
8 2001?

9 A Yes, sir.

10 Q And you all, what you would do, you would go
11 by somebody's house, you would watch them and keep
12 track of what cars were there?

13 A Yes, oftentimes we would.

14 Q You would run tag numbers on the cars?

15 A Yes.

16 Q You all did that a fair number of times?

17 A Yes, sir.

18 Q All right. For many of the people that were
19 named in this indictment? You did it for Martha
20 Ellis?

21 A Yes, sir.

22 Q And you did it for -- who else did you do it
23 on, Julie Prince?

24 A No, not really. Marshall Miller, Lisa Hayes.
25 That particular location was hard to see from the

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1 road, it was a good ways off the road. There is
2 numerous ones.

3 Q And you would take down, in fact, you
4 catalogued the days the most traffic went there?

5 A I have.

6 Q Okay. You catalogued what people went there?

7 A I have.

8 Q And you never had the tag number on Billy
9 Moore?

10 A No, sir, I have not.

11 Q Now, you first interviewed Michelle Madden
12 back in 2000, early, mid 2001, May of 2001?

13 A I'm not sure of the exact date but that I
14 recall.

15 Q Let me hand you this and see if that
16 refreshes your memory. You can hold on to it, I
17 don't need it. Is that correct?

18 A This statement?

19 Q Yes. Is it correct you talked to her May 26,
20 I believe, 2001?

21 A Yes, sir.

22 Q Do you remember that now?

23 A Yes, sir.

24 Q All right. Had you arrested her at that
25 time?

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1 A No, sir.

2 Q Could you tell us how that interview came
3 about?

4 A Officer Terry Harvey with the Ware Shoals
5 Police Department had come in contact with this
6 particular lady.

7 Q Had he arrested her?

8 A I'm not sure if he had or not, I don't recall
9 exactly, but he said she may have some useful
10 information for us.

11 Q And you all interviewed her?

12 A Yes.

13 Q And when you went down to Georgia where all
14 this, these items were found, did you find out who
15 the owner of that property was?

16 A The property in Georgia?

17 Q The real estate, the land itself, not the
18 items.

19 A No, sir.

20 Q You never checked to see who owned the land?

21 A No, sir.

22 Q It was literally just on the side of the
23 road, in the edge of the woods?

24 A I would say it would be, you know, from here
25 to that first row of seats, maybe a little farther

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1 into the woods --

2 Q It wasn't in a building?

3 A -- from the side of the road.

4 Q It wasn't in a building?

5 A No, it was not in a building.

6 Q Just sitting out in the woods?

7 A Yes, sir.

8 Q And you all never checked to see who actually
9 owned that land?

10 A No, sir. I was in another state, I was more
11 in a support position.

12 Q Were you working on the assumption that
13 whoever owned the land didn't own the stuff?

14 A I felt like that was the case.

15 MR. WISE: All right, thank you.

16 THE COURT: Any redirect, Mr. Hood?

17 MR. HOOD: No, sir, Your Honor.

18 THE COURT: Thank you very much, sir. Come
19 down.

20 (Witness excused).

21 THE COURT: Call your next witness, please.

22 MR. HOOD: At this time, Your Honor, the
23 State calls Major Ronnie McAllister.

24 THE COURT: Any jurors need a break? Okay,
25 move forward.

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1 MR. HOOD: Your Honor, I'm making the
2 assumption without objection from defense counsel
3 it's okay if Sergeant Scott stays in the courtroom?

4 MR. WISE: That's correct.

5 THE COURT: He has already testified.

6 MR. HOOD: Thank you, Your Honor.

7 THE COURT: Any person who has already
8 testified, under the rules of sequestration, may
9 remain.

10 MR. VARNER: I have no question as long as
11 the witnesses understand they can't go out and talk
12 to other witnesses about what was said or what
13 wasn't said.

14 THE COURT: That's exactly true, and we will
15 try to instruct each witness to that effect. Swear
16 the witness.

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RONNIE McALLISTER - DIRECT

1 RONNIE McALLISTER,
2 after being first duly sworn testified as follows:

3 THE CLERK: Have a seat and state your full
4 name, please.

5 THE WITNESS: Ronnie McAllister.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. HOOD:

8 Q Major McAllister, where do you work?

9 A Greenwood County Sheriff's Department.

10 Q What are your current duties and
11 responsibilities with the Greenwood County
12 Sheriff's Department?

13 A I'm a major, I supervise the narcotics
14 division at the Sheriff's Department.

15 Q How long have you been with the Sheriff's
16 Department?

17 A I have been with the Sheriff's Department
18 since 1981.

19 Q Twenty-two years, twenty-three now?

20 A I have actually been in law enforcement
21 thirty years but I have been with the Sheriff's
22 Department twenty-three years.

23 Q What did you do before you were at the
24 Sheriff's Department?

25 A I worked for the city police department in

RONNIE McALLISTER - DIRECT

1 Greenwood.

2 Q And you being the major over narcotics, what
3 does that entail as your duties there in the
4 Greenwood County Sheriff's Department?

5 A As I said, I supervise the narcotics unit and
6 enforce the drug laws in and around Greenwood
7 County.

8 Q How many people do you actually supervise?

9 A Currently four.

10 Q And how long have you been the supervisor
11 over narcotics at Greenwood County?

12 A Since 1989.

13 Q Have you been through specific training and
14 classes in the area of narcotics, Major McAllister?

15 A Yes, I have.

16 Q And tell us about some of those classes.

17 A I have been to DEA training for drug
18 enforcement, I have been to South Carolina Criminal
19 Justice Academy, which included drug enforcement.
20 I have been to clandestine lab, meth lab
21 enforcement, I have been to the University of
22 Georgia for drug investigations. I have been to
23 various other seminars all over several states.

24 Q Is it fair to say that in your thirty years
25 of law enforcement you have been to lots of

RONNIE McALLISTER - DIRECT

1 classes?

2 A Many, many.

3 Q And have you been to, can you give an
4 estimate on how many classes you have been to on
5 narcotics and narcotics enforcement?

6 A I would say twenty-five or thirty.

7 Q What do you do on a day to day basis, Major
8 McAllister, if you weren't here in court today, and
9 what I mean by that, if you were working what would
10 you be doing?

11 A I would be supervising a narcotics unit, and
12 being a small unit, small division, I would be
13 doing hands-on investigation myself.

14 Q Major McAllister, let me take you back to
15 September 24th, 2002. Do you remember that day?

16 A Yes, I do.

17 Q And why does that day stick out in your mind?

18 A That was the day I went up on Morgan Road in
19 Greenwood County there where Marshall Miller and
20 Billy Moore were arrested.

21 Q Okay. Do you know who else was arrested that
22 day?

23 A No, I don't. I know there was a multitude of
24 people that SLED had arrested in and around
25 Abbeville, Greenwood and Laurens County. The exact

RONNIE McALLISTER - DIRECT

1 number, I'm not sure.

2 Q How did you get called to the scene that day?

3 A I was advised the night before, Lieutenant
4 Frank O'Neil advised me and I knew that there was a
5 current investigation by the State Grand Jury into
6 methamphetamine distribution in the area, and I was
7 contacted by Lieutenant Frank O'Neil the night
8 before and he advised me that they were going to be
9 picking up some people in the area in reference to
10 that investigation. Of course, I told him that if
11 he needed help let us know. He told me most of the
12 people that were going to be picked up was in the
13 Abbeville and Laurens area, there were a few to be
14 in Greenwood, and of course I advised him again
15 that if he needed my help to let me know.

16 Q How did you actually show up on Morgan Road
17 that day?

18 A I actually heard on the radio where they had
19 requested the bloodhounds to come to the scene, so
20 myself and Lieutenant Gunter rode up to the area to
21 see why the bloodhounds had been requested in the
22 area.

23 Q And who is Lieutenant Gunter?

24 A He is my second in command in the narcotics
25 unit.

RONNIE McALLISTER - DIRECT

1 Q And what did you find once you showed up on
2 Morgan Road there, Major McAllister?

3 A I found Lieutenant Frank O'Neil and his staff
4 and several other police officers there at Billy
5 Moore's shop.

6 Q Were you advised of the situation?

7 A I was. I was told that they had come there
8 to arrest a subject across the street and upon
9 arriving there they, Marshall Miller was one of
10 their targets to be arrested that day and they
11 observed him over at the shop.

12 Q Did you know who Marshall Miller was before,
13 without citing what you knew, did you know who
14 Marshall Miller was before this day in question?

15 A Yes, I did.

16 Q And had you obtained information about
17 Marshall Miller?

18 A Yes, sir, I had.

19 Q Tell us what you did once you showed up on
20 the scene, Major McAllister.

21 A Well, I first talked to Lieutenant Frank
22 O'Neil, he advised me of what they were there for,
23 and of course immediately I knew why they were
24 there because he advised me the night before and I
25 observed that Marshall Miller's truck was there, I

RONNIE McALLISTER - DIRECT

1 observed that Marshall Miller's thirty foot black
2 utility trailer was there, and he advised me that
3 upon arriving there his officers had noted Marshall
4 there and Marshall had fled into the woods and they
5 had a perimeter set up, had contacted bloodhounds
6 and were waiting on the bloodhounds to arrive at
7 the scene to try to apprehend Mr. Miller.

8 I advised Frank at that time that we had, we
9 were involved in an investigation in reference to
10 that shop and did he mind if I went in and talked
11 to Billy Moore and try to get his permission to
12 search the shop area.

13 Q And did you, that day did you come into
14 contact with an individual by the name of Billy
15 Moore?

16 A Yes, I did. Billy Moore was there in the
17 shop area. I went over to him and identified
18 myself, Major McAllister with the Greenwood County
19 Sheriff's Department, and asked his permission to
20 search the shop. He gave me that permission
21 orally. I went to the car and got a written
22 consent for him to sign. He signed the written
23 consent and we conducted a search of the shop area.

24 Q And is Mr. Moore in the courtroom today?

25 A Yes, he can.

RONNIE McALLISTER - DIRECT

1 Q Could you point him out to us for the jury?

2 A He's seated over there at the table beside
3 his attorney Mr. Rauch Wise.

4 MR. HOOD: And let the record show, Your
5 Honor, Major McAllister has identified Mr. Billy
6 Moore.

7 Q Was Mr. Moore cooperative with you that day?

8 A Yes, he was.

9 Q And you mentioned this consent to search.
10 Did you threaten Mr. Moore in any way?

11 A No, I did not.

12 Q Did you use any type of coercion?

13 A No, I did not.

14 Q Did you use any type of physical force?

15 A No, I did not.

16 Q Was Mr. Moore essentially cooperative with
17 you?

18 A Yes, he was.

19 Q Okay. Major McAllister, let me show you this
20 document. Without stating what it is, do you
21 recognize this document?

22 A Yes, I do.

23 Q And what do you recognize that document to
24 be?

25 A This is a consent to search form that I

RONNIE McALLISTER - DIRECT

1 presented to Billy Moore on the date that we're
2 discussing and it's signed by myself and witnessed
3 by Doug Gunter and signed by Billy Moore.

4 Q And did he sign that in your presence?

5 A Yes, he did.

6 Q Did he sign that that day in Greenwood, on
7 Morgan Road?

8 A Yes, he did.

9 Q What is the date of that document?

10 A 9/24/02.

11 MR. HOOD: Your Honor, at this time we would
12 like to have this item marked and moved into
13 evidence. I believe that is without objection.

14 MR. VARNER: No objection.

15 MR. WISE: No objection.

16 THE COURT: Without objection it will be
17 marked as State's Exhibit Number next. Exhibit
18 Number 15.

19 (State's Exhibit Number 15 was marked
20 and received in evidence).

21 BY MR. HOOD:

22 Q Major McAllister, at that time, once you had
23 received not only oral but written consent to
24 search Mr. Moore's shop did you then conduct a
25 search of his shop?

RONNIE McALLISTER - DIRECT

1 A Yes, myself and Lieutenant Gunter, and I also
2 called another officer that works in our unit,
3 Bobby Grogan, to the scene and the three of us
4 began a search of the shop area.

5 Q Okay. And did you have any idea of what you
6 were going to find in that shop area?

7 A I had a pretty good idea, yes, sir.

8 Q Did you know specifically what you were
9 looking for?

10 A Yes, sir.

11 Q Tell us some of the things that you may have
12 been looking for in that shop area.

13 MR. WISE: Your Honor, I would object to his
14 testimony of what he was looking for.

15 THE COURT: Sustained.

16 Q Major McAllister, if you would, step down.
17 Let me show you this document. Half of this, this
18 board, I should say, half of it is marked side B
19 and half of it is marked side A. I believe for the
20 record State's Exhibit Number 5 is side A of this
21 board.

22 Do you recognize the pictures on side B of
23 this board?

24 A Yes, I do.

25 Q And what do you recognize them to be?

RONNIE McALLISTER - DIRECT

1 A Photographs taken at the shop that day, at
2 Billy Moore's shop on the 24th of September, 2002.

3 Q And did you see these items there present
4 that day?

5 A Yes, I did.

6 MR. HOOD: Your Honor, at this time we would
7 move side B of this exhibit into evidence.

8 THE COURT: How says the defendant Miller?

9 MR. VARNER: Your Honor, I don't believe he
10 has laid the proper foundation at this point in
11 time. The fact he saw something there is not a
12 sufficient foundation.

13 BY MR. HOOD:

14 Q Major McAllister, you saw these items there
15 present that day, is that correct?

16 A Yes, sir.

17 Q Were these items seized that day?

18 A Yes, sir.

19 Q Do you know what was contained in each of
20 these items?

21 A I do.

22 Q What was contained in the top, the item on
23 top of exhibit B, the top picture?

24 A A whitish/brown powder substance when
25 identified and analyzed by SLED returned to be

RONNIE McALLISTER - DIRECT

1 methamphetamine.

2 Q How close was the item on the top picture of
3 side B to Billy Moore's shop?

4 A The trailer that it's sitting on is actually
5 about touching Billy Moore's shop.

6 Q Okay. Describe what is in picture, or the
7 middle picture on side B of this diagram.

8 A That is the container in the top picture
9 opened up and lying on the shop, I mean the trailer
10 fold-down door.

11 Q Okay. And describe some of the items in that
12 picture.

13 A It appears to be the white powder substance
14 that I mentioned when analyzed by SLED was
15 determined to be methamphetamine. It appears to be
16 a syringe, a black plastic film canister containing
17 white powder substance, and some other clear
18 plastic bags, some small, some larger than others,
19 containing white powder substances.

20 Q And the picture on the bottom of side B, what
21 is that a picture of?

22 A That is an officer, I don't know who the
23 officer is, but he's wearing green fatigues and a
24 black tee-shirt with black gloves, and he's holding
25 the black film canister containing the white powder

RONNIE McALLISTER - DIRECT

1 substance found inside the package, I mean the
2 container on pictures one and two at the top.

3 Q Do you know if this items were seized that
4 day?

5 A Yes, they were.

6 Q And were they taken into custody by some of
7 the other agents present?

8 A Yes, they were.

9 Q Okay.

10 MR. HOOD: Your Honor, at this time we would
11 move side B of the board into evidence.

12 THE COURT: Mr. Varner?

13 MR. VARNER: No objection.

14 MR. WISE: No objection.

15 THE COURT: All right.

16 (State's Exhibit Number 16 was marked
17 and received in evidence).

18 BY MR. HOOD:

19 Q If you would, Major McAllister, let me ask
20 you this. Are you familiar with the pictures in
21 State's Exhibit Number 5?

22 A Yes, sir.

23 Q Will I also be able to take you through those
24 pictures?

25 A Yes, sir.

RONNIE McALLISTER - DIRECT

1 Q If you would, let's start with State's
2 Exhibit Number 16 and take us through these
3 pictures, and if you would, I know you just
4 described it, but just explain it to us again now
5 that the jury can see it.

6 A Do you want me to start here, sir?

7 Q Please do, yes.

8 A All right.

9 Q And don't forget you have jurors a little
10 behind you that have to be able to see everything.

11 A Okay. This is the top of Billy Moore's shop
12 right here and this is about a thirty foot black
13 utility trailer which is backed up to the folding
14 door of Billy Moore's shop. The trailer itself has
15 a folding door that folds down, the entire rear of
16 the trailer folds down and that was the door to it.

17 This is the corner, there is about this much
18 left of the trailer right here, so this would be
19 facing the road, looking at the shop, this would be
20 the left corner of the thirty foot utility trailer.

21 This is a blue zipped up, zipped type bag
22 that is on the top of the trailer.

23 This is the door, this is the fold-down door
24 that I spoke of, of the thirty foot utility
25 trailer. The door is folded down, and looking from

RONNIE McALLISTER - DIRECT

1 the shop into the trailer, this would be the right
2 corner of the fold-down door.

3 This is a picture of this bag that was found
4 on top of the trailer, opened up. One of the
5 officers had seized it, opened it up and a
6 photograph was taken of it opened up and you can
7 see to the left here is the black film canister
8 with white powder substance in it. These are small
9 plastic bags containing white substance.

10 This is a syringe with an orange tip on the
11 end of it.

12 This is just another picture of the top of
13 the bag here, and this is the officer who, I don't
14 know who the officer is, but he is holding the film
15 canister and the picture is taken down inside the
16 canister with the whiteish/brown powdered substance
17 in it.

18 Do you want me to continue on this side?

19 Q Let me ask you a few questions first, Major
20 McAllister. Referring to State's Exhibit Number 5,
21 which is side A of the board you were just
22 describing for the record, which I believe State's
23 Exhibit Number 5 is in evidence, is that correct,
24 Mr. Court Reporter? Thank you very much. While
25 you were there that day at Mr. Billy Moore's shop

RONNIE McALLISTER - DIRECT

1 did you notice what was in the pictures of State's
2 Exhibit A, I mean State's Exhibit Number 5 on side
3 A, did you see those items?

4 A Here, here and here?

5 Q Yes, sir.

6 A Yes, I did.

7 Q And where did you see those items?

8 A These items are contained in the rear of the
9 black pickup truck which was backed up to the door
10 of the shop that was owned by Marshall Miller.

11 Q Okay. And --

12 MR. VARNER: Objection. Your Honor, my
13 objection is there has already been testimony that
14 it was not his truck, he was not the registered
15 owner, I object to him coming to a legal conclusion
16 or testifying who it belonged to.

17 THE COURT: Rephrase the question.

18 Q Major McAllister, had you seen that truck
19 before?

20 A Yes, sir.

21 Q And who had you seen driving that truck
22 before?

23 A Marshall Miller.

24 Q And approximately how many times had you seen
25 Marshall Miller driving that truck?

RONNIE McALLISTER - DIRECT

1 A I had probably only seen him actually driving
2 it one time but through intelligence information
3 and surveillance --

4 MR. VARNER: Objection.

5 THE COURT: Sustained.

6 Q Was there a black truck at the shop that day?

7 A It was backed up to the door of the shop,
8 yes, sir.

9 Q Okay. Did you see who drove that truck to
10 the shop?

11 A No, I did not.

12 Q Okay. And describe how the black -- what
13 kind of truck is it?

14 A It's a black Chevrolet pickup truck.

15 Q Okay. Was it pulled in forward, or pulled in
16 backwards?

17 A It was backed up right beside the utility
18 trailer, backed up to the door of the shop, which
19 was open.

20 Q Okay. And was the tool box open, or closed?

21 A When I observed it, it was open.

22 Q Okay. And did you look inside the tool box?

23 A Yes, sir.

24 Q Okay. And are the three pictures in State's
25 Exhibit Number 5 evidence of what you saw in the

RONNIE McALLISTER - DIRECT

1 tool box that day?

2 A This is an aluminum tool box commonly seen in
3 the rear of pickup trucks and it is opened and down
4 in the bottom of the tool box is a long gray tank
5 which was later identified by SLED to contain
6 anhydrous ammonia. Attached to the tank was a
7 copper fitting, attached to the copper fitting was
8 a rubber hose, and the rubber hose was run from the
9 bottom of the aluminum box, into the truck bed
10 area, out the back of the truck bed area to the
11 tailgate of the truck.

12 Q What was done with that tank that day?

13 A The tank, we contacted the Greenwood County
14 Hazmat Unit who handles hazardous materials for us,
15 and the Hazmat Unit came out -- well, first the
16 truck was towed by a local wrecker service and then
17 the Hazmat Unit came to the wrecker service and
18 took possession of the anhydrous ammonia tank. It
19 was transported out to the Greenwood Airport where
20 the Hazmat Unit is stationed at, SLED was
21 contacted, and analysis was conducted by SLED and
22 it was deemed to be anhydrous ammonia contained in
23 the tank. We do not have any facilities at the
24 Sheriff's Department or the county to store
25 anhydrous ammonia, so a business was contacted

RONNIE McALLISTER - DIRECT

1 there in Greenwood that has a license to store it,
2 and it was delivered by the Hazmat Unit to this
3 business for storage.

4 Q What is the standard operating procedure at
5 the Greenwood County Sheriff's Department in
6 dealing with tanks that contain anhydrous ammonia?

7 A We don't touch it, we call somebody that has
8 the authority to dispose of it for us.

9 Q And why don't you touch it?

10 A We -- first of all it's very dangerous
11 material and most first responders such as myself
12 or other officers are not trained in the disposal
13 of hazardous materials, so we don't touch it, we
14 call somebody that is trained in that, in disposal
15 of it.

16 Q What happened to that tank, Major McAllister?

17 A The tank was subsequently stolen from the
18 business there in Greenwood that was storing it for
19 us.

20 Q And was a report taken of that theft?

21 A Yes, sir.

22 Q Major McAllister, let me show you this
23 exhibit. Do you recognize the pictures on this
24 exhibit?

25 A Yes, sir.

RONNIE McALLISTER - DIRECT

1 Q And what do you recognize the pictures on
2 this exhibit to be?

3 A These are pictures of Billy Moore's shop the
4 day of the incident and pictures of the evidence
5 collected at Billy Moore's shop the day of the
6 incident there.

7 Q And what is this picture up here in the
8 right-hand corner?

9 A That's a picture of an area right behind
10 Billy Moore's shop, where a fire was.

11 Q Did you take these pictures?

12 A I took some of them. Lieutenant Gunter
13 probably took some of them.

14 Q And do they fairly and accurately represent
15 what you saw that day in Mr. Moore's shop?

16 A Yes, they do.

17 Q And do they fairly and accurately represent
18 the vehicles that were parked out front of Mr.
19 Moore's shop that day?

20 A Yes, sir.

21 Q And did you seize the items that are seen in
22 these pictures?

23 A They were seized, yes, sir.

24 Q And did you take them, or did someone from
25 the Greenwood County Sheriff's Department take them

RONNIE McALLISTER - DIRECT

1 into their care, custody and control?

2 A Yes, sir.

3 Q Okay. And are they here today in court?

4 A I assume they are, yes, sir.

5 MR. HOOD: At this time, Your Honor, we would
6 move this diagram into evidence. I believe that's
7 without objection.

8 THE COURT: How says the defendant Miller?

9 MR. VARNER: No objection.

10 THE COURT: How says defendant Moore?

11 MR. WISE: No objection.

12 MR. HOOD: Thank you.

13 THE COURT: It's in evidence and becomes part
14 of the evidence in the case, to be marked.

15 (State's Exhibit Number 17 was marked
16 and received in evidence).

17 BY MR. HOOD:

18 Q Referring to what is in evidence as State's
19 Exhibit Number 17, if you could, take us through
20 each of these pictures, describe what is in each
21 picture and just explain to us what is shown on
22 that board.

23 A This is a picture of Billy Moore's shop. I
24 think the photograph is taken from the road in
25 front of the shop. This photograph was taken after

RONNIE McALLISTER - DIRECT

1 that day, on the 24th of September, 2002.

2 This picture is a photograph of Billy Moore's
3 shop the day of the incident where the arrests were
4 made, when the arrest was made.

5 This is the trailer, the thirty foot black
6 trailer that was backed up to the door of the shop.

7 This is the black Chevrolet pickup truck that
8 contained the anhydrous ammonia tank that I
9 described earlier, that was backed up to the door
10 of the shop.

11 This is just another picture of the truck and
12 you can see there the truck is backed up to the
13 door of the shop there, that contained the
14 anhydrous ammonia tank.

15 This is a vehicle that was pulled in there,
16 this is a boat sitting over to the right of the
17 shop.

18 So, these three pictures here are of the shop
19 and the vehicles parked in front of the shop the
20 day of the arrest.

21 Excuse me just one second, let me get over
22 here and look.

23 All right. This is a photograph of the, when
24 you walk into the shop area, it was divided into a
25 couple different rooms. When you walk into this

RONNIE McALLISTER - DIRECT

1 big door right here you had, which I call the shop
2 area, where the go-carts, go-cart motors, the
3 engines and apparently where he worked on go-carts.

4 If you turn to the left you went through a
5 door and it was what appeared to be an office area
6 where there was a safe in there, there was a desk
7 in there and there was a phone in there. There
8 were other items, personal items in there, which is
9 a different area, different room separate from the
10 shop area, which I will be describing as the office
11 area.

12 This first photograph here is in the office
13 area. This is a photograph of a, I think blue or
14 purple in color zip bag. This is a picture of this
15 bag in the office area opened. This bag contained
16 a number of pills, ephedrine based pills such as
17 Sudefed and other antihistamines and cold tablets.
18 It also contained a number of lithium batteries.

19 This is another photograph, a little more
20 descriptive of that same container. You can see
21 the pills, the red pills, some of them are red,
22 some of them are white, and can you see the blue
23 and silver lithium batteries.

24 This picture, this photograph is of a set of
25 triple beam scales used for measurement. It's

RONNIE McALLISTER - DIRECT

1 manual type scales where you put the weight or
2 whatever you measure on one end of it and you
3 manually move the weights on the other end until
4 you get the proper measurement or weight.

5 This is a photograph of the triple beam
6 scales and some plastic baggies, common ziplock
7 storage baggies.

8 And this is a photograph of a red bag
9 containing other paraphernalia, spoons, syringes
10 and other residue.

11 This is a photograph of an area right behind
12 the shop, I would say approximately 30 for 40 feet
13 behind the shop, where obviously a fire had been,
14 and upon looking closer we found the remains of
15 lithium batteries where the lithium had been
16 removed from the battery and remains of these
17 containers that the ephedrine based tablets came
18 from, or came in.

19 Q Okay. And did you just take pictures of
20 these items or did you actually seize them that
21 day?

22 A Everything, with the exception of the
23 photographs of the shop itself, we seized and
24 retained these items for court.

25 Q If you would, take your seat, Major.

RONNIE McALLISTER - DIRECT

1 THE COURT: Ladies and gentlemen, we'll take
2 a short recess while these discussions are taking
3 place. Mr. Witness, you can take a recess, too.
4 You may not talk with anyone about any questions
5 that have been asked or answers that you have given
6 to those questions. You may not discuss the case
7 at all with anyone under any circumstances,
8 including any questions you expect you might be
9 asked or answers that you expect you may give to
10 those anticipated questions. Otherwise please
11 relax, as everyone else will. Come down, please.

12 THE WITNESS: Yes, sir.

13 THE COURT: Ladies and gentlemen of the jury,
14 do not discuss the case by, between and among
15 yourselves, and retire to the jury room just
16 briefly.

17 (The jury was excused from the courtroom).

18 THE COURT: Is there anything for the record
19 from the State before we recess?

20 MR. HOOD: No, sir.

21 THE COURT: Anything from the defendant
22 Miller, Mr. Varner?

23 MR. VARNER: Sir, I'm sorry, I didn't hear
24 you?

25 THE COURT: Do you want to speak to the

RONNIE McALLISTER - DIRECT

1 record before we close it temporarily?

2 MR. VARNER: Nothing, Your Honor.

3 MR. WISE: No, sir, Your Honor.

4 THE COURT: Thank you. We're in recess
5 momentarily.

6 (Recessed at 11:22 a.m.).

7 (Reconvened at 11:47 a.m.).

8 THE COURT: The record is open. State of
9 South Carolina versus Marshall Miller and others.
10 In this case, among the defendants named in the
11 indictment 2002-GS-47-32 are being tried Marshall
12 Miller and Billy Moore. Anything from the State
13 before the jurors come in?

14 MR. HOOD: No, sir, Your Honor.

15 THE COURT: From the defendant Marshall
16 Miller?

17 MR. VARNER: No, Your Honor.

18 THE COURT: From the defendant Billy Moore?

19 MR. WISE: No, Your Honor.

20 THE COURT: Thank you. Show the jurors in,
21 please, Mr. Busby.

22 (The jury returned to the courtroom).

23 THE COURT: All the jurors are present, with
24 the forelady and the alternates properly seated.

25 Mr. Witness, have you talked with anyone

RONNIE McALLISTER - DIRECT

1 about this case at all in any way?

2 THE WITNESS: No, sir.

3 THE COURT: You understand that you have been
4 sworn and you remain under oath to tell the truth?

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you. The witness is with
7 you on continued direct examination.

8 MR. HOOD: Thank you, Your Honor, may it
9 please the Court.

10 BY MR. HOOD:

11 Q Major McAllister, let me show you this item.
12 What do you recognize this item to be? Do you
13 recognize this item?

14 A Yes. That's a triple beam scales that was
15 found in the office area of Billy Moore's shop.

16 Q And that was my next question. Where did you
17 see that item?

18 A In the office area of Billy Moore's shop.

19 Q Did you take that item into your custody on
20 September 24th, 2002?

21 A Yes, sir.

22 Q And what did you do with it once you took it
23 into your custody?

24 A It was placed in an evidence vault there at
25 the Sheriff's Department.

RONNIE McALLISTER - DIRECT

- 1 Q Okay. And when was it taken out of the
2 evidence vault of the Sheriff's Department, or who
3 took it out of the evidence vault in the Sheriff's
4 office?
- 5 A It was given to Agent Sonnefeld, I believe on
6 Friday of last week.
- 7 Q Okay. And is that evidence room that you
8 placed it, describe the security of the evidence
9 room where that item was placed.
- 10 A It's in the basement of the Sheriff's
11 Department, it's a room designated for the
12 narcotics unit's evidence, three people possess
13 keys to it, that's myself, Lieutenant Gunter and
14 Sheriff Riley. It's got one entrance door, one
15 exit door, secured by, like I said, it's in the
16 basement of the Sheriff's Department, it's secured
17 by four walls and one door.
- 18 Q And is that item in the same condition that
19 it was on the day that you seized it from Billy
20 Moore's shop?
- 21 A Yes, sir.
- 22 Q And has it changed in any way?
- 23 A No, it hasn't.
- 24 Q Okay. Is that the same scales you seized
25 from Billy Moore's shop that day?

RONNIE McALLISTER - DIRECT

1 A Yes, sir.

2 MR. HOOD: Your Honor, at this time we would
3 move the scales and its container into evidence.

4 MR. VARNER: No objection.

5 MR. WISE: No objection.

6 THE COURT: Without objection it will be
7 marked and become part of the evidence in the case.

8 (Exhibit Number 18 was marked
9 and received in evidence).

10 BY MR. HOOD:

11 Q Major McAllister, let me show you these three
12 items. Do you recognize these three items?

13 A Yes, sir.

14 Q What do you recognize these three items to
15 be?

16 A These are the Glad, I call them sandwich
17 bags, clear plastic containers that were found in
18 the office area of Billy Moore's shop on 8/24/02.

19 Q Is that August, or September?

20 A I'm sorry, 9/24/02.

21 Q And did you take custody of these baggies
22 that day?

23 A Yes, sir.

24 Q And is that all three of them?

25 A Yes, sir.

RONNIE McALLISTER - DIRECT

1 Q Okay. And did you take them into your
2 custody that day?

3 A Yes, sir.

4 Q And did you seize those items?

5 A Yes, sir.

6 Q And did you place those items in the evidence
7 locker at the Greenwood County Sheriff's
8 Department?

9 A Yes, sir.

10 Q Okay. And did they stay in that area until
11 they were taken out by Special Agent Sonnefeld?

12 A Yes, sir, they were.

13 Q And are they in the same condition they were
14 on the day that you seized them at Billy Moore's
15 shop?

16 A Yes, sir.

17 MR. HOOD: Your Honor, at this time we would
18 like to move all three boxes in as one piece of
19 evidence.

20 MR. VARNER: No objection.

21 MR. WISE: What's the number?

22 THE COURT: Number 19. Any objection, Mr.
23 Wise?

24 MR. WISE: No objection.

25 THE COURT: Without objection, the three will

RONNIE McALLISTER - DIRECT

1 be marked as one exhibit.

2 MR. CROUT: Madam Clerk, do you have a
3 rubberband you can wrap around these?

4 (State's Exhibit Number 19 was
5 marked and received in evidence).

6 BY MR. HOOD:

7 Q Major McAllister, do you recognize this?

8 A Yes, sir, I do.

9 Q What do you recognize this to be?

10 A This is a plastic bag containing the burned
11 remnants of articles found behind the shop area at
12 Billy Moore's shop on Morgan Road in Greenwood
13 County.

14 Q Did you take a picture of that burn?

15 A Yes, sir.

16 Q And explain exactly what that is to the jury
17 and how you got it.

18 A Well, when searching Billy Moore's shop we
19 searched the outside area and about thirty, twenty
20 to thirty foot directly behind the shop area on the
21 ground there was some charred remains from
22 obviously a fire. Upon close inspection of that
23 you could tell that batteries had been burned, some
24 medicine containers, ephedrine based medicine
25 containers had been burned. Of course they didn't

RONNIE McALLISTER - DIRECT

1 all burn, they attempted to burn all of it but just
2 about every fire there is going to be, unless it
3 gets extremely hot, there is going to be something
4 left behind.

5 MR. VARNER: Objection, Your Honor, to his
6 qualifications as to how a fire burns, unless he's
7 in forensics or is qualified on that, Your Honor.

8 THE COURT: All right, the objection is
9 sustained. You can question him.

10 MR. HOOD: Yes, sir.

11 BY MR. HOOD:

12 Q Major McAllister, can you determine what some
13 of the items in that bag are, just by looking at
14 it?

15 A Yes, sir. You can see there were batteries,
16 remains of batteries, you can see some remains of
17 the Sudafed containers, little popout containers
18 which are metal, some of it is metal, some of it is
19 plastic. Obviously the metal didn't burn. And
20 there is some other items in there but without
21 opening it and pouring it out you can't see what's
22 contained deeper in there but obviously you can see
23 where the batteries and the Sudafed containers and
24 other antihistamines, ephedrine based tablet
25 containers are.

RONNIE McALLISTER - DIRECT

1 Q Did you take that into your care, custody and
2 control that day?

3 A I did. I collected this myself, put it in
4 the bag and it's been in the custody of the
5 Greenwood County Sheriff's Narcotics Unit evidence
6 vault until Friday of last week when Agent
7 Sonnefeld took custody of it.

8 MR. HOOD: Your Honor, at this time we move
9 this bag of ashes into evidence.

10 MR. VARNER: No objection.

11 MR. WISE: No objection.

12 THE COURT: It will be marked Number 20.

13 (State's Exhibit Number 20 was marked
14 and received in evidence).

15 BY MR. HOOD:

16 Q Major McAllister, do you recognize this?

17 A Can I open it?

18 Q Sure. Please be careful.

19 A Yes, sir. This is a zip bag, a bag that was
20 found in the office area of Billy Moore's shop, and
21 contained in it is paraphernalia used to consume
22 methamphetamine and other powdered controlled
23 substances.

24 Q And describe the items that are in that bag.

25 A You have a spoon in there, which is commonly

RONNIE McALLISTER - DIRECT

1 used to heat up, if you will look at the bottom of
2 the spoon, it's charred where you put the powdered
3 substance in the spoon with a liquid to heat it up,
4 it changes the powder into a liquid so it can be
5 drawn up in the syringe, several syringes in there,
6 and then shot intravenously into the, usually into
7 the arm area, into the veins.

8 Q What else is in there, Major McAllister?

9 A Also it looks like what we commonly see used
10 to snort powdered controlled substances, it looks
11 like a pen with the filter removed out of the pen,
12 and it's hollow inside, and that is used to snort
13 controlled substances up into the nose.

14 Also a pipe that has obviously been used
15 because it's black and charred, and that's commonly
16 used to smoke controlled substances.

17 Q Were each of those items -- are there more
18 items in that bag? Would you check the rest of
19 that bag for items contained in it?

20 A There is a plastic bag -- have you got some
21 rubber gloves I can put on?

22 MR. HOOD: Sure.

23 A They don't work too good when your hands are
24 sweaty, they don't go on too good, but that will
25 do.

RONNIE McALLISTER - DIRECT

1 This is just a plastic bag, it is exactly
2 what fish shot, what fishing weight comes in, it
3 doesn't appear to be anything in it.

4 On this side of the bag is other syringes.
5 In this side of the bag is more syringes, and that
6 appears to be it.

7 Q Major McAllister, did you take that item into
8 your custody on that day in Greenwood County?

9 A Yes, sir, I did.

10 Q And all the items that are in the bag now,
11 were they in the bag on September 24th, 2002?

12 A Yes, sir.

13 Q And what did you do with that bag once you
14 seized it from the shop area?

15 A They were placed in the narcotics unit
16 evidence vault there in the basement of the
17 Sheriff's Department, where they remained until
18 Friday of last week when they were turned over to
19 Agent Sonnefeld with SLED.

20 Q And does that bag appear to be in the same,
21 in the same condition as it was on the day that you
22 found it?

23 A Yes, sir.

24 MR. HOOD: At this time, Your Honor, we would
25 move the bag and its content into evidence.

RONNIE McALLISTER - DIRECT

1 THE COURT: How says the defendant Miller?

2 MR. VARNER: Without objection.

3 THE COURT: Defendant Moore?

4 MR. WISE: No objection.

5 THE COURT: It will be marked exhibit number
6 next.

7 (State's Exhibit Number 21 was marked
8 and received in evidence).

9 BY MR. HOOD:

10 Q Major McAllister, let me show you this item.
11 Do you recognize this item?

12 A Yes, sir.

13 Q What do you recognize that item to be?

14 A This is the, I think it's described as purple
15 ziplock, or zip bag, when opened, contained lithium
16 batteries on the right side of it and ephedrine
17 based cold and antihistamine tablets on the other
18 side.

19 Q How many bags of pills are in there, Major
20 McAllister?

21 A There is one, two, three, four, five, six
22 bags of pills, and one, two, three, four, five,
23 six, seven, eight, nine, ten, eleven, twelve,
24 thirteen, fourteen, fifteen, sixteen, seventeen,
25 eighteen, nineteen, twenty, twenty-one, twenty-two,

RONNIE McALLISTER - DIRECT

1 twenty-three, twenty-four, twenty-five, twenty-six,
2 twenty-seven, twenty-eight lithium batteries,
3 double A batteries.

4 Q And how do you know they are lithium?

5 A Well, it says right there on the side of it,
6 lithium batteries.

7 Q Did you take these items into your care,
8 custody and control that day?

9 A Yes, sir.

10 Q And where did you seize them from?

11 A These were seized from the office area of
12 Billy Moore's shop on Morgan Road in Greenwood
13 County.

14 Q And what did you do with that item once you
15 took it into your care, custody and control?

16 A It was placed in the narcotics unit evidence
17 vault there in the basement of the Sheriff's
18 Department and remained in my, in the custody of
19 the, my custody there at the Sheriff's Department
20 narcotics unit vault until Friday of last week when
21 it was turned over to Agent Sonnefeld with the
22 South Carolina Law Enforcement Division.

23 Q Approximately how many pills do you think are
24 in that bag, Major McAllister, without counting
25 each one individually?

RONNIE McALLISTER - DIRECT

1 A I would say close to a thousand.

2 MR. HOOD: Your Honor, at this time we would
3 move this item, we would like for it all to be
4 marked one item into evidence.

5 THE COURT: What says the defendant Miller?

6 MR. VARNER: No objection.

7 MR. WISE: No objection. That's 22?

8 THE COURT: You're correct, 22.

9 (State's Exhibit Number 22 was marked
10 and received in evidence).

11 MR. CROUT: Your Honor, if I may interject
12 while Mr. Hood is conducting his direct
13 examination, I believe that Mr. Varner is going
14 through the evidence that was in the sealed plastic
15 bag. Where I'm sitting it's certainly distracting
16 for me. He has an opportunity to look at that and
17 certainly will, Your Honor, I would request that he
18 not do that.

19 THE COURT: Yes, sir. Wait until more
20 opportune time, counsel.

21 MR. VARNER: Okay.

22 BY MR. HOOD:

23 Q Major McAllister, let me hand you this. What
24 do you recognize this to be?

25 A This is a red ziplock bag containing, again,

RONNIE McALLISTER - DIRECT

1 paraphernalia associated with powdered controlled
2 substance use, a spoon that has got a powdered
3 residue on it, and once again these spoons are,
4 they commonly are used for, they put the powdered
5 substance in the spoon with a liquid, heat it on
6 the bottom, convert the powder into liquid and then
7 they draw it up into the syringe, there is two
8 syringes in here, and they shoot it intravenously,
9 commonly in the arm. There is also a pill bottle
10 in here. It says X-Pain Extra Strength, twelve
11 tablets. It's got four white tablets.

12 Q Is there anything else in that bag, Major?

13 A Two syringes.

14 Q Did you take that bag into your care, custody
15 and control on September 24th, 2002?

16 A Yes, sir.

17 Q And where did you place it?

18 A It was placed into the narcotics unit's
19 evidence room in the basement of the Sheriff's
20 Department, where it remained in the care and
21 control of myself until Friday of last week, where
22 it was, and Agent Sonnefeld with the South Carolina
23 Law Enforcement Division took it into her custody.

24 Q Where was that bag when you found it?

25 A It was in the office area of Billy Moore's

RONNIE McALLISTER - DIRECT

1 shop.

2 Q And is it in the same condition today as it
3 was on the day you seized it?

4 A Yes, sir.

5 MR. HOOD: At this time, Your Honor, we would
6 move the referred to Sudafed bag and its contents
7 into evidence.

8 MR. VARNER: No objection.

9 MR. WISE: Red Sudefed bag.

10 MR. HOOD: It says Sudefed on the outside of
11 it.

12 THE COURT: Any objection?

13 MR. WISE: No objection.

14 THE COURT: Without objection, it will be
15 part of the evidence in the case.

16 (State's Exhibit Number 23 was
17 marked and received in evidence).

18 BY MR. HOOD:

19 Q Major McAllister, let me show you this item.
20 Do you recognize this item?

21 A Yes, sir.

22 Q Where was that item found?

23 A This item was found in the office area of
24 Billy Moore's shop.

25 Q Was it found in another container?

RONNIE McALLISTER - DIRECT

1 A I believe it was in a black bag, yes, sir.

2 Q Okay. What do you recognize that item to be?

3 A It's a black Marlboro zip bag, nylon
4 material, containing clear plastic bags with the
5 pull together tops.

6 Q Did you take that into your care, custody and
7 control on September 24th, 2002?

8 A Yes, sir, and it remained in my custody and
9 control at the Greenwood County Sheriff's
10 Department Narcotics Unit vault in the basement of
11 the Sheriff's Department until Friday of last week,
12 when it was turned over to Agent Sonnefeld with the
13 South Carolina Law Enforcement Division.

14 Q Is it in the same condition it was on the day
15 you seized it?

16 A Yes, sir.

17 MR. HOOD: Your Honor, at this time we move
18 the black Marlboro bag with its contents into
19 evidence.

20 THE COURT: Mr. Varner?

21 MR. VARNER: No objection.

22 MR. WISE: No objection.

23 THE COURT: Without objection, it will be
24 marked as part of the evidence in the case.

25 (State's Exhibit Number 24 was marked

RONNIE McALLISTER - DIRECT

1 and received in evidence).

2 BY MR. HOOD:

3 Q Major McAllister, do you recognize these two
4 items?

5 A Yes, sir.

6 Q And where were these two items found?

7 A They were found in a black bag. I think the
8 black bag was sitting on the desk in the office
9 area of Billy Moore's shop.

10 Q Okay. And where were those items located?
11 Were they inside the bag, laying around the bag,
12 were they on the floor? Where were they located?

13 A These items were in the black bag in the
14 office area of Billy Moore's shop.

15 Q Okay. Taking the red item first, what do you
16 recognize the red item to be?

17 A It says B.J.'s Wholesale Club on the front.
18 You turn it over and it's got a photograph and the
19 name Marshall Miller on the back, with a bar code.

20 Q Did you seize that item that day?

21 A Yes, sir.

22 Q Did you take it into your care, custody and
23 control?

24 A Yes, sir.

25 Q And was it seized from the same location as

RONNIE McALLISTER - DIRECT

1 all the other evidence had been, has been placed?

2 A Yes, sir.

3 Q Was it picked up by Special Agent Connie
4 Sonnefeld?

5 A Yes, sir.

6 Q Is it in the same condition today as it was
7 when you seized it?

8 A Yes, sir.

9 MR. HOOD: At this time we move the B.J.'s
10 Wholesale Club card into evidence.

11 THE COURT: Mr. Varner?

12 MR. VARNER: May I speak with Mr. Hood
13 quickly?

14 (Brief pause).

15 MR. VARNER: Your Honor, I have a matter to
16 take up outside the presence of the jury.

17 THE COURT: Very well. Madam Forelady,
18 ladies and gentlemen of the jury, do not discuss
19 the case by, between or among yourselves, and
20 retire to the jury room.

21 (The jury was excused from the courtroom).

22 THE COURT: Mr. Varner, you're recognized.

23 MR. VARNER: Your Honor, I have, I do not
24 take the position I memorized everything in all
25 these books, but when the Attorney General's office

RONNIE McALLISTER - DIRECT

1 brought this out there is a black book which could
2 be construed to be an address book, maybe that's
3 nebulous, but laying by itself was the B. J.'s
4 Wholesale card in Mr. Miller's name, and all three
5 of us have been looking for it. That has never
6 been disclosed in any way, shape or form. I have
7 no knowledge and I will tell the Court this, had I
8 picked up on that, I would have made a mental note
9 of that. If it's shown, then I stand to be
10 corrected. That was not provided in discovery in
11 any way, shape or form, nor has it been mentioned.
12 This is the first time I have heard about a B.J.'s
13 card that they found anywhere.

14 THE COURT: Mr. Hood?

15 MR. HOOD: May I ask some questions of the
16 witness, Your Honor?

17 THE COURT: Yes, sir.

18 BY MR. HOOD:

19 Q Major McAllister, did you document that
20 material that was found in the black bag in Billy
21 Moore's shop?

22 A It's documented in the evidence room at the
23 Sheriff's Department, yes, sir.

24 Q Okay. Did you ever provide us a copy of
25 that?

RONNIE McALLISTER - DIRECT

1 A I don't think I did.

2 Q Okay. Did you take a report on what happened
3 that day?

4 A Yes, sir.

5 Q Did you list some of the items that were
6 taken from that shop?

7 A Yes, sir.

8 Q Did you say where those items were taken to
9 in that report?

10 A I would have to review the report to be sure.
11 I normally do.

12 MR. HOOD: Your Honor, I to not see those
13 items listed. When I'm referring to those items,
14 I'm referring to the B.J.'s Wholesale Club card or
15 the black index, it's missing on the evidence sheet
16 that was provided to the defense.

17 MR. VARNER: Your Honor, on that basis I
18 would move that both the address book and the card
19 be, not be admitted into evidence and I would ask
20 the jury be instructed to disregard any comment
21 about any card.

22 MR. HOOD: Your Honor, it's our position, and
23 I'm not disagreeing with the fact that it's not
24 written down by the Sheriff's Department and
25 provided to the defense, but there were items that

RONNIE McALLISTER - DIRECT

1 were listed and taken down that were taken into
2 care, custody and control of the Greenwood County
3 Sheriff's Department, and surely they had the
4 opportunity to go and view those items, just as I
5 did, and look and see what was in the bag and what
6 was in the box.

7 MR. VARNER: Your Honor, they have articles
8 all over the State, and that doesn't excuse, you
9 know, I say I don't have the ability to do it, but
10 they make notations of what they found and say
11 where it's to be found. I know where those
12 articles are, some articles I do not need to see,
13 those articles I would, but now we have an article
14 that is not even mentioned, it is not putting the
15 responsibility on me because to start searching for
16 their evidence, they have a duty to disclose in
17 some terms what their evidence is. There is no
18 notation or anything about a B.J.'s buying card
19 with my client's name on it found with these drugs.
20 That is critical, that is a very significant piece
21 of evidence, and they can't put the burden of
22 producing under discovery on me saying I didn't go
23 search for it. It was never disclosed. I wouldn't
24 have known to look for it.

25 THE COURT: Was it ever disclosed under

RONNIE McALLISTER - DIRECT

1 Brady? Did you make a Brady motion?

2 MR. VARNER: Yes, sir, there should be one
3 filed in there.

4 MR. HOOD: He did, Your Honor.

5 THE COURT: Or Rule 5 motion.

6 MR. HOOD: He did both.

7 THE COURT: Was it ever disclosed?

8 MR. HOOD: No, sir. I do not show it in the
9 discovery.

10 THE COURT: The Court grants the motion to
11 exclude these items.

12 MR. HOOD: Thank you, Your Honor.

13 MR. WISE: In view of the fact they are in
14 Marshall Miller's name, on behalf of Billy Moore I
15 would take exception to it.

16 THE COURT: Well, it's being excluded, Mr.
17 Wise.

18 MR. WISE: I know, but I would like to have
19 them admitted.

20 THE COURT: Well, were they in any of your
21 discovery information?

22 MR. WISE: No, sir, they weren't in my
23 discovery. I was very happy to discover this.
24 Unlike Mr. Varner, I'm delighted.

25 MR. HOOD: Your Honor, I say this with all

RONNIE McALLISTER - DIRECT

1 due respect, I realize you made your ruling. Mr.
2 Crout reminded me of something. We have provided
3 documentation to them that Mr. Miller had an
4 account at B. J.'s Wholesale Club where he
5 purchased --

6 MR. VARNER: This is not the issue. The
7 issue is his stuff, a personal piece of information
8 was found near drugs, period, but you have made
9 your ruling. I would ask further that there be
10 some kind of curative instruction to the jury
11 because they have already been held up and told the
12 name on this card, and they need to be told to
13 disregard that. That is highly prejudicial at this
14 stage, to put an inadmissible piece of evidence in
15 front of a jury and go ahead and read it to them.
16 I would leave it to this Court's discretion as to
17 whatever type of cure can be given on that.

18 MR. WISE: And the flip side of the problem I
19 have is I want to get in front of the jury that
20 that was identification, and I guess one way to
21 solve it is to let the jury know that that was
22 identification found in there in that room with
23 these items that did not belong to Billy Moore, and
24 that's the main reason I want to get it in. If the
25 Court would, in addition to telling the jury to

RONNIE McALLISTER - DIRECT

1 disregard that, stipulate that the identification
2 didn't belong to Billy Moore, then I'm happy with
3 it, but it's evidence that this stuff belonged to
4 somebody other than Billy Moore and I think that's
5 relevant to my client.

6 THE COURT: The Court will exclude the items.
7 If you wish to mark it for identification, please
8 do that so that any reviewer of the record will
9 have the benefit of these items and they will go
10 with the record of the trial. The Court will tell
11 the jurors to disregard these items or what they
12 saw concerning the buying card and the index. What
13 is that black book?

14 MR. HOOD: It's a roll-a-dex of business
15 cards.

16 MR. VARNER: He didn't show them anything
17 from that book.

18 THE COURT: Disregard the black book and the
19 B.J.'s buying card but now that, in the opinion of
20 this judge, does not foreclose this witness
21 describing what he may have found. He can still
22 describe what he found. Do you disagree with that,
23 Mr. Varner?

24 MR. VARNER: Your Honor, I have no problems
25 with him saying, "I found some type of business

RONNIE McALLISTER - DIRECT

1 card and a book," but to go further than that,
2 without giving disclosure to us, is not in the
3 spirit of Brady whatsoever, because that is, that
4 is a very significant piece of evidence to my
5 client and it certainly links my client to all this
6 other stuff, and to not tell me about that, they
7 gave me 3,000 pages of stuff and didn't include
8 that, that is significant, I'm not trying to be
9 cute about it, that is a very significant piece of
10 evidence. It's not like telling me there is a
11 piece of trash or a burn, you know, I can do that
12 on my own, but that directly links my client to a
13 whole bunch of stuff and I wasn't even told, so I
14 would object very strenuously to him even
15 mentioning a significant piece of evidence when I
16 was not advised of it, or its existence.

17 THE COURT: Mr. Hood, do you want to be heard
18 further?

19 MR. HOOD: No, sir. I think, this is just my
20 opinion, I think, you know, Mr. Wise, as far as his
21 concerns, you know, I think he will be able to
22 cross-examine Major McAllister to the extent of,
23 you know, this stuff you talked about earlier
24 didn't have Billy Moore's name attached to it, but
25 I have no problem with however the Court wants to

RONNIE McALLISTER - DIRECT

1 address the issue.

2 THE COURT: The Court sees no way to satisfy
3 Mr. Wise by letting these pieces of evidence in and
4 then satisfy the objection of the defendant Miller
5 by keeping them out. They are inculpatory insofar
6 as Mr. Miller is concerned, they may be exculpatory
7 so far as defendant Moore is concerned, but they
8 were not identified in the discovery for either, so
9 they will be excluded. They will be marked for
10 identification only. The Court will instruct the
11 jurors accordingly.

12 Anything further before the jurors come in,
13 please?

14 MR. VARNER: Nothing further, Your Honor.

15 MR. WISE: What are we going to do about
16 simply telling them the identification did not
17 belong to Mr. Moore?

18 THE COURT: You are going to have the witness
19 on cross-examination.

20 MR. WISE: I guess I can ask him was there
21 any identifying document found in there and the
22 answer is yes, then I ask did they belong to Mr.
23 Moore, he says no.

24 THE COURT: That seems to be fair play unless
25 something comes up here that's different.

RONNIE McALLISTER - DIRECT

1 MR. HOOD: No, sir.

2 THE COURT: Anything further?

3 (State's Exhibits 25 and 26 were marked
4 for identification).

5 THE COURT: Show the jury in, please.

6 (The jury returned to the courtroom).

7 THE COURT: All the jurors are present, with
8 the forelady and the alternates properly seated.

9 Ladies and gentlemen, you heard some
10 testimony and saw a buyer's card from B.J. Buyers
11 Club and there was a photograph and a bar code on
12 the back, you may or may not have been able to
13 recognize any of that, and there was a black
14 folding book of some sort and the inside of it was
15 not displayed to you. You are instructed to
16 disregard completely both the card, front and back
17 of the card, and the book. You are to disregard
18 that that was even shown to you, that is not part
19 of the evidence in the case, it is of no
20 consequence and you are not to consider it in any
21 way at anytime.

22 Continue direct examination.

23 MR. HOOD: Thank you, Your Honor, may it
24 please the Court. Your Honor, I believe after
25 reviewing my notes that's all the questions we have

RONNIE McALLISTER - DIRECT

1 at this time for Major McAllister.

2 THE COURT: Very well. Mr. Varner, on
3 cross-examination, please.
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RONNIE McALLISTER - CROSS

1 CROSS EXAMINATION

2 QUESTIONS BY MR. VARNER:

3 Q All right, sir, first things first. I heard
4 your testimony about baggies and the prosecutor
5 asked you about baggies. I want to ask you
6 something here. As a matter of fact, this box has
7 never even been opened, with the Court's
8 permission?

9 THE COURT: Wait a minute, why don't you use
10 another box.

11 Q What does this box say it is?

12 A Cling wrap, Glad.

13 Q Okay. Is cling wrap a baggie in any way,
14 shape or form?

15 A It can be used as a baggie, yes, sir.

16 Q I didn't ask you could it be used. It could
17 be used to strangle somebody with. It's not a
18 murder instrument. Is this a baggie, yes or no?

19 A It could be used as a baggie, yes, sir.

20 Q You can't answer that, you don't know whether
21 or not this is a baggie or this is cling wrap,
22 Saran wrap, you don't know that?

23 A It says Glad Cling Wrap, yes, sir.

24 Q Okay. Clor Color Wrap, is that a baggie?
25 You can open it up.

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1 A It's described just as you said, yes, sir, on
2 the box.

3 Q Okay. Like your wife or you or your mom
4 would use to wrap up an apple pie, so to speak,
5 after you had eaten part of it?

6 A Yes, sir, you can wrap a lot of things with
7 it.

8 Q That's right. Dope dealers use baggies,
9 don't they?

10 A They also use that, sir.

11 Q Oh, they do? You understand how significant
12 it is to everybody involved that we be accurate and
13 precise about what we call things?

14 A Absolutely.

15 Q All right. You talked about this fire. I
16 will let you look through this. There is two
17 batteries in here. You can wipe it off if you
18 like. Those are alkaline batteries, aren't they,
19 not lithium batteries?

20 A Sir, the one you handed me is an alkaline
21 battery, yes, sir.

22 Q Okay. Do you want to go ahead and find --
23 there is another one in there, another alkaline
24 battery.

25 A There are the remains of alkaline batteries

RONNIE McALLISTER - CROSS

1 in there.

2 Q Okay. Alkaline batteries, those are the kind
3 of batteries you use in radios or anything else,
4 right?

5 A Yes, sir. As I said, there is remains of
6 lithium batteries.

7 Q Well, let's stay on alkaline a minute.

8 A The lithium has been removed.

9 Q Excuse me, I didn't ask you that, sir. If
10 you would, respond to my question.

11 A There are --

12 Q Excuse me. You don't use alkaline batteries
13 in anything to do with crystal meth production, do
14 you?

15 A It could be, yes, sir.

16 Q Well, how can alkaline batteries be used to
17 make crystal meth?

18 A Well, using a flashlight to --

19 Q Okay.

20 A For light, it could be contained in the
21 flashlight, I mean.

22 Q So, if you found -- how many flashlights were
23 at that shop?

24 A I don't know, sir.

25 Q Did you seize any flashlights?

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1 A No, sir.

2 Q Did you seize any lights that you could use
3 to see to cook crystal meth, from the shop?

4 A No, sir.

5 Q I'm going to ask you a straight question.
6 How do you use alkaline batteries in making crystal
7 meth? You don't, do you?

8 A It depends on the situation, sir.

9 Q Well, tell me how, under what situation
10 you're going to use an alkaline battery to make
11 crystal meth. How is that used in the production
12 of crystal meth?

13 A Well, there are heat sources that are used in
14 the cooking of methamphetamine, which alkaline
15 batteries could be used in the heating process.
16 Again, it could have been used as a light. I mean,
17 as far as a chemical re-agent, or agent, no, sir.

18 Q Okay. You're talking about a heat source.
19 What kind of heat source do you know that uses
20 double A or triple A alkaline batteries?

21 A Well, they're use to light the heat source,
22 electric light.

23 Q A cigarette lighter will do that, won't it?

24 A Yes, but some of the cooking instruments you
25 use, you have electronic lighting instruments and

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1 the batteries are the light source.

2 Q So, this is a crystal meth apparatus,
3 according to your definition?

4 A Could be, yes, sir.

5 Q Okay. So, that's a reasonable inference,
6 according to you, you would think I was a crackhead
7 because I've got a cigarette lighter in my pocket,
8 according to that same reasoning?

9 A No, sir.

10 Q Okay. And P-e-p-s-i, what is that? Have you
11 ever heard of Pepsi?

12 A Pepsi?

13 Q Pepsi, P-e-p-s-i.

14 A I've heard of Pepsi, yes, sir.

15 Q And they have, that might be Pepcid, too.
16 Pepcid is for a bad stomach?

17 A I think you're correct, sir.

18 Q Okay. Old shop towel being burned up. I
19 think there is the remains of like a Coca Cola
20 bottle in here, or Pepsi bottle. There we go. Or
21 some kind of, I don't know, it might be a Brown Cow
22 bottle, whatever, a plastic bottle of some sort?

23 A Yes, sir. That's an ephedrine bottle, it has
24 ephedrine written right there on it.

25 Q Where is it written on there?

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1 A Right there, it says ephedrine.

2 Q All right. That's something that's stuck to
3 it, to the glass container?

4 A It has ephedrine written on it.

5 Q Excuse me, could you please, I will wait
6 until you quit talking if you will give me the same
7 courtesy.

8 A Yes, sir.

9 Q That bottle, anything to identify that
10 bottle?

11 A That ephedrine?

12 Q Sir, I'm not asking you about this.

13 A It was attached to it when you handed it to
14 me.

15 Q Sir, I'm asking you about that bottle.

16 A It's charred up beyond recognition.

17 Q Okay. When things like a plastic bottle melt
18 things stick to it, correct?

19 A Sir, I'm still looking for identification,
20 the identification on this bottle, if you will give
21 me just a minute. The item you handed me here is
22 obviously the little wrappers that some of those
23 capsules, ephedrine based capsules were contained
24 in, the bubble containers.

25 Q I understand.

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1 A It's stuck to the bottle but it was burned
2 and that is what that is.

3 Q Okay.

4 A Containers where --

5 Q And when a bottle melts, do you want to hold
6 that, when the bottle melts it's going to stick to
7 whatever else is in the fire, correct?

8 A Yes, sir.

9 Q Did you send that to SLED or send it to any
10 forensic lab to see if and when this fire occurred?

11 A I think it's pretty obvious there was a fire,
12 sir.

13 Q No, sir, I didn't ask you that. I asked you
14 a simple question. Did you send this to any
15 forensic lab or SLED or anything to determine when
16 this fire was burned?

17 A I don't think SLED has that ability, sir.

18 Q It's a yes or no question. Did you do that?

19 A No, sir.

20 Q Have you ever heard of carbon fiber analysis?

21 A Yes, sir.

22 Q Okay. They can look at a piece of wood from
23 2,000 years ago and tell you when it was either
24 charred or burned or when it existed, right?

25 A I'm not that familiar with it, no, sir.

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1 Q Okay. Well, bottom line is, you didn't know
2 of your own knowledge whether this fire occurred
3 last week, last year, three years ago, or even how
4 many fires occurred there one on top of another,
5 you don't know of your own knowledge, do you?

6 A No, sir.

7 Q Okay. At the time you got to Mr. Moore's
8 shop, at that location, had Mr. Miller already been
9 arrested?

10 A No, sir.

11 Q Okay. And he was not in the shop, correct?

12 A No, sir. He was found just behind the shop.

13 Q All right. And at the time you got there who
14 was in the shop?

15 A Billy Moore was in the shop, and I'm trying
16 to remember if there, if any agents were in the
17 shop. There were some agents out around the shop.
18 I think Billy Moore was the only person in the
19 shop.

20 Q And Billy Moore at that point in time, he
21 wasn't arrested at that time, was he?

22 A Yes, sir, he was arrested.

23 Q He was arrested at the time you got there?

24 A Oh, no, sir, not when I got there. He was
25 arrested before I left.

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1 Q Okay. And who else was there?

2 A There was a number of agents from the South
3 Carolina Law Enforcement Division there, there were
4 some agents from I think Honea Path P.D., some
5 agents from Abbeville County Sheriff's Department,
6 there were some relatives of Billy Moore there, and
7 I think a couple friends of Billy Moore's was
8 there.

9 Q Was Mr. Ernest Covan there?

10 A No, sir.

11 Q Okay. How about a Mr. Heatherly? He has a
12 nickname.

13 A What's the nickname? I don't --

14 Q Chip.

15 A Sir?

16 Q Chip is his nickname.

17 A Sir, he could have been, I'm not sure. If I
18 could see him, then I could tell you, but there was
19 a number of people there that I could identify
20 physically but not know their name.

21 Q Okay. So, other than law enforcement, the
22 only person you saw unrelated to law enforcement
23 would have been Mr. Moore and his family members
24 over there?

25 A There was another subject there. I don't

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1 remember his name and I don't think he was a
2 relative of Billy Moore's.

3 Q Okay.

4 A Again, if I could see him I could identify
5 him.

6 Q Well, do you know what Ernest Covan looks
7 like?

8 A Yes, sir.

9 Q You're sure it was not Ernest Covan?

10 A Ernest Covan was not there.

11 Q Okay. But you do believe there was another
12 one of the defendants there but you're not sure
13 which one it was without viewing them?

14 A I didn't say a defendant. I said there was
15 another subject there, that I remember being there
16 and talking to but I can't remember his name.

17 Q I want to make sure we talk in the same
18 terms. What would you call a subject, just another
19 person, it could have been a person off the street,
20 or --

21 A What's your question, sir?

22 Q What is a subject?

23 A A subject could be anyone.

24 Q Okay. Well, I'm talking about in the terms
25 you used it. Does that mean there was just another

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1 person there, you don't really know what they had
2 to do with it or didn't have to do with it?

3 A Sir, I'm trying to describe to you the people
4 that were there, and my answer is there was some
5 people there that I do not know their name, I can
6 identify them if I saw them. I talked to one
7 individual that I do not believe was related to
8 Billy Moore but he was there on the scene but I
9 don't remember his name.

10 MR. VARNER: All right, that's all the
11 questions I have.

12 THE COURT: Mr. Wise.
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CROSS EXAMINATION

QUESTIONS BY MR. WISE:

Q Mr. McAllister, I believe you had the opportunity to -- could you take this bag and find one of those lithium batteries?

A I'm going to have to pour it out, sir.

Q That's fine.

A On something.

Q Whatever you need to do.

A Pour it out on the floor?

Q You didn't take out a lithium battery before you got here today?

A Sir?

Q You didn't take the lithium battery out of there before you got here today, to show this jury?

A I never said there was a lithium battery. I said there was some remains of a lithium battery.

Q Well, remains of a lithium battery, that's fine, I don't care how you do it.

A Well, again I'm going to have to pour it out. I need something to pour it out on.

Q You are saying there are remains of lithium batteries in there. I want to see one for the jury.

A Can I have something to pour it out on, Your

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1 Honor?

2 THE COURT: Yes, sir, we're going to try to
3 find something.

4 Close the record, please.

5 (Brief recess).

6 THE WITNESS: Do you have one of those big
7 white sheets back there?

8 MR. WISE: How about that?

9 THE WITNESS: Let's get one of those big
10 white sheets in the back.

11 BY MR. WISE:

12 Q There you go, very good.

13 A There's one right there, Mr. Wise, that's the
14 inside of a lithium battery, with the lithium
15 removed from it.

16 Q All right. Did you have that sent anywhere
17 for analysis?

18 A No, sir.

19 Q This piece of aluminum foil here, you say?

20 A That's the inside of a lithium battery, with
21 the lithium strip removed from it.

22 Q Did you bring us anything to compare that to,
23 to look at it?

24 A No, sir. Here is another one here.

25 Q These pieces of strips, you say came from a

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1 lithium battery?

2 A Yes, sir. I see it all the time in meth
3 labs.

4 Q Do you have two in there?

5 A Well, we can find more if you want.

6 Q Well, two or three.

7 MR. CROUT: Your Honor, could we have the
8 record reflect at the time the officer is
9 identifying these items he is altering them by
10 unrolling them, sir?

11 THE COURT: The record will so reflect.

12 Q So, you say these are what you say are
13 remains of lithium batteries?

14 A Yes, sir.

15 Q There are no outside remains in there?

16 A Well, I'm going to look, if you will allow me
17 to continue looking.

18 Q That's an alkaline battery there, right?

19 A Yes, sir.

20 A There's another one, it's burned a little
21 more, melted a little more but it's one. You've
22 got a lot of where it's been -- another one?

23 A Another one. Another one. Parts of another
24 one. I think that's all the lithium.

25 Q There is no remains in there that identify

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1 any type of battery other than the two alkalines?

2 A I know those to be the inner rollings of a
3 lithium battery, Mr. Wise.

4 Q There are no remains on the outside of any
5 battery except the two alkalines?

6 A Well, if you could continue to let me look a
7 little bit I may find some. There is a lot more
8 here.

9 Q You have had these since September of 2002?

10 A That's correct.

11 Q You have looked through it?

12 A That's correct.

13 Q You haven't before today found anything that
14 contains a name label on any of the outside of any
15 battery?

16 A I haven't looked for a name labeling of a
17 lithium.

18 Q Okay, all right. What time did you get there
19 that day?

20 A I'm not sure. I can look back at the report
21 and tell you exactly what time.

22 Q Roughly?

23 A Mr. Wise, I'm going to say around, a little
24 after lunch but I'm not sure.

25 Q SLED had been there for some time before you

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1 got there?

2 A Sir?

3 Q SLED had been there for some time, an hour or
4 two before you got there?

5 A I don't know exactly how long they had been
6 there.

7 Q But they had been there before you got there?

8 A Yes, sir.

9 Q And the pictures that you introduced here on
10 Exhibit 5 and Exhibit 17, you did not take?

11 A I would have to look at them and tell you,
12 sir. If you don't mind pointing to the one you're
13 talking about.

14 Q All of them. Did you take any of them?

15 A Yes, sir.

16 MR. HOOD: Your Honor, if I may?

17 THE COURT: Yes, sir.

18 MR. HOOD: I'm not objecting to what he's
19 going to now. Can we get that cleared up before we
20 start walking back and forth? That's the only
21 concern I have.

22 THE COURT: The Court would suggest that, Mr.
23 Wise, wait a minute, and the record will show that
24 what the witness was examining is the remains of,
25 or what was a fire, as he described it. It is

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1 sooty, it is grimey, it is extremely dirty. During
2 the testimony of the witness he separated out
3 portions that he was particularly asked about by
4 Mr. Wise. Although it is not necessarily
5 identified by any writing, the witness identified
6 certain portions. The Court would request that
7 those portions not be put back in the big bag so
8 that if the jury were to want to look at them
9 separately they would not have to look in and among
10 the remains of the charred and burned things to
11 look at what the witness identified, for whatever
12 weight the jury may give it, if any.

13 Now, do we have a container?

14 MR. HOOD: We can find one, Your Honor.

15 THE COURT: Which exhibit is this, what
16 number, Mr. Wise, is on the bag? I think it's
17 five, maybe. What is it?

18 THE WITNESS: Twenty, sir.

19 THE COURT: Twenty, I was way off. We will
20 make that 20-B.

21 MR. HOOD: I just wanted to get it cleared
22 up, Your Honor.

23 THE COURT: I appreciate that.

24 MR. WISE: Just put whatever he was
25 interested in in this cardboard box, we will put

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1 the rest of it back in the plastic bag.

2 THE COURT: Just the portions you identified.

3 THE WITNESS: How about the ephedrine that
4 was identified by --

5 THE COURT: Anything you specifically
6 identified, put it separate.

7 (State's Exhibit 20-B was marked as
8 a part of State's Exhibit 20).

9 THE COURT: Mr. Wise, are you satisfied?

10 MR. WISE: If he's satisfied, I'm satisfied.

11 THE COURT: All right.

12 MR. WISE: That's a stick there.

13 THE WITNESS: I'm sorry.

14 THE COURT: With the greatest care possible,
15 in fact, Mr. Fisher, would you assist us in some
16 way taking the white piece of paper and the black
17 bag into another room?

18 MR. WISE: We'll do it right here?

19 THE WITNESS: Put that back in here?

20 THE COURT: Yes, but I don't want to make a
21 bunch of dust in here for everybody.

22 THE WITNESS: Yes, sir.

23 THE COURT: But if you will assist, please.

24 THE WITNESS: Can I ask if I'm going to be
25 asked to handle anything else, so I can remove

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1 these gloves?

2 MR. WISE: Not that I know of.

3 THE COURT: Mr. Varner?

4 MR. VARNER: None I'm aware of, Your Honor.

5 THE COURT: All right, take them off. All
6 right, continue cross-examination.

7 QUESTIONS BY MR. WISE:

8 Q You got there some hour and a half, two hours
9 after you think SLED got there?

10 A Mr. Wise, I'm not sure.

11 Q You were well after lunch?

12 A No, sir. I said I'm not sure exactly what
13 time I got there. If I could review my report I
14 could tell you exactly but I know SLED was there
15 before I was.

16 Q Have you got it with you?

17 A No, sir.

18 Q All right.

19 MR. HOOD: I have it.

20 Q Okay. Is this your report?

21 A This indicates 12:20, so I was close.

22 Q Okay. Now, we were asking you about Exhibits
23 17 and 5. Did you take any of these pictures?

24 A I believe I took that picture.

25 Q Uh-huh (affirmative).

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1 A That one. I believe I took these. I don't
2 think I took that one or this one or these over
3 here.

4 Q Okay. So, you took some of the pictures of
5 evidence that was found that day?

6 A Sir?

7 Q You took some of the pictures of evidence
8 that was found that day?

9 A Yes, sir.

10 Q All right. Mainly these pieces of Glad wrap,
11 stuff like that?

12 A Yes, sir.

13 Q All right. Did you have a camera?

14 A It was a digital camera, yes, sir.

15 Q Could you show us the pictures you had of
16 Exhibits 21 and 23?

17 A Could I show you what, sir?

18 Q Pictures you took where you found Exhibits 21
19 and 23?

20 A It was a digital camera.

21 Q Uh-huh (affirmative)?

22 A And the batteries in the camera went dead
23 before we had an opportunity to take pictures of
24 some of that stuff.

25 Q And no one else had a camera?