

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Chester County

Brian M. Gibbons, Circuit Court Judge

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OCT 27 2014

S.C. Supreme Court

MICHAEL LEE MONTGOMERY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000638

APPENDIX

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF CHESTER
4 2010-GS-12-37 AND 38
5
6 STATE OF SOUTH CAROLINA
7 VS.
8 MICHAEL MONTGOMERY
9
10 CHESTER, SOUTH CAROLINA
11 OCTOBER 11-12, 2010
12 BEFORE THE HONORABLE DOYET A. EARLY, III

13
14 APPEARANCES
15 FOR THE STATE: CHRIS TAYLOR
16 FOR THE DEFENDANT: MARK GRIER
17 REPORTED BY: MICHAEL C. WATKINS
18 OFFICIAL COURT REPORTER

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VOIR DIRE

1 MR. TAYLOR: State versus Michael L. Montgomery,
2 indictment numbers 2010-GS-12-37, manufacturing marijuana,
3 and 2010-GS-12-38, possession with intent to distribute
4 marijuana. He is represented by Mr. Mark Grier.

5 THE COURT: Sir, are you ready to proceed?

6 MR. GRIER: Yes, sir.

7 THE DEFENDANT: I would rather represent myself.

8 THE COURT: Just calm down, we'll address that in just
9 a little while. Pass up the indictments, please.

10 THE DEFENDANT: Your Honor, can I request to fire my
11 public defender?

12 THE COURT: Sir, I'm going to draw this jury and then
13 I will address your concerns, fair enough?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Ladies and gentlemen of the jury, we are
16 going to draw the jury in the case of the State of South
17 Carolina versus Michael L. Montgomery, II. As I explained
18 yesterday these indictments are simply the charging papers
19 by which the case comes into the courtroom. He has been
20 charged, arrested and indicted on two counts of possession
21 with intent to distribute marijuana and growing and/or
22 manufacturing marijuana. Mr. Montgomery has pled not
23 guilty and by pleading not guilty he has a constitutional
24 presumption of innocence unless the State is able to prove
25 his guilt to you beyond a reasonable doubt as to both

VOIR DIRE

1 indictments. So we're going to now draw the jury, I'll
2 have to ask you certain questions like I did yesterday,
3 they will be redundant, they will be the repeat of
4 yesterday but since this is a new trial we have to go
5 through the same exercise. Mr. Montgomery, if you would
6 please stand and face the jury panel. Thank you very much,
7 you may be seated. Ladies and gentlemen, is any member of
8 the jury panel related by blood or marriage or do you now
9 or have you in the past had a close personal or social
10 relationship with any -- close personal or social
11 relationship with Mr. Montgomery? If so, please stand. I
12 am informed that the potential witnesses in the trial of
13 the case are as follows, if you are in the courtroom would
14 you please stand? Richard Smith, the Sheriff of Chester
15 County, is he in the courtroom? Chuck Grant, Chester
16 County Sheriff's Department, Mr. Grant? Michael
17 Montgomery, Sr. Thank you, he is in the back back here.
18 Tammy Dinns, D-i-n-n-s. M. J. Foldings, SLED. Wendy
19 Glenn.

20 MR. TAYLOR: Your Honor, I'm sorry, those are
21 potential defense witnesses. I have some State's
22 witnesses, I didn't know if you want me to call them or --

23 THE COURT: I normally get a witness list, who do you
24 have?

25 MR. TAYLOR: Your Honor, we have Detective Kito Crank,

VOIR DIRE

1 Chuck Grant whose name has already been called, Amanda
2 Hughey who is not present in the courtroom. Robert
3 Sprouse, T. J. Murphy, and a civilian witness, Debbie
4 Thompson, who works for K and K Realty Property.

5 THE COURT: Now, ladies and gentlemen, are any of you
6 now or have you been in the past related by blood or
7 marriage, or do you have a close personal or social
8 relationship now or in the past to any of the potential
9 witnesses? If so, please stand. Ma'am, weren't you going
10 to -- the lady right here who wanted to stand.

11 THE JUROR: I'm friends with the defendant's mother.

12 THE COURT: And your name, please?

13 THE JUROR: Joyce Gibson.

14 THE COURT: Ms. Gibson? The fact that you are a
15 friend with the defendant's mom, would that in any way
16 preclude or keep you from being a fair and impartial juror
17 in the trial of the case?

18 THE JUROR: No, sir.

19 THE COURT: Thank you, you may be seated. Sir in the
20 green?

21 THE JUROR: I was married to the defendant's cousin.

22 THE COURT: Was?

23 THE JUROR: Yes, sir.

24 THE COURT: No longer?

25 THE JUROR: No, sir.

1 THE COURT: And your name, please?

2 THE JUROR: Jerry Williamson.

3 THE COURT: Sir, the fact that you were married to the
4 defendant's cousin, would that in any way preclude or keep
5 you from being fair and impartial in the trial of the case?

6 THE JUROR: No, sir.

7 THE COURT: Thank you, you may be seated. Yes, ma'am,
8 your name again for the day?

9 THE DEFENDANT: Amy Dorsey.

10 THE COURT: Ms. Dorsey.

11 THE DEFENDANT: My husband is Max Dorsey with SLED and
12 he has a close personal relationship with most of these
13 witnesses, not me personally.

14 THE COURT: And the fact that your husband works with
15 some of the witnesses, ma'am, would that in any way
16 preclude or keep you from being fair and impartial?

17 THE JUROR: No, sir.

18 THE COURT: Thank you, you may be seated. Sir, in the
19 back with the sun glasses?

20 THE JUROR: Yes, Ronald McVey. I worked with Richard
21 Smith being a police officer.

22 THE COURT: Worked with him in the past?

23 THE JUROR: Yes.

24 THE COURT: The fact that you were a co-employee with
25 one of the potential witnesses, sir, would that preclude or

VOIR DIRE

1 keep you from being fair and impartial?

2 THE JUROR: No, sir.

3 THE COURT: Thank you, you may be seated. Sir with
4 the red name tag or something?

5 THE JUROR: Ryan Christopher, and I go to church with
6 the defendant's father.

7 THE COURT: You go to church with the defendant's
8 father? The fact that you and the defendant's father
9 attend the same church, would that in any way preclude or
10 keep you from being fair and impartial?

11 THE JUROR: No, sir.

12 THE COURT: Thank you, you may be seated. Ladies and
13 gentlemen, in this case the State will be represented by
14 Mr. Chris Taylor. Mr. Barfield, are you going to assist?

15 MR. BARFIELD: Maybe perhaps.

16 THE COURT: And by the Solicitor, Mr. Doug Barfield.
17 The defendant is represented by Mr. Mark Grier.

18 MR. GRIER: Thank you, Your Honor.

19 THE COURT: Ladies and gentlemen, anybody on the jury
20 panel now or in the past that have legal services provided
21 to you by any of these attorneys? If so, please stand.
22 Ladies and gentlemen, any members of the jury panel related
23 by blood or marriage or have you now or in the past had a
24 close personal or social relationship with any of the
25 lawyers? If so, please stand. This is funny, I asked that

VOIR DIRE

1 question all over the state and nobody is friends with the
2 lawyers or you don't want to admit it anyway. Ladies and
3 gentlemen, it's alleged -- these are simply allegations,
4 obviously it's not evidence in the case but I must tell
5 you, it is alleged that here in Chester County back on
6 September 30th of 2009 it is alleged that the defendant
7 grew marijuana and it is alleged that he had in his
8 possession marijuana with intent to distribute
9 September 30th of 2009 and it was allegedly grown in a
10 house or an apartment, or where?

11 MR. TAYLOR: In a house, Your Honor.

12 THE COURT: Where?

13 MR. TAYLOR: [REDACTED].

14 THE COURT: [REDACTED] in Chester?

15 MR. TAYLOR: Yes, sir.

16 THE COURT: Any members of the jury panel know
17 anything about the allegations in this case? Have you read
18 anything about it, seen anything about it, anybody
19 discussed it with you, know anything at all about the facts
20 in the case? If so, please stand. Yes, ma'am, your name?

21 THE JUROR: Joyce Gibson.

22 THE COURT: Ms. Gibson, I'm going to ask you to walk
23 up here and tell me so -- what you know.

24 (Conference at the bench.)

25 THE COURT: Good morning.

VOIR DIRE

1 THE JUROR: Good morning.

2 THE COURT: How are you?

3 THE JUROR: I'm fine.

4 THE COURT: What do you know very quietly?

5 THE JUROR: Just that what happened, that his mom had
6 told me what had happened, that's all.

7 THE COURT: That his mom told you what happened, that
8 he was caught growing marijuana?

9 THE JUROR: Uh-huh.

10 THE COURT: And your name again?

11 THE JUROR: Joyce Gibson.

12 THE COURT: Okay. Thank you, Ms. Gibson. I'm going
13 to strike her, Ms. Gibson. Madam Clerk, please remove
14 Ms. Gibson's name from the trial of this case. Ma'am, you
15 stay with me, though.

16 THE JUROR: Okay.

17 THE COURT: Just have a seat back there. Any member
18 of the jury panel, you or your immediate family work for
19 law enforcement or the solicitor's office or SLED, federal
20 police officers? If so, please stand, other than
21 Ms. Dorsey. Ms. Dorsey, once again your husband is
22 employed at SLED; is that correct?

23 THE JUROR: Yes, sir.

24 THE COURT: And the same question, the fact that your
25 husband is employed at SLED, would that in anyway preclude

VOIR DIRE

1 or keep you from being fair and impartial?

2 THE JUROR: No, sir.

3 THE COURT: Any members of the jury panel been a
4 victim of a crime? If so, please stand. Ms. Dorsey, I'm
5 sorry ma'am I have to ask the same questions, but we have
6 to make a --

7 THE JUROR: My -- our house was broken into last year.

8 THE COURT: Ma'am in the front, your name again?

9 THE JUROR: Felicia Chisholm.

10 THE COURT: You had two stabbings, right?

11 THE JUROR: Yes.

12 THE COURT: Ladies, the fact that y'all have
13 experienced these events in your life, would that in any
14 way preclude or keep you from being fair and impartial in
15 the trial of case?

16 (Both replied no.)

17 THE COURT: Thank you very much. Any members of the
18 jury panel a member of or a contributor to such
19 organizations that has as its primary goals the enforcement
20 of laws or victims' rights such as MADD, SADD or CAVE? If
21 so, please stand. As I said yesterday, one of my main
22 goals is to make sure that both the State and the defendant
23 receive a fair trial. Do I have any member of the jury
24 panel who is unable to perform that service, that service
25 being that you are to determine what the true facts are in

VOIR DIRE

1 the case and apply them to the law as I give it to you? Do
2 I have anyone who for personal reasons, religious reasons,
3 political beliefs, any kind of beliefs that you cannot
4 perform that duty I need to know now. If so, please stand.
5 Any member of the jury panel know of any reason why he or
6 she should not serve as a juror on this case with
7 particular emphasis being placed on your ability to be fair
8 both to the defendant and the State of South Carolina? If
9 so, please stand. Any additional questions by the State?

10 MR. TAYLOR: No, Your Honor.

11 THE COURT: By the defendant?

12 MR. GRIER: No, Your Honor.

13 THE COURT: I will make your voir dire questions part
14 of the record. Ladies and gentlemen, we will go through
15 the same exercise as we did yesterday, there will be -- we
16 will select 12 with two alternates, I will -- we will do
17 the same, when your name is called if you would please come
18 forward, the lawyers in this case as well have five strikes
19 each, and on the alternates the defense has two and the
20 State has one.

21 THE JUROR: I need to speak to you.

22 THE COURT: Juror number what?

23 THE JUROR: I think 42, 41.

24 (Conference at the bench.)

25 THE COURT: Good morning.

VOIR DIRE

1 THE JUROR: Yesterday you asked if I was a resident of
2 Chester County, I am not. My mail goes to my mom's address
3 which is in Richburg and I am physically -- I physically
4 live in Spartanburg, South Carolina.

5 THE COURT: I know you physically do but you come back
6 to Chester, don't you?

7 THE JUROR: I don't like live, I just come back
8 because I actually work in Spartanburg, I come back to
9 visit.

10 THE COURT: Have you got a drivers license?

11 THE JUROR: Yes.

12 THE COURT: What is the address on your license?

13 THE JUROR: My mom's address.

14 THE COURT: You are a resident of Chester County.

15 THE CLERK: Juror number 140, Donna J. Winchester.
16 What says the State?

17 MR. TAYLOR: Please present the juror.

18 THE CLERK: What says the defendant?

19 MR. GRIER: Please swear the juror.

20 THE CLERK: Juror number 43, Donald Funderburke. What
21 says the State?

22 MR. TAYLOR: Please present Mr. Fundeburk.

23 THE CLERK: What says the defendant?

24 MR. GRIER: Please seat the juror.

25 THE CLERK: Number 141, Tia Womack. What says the

VOIR DIRE

1 State?

2 MR. TAYLOR: Please present Ms. Womack.

3 THE CLERK: What says defendant?

4 MR. GRIER: Please swear the juror.

5 THE CLERK: Juror number 131, James A. Tucker. What

6 says the State?

7 MR. TAYLOR: Please present Mr. Tucker.

8 THE CLERK: What says the defendant?

9 MR. GRIER: Please swear the juror.

10 THE CLERK: Juror number 41, Latasha S. Fourney. What

11 says the State?

12 MR. TAYLOR: Please excuse Ms. Fourney from the trial

13 of this case.

14 THE CLERK: Juror number 94, Dorothy M. Moore. What

15 says the State?

16 MR. TAYLOR: Please present Ms. Moore.

17 THE CLERK: What says the defendant?

18 MR. GRIER: Please excuse the juror.

19 THE CLERK: Juror number 134, Jameka S. Ward. What

20 says the State?

21 MR. TAYLOR: Please present Ms. Ward.

22 THE CLERK: What says the defendant?

23 MR. GRIER: Please swear the juror.

24 THE CLERK: Juror number 90, Ronald D. McVey. What

25 says the State?

VOIR DIRE

1 MR. TAYLOR: Please excuse Mr. McVey from the trial of
2 this case.

3 THE CLERK: Juror number 20, Ryan P. Christopher.
4 What says the State?

5 MR. TAYLOR: Please excuse Mr. Christopher from the
6 trial of this case.

7 THE CLERK: Juror 56, Shirley Hemphill. What says the
8 State?

9 MR. TAYLOR: Please present Ms. Hemphill.

10 THE CLERK: What says the defendant?

11 MR. GRIER: Please excuse Ms. Hemphill.

12 THE CLERK: Juror number five, Cheryl C. Baker. What
13 says the State?

14 MR. TAYLOR: Please excuse Ms. Baker from the trial of
15 the case.

16 THE CLERK: Juror number 108, Gregory S. Price. What
17 says the State?

18 THE COURT: The Court has excused juror 108, he has
19 advised us this morning that he had some health issues for
20 a child who had to be hospitalized last night.

21 THE CLERK: Juror number 21, Curtis C. Clark. What
22 says the State?

23 MR. TAYLOR: Please present Mr. Clark.

24 THE CLERK: What says the defendant?

25 MR. GRIER: Please swear the juror.

VOIR DIRE

1 THE CLERK: Juror number 71, Charlie J. Johnson. What
2 says the State?

3 MR. TAYLOR: Please --

4 THE CLERK: Seventy-one, Charlie Johnson?

5 THE COURT: He is disqualified.

6 THE CLERK: Juror 91, Saundra M. McWatters. What says
7 the State?

8 MR. TAYLOR: Please present Ms. McWatters.

9 THE CLERK: What says the defendant?

10 MR. GRIER: Please swear the juror.

11 THE CLERK: Juror number 104, Douglas E. Peay. What
12 says the State?

13 MR. TAYLOR: Please present Mr. Peay.

14 THE CLERK: What says the defendant?

15 MR. GRIER: Please swear the juror.

16 THE CLERK: Juror number 112, Melody C. Reid. What
17 says the State?

18 MR. TAYLOR: Please present Ms. Reid.

19 THE CLERK: What says the defendant?

20 MR. GRIER: Please excuse Ms. Reid.

21 THE CLERK: Juror number 85, George A. Mayfield.
22 What says the State?

23 MR. TAYLOR: Please present Mr. Mayfield.

24 THE CLERK: What says the defendant?

25 MR. GRIER: Please swear the juror.

VOIR DIRE

1 THE CLERK: Juror number 132, Donna B. Varnadore.
2 What says the State?
3 MR. TAYLOR: Please present Ms. Varnadore.
4 THE CLERK: What says the defendant?
5 MR. GRIER: Please swear the juror.
6 THE CLERK: Juror number 19, Felicia L. Chisholm.
7 What says the State?
8 MR. TAYLOR: Please present Ms. Chisholm.
9 THE CLERK: What says the defendant?
10 MR. GRIER: Please swear the juror.
11 THE CLERK: Juror number two, Sherry M. Ammons. What
12 says the State?
13 MR. TAYLOR: Please present Ms. Ammons.
14 THE CLERK: What says the defendant?
15 MR. GRIER: Please swear the juror.
16 THE CLERK: Juror number 145, Jacqueline Young-Hardin.
17 What says the State?
18 MR. TAYLOR: Please present Ms. Young-Hardin.
19 THE CLERK: What says the defendant?
20 MR. GRIER: Please swear the juror.
21 THE CLERK: Juror number 98, John M. Morton. What
22 says the State?
23 MR. TAYLOR: Please present Mr. Morton.
24 THE CLERK: What says the defendant?
25 MR. GRIER: Please swear the juror.

VOIR DIRE

1 THE COURT: Any motions by the defendant concerning
2 the selection of the jury?

3 MR. TAYLOR: No, Your Honor, none from the defense.

4 THE COURT: By the State?

5 MR. TAYLOR: No, Your Honor.

6 (The remaining panel was excused.)

7 THE COURT: All right, ladies and gentlemen. How many
8 served yesterday? Do I have any that was on yesterday?
9 Well, I'm going to let y'all go buy lottery tickets since
10 you are so lucky. We are going to do like we did
11 yesterday, I have got about two hours worth of work, about
12 an hour of it deals with the jury coming back this
13 afternoon and about an hour of it deals with this
14 particular case, I don't want you sitting back there for
15 two hours and then we start so we will start back at 2:15.
16 The bailiff will show you where to be back at 2:15. Give
17 me some guestimate on how many witnesses you have?

18 MR. TAYLOR: Your Honor, we should have five to six.

19 THE COURT: So this case, if we get going it probably
20 will get most of it today, come back and be finished by
21 lunchtime tomorrow, that will be y'all's -- you will not
22 have to come back so that will be the extent of your duty
23 this week. Yes, ma'am?

24 THE JUROR: Your Honor, I have a question. I am kind
25 of --

VOIR DIRE

1 THE COURT: Come up here.

2 (Conference at the bench.)

3 THE JUROR: So we are going to break until 2:15.

4 Please don't discuss the case, don't let anybody discuss it
5 with you and we will start right at 2:15. Thank you, you
6 are excused to go.

7 (The jury left the courtroom.)

8 THE COURT: Here is what I want to do, we have as I
9 understand it two pleas, that, Mr. Grier, will give you an
10 opportunity to talk with your client back here, he is in
11 custody. Once we finish those pleas, Mr. Montgomery, I
12 will bring you back out and you can if you want to make a
13 motion to represent yourself or whatever else you want to
14 do, I will be more than happy to listen to you, fair
15 enough?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, he is in custody. I want y'all to --
18 would it be beneficial if his dad went in with you? Would
19 you like your dad to go back? I will give you permission
20 to let your daddy --

21 THE DEFENDANT: Go back where now?

22 THE COURT: You are getting ready to go back here.

23 THE DEFENDANT: Okay. No, he doesn't have to go back
24 there.

25 THE COURT: Very well.

VOIR DIRE

1 (Break in proceedings.)

2 THE COURT: Let the record reflect we have taken about
3 an hour break, we had to do two pleas, I had Mr. Montgomery
4 meet with his lawyer, also allowed his father to go back in
5 and speak with him. Mr. Montgomery; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Stand up raise your right hand.

8 (The defendant was sworn.)

9 THE COURT: I need to ask you a few questions so I
10 can -- how old are you?

11 THE DEFENDANT: Twenty-eight.

12 THE COURT: How far did you go in school?

13 THE DEFENDANT: First year of college.

14 THE COURT: Where did you go to your first year of
15 college?

16 THE DEFENDANT: USCL.

17 THE COURT: When did you finish high school?

18 THE DEFENDANT: 2000.

19 THE COURT: Where was that?

20 THE DEFENDANT: USCL.

21 THE COURT: USC in Lancaster?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: What kind work did you do?

24 THE DEFENDANT: I drive a truck for a living, I did a
25 little work in Columbia for awhile.

VOIR DIRE

1 THE COURT: Have you ever been treated for alcohol or
2 drugs or for mental illness?

3 THE DEFENDANT: Well, I went into a Keystone program
4 one time, I was trying to get back right with my father.

5 THE COURT: What is Keystone?

6 THE DEFENDANT: Went up there for three days, they
7 dismissed me.

8 THE COURT: Keystone is for treatment for what?

9 THE DEFENDANT: Alcohol.

10 THE COURT: And you stayed for three days?

11 THE DEFENDANT: Alcohol and drugs. Yeah, I believe it
12 was about three days.

13 THE COURT: So I assume you did not successfully --

14 THE DEFENDANT: Completed it. He released me and said
15 everything was fine.

16 THE COURT: For three days?

17 MR. GRIER: Judge, if I could, I think sometimes they
18 just do a detox and then release them and that's not
19 uncommon.

20 THE COURT: Have you taken any medication, drugs or
21 alcohol in the last 24 hours?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you aware of any physical, emotional
24 or nervous problems that might keep you from understanding
25 what you are doing?

VOIR DIRE

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you ever studied law?

3 THE DEFENDANT: I have been studying a law book but
4 not school.

5 THE COURT: What kind of law book?

6 THE DEFENDANT: South Carolina State Code.

7 THE COURT: Have you ever been in any criminal court
8 before?

9 THE DEFENDANT: I have sat through court before but I
10 have never been charged.

11 THE COURT: Do you understand that you are charged
12 with two offenses, manufacturing marijuana and possession
13 with intent to distribute marijuana?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand what the elements of
16 those crimes are?

17 THE DEFENDANT: As far as what?

18 THE COURT: As far as what you are charged with.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you are found guilty, do you know how
21 much time I can impose?

22 THE DEFENDANT: How much time is left?

23 THE COURT: You don't know?

24 THE DEFENDANT: Well, I know under the old law if it
25 was violated it was five years apiece if I'm not mistaken.

VOIR DIRE

1 THE COURT: Correct. Mr. Solicitor, it's still five
2 years apiece?

3 MR. TAYLOR: Yes, sir.

4 THE COURT: You are looking at ten years.

5 THE DEFENDANT: Ten years? I thought I read in there
6 I had to be charged already, previously charged before. I
7 thought it was all saying if it happened at the same time,
8 you know what I'm saying, I'm looking at ten years.

9 THE COURT: No, sir. You are charged with two
10 separate offenses and if a jury convicts you on two
11 separate offenses they each carry five years.

12 THE DEFENDANT: Okay.

13 THE COURT: I have the right to sentence you to five
14 years and then five more years, I have the right to
15 sentence you to five years to run together which they call
16 concurrently, I have all kinds of options. You are looking
17 at ten years, do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that if you represent
20 yourself that you are on your own, I can't tell you how to
21 try your case, give you any advice or show you how to try
22 your case, it's strictly your own. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you know how to make an opening
25 statement?

VOIR DIRE

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you know how to do jury charges?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you know how to do verdict forms?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you familiar with the South Carolina

7 Rules of Evidence, have you ever read them?

8 THE DEFENDANT: South Carolina Rules of Evidence?

9 THE COURT: You have to comply with the rules of
10 evidence.

11 THE DEFENDANT: Yeah. I haven't had a chance to look
12 at the evidence that the prosecution has.

13 THE COURT: What?

14 THE DEFENDANT: I haven't had a chance to look at the
15 evidence that the prosecution has as far as any witnesses,
16 they say that that's what I was doing, they said somebody,
17 a guy --

18 THE COURT: I asked you are you familiar with the
19 rules of evidence, how do you ask questions, what can be
20 allowed into the trial?

21 THE DEFENDANT: No, sir.

22 THE COURT: Well, in order to present evidence you
23 have to comply with the rules of evidence and you must
24 follow those rules. You may not be able to introduce any
25 evidence or do anything if you don't know the rules.

VOIR DIRE

1 Hearsay, do you know what a hearsay is?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Tell me what it is.

4 THE DEFENDANT: Something somebody says that can't be
5 proven.

6 THE COURT: Are you familiar with the South Carolina
7 Rules of Criminal Procedure?

8 THE DEFENDANT: Somewhat but I don't have them in my
9 head.

10 THE COURT: Do you understand those rules govern how
11 we try cases?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand those rules allow for
14 certain motions to be made before, during and after the
15 trial?

16 THE DEFENDANT: I was going to ask you for a motion to
17 dismiss the case.

18 THE COURT: Well, have you filed that motion?

19 THE DEFENDANT: Sir?

20 THE COURT: Have you filed it?

21 THE DEFENDANT: I haven't been, that's why I wanted
22 him by my side, Your Honor.

23 THE COURT: You don't have a lawyer. I can't make him
24 sit by your side, you are either on your own or not.

25 THE DEFENDANT: I will let him do that. I can testify

VOIR DIRE

1 to the jury, right? I can speak with the jury from the
2 stand if he asks the questions to the witnesses.

3 THE COURT: Then he is your lawyer. He has to make
4 motions, he makes the opening statements, he asks all of
5 the questions. Sure, you can take the stand and he can ask
6 you what happened, he can ask you any relevant questions,
7 you can respond. That's not the same as being your lawyer.
8 When you don't have a lawyer you represent yourself, you
9 have got to do that. If you want to when they call a
10 witness you have to do the cross examining them. Do you
11 know how to do that? When you get ready to present your
12 case you have to call the witnesses and question them and
13 those questions have to be within the rules, do you know
14 how to do that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you want to do that?

17 THE DEFENDANT: Well, I guess I can explain my case to
18 the jury without having to ask the questions to the
19 witnesses so I will be fine with letting him, but I would
20 like to be able to dismiss the case, that's what I was
21 wanting to do.

22 THE COURT: No, sir. You made a motion to represent
23 yourself, we are going to talk to that first. I'm trying
24 to be patient, I'm trying to be nice, you are just going to
25 get yourself into hot water trying to represent yourself

VOIR DIRE

1 but you can do that if you want to. Let me make sure you
2 understand, make sure your dad understands, if you
3 represent yourself Mr. Grier doesn't have any control in
4 the case and he can sit there and you can ask him questions
5 but you are on your own. When the case starts the State
6 makes an opening statement and you make an opening
7 statement. After that the State calls their witnesses, you
8 have the right to cross examine the witnesses if you know
9 how and know how to follow the rules, but if you represent
10 yourself you have to do all of that, I can't.

11 THE DEFENDANT: I was wanting to ask him to stay on
12 the sidelines to kind of help me through this, you know,
13 but not actually ask the questions himself.

14 THE COURT: Who is going to ask the questions?

15 THE DEFENDANT: I guess I will, I at least want to be
16 able to make a motion to dismiss the case.

17 THE COURT: I am going to let you make your motion, we
18 will talk about the motion to represent yourself first.

19 THE DEFENDANT: Okay.

20 THE COURT: Do you want to represent yourself?

21 THE DEFENDANT: Well, is it possible that I can make
22 the motion to dismiss the case and let him ask the
23 questions?

24 THE COURT: I will let you make your motion to dismiss
25 the case right now.

VOIR DIRE

1 THE DEFENDANT: Okay, I have got a couple of different
2 reasons. For one, I left out of my house at 10:00 in the
3 morning and there wasn't nothing illegal in there, do you
4 know what I am saying, wasn't no weed or nothing in the
5 house and then at 5:30 I get a phone call at my buddy's
6 house saying that I have been smoking pot, smoking pot,
7 anxiety, it has to keep me calm, you know.

8 THE COURT: No, sir, I don't know. You asked me if I
9 know, no, sir, I don't know.

10 THE DEFENDANT: Okay. That's -- I smoke marijuana as
11 a medication but also too -- can I approach the stand?

12 THE COURT: What do you want to give me?

13 THE DEFENDANT: They got my charge controlled
14 substance, in 1993 marijuana was no longer classified as a
15 controlled substance by definition.

16 THE COURT: Go ahead.

17 THE DEFENDANT: And subsection 12-21-50, dealers were
18 allowed to possess marijuana with a tax standing.

19 THE COURT: Anything else?

20 THE DEFENDANT: Yes, sir, excuse me one second. And
21 445310616015, it says narcotics, substance or scheduled
22 such substance made under domestic law and sold over the
23 counter without a prescription it's required DHEC removal
24 from the schedules.

25 THE COURT: Anything else?

VOIR DIRE

1 THE DEFENDANT: Also, too, and I think it is in
2 12215020, it says classified as you have to be in violation
3 of the laws of this state before Congress removed marijuana
4 from the controlled substance category, it was no longer a
5 violation.

6 THE COURT: Anything else?

7 THE DEFENDANT: I also noticed too on the schedule
8 that marijuana is labeled as a schedule one. In 1980 DHEC
9 was required to give marijuana to cancer patients and it
10 has got a label as a cancer a medicine where there was no
11 medicine.

12 THE COURT: Anything else?

13 THE DEFENDANT: No, sir.

14 THE COURT: Mr. Solicitor?

15 MR. TAYLOR: Your Honor, I think it's pretty clear in
16 this state we don't recognize marijuana for medicinal
17 purposes and we also have statutes directly indicating that
18 possession of that drug is illegal, whether you have it at
19 simple possession or possession with intent to distribute
20 or manufacturing or whatever, that that is illegal in this
21 state.

22 THE DEFENDANT: I would have to disagree, Your Honor.

23 THE COURT: That's what?

24 THE DEFENDANT: I said I would have to disagree, Your.
25 Honor. Under 12215050 it says dealers can't possess

VOIR DIRE

1 marijuana controlled substance unless the taxes has been
2 paid.

3 THE COURT: Anything else?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. The law is abundantly clear in
6 the State of South Carolina that's it is illegal to
7 possess, grow, manufacture a substance known as marijuana,
8 the motion denied. All right. Hold on. We've got to talk
9 about representing yourself. How do you want to handle
10 that?

11 THE DEFENDANT: I will let Mark handle the case.

12 THE COURT: Thank you. Now, the jury is coming back
13 in at 2:00, we will be ready to start the trial. I don't
14 know if Mr. Grier has had an opportunity to speak with you
15 and your dad about two ways of handling the trial, one is
16 that you go through the trial and the State has to prove
17 your guilt to the jury beyond a reasonable doubt. They
18 present evidence, the jury has to determine -- and then you
19 have a right to present evidence and the jury has to
20 determine who is telling the truth about whether or not the
21 marijuana was found in your house or where it was found.
22 If they believe you they found you not guilty, you walk out
23 the door. If they believe the police officers or whoever
24 investigated the case and find it to be marijuana it was
25 growing in there that it was over 28 grams or over one

VOIR DIRE

1 ounce, then you would be found guilty and you would be
2 looking at ten years, that's one way of handling it. Or if
3 you want to plead not guilty -- if you want to plead guilty
4 I will listen to you, I will listen to your dad, I will
5 listen to your lawyer and I will promise you this, whatever
6 I give you the sentences will run together, concurrent, so
7 you won't be looking at ten, you will be looking at five to
8 run together. On the marijuana charge if I gave you the
9 full five they keep marijuana people down there about
10 25 percent of it. Now, those are your choices, trial at
11 2:15 or if you want to change your plea to guilty. I will
12 give you a chance to talk to your dad and your lawyer and
13 we will stand at ease until then.

14 MR. GRIER: Your Honor, may we approach for just a
15 moment?

16 (A bench conference was held.)

17 THE COURT: Anything else that you wanted to tell me,
18 Mr. Montgomery?

19 THE DEFENDANT: I was under the impression that
20 marijuana was legalized.

21 THE COURT: Whether it's a controlled substance or not
22 a controlled substance it is illegal. We don't have any
23 legality of marijuana in this state. It's not like
24 California, California I think you can have it out there,
25 go to la-la land, California has certain counties they

VOIR DIRE

1 allow it for medicinal purposes, this state does not, I
2 promise you I am right. You can ask any police officer,
3 any lawyer, any solicitor, any legislator.

4 THE DEFENDANT: Well, I have been reading it in the
5 South Carolina state code so that's basically what I was
6 going by, Your Honor. It says that -- 5050 says the dealer
7 cannot possess marijuana controlled substance unless the
8 tax has been paid.

9 THE COURT: I am just telling you it is not legal in
10 this state. I send people to jail everyday, I give
11 probation every day for possession of marijuana. I'm not
12 arguing with you whether it's right or wrong but it's the
13 law and I am all over this state as well as all of our
14 other judges and it's against the law in this state. All
15 right, back at 2:00.

16 (A lunch break was taken.)

17 THE COURT: Ready for the Jackson v. Denno?

18 MR. TAYLOR: State would call Captain Chuck Grant.
19 The witness, CHUCK GRANT, was first duly sworn and
20 Testified as follows, on:

21 DIRECT EXAMINATION

22 BY MR. TAYLOR:

23 Q Captain Grant, who are you employed with?

24 A Chester County Sheriff's Office.

25 Q How long have you been with the sheriff's office?

JACKSON VS. DENNO

1 A I have been with the Chester County Sheriff's Office
2 since January of '09.

3 Q And what is your job description or job duties at the
4 sheriff's office?

5 A I'm a captain with the sheriff's office assigned to
6 the narcotics division, oversee and supervise operations
7 of the narcotics unit.

8 Q Actually on September 30th of 2009, were you actively
9 working with the narcotics unit?

10 A Yes, sir, I was.

11 Q Did you have an occasion to become involved in a
12 narcotics investigation at [REDACTED]?

13 A Yes, sir, I did.

14 Q How did that investigation start?

15 A It initially started with the controlled purchase of
16 marijuana prior to the 30th.

17 Q And after that purchase was made what, if anything,
18 did you do?

19 A Once that purchase was made then there was a search
20 warrant applied for and obtained for that residence and
21 executed on the 30th of September, 2009.

22 Q From your investigation were you able to determine
23 who was the owner or in possession of the 614 Dupree
24 residence?

25 A Yes, sir, I was, it was Michael Montgomery.

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1 Q Do you see Mr. Montgomery in the courtroom today?

2 A Yes, sir, I do. He is at the defense table next to
3 Mr. Grier -- I mean Junior, here in the gray T-shirt, I'm
4 sorry.

5 Q And we will get into some of the details of what you
6 found later, but just briefly for the Court, can you
7 explain what was found in the house?

8 A Yes, sir. There was a room dedicated for a marijuana
9 growing operation, it was -- some marijuana had been
10 harvested and in a drying phase, some that had already
11 been packaged for distribution.

12 THE COURT: Let's get right onto the statements so we
13 can move along.

14 Q Did you have an occasion to talk to Mr. Montgomery
15 after the search was made of the residence?

16 A Yes, sir, I did. Upon execution of the search
17 warrant he was not at home, several hours later I was
18 contacted by a deputy that had him and was talking with
19 him, she transported him to our office.

20 Q What was the deputies name?

21 A Wendy Glenn.

22 Q Mr. Montgomery came to your office and he spoke to
23 her?

24 A Yes, sir, she brought him to our office.

25 Q Prior to speaking to him, did you issue any warnings

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1 or anything to him?

2 A Yes, sir, I did.

3 Q Okay.

4 MR. TAYLOR: I'm going to have this marked if I can,
5 Your Honor.

6 Q Captain Grant, I'm going to show you what is marked
7 as State's Exhibit 92. Do you recognize that document?

8 A Yes, sir, I do.

9 Q What is that?

10 A This is the waiver of rights card that I actually
11 keep in my wallet with me at all times and read it
12 verbatim from my card. This is a copy of the card of the
13 Miranda rights that I read to Mr. Montgomery on the night
14 of the 30th, and at that time Agent Pendergrass was there
15 when I read it, it was at 10:34 in the nighttime.

16 Q Why don't you briefly just state what the rights are.

17 THE COURT: We don't need that for Jackson v. Denno,
18 if you are going to show what that read that is fine.

19 Q Is that Mr. Montgomery's signature?

20 A Yes, sir, it is.

21 Q Did he sign this in your presence?

22 A Yes, sir, he did.

23 THE COURT: I assume you're offering it. Any
24 objection?

25 MR. GRIER: No, not to that, Your Honor.

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1 THE COURT: All right.

2 Q In response to his waiver of Miranda being given,
3 what statements, if any, did Mr. Montgomery make to you?

4 A We were advising him on what he was being charged
5 with at the time, and then his response was he was growing
6 marijuana in his residence, he had been selling it to
7 other people, explained that he would put it in the oven
8 to dry the marijuana out and that the marijuana that was
9 found hanging from the racks had just been cut like a day
10 or two before. At that point then he asked to be
11 transported to the detention center.

12 Q At any point during this questioning did
13 Mr. Montgomery ask to speak to a lawyer?

14 A No, sir, he did not.

15 Q Did he ask that the questioning be terminated?

16 A No, sir, he did not.

17 Q Did he appear to understand the questioning?

18 A Yes, sir.

19 Q Could you determine whether he could read or write?
20 There was no written statement given?

21 A No, sir, no written statement given.

22 Q Is there a recorded statement of it?

23 A No, sir, there is not.

24 Q Did he appear to be under the influence of any drugs
25 or alcohol?

JACKSON VS. DENNO

1 A No, sir, he did not.

2 Q And were any promises made to Mr. Montgomery to get
3 him to tell you about what y'all had found at 614 Dupree
4 Street?

5 A No, sir, there was not.

6 Q Were any threats or intimidation done of
7 Mr. Montgomery?

8 A No, it was not. We were dressed in civilian blue
9 jeans and T-shirts and my weapon was still in the holster
10 on my side, so no, sir, it was not.

11 Q But he was in custody, he was under arrest?

12 A Yes, sir, he was.

13 Q Well, let me ask you this, how long did the
14 questioning last?

15 A Less than ten minutes.

16 Q And he was with you the whole time?

17 A Myself and Agent Pendergrass, yes, sir, in a little
18 room in our office.

19 Q After the interview what happened then?

20 A He was transported to the sheriff's office for
21 booking process.

22 MR. TAYLOR: Your Honor, we don't have any other
23 questions.

24 THE COURT: Cross?

25 CROSS EXAMINATION

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1 BY MR. GRIER:

2 Q You said that Wendy Glenn was with you. Who brought
3 him in?

4 A Wendy Glenn.

5 Q She wasn't present for this examination, though.

6 A No, sir, she was not. He was not present at the
7 house and I received a call from Deputy Glenn that he was
8 in the West Chester area and she met with him and
9 transported him to our office, and then once she brought
10 him to our office then she left.

11 Q All right. Is this the entire document as far as his
12 Mirandized statement?

13 A Yes, sir, that's it.

14 Q You don't have a cover sheet?

15 A I do, but that night I just read him his rights from
16 the card and spoke with him briefly.

17 Q So you didn't record it?

18 A No, sir, I did not.

19 Q Have you got a recorder?

20 A I do.

21 Q Why didn't you record it?

22 A I never record it, I just do it by notes.

23 Q Why is that?

24 A It's just the way I have always done it.

25 Q How much does a recorder cost?

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1 A Twenty bucks.

2 Q All right. How about witnessing it, is it not
3 traditional to witness a statement?

4 A It was an interview, it wasn't really a statement. I
5 was just asking him about what was found in the house, I
6 didn't take a statement from him, no, sir.

7 Q So you don't consider what he said to you a
8 statement?

9 A I consider it an admission of what was going on in
10 the house, I didn't write it per se a sworn statement, no,
11 sir.

12 Q But as far as just acknowledging that he was
13 Mirandized you wouldn't ordinarily get that witnessed, his
14 signature?

15 A Usually, yes, sir, the other agent puts her name but
16 she had him sign it instead of putting her name.

17 Q The document that -- were these statements that you
18 say he said that he had sold to different people, multiple
19 people?

20 A Yes, sir.

21 Q Was that in response to a specific question, or what
22 was the format? How did you get him to start talking?

23 A Initially told him what he was charged with and got
24 into the possession and manufacturing, that's when he laid
25 it out that he was growing the marijuana in his house and

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1 had he been smoking marijuana and he does sell to other
2 people.

3 Q You never took him back to the place to ask him
4 questions about Dupree Street, his residence on [REDACTED]
5 [REDACTED]?

6 THE COURT: Take him back to what place?

7 A I'm not sure what you said.

8 Q Did you take him back to the residence --

9 A No, sir, we didn't.

10 Q -- where this was found and ask him specifics about
11 it?

12 A No, sir. There was a several hour time lapse there
13 that we cleared it up until the time he was in our office.

14 Q All right. He didn't ask you to have a lawyer
15 present or anything at that time?

16 A No, sir, he didn't.

17 Q Did you make any promise to him to offer him anything
18 about some leniency or anything of that nature if he gave
19 a statement?

20 A The only thing that came out, we were actually
21 seeking cooperation to see if he wanted to assist us and
22 if he did cooperate with us we would make recommendations
23 based on his cooperation to the solicitor and he could
24 provide leniency if he cooperated with law enforcement.

25 Q Did you ask for a specific target?

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1 A No, sir. Not at that time, no, sir.

2 Q Now, you're saying he seemed to understand
3 everything, how did you decide that he understood all of
4 your questions and that he understood his rights and
5 everything?

6 A He is talking freely, explaining the layout, if he
7 was growing marijuana and he was selling it, seemed to be
8 well spoken. In my opinion he understood what I was
9 talking about as freely as he was describing what was
10 going on in the house.

11 MR. GRIER: Beg the Court's indulgence for a moment.

12 (Break in proceedings.)

13 MR. GRIER: That's all.

14 THE COURT: Anything on redirect?

15 MR. TAYLOR: That's all.

16 THE COURT: Anybody want to make any arguments?

17 MR. GRIER: Judge I will argue for the record that --
18 simply ask you to suppress the statement. I believe you
19 have had a chance to witness the defendant, the person here
20 today, I believe that simply, you know, the opportunity to
21 help himself and those kinds of representations may have
22 elicited a response that was not voluntary, the
23 statement -- or rather the Mirandized acknowledgment
24 certainly could have been -- should have been probably
25 notarized and why the statement was not recorded I don't

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1 know, if so we wouldn't be even having this discussion
2 today I think undermines the credibility of it.

3 THE COURT: Respectfully denied. As the gatekeeper
4 all I have to do is find by the preponderance of the
5 evidence that Miranda warnings were given and I find the
6 statement was voluntary. I do -- it would be up to the
7 jury to determine whether or not beyond a reasonable doubt
8 it was voluntary and that Miranda was given and give to it
9 the weight, if any, they determine to do so and those are
10 so instructed. Anything else pretrial?

11 MR. GRIER: Not pretrial, Your Honor.

12 THE COURT: The evidence officer?

13 MR. TAYLOR: The evidence officer I believe is -- I
14 have already spoken with her, I thought she would be here
15 at 2:00. Can I get somebody to check to be sure she's
16 bringing the stuff here?

17 THE COURT: Sure.

18 (Break in proceedings.)

19 THE COURT: Let the record reflect that an order was
20 issued by the Honorable Brooks P. Goldsmith for evaluation
21 for competency to stand trial, that it was performed by the
22 South Carolina Department of Mental Health Forensics
23 Evaluation Service on February 13th of -- the report says
24 1982 but obviously that's a typo, it should be '02, the
25 date of the evaluation was August 4th of 2010, the

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1 evaluation was done by Dr. Mario T. Taylor and they have
2 issued a report dated 8-6-10, August 6th of 2010. It was
3 their opinion that Mr. Montgomery had the capacity to
4 understand the proceedings against him and to assist his
5 lawyer in his own defense. Does the defendant have any
6 evidence that would be contrary to that report?

7 MR. GRIER: Judge, we have no evidence that would
8 challenge his ability to conform to the Blair standard.

9 THE COURT: I find he is competent to stand trial.
10 Let's mark the report evaluation as part of the record.
11 All right, ma'am. Are you related to somebody?

12 THE JUROR: Yes.

13 THE COURT: Your name for the record, please?

14 THE JUROR: My name is Felicia Chisholm. Yeah, my
15 mother works at the probation and parole office at the time
16 when you were asking these questions I think someone was
17 asking me hey, do I need to stand up at this time, so I
18 didn't.

19 THE COURT: That's your mother, that's not you.

20 THE JUROR: No, that's not me.

21 THE COURT: Your mother works at the probation office?

22 THE JUROR: Yeah, so I am related to someone.

23 THE COURT: You are related to your mama?

24 THE JUROR: I am answering the question, I just wanted
25 to put it out there because I didn't do it the first time,

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1 I just wanted you to be 100 percent clear.

2 THE COURT: Thank you, ma'am, no problem.

3 (The jury returned to the courtroom.)

4 THE COURT: First thing we have to do for this trial
5 is for you to stand, raise your right hand and be sworn,
6 please.

7 (The jury was sworn.)

8 THE COURT: All right, ladies and gentlemen, let me
9 tell you a little bit about what you can expect, what your
10 duties are, what my duties are and sort of how we are going
11 to proceed. My job is basically two things now, I have to
12 rule on the admissibility of evidence and I have to
13 instruct you on the law. As the judge of the facts in the
14 case I tell you what the law is, as the judge of the law in
15 the case I tell you what the law is. So if you come
16 into -- I don't tell you what it is, I instruct you on what
17 it is. So if you come into the courtroom with some
18 preconceived idea about what the law is or should be, if it
19 doesn't agree with what I tell you or what I instruct you,
20 you have to set that aside and accept the law as I give it
21 to you. I charge or instruct you on what the law in the
22 State of South Carolina is dealing with general
23 propositions of criminal law and dealing with the specific
24 areas that we are dealing with here. My other job is to
25 rule on the admissibility of evidence. The lawyers have to

OPENING STATEMENTS

1 perform and ask questions that conform with our rules of
2 evidence and rules of criminal procedure. Once that
3 evidence is admitted into the trial of the case then the 12
4 of you collectively, acting as one, you become the judges
5 of the facts in the case. You determine who is telling the
6 truth, you determine the credibility of the witnesses and
7 once you determine what the true evidence in the case is
8 then you take those true facts and apply it to the law as I
9 give it to you and you will be in a position to render a
10 true and just verdict. So the system works, you have got a
11 judge of the law and judge of the facts, which your job is
12 much more important than mine because you have to determine
13 who is telling the truth. Don't leave your common sense at
14 home when you do that. You deal with your children day in
15 and day out, your mom, your dad, your wives, your husbands,
16 employees, employers, you know how to judge somebody if
17 they're telling the truth. You determine what the true
18 evidence is and then apply it to the law as I give it to
19 you. In this case the defendant has been indicted for
20 manufacturing or growing marijuana and possession with
21 intent to distribute marijuana, and as I told you when we
22 were selecting the jury he has pled not guilty to both
23 indictments and a plea of not guilty puts the burden of
24 proving each element of each indictment to you, the State
25 has to prove it to you beyond a reasonable doubt. That is

OPENING STATEMENTS

1 the standard of proof in a criminal case. If we were in
2 here suing a doctor for leaving something in me or for
3 running a red light or for breaching a contract that's a
4 civil case, the plaintiff sues the defendant. When they
5 come into the courtroom the parties are on equal footing.
6 In a civil case for the plaintiff to prevail he has to
7 prove his case by what we call the preponderance or greater
8 weight of the evidence, he has to move the scales ever so
9 slightly, if he does that he's entitled to a verdict. If
10 after everything has entered the scales remain the same or
11 they tip in favor of the defendant then he will not be
12 entitled to a verdict. Not so in a criminal case. Because
13 we have a constitutional protection of being presumed to be
14 innocent the scales of justice are tipped way in favor of
15 the defendant who is charged and for the State to prove
16 their case beyond a reasonable doubt the evidence must
17 weigh in this manner. It's a much greater degree of proof
18 required in a criminal case than in a civil case, so I ask
19 that you pay close attention so you will be able to
20 determine whether or not the State has proved their case by
21 the -- or beyond a reasonable doubt and I will define to
22 you what reasonable doubt and all of that means at the
23 conclusion of the case, that's some of the law that I will
24 instruct you on. The way the cases are tried because the
25 State has the burden of proof they go first, they will

OPENING STATEMENTS

1 present their case. After the State has presented their
2 case the defendant has the opportunity to present his case,
3 and then after that if the State wants to put something up
4 in reply they have the opportunity to do that. But before
5 any of that evidence comes in the State will make an
6 opening statement followed by the defendant making an
7 opening statement. The opening statements are not evidence
8 in the case, it is simply what the lawyers contend they
9 will show or be able to prove to you, what the major ideas
10 are, the major issues are and what they intend to do during
11 the trial of the case. It's sort of like a road map as to
12 where they're going to go in the case, that's not evidence.
13 The only evidence you can consider comes from this witness
14 stand from sworn witnesses and from relevant exhibits that
15 may be introduced in the trial of the case. Once the
16 opening statements are made and all of the evidence is in
17 then the lawyers will get back up and make final arguments.
18 They are adversaries for their particular side so they will
19 be arguing the evidence for their clients or for the State,
20 but once again that's not evidence. After they make their
21 final arguments I will instruct you or charge you on the
22 law, then you will be in a position to start your
23 deliberations. I try to be efficient, I try to start on
24 time and I try to make the best of the time that we have
25 together. We will -- if everything goes smooth we will run

OPENING STATEMENTS

1 until about 5:00 this afternoon, then we will sort of
2 assess the situation, see where we stand and decide what
3 time to come back tomorrow if need-be. Even though we are
4 trying to be efficient I'm not trying to run a race up
5 here, so if at any time during the trial of the case you
6 become uncomfortable, you need to take a bathroom break,
7 cigarette break, you get tired of listening to me, you need
8 to stretch your legs, stand up or whatever, raise your hand
9 and we will take a break so your needs are met. It is
10 2:30, we will probably run to 3:30 or 20 minutes until 4:00
11 before we take that first break. I will tell you each time
12 we take a break to please do not start deliberating, please
13 do not start talking about the case, it's improper to do so
14 until all of the evidence has been presented, the final
15 arguments are made and I have instructed you on the law, so
16 please do not start any deliberating or talking about the
17 case until all of the evidence is in. When we take our
18 first break I will ask that the 12 of you who are the
19 regular jurors, not the alternates, to select a foreperson
20 amongst the 12 of you. The foreperson is simply the
21 spokesman for the jury or spokeswoman for the jury and
22 heads up the deliberations, sends me any notes about any
23 concerns you may have, so if y'all would do that please.
24 And let me know if you can't choose somebody, I am just
25 going to randomly select somebody. Don't do like we did in

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1 Akin once, I said, "What's wrong, ma'am, you don't want the
2 job?" She said, "Well, you know, I went into the bathroom
3 and when I came out they had all elected me." There might
4 be a better way of doing it than that but y'all try to get
5 me a foreperson. If at any time during the trial you need
6 anything just let me know and we will make sure your needs
7 are met. Any objection to my opening remarks by the State?

8 MR. TAYLOR: No, Your Honor.

9 THE COURT: By the defendant?

10 MR. GRIER: No, Your Honor.

11 THE COURT: Please listen carefully as the State will
12 make their opening statement.

13 MR. TAYLOR: Please the Court? Mr. Grier? Ladies and
14 gentlemen of the jury, I already introduced myself, I am
15 Chris Taylor, I'm the deputy solicitor of the 6th Circuit.
16 I will present my case to you in the -- I never try to tell
17 juries how long cases are going to take because we never
18 know, but I don't think this will be one that is going to
19 take a substantial long period of time. The defendant,
20 Michael Montgomery, is seated at the table, he is charged
21 with manufacturing marijuana and possession with intent to
22 distribute marijuana. I am not going to try to tell you
23 about every detail in the case but just as the Judge said,
24 give you an overview of what we believe the evidence will
25 show is that on September 30th of 2009 Mr. Montgomery was

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1 renting a house at [REDACTED]. The Chester County
2 Narcotics Unit, you will hear from them today, had gotten
3 information that there was marijuana being grown in that
4 house. They obtained a search warrant, went into the house
5 and found what would best be described as a grow room
6 inside of this house. There were grow lights, equipment,
7 plants that were growing, scales and some other items that
8 you will see during the course of this trial that were in
9 that home. These items were in the possession and custody
10 of Mr. Montgomery. We will present evidence that he was
11 paying rent on this house as late as September 21st, which
12 was a little bit more than a week before this warrant was
13 actually executed. I am cautioned to say it's a relatively
14 straight forward trial because I don't want to say that to
15 give you the wrong impression, but we are going to try to
16 present a pretty linear case with you. He lived there, the
17 marijuana was being grown there, the police got information
18 that he was growing marijuana there and some other
19 statements that you will hear that the police obtained.
20 You will take all of those together, you will see pictures
21 of how that was grown and different things, but once you
22 kind of get all of the information in and once you hear
23 what the law is on this case which you will get from the
24 Judge, I believe you will return a verdict of guilty
25 against Mr. Montgomery for manufacturing marijuana and also

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1 possession with intent to distribute. It's two different
2 indictments that you will have to vote on and I think you
3 will find him guilty of both of those charges. I'm not
4 going to talk a long time, I normally don't do that in
5 opening statements but I just want to thank you for your
6 time in advance and your attention.

7 MR. GRIER: May it please the Court? Mr. Taylor? My
8 name is Mark Grier, I am here and I represent Michael
9 Montgomery. I'm from Lancaster, I have been practicing law
10 for 20 years and it's nice to be over in Chester, thank
11 y'all for allowing a visitor to your courtroom, nice
12 courthouse, nice people over here, I enjoy coming over to
13 Chester. You have won the lottery, you get to sit in a
14 trial. Some of you may have done that in the past so you
15 have got some experience with that, but obviously some of
16 you have not. I think that this probably will not be a
17 particularly long trial but the Judge actually told you
18 some of the more important tenants about how to maintain an
19 open mind and to approach the way the evidence will be
20 presented to you. The State has the burden of proof, it
21 must be proof beyond a reasonable doubt. Now, the State as
22 you can see got a lot of people, the State has a lot of
23 resources and that tradition. When our country was being
24 founded that was the reason that our constitution was
25 framed the way it was because the State and the King had

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1 some powers that individuals didn't have, so I would say in
2 a nutshell the way the constitutional rights for our
3 country were fashioned in a way that the little man can
4 have their day in court and can have a fair shot at putting
5 up a defense. Mr. Montgomery -- if you are not familiar
6 with the courtroom, these officers, I imagine they're
7 pretty familiar with the process, they've all been trained
8 how to present evidence and to appear and to testify and to
9 present in the courtroom, certainly Mr. Montgomery doesn't
10 have that and so my role is simply to be an advocate and
11 guide for Mr. Montgomery, to help him. Just like when
12 y'all came here today some of you may have known exactly
13 what to do, where to go and where the restrooms were and
14 what -- and everything about this courtroom but I would say
15 most probably you needed help and so Mr. Davis and the
16 court officers and clerk of court and all of the folks with
17 jobs around here helped you find your way around here,
18 that's really what a lawyer's job is for their client. And
19 so my job is to present Mr. Montgomery's side of this case,
20 or at least to attack the State's evidence on his behalf,
21 and I think you are going to see plenty of reason that --
22 plenty of reasons that Mr. Montgomery asserts his
23 innocence, most certainly. I think that the solicitor told
24 you, one, that he wasn't around when this happened and so
25 out of the starting gate most certainly that throws things

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1 into question about any guilt that he had associated with
2 this case. He is certainly -- he is not a Chester native,
3 his mother lives in Chester but he had been living -- he
4 had been living over here for some time but he denies that
5 he was selling it or growing marijuana and he is asking the
6 State to put their evidence up and we just do not think
7 that the State can meet its burden of proof. He's innocent
8 and the State is not going to be able to show he's guilty
9 and most certainly not beyond a reasonable doubt. The
10 Judge has told you, he will give you what -- I say give, he
11 will relate the law to you, but a couple of things that I
12 think are important and I would ask that I think that the
13 Judge is likely to tell is that a reasonable doubt in South
14 Carolina is the kind of doubt that would cause someone to
15 hesitate to act. That a -- that certainly each of you --
16 you are a jury, but each of your buttons says juror, okay.
17 And each of you -- we went through the process and selected
18 you for reasons we think we know or we all have -- lawyers
19 have some theory that they know certain type of
20 individual's jobs, different reasons that we think might be
21 a good jury for -- juror for us. And so we -- there is
22 some thought that goes into picking juries and each of you
23 is your own juror. Now, you will have to ultimately
24 deliberate meaning you will go back into the room back
25 there and share your ideas about the case, but like the

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1 Judge asked you, wait until you've heard everything before
2 you start deliberating, and then each of you will be able
3 to have your say so, but each of you must come to your own
4 decision as well. Certainly you want to give credence and
5 credit to your co-jurors that when they have something
6 important to say and something credible to say, but when
7 you put your head on your pillow tonight or a little after
8 the conclusion of this case, if you have come to your own
9 conclusion and you have listened to the Judge and to the
10 evidence and followed the law as the Judge gives it to you,
11 well, each of you will -- if you come to your own
12 conclusion and don't just listen to that and adopt what
13 someone else says simply because there's someone else and
14 you have listened to their reason, you will be able to
15 sleep well and know that you have done your job correctly.
16 We believe upon hearing all of the evidence and the facts
17 and instruction that you will return a verdict of not
18 guilty. Thank you.

19 THE COURT: Call your first witness.

20 MR. TAYLOR: May it please the Court? Your Honor,
21 State calls Captain Chuck grant.

22 The witness, CHUCK GRANT, was first duly sworn and
23 testified as follows, on:

24 DIRECT EXAMINATION

25 BY MR. TAYLOR:

TESTIMONY OF CHUCK GRANT

1 Q State your name, please.

2 A Chuck Grant.

3 Q Captain Grant, who are you employed with?

4 A With the sheriff's office.

5 Q How long have you been with the sheriff's office?

6 A June 5th of 2009.

7 Q What is your responsibility with the sheriff's
8 office?

9 A I'm a captain assigned to the drug enforcement unit.
10 I specifically supervise and coordinate the narcotic
11 investigations in Chester County.

12 Q On September 30th of 2009, were you in charge of the
13 drug enforcement unit here in Chester?

14 A Yes, sir, I was.

15 Q Did you have an occasion to have an investigation at
16 [REDACTED] ?

17 A Yes, sir, we did.

18 Q And how did that investigation begin?

19 A Initially we received information about marijuana
20 being distributed from that residence and also being
21 manufactured or grown inside of the residence.

22 Q Did you have a name associated at that point with
23 that residence?

24 A I believe it was Michael Montgomery, I'm not sure we
25 had the name at that point or until later on.

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1 Q And based on the information that you received what
2 did your department do? What did your office do?

3 A We were able to conduct a purchase of marijuana from
4 that residence.

5 Q Who was that purchased from?

6 A Michael Montgomery.

7 MR. GRIER: Objection, Judge --

8 THE COURT: Sustained. Disregard that, that's not
9 what we are hearing this case about.

10 Q Did you have an occasion to search the 614 Dupree
11 Street residence?

12 A Yes, sir, we did.

13 Q Do you recall when that search took place?

14 MR. GRIER: Judge, I think they have got to lay some
15 foundation to develop information about that search
16 necessary, I would object to it.

17 THE COURT: Sustained. Lay the foundation.

18 Q What was the basis of your --

19 THE COURT: Gentlemen, come over here.

20 (A bench conference was held.)

21 Q Captain Grant, from the testimony so far would it be
22 fair to say that you got some information from a
23 confidential informant; is that correct?

24 MR. GRIER: Judge, I am going to object to it. I know
25 we had a conversation but I think this is going to be

TESTIMONY OF CHUCK GRANT

1 hearsay, to give any information of any development through
2 any sort out here.

3 THE COURT: I will let you ask it as a result of an
4 investigation did you get a search warrant.

5 Q As a result your investigation were you able to
6 obtain a search warrant?

7 A Yes, sir, we were.

8 Q Did you -- what was the residence for that search
9 warrant?

10 A Can you repeat -- I'm not sure --

11 Q Did you execute that search warrant?

12 A Yes, sir.

13 Q Can you tell the jury outside -- I assume you were
14 present for that execution?

15 A Yes, sir.

16 Q Were there other drug unit agents in the unit?

17 A Yes, sir, there was.

18 Q Can you state the names?

19 A At the time it was Agent Robert Sprouse, Agent T. J.
20 Murphy, Agent Tracy Pendergrass, I believe it was Agent
21 Kito Grant was also there and myself.

22 Q Did y'all make entry into the house?

23 A We initially knocked and announced our presence and
24 had to force open the door.

25 Q Was this the front door, back door?

TESTIMONY OF CHUCK GRANT

1 A Front door. It was actually the door was facing
2 Dupree Street which I would say would be the front door.

3 Q Do you recall the first area of the house that you
4 came to?

5 A It was like you come in -- if you looked like it was
6 the bed -- the best I can remember it was like a bedroom,
7 then you walk in like a foyer, like a den into the kitchen
8 and then there was a room off to the right.

9 Q Was there anything that was found in that first area
10 around the kitchen area?

11 A Yes, sir. There was some items recovered from inside
12 what we deemed the kitchen area.

13 Q Did y'all take pictures or record in any way what you
14 found in the house?

15 A Yes, sir, it was photographs taken.

16 MR. TAYLOR: Your Honor, these pictures have been
17 premarked Exhibits 60, 61, 62, 63, 64, 65 and 66 and I
18 would like to present these to the witness.

19 THE COURT: Any objection?

20 MR. GRIER: No, Your Honor.

21 Q Captain Grant, do you recognize those photographs?

22 A Yes, sir, I do.

23 Q What are those pictures of?

24 A Pictures that were taken inside of the residence at
25 Dupree Street.

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1 Q These were on the day that the search warrant was
2 served?

3 A That's correct, September 30th of 2009.

4 MR. TAYLOR: Your Honor, at this time I would offer
5 these pictures, these photographs into evidence.

6 THE COURT: He said no objection.

7 (The photos were received as State's 60-66.)

8 Q I don't want you to get down from the stand, but can
9 you tell the jury what these are pictures of?

10 A Yes, sir. These were glass jars, several items of
11 suspected marijuana were stored in the jars and these are
12 cabinets inside of the area in Dupree Street.

13 Q And this Exhibit Number 62, what is in that
14 photograph?

15 A Some envelopes and a glass bottle or item used for
16 the consumption of marijuana.

17 Q And Number 63, can you identify that for me please?

18 A Yes, sir. This is mail correspondence from K and K
19 Rental Properties addressed to Mike Montgomery that was
20 found in the house.

21 Q Where was this item found, is that --

22 A I would have to look back, I think it was found on a
23 desk type of thing in the residence.

24 Q Was that sitting on the --

25 A On the counter there, yes, sir, in the kitchen area.

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1 Q And 64 and 65, can you show what is in those
2 pictures?

3 A Yes, sir, I can. There is a glass pipe used for the
4 consumption of marijuana, a cigar, a medicine bottle right
5 here with marijuana seeds in it. And in this one it is --
6 on number 65 if I pronounce it right it looks like shults
7 take root which I believe is a plant additive for growing.

8 Q And 66, can you identify that? We may need to get it
9 back, we've got a series of photographs.

10 A No, sir. I can't, no, sir.

11 Q Were those the only items that you found in the
12 house?

13 A No, sir, it is not.

14 Q What else did you find in the house once you got past
15 the kitchen area?

16 A We found some miscellaneous paperwork throughout the
17 residence. In one room to the right of the den there was
18 a room converted into what I would call a grow room, it
19 had silver sheet leak insulation over the walls, over the
20 windows, had lamps in it, a swimming pool which contained
21 flower pots with what appeared to be marijuana plants, and
22 also some what appeared to be marijuana hanging to dry,
23 it's some lose marijuana throughout the house.

24 Q Okay. Did you take photographs of all of those
25 items?

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1 A Yes, sir, we did.

2 Q Describe to the jury how this grow room was set up.

3 A Basically it was separated from the rest of the room,
4 it was -- the windows are covered and it has got like a
5 sheeting over it kind of like aluminum foil that preserves
6 the heat inside, it does not let any light in from the
7 outside, that controls the amount of sunlight and amount
8 of darkness and the amount of nutrients required for
9 raising marijuana or growing marijuana. It is more or
10 less a controlled environment.

11 Q I will ask you to take a look at those pictures and
12 tell me if you recognize them. Is that a fair and
13 accurate representation? I would offer these into
14 evidence at this time.

15 MR. GRIER: No objection.

16 Q I am not going to make you talk about every one of
17 them, they'll get these in the back. But I am going to
18 have you just identify one or two, a couple of these.
19 This is Exhibit 35 and you mentioned something about some
20 plants drying and that kind of thing, does that picture
21 reflect what you were discussing?

22 A Yes, sir, it does.

23 Q Item 36, were those the --

24 MR. GRIER: Judge, I object. I would like the client
25 to testify rather than the lawyer on direct.

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1 THE COURT: No leading, please.

2 Q Can you identify what is in Number 36?

3 A Yes, sir, I can. It's framework that's been
4 constructed inside of the room, also you see the silver
5 lining around the walls and windows. You will see two
6 separate swimming tools, you see florescent lights inside
7 of this constructed area, and then one in the blue
8 swimming pool you see flower pots which contains what we
9 believe is marijuana plants that were growing inside of
10 the residence. And on top it appears to be there's
11 some -- what I would -- suspected marijuana on top just
12 laying on top of the boards right there.

13 Q And item Exhibit Number 40, can we state what is in
14 that photograph?

15 A Yes, sir, I can. It is -- again, this is another
16 picture of the room with some styrofoam cups, you have got
17 the silver insulation around the walls. Again it appears
18 to be suspected marijuana hanging down from the corner
19 here. These cups appear to be have had dirt in them at
20 one time which is common for the starting of marijuana
21 where seeds grow. Once they've reached a certain height
22 in the cup they will transfer them to a larger pot.
23 There's several jars here in the corner which are Ragu
24 jars which is the exact same jars that were in the kitchen
25 cabinet, or same type jars.

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1 MR. TAYLOR: Okay. Your Honor, I would like to
2 publish some of these photographs to the jury.

3 THE COURT: Well, let's do them at all one time so we
4 can continue with testimony.

5 MR. TAYLOR: Yes, sir.

6 Q Do you recall how many plants that you found in the
7 grow room?

8 A I believe it was approximately 19.

9 Q And were all of those plants collected as evidence?

10 A Yes, sir, they were.

11 Q And were they sent to be analyzed that you know of?

12 A Not the whole plant, no, sir, but they were analyzed,
13 yes, sir. There were samples collected and were sent to
14 be analyzed.

15 Q I'm going to show you what is marked State's Exhibits
16 24 through 29. And do you recognize those photographs?

17 A Yes, sir, I do.

18 Q And what are those photographs of?

19 A These are more photos that were taken from inside of
20 the residence on Dupree Street.

21 Q And I'll show you State's Exhibit Number 51 through
22 56. Is there another house in the room that you also went
23 into?

24 A I think there was another room off to the den,
25 there's two rooms, I think one is to the right and one to

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1 the left, I think one of them may have been a closest or
2 something.

3 Q I will show you what is marked 53 through 56 and just
4 ask you, do you recognize those photographs? What are
5 those pictures of?

6 A These again are more photographs taken from the
7 residence of [REDACTED].

8 Q In Number 53, can you tell the jury what is in that
9 picture?

10 A Yes, sir, I can. There is two -- these appear to be
11 three bags of Miracle Grow, like potting soil or plant
12 food type potting soil that's commonly used in the
13 manufacturing of marijuana.

14 Q And in item 55, can you state what is in that
15 photograph?

16 A Yes, sir, I can. Again there is more Miracle Grow
17 potting soil and then there appears to be florescent bulbs
18 that would match the ones that were in the lamps in the
19 other pictures.

20 MR. TAYLOR: Your Honor, may we approach for just a
21 moment?

22 (A bench conference was held.)

23 Q I'm going to show you this item, Captain Grant. Does
24 this item look familiar to you?

25 A Yes, sir, it does.

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1 Q Tell the jury why this item looks familiar.

2 A It appears to be the same type lights that were in
3 the photos of the room of the grow room where the
4 construction had taken place that were lined and stacked
5 up again, I think the two by fours in that room.

6 Q So this is the light like what you see in this
7 photocopy graph, Exhibit 38?

8 A Yes, sir, it is.

9 Q Did y'all seize all of the lights from that
10 similar -- like that one from the grow room, did you
11 actually take those into your possession?

12 A Yes, sir, we did.

13 Q I show you what is marked as State's Exhibit 30 to
14 34. And can you identify these photographs?

15 A Yes, sir, I can.

16 Q What are those photographs of?

17 A The lights, the humidifier, the drop cords taken out
18 of the residence at Dupree Street.

19 Q Now, can you in terms of want of a better word
20 sophistication, can you relate to the jury this setup that
21 you saw at [REDACTED], what level of sophistication
22 that was?

23 A It is not the best I have ever seen but it's not just
24 an average, it's okay. It's not like -- it's not one of
25 the most sophisticated ones I have every scene but it was

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1 setup nice. The light and humidifier in there, the pot
2 soil where he could basically control the environment.

3 Q Did it have all of the basic elements one would need
4 in order to manufacture marijuana indoors?

5 A Yes, sir, it does.

6 Q The plants themselves, did you have an opportunity to
7 look at them before they were logged into evidence?

8 A Yes, sir, I did.

9 Q Are you familiar with the quality of marijuana
10 plants?

11 A Yes, sir.

12 Q Can you tell the jury just in general terms about the
13 quality of the plants that you found?

14 A The plants were healthy, they had been groomed and
15 taken care of and the plant produces what is known as a
16 bud and they were budding out, had the buds on them. So
17 they had been taken care of and were getting good quality
18 type plants.

19 Q Do you have any idea or opinion as to how long it
20 would take plants to get to the level that you saw them in
21 that day?

22 A Three to six months. It takes several months for
23 them to get to that stage.

24 Q And there was one --

25 MR. TAYLOR: I need to have an item marked, Your

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1 Honor.

2 A Okay.

3 Q I show you what is marked as State's Exhibit 93. And
4 do you recognize that document?

5 A Yes, sir, I do.

6 Q And how do you recognize that?

7 A This is a rental agreement that was found inside of
8 the residence.

9 Q Was that the one that was seen in the photograph that
10 you described earlier?

11 A I believe so, yes, sir.

12 MR. TAYLOR: Your Honor, I would like to offer Number
13 93 into evidence.

14 THE COURT: Any objection?

15 MR. GRIER: No, Your Honor.

16 (The rental agreement was received as State's 93.)

17 Q And you stated that no one else was in the house when
18 you actually executed the search warrant; is that right?

19 A That's correct, no one was at home.

20 MR. TAYLOR: Your Honor, I would like to also mark an
21 exhibit.

22 THE COURT: Any objection?

23 MR. GRIER: No, Your Honor.

24 (The power bill was received as State's 94.)

25 Q And can you identify what has been admitted as

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1 State's Exhibit Number 94?

2 A Yes, sir, I can. It is a Duke Power bill, a power
3 bill for the residence of [REDACTED] in Chester.

4 Q Is that a bill that was found in the residence?

5 A Yes, sir. It was found when we conducted a search of
6 the residence.

7 Q Whose name is listed there?

8 A It was sent to Michael Montgomery, II at [REDACTED]
9 [REDACTED] in Chester.

10 Q What is the issue date on that bill?

11 A Bill date was 9-8-2009, it shows it would be past due
12 on 10/5/2009.

13 Q Did you have an occasion after the search was done of
14 Mr. Montgomery's residence, did you have an opportunity to
15 talk with him?

16 A Yes, sir, I did.

17 Q And what were the circumstances as to how you
18 actually got to speak to him?

19 A I was contacted by Deputy Wendy Glenn and asked were
20 we looking for Mr. Montgomery and I think she had contact
21 with him and then brought him to our office.

22 Q And did he speak to you -- willingly speak to you?

23 A Yes, sir, he did.

24 Q Are you familiar with Miranda?

25 A Yes, sir, I am.

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1 Q And did you read Mr. Montgomery his Miranda rights?

2 A Yes, sir, I did.

3 Q I show you what has been admitted State's 92. Is
4 that the form that was provided to or the rights that were
5 provided to Mr. Montgomery?

6 A Yes, sir, it is.

7 Q Can you read for the Court and for the jury what
8 rights were actually read to him?

9 A Yes, sir, this is an actual copy of warning of rights
10 that I keep in my wallet at all times and I read from --
11 this is what I read from, and I read it verbatim. "You
12 have the right to remain silent. Anything you say can and
13 will be used against you in a court of law. You have the
14 right to talk to a lawyer and have him present while being
15 questioned. If you cannot afford to hire a lawyer one
16 will be appointed to represent you before any questioning
17 if you wish. If you consent to answer questions now
18 without a lawyer present you still have the right to stop
19 answering at any time."

20 Q Did he in some way acknowledge his understanding of
21 those rights that you read to him?

22 A He began talking to me, yes, sir.

23 Q Did he sign anything to acknowledge that he --

24 A No, sir. What we done is made a copy of this, put
25 the time who -- the time it was read, who read it and most

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1 people -- Agent Pendergrass had Mr. Montgomery sign here
2 that I did read it to him.

3 Q Did he sign that in your presence?

4 A Yes, sir, he did.

5 Q Now, without regard to any prior matters before you
6 executed the search warrant, did he talk to you about
7 whether his -- whether or not [REDACTED] was in
8 fact his residence? Did y'all have that discussion? Did
9 he live there?

10 A Yes, sir. He stated he was growing the marijuana
11 there, and I don't think I specifically asked him if he
12 lived there so I don't specifically remember asking him
13 was that his residence.

14 Q But you did ask him about the marijuana that you
15 found in the --

16 A Yes, sir, I did.

17 Q Were any promises or anything made to him before he
18 told you this?

19 A No, sir, there was not.

20 Q Did you make a recording either written or audio or
21 video of what he told you?

22 A No, sir. We documented in our case summary we did
23 not take a sworn statement from him or do it by digital
24 recording, just took notes and put it in our case summary.

25 Q Why don't you do a written statement or video

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1 statement or audio statement?

2 A Just never have. It was my practice to never do
3 audio or video statement, I have always done it by hand,
4 written notes.

5 Q But there is no written statement from him in this
6 case.

7 A No, sir. In this case there was no written
8 statement. Each case is different, sometimes we do,
9 sometimes it's not, we are not able to or we didn't.

10 Q Were you able to this time?

11 A No, sir, we did not.

12 Q I said were you to --

13 A No, sir. Once we got to talking after a short time
14 he asked to be taken to the detention center.

15 Q How long did the questioning or interview with
16 Mr. Montgomery last?

17 A In the neighborhood of about ten minutes.

18 Q Where did that take place?

19 A In our office which is downstairs of the courthouse.

20 Q At any time did he ever indicate that he didn't
21 understand the questions that you were asking him or --
22 let me ask you, did he understand the Miranda warnings
23 that you gave to him?

24 A Yes, sir, as far as I know. He just began speaking
25 freely about it.

TESTIMONY OF CHUCK GRANT

1 Q At any point did he say, "I don't understand what you
2 are asking me?"

3 A No, sir, he did not.

4 Q Did he appear to be under the influence of any
5 alcohol or drugs at the time?

6 A No, sir, he did not.

7 Q Do you have any idea the setup that you saw in the
8 Montgomery residence, do you have any idea what that setup
9 would actually cost?

10 A The setup itself, no, sir. But going by the light
11 fixtures and the way they're hung it is kind of an
12 inexpensive operation, I would probably venture to say
13 less than 800 or less, a thousand dollars at the most just
14 to get setup what he had.

15 Q And from your investigations have you determined
16 whether or not anybody else lived in that residence?

17 A No, sir, we did not. It appeared to be Mr. Michael
18 Montgomery, II was the only occupant of the house. Even
19 upon searching the residence there were very limited
20 clothing or anything in the house, no other clothing other
21 than what appeared to be men's clothing in the house that
22 I seen.

23 Q Were there items in the bathroom, personal items,
24 that type thing?

25 A Just the normal items that you -- there were nothing

TESTIMONY OF CHUCK GRANT

1 to indicate that a female or anything or another person.
2 Like I said, the house basically didn't have a whole lot
3 in it, like a place to sleep, a few things in the
4 refrigerator, just a few clothes laying around.

5 MR. GRIER: Your Honor, I don't have any further
6 questions at the time.

7 THE COURT: Cross examination?

8 MR. GRIER: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. GRIER:

11 Q Detective, so the Miranda warnings were not
12 witnessed?

13 A There was someone present with me when I read them,
14 yes, sir.

15 Q There's no written witness?

16 A She did not sign, no, sir. She had Mr. Montgomery
17 sign it.

18 Q There's no sworn statement?

19 A No, sir, there was not.

20 Q There's no recorded statement?

21 A No, sir, there's no recorded statement.

22 Q Why wouldn't you want to record the statement by the
23 codefendant?

24 A My practice has always handwrote it, I always take my
25 notes and translate them into writing and I have never

TESTIMONY OF CHUCK GRANT

1 recorded one.

2 Q Well, I suppose there's a reason for that. Why?

3 A Just the way I have done it for years. I don't have
4 any other reason, that's just the way I do things.

5 Q Well, you have been a -- I know you have had lots and
6 lots of training.

7 A I have had some, yes, sir.

8 Q Is that the standard practice not to record or to
9 record, or what is the prevailing practice? Do they do
10 it -- it's often done, isn't it?

11 A Each officer has his own way of doing things. I have
12 seen guys record them, I have seen other agents just sit
13 there and handwrite their notes and transcribe them out.

14 Q All right. But you never do it?

15 A No, sir, I never have.

16 Q How much does a recorder cost, audio recorder, 20
17 bucks at Wal-Mart?

18 A Probably, yes, sir, probably around 20 bucks.

19 Q Well, you said you did not determine whether anyone
20 else lived there or not, you don't know, somebody else
21 might have lived there?

22 A We didn't see anything that would indicate that
23 anybody else's name of anyone else residing there.

24 Q All right. Well, you didn't ask Mr. Montgomery who
25 else lived there you said.

TESTIMONY OF CHUCK GRANT

1 A No, sir, I did not ask him.

2 Q When these plants were assembled or rather taken, did
3 you separate the marijuana from the stalk, was that done?
4 Were the marijuana leaves, buds, et cetera from the stalk?

5 A There was leaves taken from each plant to be tested.

6 Q Right. But how -- I assume this was all weighed, in
7 fact, I can see 225 grams.

8 A The loose marijuana that was collected in the house
9 was weighed on the plants, we just removed three leaves
10 from each plant and have those tested so we do not weigh
11 the plants, no, sir. We count the plants.

12 Q How is the weight determination made then on the
13 warrant?

14 A The warrant for the weight comes in is for the loose
15 marijuana, we do not weigh the plants because it does not
16 go into possession, it goes into the manufacturing so what
17 loose marijuana we found in the house, the marijuana that
18 was in the jars what we weighed was the ready consumption
19 marijuana, we do not weigh the plants.

20 Q Well, I have a document here called general sessions
21 case file summary and it doesn't seem to be dated. Can
22 you tell me when that would have been prepared
23 approximately?

24 A Yes, sir. It would have been prepared within the
25 next seven days, usually the next day.

TESTIMONY OF CHUCK GRANT

1 Q But that's not dated.

2 A No, sir, it is not dated.

3 Q Is it within the next day of the police report being
4 done or the actual --

5 A The police report was done that night, the case
6 within seven working case of the arrest, if he hadn't been
7 arrested after the day he is arrested the reports required
8 all cases -- folders are required to be within seven days.

9 Q Well, there's no mention of any statements or
10 anything in the police report, are there?

11 A No, sir, just at the bottom of the summary.

12 Q So that verbal statement, there was no record even
13 made of that until the next day, at best after the
14 conversation with Mr. Montgomery.

15 A That's correct. It would have been after the
16 conversations.

17 Q How long did it take to go in -- you cleared the
18 location at 1900 hours on the 30th according to the police
19 report. How long did you spend at Dupree Street at this
20 residence?

21 A We was there probably close to two hours, hour and a
22 half.

23 Q 17:30 to 19:30, so hour and a half?

24 A Yes, sir.

25 Q So you went in, wrapped it up and were out of there

TESTIMONY OF CHUCK GRANT

1 in an hour and a half?

2 A Went in, photographed, collected evidence,
3 disassembled the grow room, yes, sir, within an hour and a
4 half.

5 Q How many people were there -- were present in the
6 whole operation?

7 A Once the entry was made into the residence five --
8 six.

9 Q Okay. SLED didn't participate in it?

10 A Not in the search, no, sir.

11 Q What participation did they have in it?

12 A They were up here on what was known as a crime
13 suppression helping serve warrants and stuff, they
14 basically went there with us to help execute the search
15 warrant. Once entry was made into the residence they
16 began looking for Mr. Montgomery, we began searching the
17 residence and collecting the evidence.

18 Q You began a search for Mr. Montgomery at what point?

19 A Once we was inside of the house, determined no one
20 was in the house they began riding the streets and looking
21 for Mr. Montgomery.

22 Q He was just found -- how was he found? Was he in
23 Hartsville, or excuse me, Lockhart?

24 A Honestly I can't answer how he was found, I just
25 received a call from Deputy Glenn asking if we were

TESTIMONY OF CHUCK GRANT

1 looking for him.

2 Q She is in did you say the western part of the county?

3 A I'm going to say the western part, it's out Number 9
4 toward Lockhart.

5 Q Is Lockhart in Chester County or is it in Union
6 County?

7 A I refer to it as Lockhart, but in that area of
8 Highway 9. Lockhart is close but she said she was out
9 there with him in that area, I don't know if it was in
10 Lockhart or Chester County.

11 Q Lockhart is in Union County?

12 A Lockhart is in Union County.

13 Q All right. Where are all of the other items that
14 aren't in the courtroom that are in these photographs, the
15 pools and the -- where are the rest of the items?

16 A The items not in the courtroom, whatever we seized
17 was turned in to evidence.

18 Q Okay. All right. Now, do you have an in-house or
19 SLED, or how do you analyze?

20 A Marijuana is analyzed in-house but not by us, it's a
21 third person, I say third, not related to the drug unit,
22 somewhere outside of drug unit, outside of drug analysis.

23 Q Another person in the Chester County Sheriff's Office
24 who was not in the drug unit?

25 A Yes, sir.

TESTIMONY OF CHUCK GRANT

1 Q Drug suppression unit. All right. Okay. Was there
2 any immediate surveillance, if I can say that, of the
3 house prior to going in? Were y'all -- was any law
4 enforcement watching the house?

5 A We did not. We just left the office and executed the
6 search warrant.

7 Q Okay.

8 MR. GRIER: Thank you.

9 THE COURT: Redirect then?

10 MR. TAYLOR: Just a few questions.

11 REDIRECT EXAMINATION

12 BY MR. TAYLOR:

13 Q Captain Grant, when you mentioned about other items,
14 some items not being in evidence, the wood and tinfoil and
15 cinder blocks, would y'all have taken that into evidence?

16 A No, sir. And I don't think we took the swimming
17 pools, I would have to look at the inventory but I am
18 pretty confident we didn't take the swimming pools either.

19 Q Was the extent basically the marijuana, some of the
20 roll lights and some other items that are in these
21 pictures?

22 A Yes, sir, that's correct.

23 MR. TAYLOR: Your Honor, I have no further questions
24 for Captain Grant. I may have to recall him for an
25 evidence issue.

1 THE COURT: All right. You may step down, thank you,
2 sir. All right, ladies and gentlemen, let's take about a
3 ten minute break, starting back at quarter until. If you
4 would select a foreperson for me between the 12 of you.
5 Please do not discuss the case and deliberate. I
6 anticipate unless there's a problem with anybody we will go
7 until about 5:00, is that okay with everybody? Everybody
8 else remain seated, y'all may step out.

9 (The jury left the courtroom and a recess was taken.)

10 THE COURT: Anything for the record from the State
11 before we bring the jury in?

12 MR. TAYLOR: No, sir.

13 THE COURT: From the defendant?

14 MR. GRIER: No, Your Honor.

15 (The jury returned to the courtroom.)

16 THE COURT: You may call your next witness.

17 MR. TAYLOR: Your Honor, the State would call
18 Ms. Deborah Thompson.

19 The witness, DEBORAH THOMPSON, was first duly sworn
20 and testified as follows, on:

21 DIRECT EXAMINATION

22 BY MR. TAYLOR:

23 Q Please state your name.

24 A Deborah Thompson.

25 Q Ms. Thompson, how are you?

TESTIMONY OF DEBORAH THOMPSON

1 A I'm good, thank you.

2 Q Where are you employed?

3 A I work for a company called K and K Rental
4 Properties.

5 Q How long have you worked with K and K Rental
6 Properties?

7 A Five years.

8 Q And what -- just briefly what are your
9 irresponsibilities there?

10 A We own two companies, I'm the bookkeeper for our
11 electrical construction company also, so I handle all of
12 the books and the invoicing for both companies.

13 Q And do you also take applications and those types of
14 things from your tenants?

15 A Yes, sir.

16 Q Are you familiar with [REDACTED] ?

17 A Yes, sir.

18 Q Is that a property that K and K Rentals owns?

19 A Yes, it's one that we own.

20 Q How long has your company actually owned that
21 property?

22 A I believe we bought it in '94, 1994.

23 Q Did you have -- I will show you what is marked and
24 what has been admitted as State's Exhibit 95. Just take a
25 second to look at that and let me know, do you recognize

TESTIMONY OF DEBORAH THOMPSON

1 it?

2 A Yes, sir, I do.

3 Q What is that?

4 A That is our lease, that's a lease for K and K Rental
5 Properties.

6 Q What is the date on that lease?

7 A May 6th of 2009.

8 Q Who was the lessee?

9 A Mike Montgomery.

10 Q What is that property -- is the property on there?

11 A Yes, it's [REDACTED], Chester.

12 Q Is that lease signed by anyone?

13 A Yes. Mr. Montgomery signed it and then I signed it
14 as the authorized signor for K and K Rental Properties.

15 Q So he signed it in your presence?

16 A Yes, sir.

17 Q How long was that lease agreement covering?

18 A It covers one year.

19 Q Did Mr. Montgomery make any payments that you are
20 aware of regarding [REDACTED], rental payments?

21 A Yes, sir.

22 Q Do you recall when those payments were made?

23 A I know the first payment was on May 6th and he paid
24 his deposit and his first months rent with a credit card.

25 Q Were there any other payments that were made?

TESTIMONY OF DEBORAH THOMPSON

1 A Yes, sir. There was two other payments that come
2 directly to mind, both of those were cash and then there
3 was one that was made by an agency here in Chester that
4 assists people when they are having difficulty.

5 MR. GRIER: I'm sorry, I didn't hear those.

6 A There was two payments, two cash payments come to
7 mind and then there was an additional payment that was
8 made by check by a company in Chester that assists people
9 when they're having financial difficulty. And the name of
10 that doesn't come to mind right away, I do have the
11 receipt.

12 Q The payments that were made in cash, were they made
13 directly to you?

14 A Yes, sir, in my office. Mike came to the office to
15 make those payments.

16 Q I'll show you what has been admitted as State's
17 Exhibit 96 and ask you do you recognize this?

18 A Yes. That's my handwriting and that was -- Mike made
19 those payments in person to me at my desk.

20 Q Because the jury hadn't seen that, what are those
21 that you are looking at?

22 A One was for 9-14.

23 Q What date was that?

24 A The September 14th of '09 for \$150, then the second
25 one was on September 21st, '09 for \$80.

TESTIMONY OF DEBORAH THOMPSON

1 Q Are there any other receipts on that form?

2 A Yes, another gentleman that rents from us. It's a
3 cash book, it's just a receipt book so anybody who pays me
4 cash I use the same book for all of the receipts.

5 Q So outside of Mr. Montgomery's two receipts that you
6 mentioned, the other two, do they have anything to do with
7 614?

8 A No. It was a different house, it has nothing to do
9 with Mr. Montgomery.

10 Q The utilities at the property, whose responsibility
11 is that?

12 A The tenant is responsible.

13 Q Did y'all do any inspection of 6-14 prior to
14 September 30, 2009?

15 A No, sir, we did not.

16 Q Were there any -- do you recall what day
17 Mr. Montgomery actually moved in or --

18 A I believe that May 6th that he was moving in that
19 day, the day that he signed the lease and paid me. I
20 handed him the keys that day, my assumption was he was
21 moving in that day.

22 Q Now, we have been referring to Michael Montgomery.
23 Do you recognize -- do you know Michael Montgomery and
24 have you seen him before?

25 A Yes, sir.

TESTIMONY OF DEBORAH THOMPSON

1 Q Do you recognize him? Do you see Mr. Montgomery in
2 the courtroom today?

3 A Yes, sir, on the far end.

4 Q Can you point him out and say what he has on?

5 A Gray T-shirt.

6 Q And he is the gentlemen that signed the lease
7 agreement to [REDACTED], he also made several rent payments to
8 you in person?

9 A Yes, sir.

10 Q Was this property vacant before Mr. Montgomery moved
11 in?

12 A It had been vacant for a few months.

13 Q Prior to Mr. Montgomery moving in, did you inspect
14 the property?

15 A Yes. We inspected it when the last tenant had left,
16 she had resided there for several years.

17 Q Was there anything out of the ordinary that you saw
18 when he went to do the inspections?

19 A No, other than the refrigerator was leaking, that was
20 the only problem.

21 Q Did you see anything -- I'll show you State's Exhibit
22 38. When you went to look at the property before
23 Mr. Montgomery moved in, did you see anything that looked
24 like this?

25 A No, sir.

TESTIMONY OF DEBORAH THOMPSON

1 Q And the last cash payment you said was made on
2 9-21-09?

3 A Yes, sir.

4 MR. TAYLOR: No further questions.

5 THE COURT: Cross?

6 MR. GRIER: Briefly, Your Honor.

7 CROSS EXAMINATION

8 BY MR. GRIER:

9 Q Ms. Thompson, I believe?

10 A Yes.

11 Q You said one payment was made by some group that was
12 helping?

13 A Yes, I do have the receipt.

14 Q Is it in here or do you know when that payment was
15 made?

16 A Yes. I have the receipt over there if you would like
17 for me to get it for you.

18 Q Well, it was made prior to these?

19 A Yes.

20 Q Okay. So --

21 MR. GRIER: Well, Judge, could we offer?

22 A There was an envelope.

23 THE COURT: We're bringing it to you.

24 A This is it, sir. It is called Carolina Community
25 Actions, that's the receipt and everything.

TESTIMONY OF CHUCK GRANT

1 Q When was that made?

2 A August 18th of 2009.

3 Q So August 2009. And how much was that for?

4 A \$362.

5 Q What was the month rent?

6 A \$400.

7 Q That was for \$362?

8 A Yes, sir.

9 MR. GRIER: Okay. Thank you. No further questions.

10 THE COURT: Redirect, if any?

11 MR. TAYLOR: No, Your Honor.

12 THE COURT: You may step down.

13 MR. TAYLOR: And Ms. Thompson is free to go if defense
14 doesn't have an objection.

15 MR. GRIER: No objection.

16 THE COURT: All right. Next witness.

17 MR. TAYLOR: Your Honor, the State would recall
18 Captain Grant for evidence purposes.

19 The witness, CHUCK GRANT, remained sworn and testified
20 as follows, on:

21 DIRECT EXAMINATION

22 BY MR. TAYLOR:

23 Q Captain Grant, you have testified earlier that these
24 items were turned over to -- the marijuana that was
25 seized, plants that were taken out of Mr. Montgomery's

TESTIMONY OF CHUCK GRANT

1 home, those were turned over to someone else to actually
2 do the analysis; is that correct?

3 A Yes, sir. I just have an individual outside the drug
4 unit for evidence storage on someone else that tested the
5 marijuana to keep it separated from our unit.

6 Q This is the final set of pictures. These are State's
7 Exhibits 1 through 20.

8 MR. TAYLOR: I'm going to offer these into evidence.

9 THE COURT: Any objection.

10 MR. GRIER: No objection.

11 (The photos were received as State's 1-20.)

12 Q Captain Grant, these are Exhibits 1 through 20. Just
13 briefly, do you recognize those?

14 A Yes, sir, I do.

15 Q What are those pictures of?

16 A These are individual pictures of -- group pictures of
17 the marijuana plants that were actually removed from the
18 residence at [REDACTED].

19 Q How did the numbers -- are there numbers on each one
20 of those plants?

21 A On the individual plants, yes, sir.

22 Q What was the purpose of putting numbers on them?

23 A To label the plant and I believe to coincide with the
24 three leaves that were removed from that plant, that will
25 coincide with that number. This plant should have another

TESTIMONY OF CHUCK GRANT

1 evidence number with three leaves removed from this plant.

2 Q When you have marijuana analyzed, do you give the
3 analysis -- do you give the analyst the entire plant?

4 A No, sir, we do not, they are destroyed. Once we get
5 the sample of the plant itself and all should be
6 destroyed, we just collect the sample from it to determine
7 that it was marijuana.

8 Q And do you know who took possession of these items
9 along with the other items that were seized from the
10 residence?

11 A The best I can recall the -- Agent Sprouse was the
12 evidence custodian who actually tagged all of the evidence
13 once it was recovered. So he collected it all and turned
14 all of the evidence in.

15 MR. TAYLOR: Thank you.

16 THE COURT: Any cross?

17 MR. GRIER: Briefly, Your Honor.

18 CROSS EXAMINATION

19 BY MR. GRIER:

20 Q I'm going to go back to your statement.

21 THE COURT: No, sir. We have already been through all
22 of that, we can only cross him on what he just said, I
23 won't allow him -- you have already crossed him on that.

24 MR. GRIER: Judge, I can recall him as a witness.

25 THE COURT: Go ahead.

TESTIMONY OF CHUCK GRANT

1 Q You indicated when you were interviewing Mr.
2 Montgomery that you tried to get him to cooperate with
3 you.

4 A Yes, sir, I did.

5 Q And he refused to cooperate?

6 A He just didn't want to cooperate with law
7 enforcement.

8 Q Him cooperating would have involved what?

9 A Provide information on other people involved in the
10 marijuana or drug business in Chester County.

11 Q Did he respond in any way when asked about that?

12 A I'm not sure what you're asking.

13 Q I said did you get any response at all from him when
14 you asked him about doing that?

15 A He just wasn't interested in it.

16 Q Okay. But -- and you didn't -- that wasn't
17 significant enough to put in your summary?

18 A No, sir, didn't put it in there.

19 THE COURT: You may step down. Next witness.

20 MR. TAYLOR: Your Honor, the State would call Robert
21 Sprouse.

22 The witness, ROBERT SPROUSE, was first duly sworn and
23 testified as follows, on:

24 DIRECT EXAMINATION

25

TESTIMONY OF ROBERT SPROUSE

1 BY MR. TAYLOR:

2 Q Agent Sprouse, who are you employed with?

3 A Chester County Sheriff's Office.

4 Q How long have you been with the sheriff's office?

5 A Since 1996.

6 Q And what do you do at the sheriff's office?

7 A I'm currently assigned to the narcotics unit.

8 Q Were you working with the narcotics unit in September
9 of 2009?

10 A Yes, sir.

11 Q Did you have an occasion to participate in the
12 narcotics investigation at [REDACTED] involving
13 Michael Montgomery?

14 A Yes, sir, I have.

15 Q Just briefly, what was your involvement?

16 A Basically evidence tech. that day, if evidence was
17 found I tagged it.

18 Q Were you involved in the actual search of the
19 evidence?

20 A Yes, sir.

21 Q So all of the items that were found were turned over
22 to you; is that correct?

23 A Yes, sir.

24 MR. TAYLOR: Your Honor, I would like to have these
25 two items marked.

TESTIMONY OF ROBERT SPROUSE

1 Q I show you what is marked as State's Exhibit Number
2 97. Do you recognize that?

3 A Yes, sir, I do.

4 Q What is that?

5 A This is marijuana leaves, it was found on the
6 countertop in the kitchen.

7 Q Did you actually take the packaging? How was that
8 setup, how was that packaged by you?

9 A The only thing it had is just marijuana leaves from
10 the counter top put into the evidence bag.

11 Q Did you actually put those into the evidence bag?

12 A Yes, sir.

13 Q Who did you turn that item in to?

14 A To the drop box, the evidence drop box at the Chester
15 County Sheriff's Office.

16 Q I'm going to show you what is marked as State's
17 Exhibit 98. Do you recognize that item?

18 A Yes, sir, I do.

19 Q What is that?

20 A It is one glass smoking pipe and one set of digital
21 scales and several marijuana roaches that was located on
22 the kitchen countertop, sealed by me.

23 Q Okay. Who did you turn these items in to?

24 A All of the items were turned in to the evidence drop
25 box at the Chester County Sheriff's Office.

TESTIMONY OF ROBERT SPROUSE

1 Q I show you what is marked as State's Exhibit 99 and
2 100. Do you recognize those items?

3 A Yes, sir, I do. This is one glass smoking pipe and a
4 prescription bottle containing marijuana seeds inside
5 which was located in the kitchen drawer, also recovered
6 and dropped by me.

7 Q And item 100, do you recognize that?

8 A Yes, sir. It is glass jars containing a green leafy
9 substance with Ragu on the jars, it states there's three,
10 it was recovered by Agent Crank and turned over to myself
11 and then I put it in the drop box.

12 MR. TAYLOR: I offer Exhibits 99 and 100 in evidence.

13 MR. GRIER: No objection.

14 (The glass pipe and Ragu jars were received as State's
15 99 and 100.)

16 Q I show you what is marked as State's Exhibit 101.
17 Can you identify that?

18 A Yes, sir. It's metal scales, it was located in a
19 blue book bag inside of the grow room recovered by myself
20 and dropped by me. And item 102, green leafy substance
21 that's on top of one of the grow lights recovered by Agent
22 Crank, turned over from Crank to me and then I dropped it.

23 MR. TAYLOR: I offer 101 and 102 into evidence.

24 MR. GRIER: No objection.

25 (The scales and green leafy material were received as

TESTIMONY OF ROBERT SPROUSE

1 State's 101 and 102.)

2 Q I show you what is marked State's Exhibit 103. Can
3 you identify that?

4 A Yes, sir. It's a green leafy substance believed to
5 be marijuana located on top of the grow lights. It was
6 recovered by Agent Crank, turned over to me, then I
7 dropped it.

8 Q And item Exhibit 104?

9 A It's a green leafy substance believed to be
10 marijuana, this was hanging beside the grow lights. It
11 was recovered by Agent Crank, turned over to me, then it
12 was dropped by me.

13 Q And Exhibit 105?

14 A This is 18 separate envelopes of marijuana leaves
15 from plants. It was found in the grow room, recovered by
16 me and dropped by me.

17 Q You heard Captain Grant testify --

18 MR. TAYLOR: Well, first I would offer 104 -- 103,
19 104, 105 into evidence.

20 MR. GRIER: No objection.

21 (The two packages of leafy substance and leaves from
22 Plants were received as State's 103-105.)

23 Q Specifically to item 105, you heard Captain Grant
24 testify about a series of pictures that were taken of
25 different plants that had numbers on them, are you

TESTIMONY OF ROBERT SPROUSE

1 familiar with that?

2 A Yes, sir.

3 Q 105, are these the samples from those different
4 plants that were taken?

5 A Yes, sir. Those were the samples from each plant.

6 Q Can you just describe how this drop box is set up at
7 the sheriff's office?

8 A Yes, sir. Of course, the sheriff's office is locked
9 itself, also there is a lock box which goes into the
10 vault. They have one key for that, we obtain that key
11 from the work area, we go in there, we drop the evidence
12 into that box which the only person that has access to it
13 from there is the evidence technician at the sheriff's
14 office.

15 Q Who is the evidence technician?

16 A Deputy Amanda Hughey.

17 Q And do you have a copy of your inventory sheet with
18 you?

19 A Yes, sir, I do.

20 Q Outside of what you have mentioned about the
21 marijuana plants, were any other items taken into
22 evidence?

23 A Yes, sir.

24 Q Can you tell us what those were?

25 A Briefly, we took 22 lights with bulbs and I believe

TESTIMONY OF ROBERT SPROUSE

1 it was five extra light bulbs, 11 power cords, one air
2 hose, one air purifier model number TPP201M.

3 Q Does this like look the air purifier that you are
4 talking about?

5 A Yes, sir, it does.

6 Q Did y'all just take a picture of that?

7 A I believe so, yes, sir.

8 MR. TAYLOR: Your Honor, we have no further questions
9 for this witness.

10 THE COURT: Cross?

11 MR. GRIER: Yes, sir, Your Honor.

12 CROSS EXAMINATION

13 BY MR. GRIER:

14 Q So were you in the initial response to the search
15 warrant?

16 A Yes, sir.

17 Q You were there at the time the house was searched?

18 A Yes, sir.

19 Q And you were there throughout the duration of the
20 search?

21 A Yes, sir.

22 Q That lasted about an hour and a half?

23 A Approximately, yes, sir.

24 Q From 7:30 to 9:00 according to the police report.

25 A Yes, sir.

TESTIMONY OF ROBERT SPROUSE

1 Q Okay. You got glass jars and pipes and grow lights,
2 right?

3 A Yes, sir.

4 Q All of those items have got surfaces on them, did you
5 get any fingerprints off of those?

6 A No, sir.

7 Q So no fingerprint evidence taken anywhere off of --

8 A We did not fingerprint anything.

9 Q Any reason that you didn't take fingerprints?
10 Wouldn't that have helped your case?

11 A That's not our common practice, sir.

12 Q Did you interview anybody?

13 A No, sir.

14 Q I heard something new that I haven't heard, an air
15 hose, did you say there was an air hose?

16 A Yes, sir.

17 Q What is the air?

18 A I'm not sure, sir.

19 MR. GRIER: No questions, thank you.

20 THE COURT: Redirect?

21 MR. TAYLOR: No.

22 THE COURT: You may step down. Next witness.

23 MR. TAYLOR: State would call Officer Amanda Hughey.
24 The witness, AMANDA HUGHEY, was first duly sworn and
25 testified as follows, on:

TESTIMONY OF ROBERT SPROUSE

1 DIRECT EXAMINATION

2 BY MR. TAYLOR:

3 Q Officer Hughey, you are employed with the Chester
4 County Sheriff's Office?

5 A I am.

6 Q What are your job responsibilities at the sheriff's
7 office?

8 A I am the evidence technician which also includes
9 marijuana analysis department.

10 Q And how long have you done both of those?

11 A Since January of '09.

12 Q Regarding your marijuana analysis, can you -- are you
13 certified in marijuana analysis?

14 A Yes, I am.

15 Q How do you obtain your certification?

16 A You have to go through classes that are offered at
17 SLED. You go through classroom time, you also have to do
18 50 samples directly which is testing, once you complete
19 that then they will issue your certification.

20 Q If there are 50 samples, is there a minimum you have
21 to get right?

22 A Fifty, all 50.

23 Q All 50 correct?

24 A Uh-huh.

25 Q Outside of that, is there any other special school or

TESTIMONY OF AMANDA HUGHEY

1 training that you go to?

2 A No.

3 Q And you have to continuously recertify?

4 A Yes. You have to recertify every three years.

5 Q When was your last certification?

6 A My certification I received in April of '09.

7 Q So you've still got a couple of years. Do you have a
8 copy of your certification with you?

9 A I do.

10 MR. TAYLOR: May we approach for just a moment, Your
11 Honor?

12 (A bench conference was held.)

13 Q You are certified currently, ma'am?

14 A Yes, sir.

15 Q Have you testified in court before as a marijuana
16 analysis expert?

17 A No, sir.

18 Q Is this your first time?

19 A Yes.

20 MR. TAYLOR: Your Honor, based on age -- Officer
21 Hughey's experience and training at this point I would
22 offer her as an expert in marijuana analysis.

23 THE COURT: Any cross examination on her qualification
24 to render an opinion on marijuana analysis?

25 MR. GRIER: Judge, I would.

TESTIMONY OF AMANDA HUGHEY

1 THE COURT: Go ahead.

2 BY MR. GRIER:

3 Q I would like to see your certification, if I could
4 see the original documents, please. And this is your
5 first appearance in court?

6 A It is.

7 Q How many times have you tested marijuana, do you keep
8 track of that?

9 A I can't give you an exact number, I do know for the
10 year of 2009 to current I have done over 700 tests.

11 Q Have you determined that some of the samples were not
12 marijuana?

13 A I have had some negative results, yes.

14 Q Do you know how many, any idea?

15 A Possibly two to four, just a handful.

16 Q You determined it was not marijuana. Do you make an
17 attempt to determine what it is?

18 A No, sir. I'm not certified to go any further than
19 marijuana.

20 Q I apologize but I didn't hear the whole -- you
21 said --

22 A I am only certified to do marijuana.

23 Q You do just -- marijuana is your only certification
24 and you got that through the South Carolina --

25 A SLED.

TESTIMONY OF AMANDA HUGHEY

1 Q And is that -- I assume that was done after you
2 became a police officer?

3 A Yes.

4 Q And how long have you been a police officer?

5 A Since January of '09.

6 Q Have you done -- were you involved in any sort of
7 chemical testing, or what was your occupation before you
8 did that?

9 A I was in the records department at the sheriff's
10 office.

11 MR. GRIER: Thank you.

12 THE COURT: All right. I will allow her to testify
13 and give an opinion as to the marijuana analysis, and I
14 will explain that to y'all at the conclusion of the case
15 about opinion testimony when I instruct you or charge you
16 on the law. Move along.

17 Q Officer Hughey, did you have an occasion to analyze
18 potential marijuana samples that were presented to you in
19 regards to this particular case?

20 A Did I test those samples? Yes.

21 Q How did you come to possession of those samples?

22 A I first retrieved the evidence items from the drop
23 box.

24 Q Do y'all keep an inventory sheet of what comes in to
25 you?

TESTIMONY OF AMANDA HUGHEY

1 A Yes. The chain of custody sheet is also our evidence
2 inventory sheet.

3 Q Is there some type of number that's assigned to that
4 particular case where you can refer that you have multiple
5 pieces of evidence that you can all say these items went
6 with this particular case?

7 A Each item is labeled with a case number and the
8 officer also assigned it an item number and normally it's
9 one, two, three, four.

10 Q So items that you receive, did they all have the same
11 case number related?

12 A Yes.

13 Q And were those items all from the same officer?

14 A The same officer dropped all of the items and started
15 the chain of custody, yes.

16 Q Who was that?

17 A Officer Sprouse.

18 Q Once when you analyzed these different items, did you
19 analyze them based on the item number that was assigned by
20 the sheriff's office? Do you have an inventory sheet with
21 you?

22 A Yes, I have the inventory sheet with me. I'm not
23 quite exactly sure what you are asking.

24 Q The item number that's assigned to something that you
25 received in regards to this case, do you have nine

TESTIMONY OF AMANDA HUGHEY

1 different items, did you make nine different tests or did
2 you just make one single test?

3 A Yes. If there's multiple samples in one item, number
4 one package is one item number. If there's multiple
5 samples in there each sample does have its own individual
6 test. If it has ten samples within that one item there
7 will be ten tests made.

8 Q And these item numbers came from -- there was
9 marijuana that was collected from different parts of this
10 residence and these were all given different item numbers;
11 is that correct?

12 A Yes.

13 Q Did you do a separate analysis on each item number
14 that you received?

15 A If it was requested. I don't have any results in
16 front of me so I'm not sure exactly. If the officer
17 requested the testing then it was tested.

18 Q I'm going to show you what has been marked State's
19 Exhibit 67. Do you recognize that document?

20 A I do.

21 Q What is that?

22 A This is a marijuana analysis request form that I have
23 the officer fill out kind of letting me know that they're
24 requesting this marijuana be tested. After I do the
25 testing I report the results on this form, make a copy of

TESTIMONY OF AMANDA HUGHEY

1 it and return it back to the officers so they know what
2 the findings were.

3 Q Is that your signature at the bottom of the page?

4 A It is.

5 Q What is the item number that's associated with that
6 particular form?

7 A This is item number one.

8 Q Where did that item number come from?

9 A Countertop in the kitchen.

10 Q And does it have the same case number associated with
11 the inventory sheet that you are looking at?

12 A It does.

13 Q And did you perform a marijuana analysis on that item
14 number?

15 A I did.

16 Q What were the results of your analysis?

17 A The results found were it did test positive
18 microscopically and positive chemically which the two
19 combined is positive for THC.

20 Q Let me do this one time but apply it to some other
21 items that you tested. There is a microscopic analysis
22 and chemical analysis?

23 A Yes.

24 Q What is the difference between the two?

25 A The microscopic is a visual test that we do and it is

TESTIMONY OF AMANDA HUGHEY

1 done under the microscope, you are looking for three types
2 of hairs on the leaf. The chemical testing is a three
3 part chemical test, each chemical you put on the actual
4 marijuana will react differently but it takes all three
5 chemicals done to complete a full chemical test.

6 Q Can you get a positive result from just one
7 microscopic or chemical or do you need both?

8 A You can have a positive microscopic but it takes both
9 positives to say that it is THC positive.

10 MR. TAYLOR: Your Honor, I would offer number 67 into
11 evidence.

12 MR. GRIER: No objection.

13 THE COURT: In evidence.

14 (The test result was received as State's 67.)

15 Q I show you State's Exhibits 68, 69 and 70. And can
16 you identify each one of those and just refer to it by
17 exhibit number if you recognize it?

18 A Exhibit 68 I do recognize as the results from jar
19 one.

20 Q What is the item number associated with that?

21 A The item number is item number five. Exhibit 69,
22 also item number five, jar two, these are the results.

23 Q What is the -- I forgot to ask you on the first
24 one -- what is the result on the second one that you
25 mentioned?

TESTIMONY OF AMANDA HUGHEY

1 A The result is positive microscopic and positive
2 chemical. Exhibit 70, item five, jar number three, also
3 microscopic positive, chemical positive.

4 Q And those are all signed by you?

5 A Yes.

6 Q Item five is associated with what inventory, what
7 evidence?

8 A Item number five is one brown bag containing three
9 glass jars.

10 MR. TAYLOR: Your Honor, I would offer these into
11 evidence at this time.

12 MR. GRIER: No objection.

13 (The test results were received as State's 68-70.)

14 Q I'm going to show you what is marked Exhibits 71, 72
15 and 73. I show you 71 first, do you recognize that?

16 A I do.

17 Q What is that?

18 A This is item number seven, marijuana leaves.

19 Q Where was that item from?

20 A On top of grow lights.

21 Q Do you have a result as to the analysis?

22 A It was tested positive for microscopic, positive for
23 chemical.

24 Q I neglected to ask you, all of these forms that you
25 are introducing or testified to, these are all basically

TESTIMONY OF AMANDA HUGHEY

1 the same type of form but just different information on
2 each one.

3 A Yes.

4 Q Is there a point on here where you put a weight as to
5 what you found?

6 A Certain items I do weigh. If it's just leaves
7 there's no weight, or if it's trace, but if it is
8 something that can be weighed, yes, there's a weight on
9 here.

10 Q You have a notation of package weight and actual
11 weight. What is the difference between those two?

12 A Package weight is how I get -- once I open the
13 envelope if I have marijuana that is in a bag or a jar I
14 will weigh it as it is, that's the package weight and then
15 I also weigh just the marijuana and that is the actual
16 weight.

17 Q So on each one of these forms there is -- if you were
18 able to -- there's an actual weight that you also noted on
19 the form; is that right?

20 A Yes.

21 Q I show you what is marked Exhibit 72. Do you
22 recognize that?

23 A I do, this is item number eight.

24 Q Where was that from?

25 A This was also found on top of the grow lights. We

TESTIMONY OF AMANDA HUGHEY

1 have a positive microscopic and positive chemical on this
2 as well.

3 Q And that was signed by you?

4 A It was.

5 Q That is Exhibit number 73.

6 A This is item number nine which was found hanging
7 beside grow lights, we have a positive microscopic and
8 positive chemical, and signed by me.

9 Q I show you what is marked State's Exhibits 74 through
10 91. Just quickly, take a look at those. And do these
11 refer to a particular item?

12 A Yes, sir. This is the report for item number 12.

13 Q What is that? What is item 12?

14 A Item 12 is one brown envelope that was containing 18
15 separate envelopes of leaves, marijuana leaves.

16 Q Were those samples -- with each one of those you
17 completed a form with each plant or each sample that came
18 in?

19 A Yes, sir, each paper was for one leaf.

20 Q What are the results of all of those samples?

21 A Results of all 18 samples positive microscopic and
22 positive chemical.

23 Q But you made a form for each individual sample; is
24 that right?

25 A I did.

TESTIMONY OF AMANDA HUGHEY

1 Q And these are signed by you?

2 A Yes, sir.

3 MR. TAYLOR: Your Honor, I would offer these into
4 evidence.

5 MR. GRIER: No objection.

6 (The test results were received as State's 71-91.)

7 Q Of the actual weight of all of the items you were
8 able to weigh, do you have an account of the total weight
9 of everything?

10 A I did not document the total weight.

11 Q But you did document individual weights?

12 A Individual weights should be on each individual
13 report.

14 MR. TAYLOR: Beg the Court's indulgence for just a
15 moment.

16 (Break in proceedings.)

17 Q When you received each one of these evidence
18 packages, did they appear to be tampered in any way?

19 A No, sir.

20 Q The cellphane wrapper that it's in, who put that on
21 there?

22 A Once you open the package for testing I will seal it
23 in a heat-sealed pouch, initial and date it, it secures
24 the package and also kind of contains the smell.

25 Q And signed each one of these?

TESTIMONY OF AMANDA HUGHEY

1 A If the package was opened it should be signed on the
2 seal and initialed. Some items I just seal just to
3 contain the smell so the package inside should not be
4 opened if it doesn't have my initial on it.

5 Q Your initials would be?

6 A ASH.

7 Q Would anybody else -- does anybody else have any
8 access besides yourself to any evidence that gets placed
9 in that drop box?

10 A We do have one backup person that is strictly backup,
11 I don't know of any time that we have used him, but I am
12 the only one that generally does the evidence.

13 Q The case number related to Michael Montgomery, did
14 anybody else have any access to any other items beside
15 you?

16 A No, sir.

17 MR. TAYLOR: No further questions, Your Honor.

18 THE COURT: Cross?

19 CROSS EXAMINATION

20 BY MR. GRIER:

21 Q Who is the backup person with the key? Somebody else
22 has got a key?

23 A Yes, sir.

24 Q And who was that?

25 A Captain Doug McMurray.

TESTIMONY OF AMANDA HUGHEY

1 Q Who is he? What division, what area of the sheriff's
2 department does he work in?

3 A He's the captain, he's over quite a few things
4 actually, he is our evidence captain.

5 Q He is over evidence?

6 A Uh-huh.

7 Q And you tested the stuff but you know nothing about
8 the site from where it was allegedly taken?

9 A No, sir, I was not on scene.

10 Q All right. So it goes into the drop box. Is the
11 drop box -- the drop box, is it inside of the department
12 somehow and like going into another room, or will you
13 describe how that is set up?

14 A There is a door that goes into a wall, on the other
15 side of that wall is a steel box, there's a steel door
16 that leads you into the other side of that wall. I am the
17 only one that has second access to go in the vault and on
18 in the drop box, once the officer drops it from this side
19 of the wall in the door -- excuse me, the box, they cannot
20 retrieve it back out. You have to go through the vault
21 door in a whole nother room.

22 Q But you and Captain McMurray both have access to
23 that, right?

24 A Uh-huh.

25 Q The testing is done strictly by you. Is there

TESTIMONY OF AMANDA HUGHEY

1 anybody else that tests and makes sure that you got it
2 right?

3 A No, sir. I'm the only one that does the testing.

4 MR. GRIER: Thank you.

5 THE COURT: Any redirect?

6 MR. TAYLOR: Just one question.

7 REDIRECT EXAMINATION

8 BY MR. TAYLOR:

9 Q Just to clarify, you are the only person that opened
10 those brown packages; is that correct?

11 A Right.

12 Q Were they sealed when you got to them?

13 A I don't break the officer's seal. I like to cut my
14 packaging at the bottom and kind of create my own seal,
15 that way it shows it was initially sealed when I received
16 it and I have opened it in a different place.

17 MR. TAYLOR: That's all.

18 THE COURT: You may step down. Do you have a ten
19 minute witness?

20 MR. TAYLOR: Your Honor, that's the State's case.

21 THE COURT: State rests. Mr. Foreman, ladies and
22 gentlemen, we are going to break for the evening and come
23 back at 9:30, we are going to start right at 9:30, I will
24 be here much earlier getting things ready to go. Have a
25 very pleasant evening. Please do not let anybody discuss

TESTIMONY OF AMANDA HUGHEY

1 the case with you, don't discuss it with anybody else,
2 don't try to do any internet research or any other kind of
3 research, just enjoy your evening. I will see you back at
4 9:30 sharp in the morning. Thank you.

5 (The jury left the courtroom.)

6 THE COURT: Anything from the State before we break
7 for the evening?

8 MR. TAYLOR: No, Your Honor.

9 MR. GRIER: Judge, I would make a motion for a
10 directed verdict unless the Court is anxiousness to leave,
11 we can do everything in the morning.

12 THE COURT: No, sir, I'm not anxiousness to do
13 anything except try this case. Make your motion.

14 MR. GRIER: Thank you, Your Honor. I find at the
15 conclusion of the State's evidence I would submit that they
16 have failed to pass muster in several respects. First of
17 all I think that the testimony that she was not the only
18 person that had access to the marijuana is troublesome to
19 the integrity of the chain of custody.

20 THE COURT: That goes to the weight, not the
21 admissibility, does it not?

22 MR. TAYLOR: Judge, if the --

23 THE COURT: It does.

24 MR. GRIER: All right. As to the -- Your Honor, I
25 would just ask the Court as the 13th juror to dismiss it

TESTIMONY OF AMANDA HUGHEY

1 and give a directed verdict. The statement, Judge, of
2 course -- the State could have and should have probably
3 recorded the statement but the statements they allege --
4 other than that there's nothing tying my client to the
5 marijuana in terms of any direct evidence. The
6 circumstantial evidence is so tenuous that I would ask the
7 Court sitting as the 13th juror -- I guess that's actually
8 a post-trial motion, but to direct a verdict on failure to
9 meet the burden of proof.

10 THE COURT: The exhibits that have weight on it, how
11 much weight is it? Has anybody added it up?

12 MR. TAYLOR: Your Honor, I did add it up. The weight
13 I believe is 138 grams.

14 THE COURT: Respectfully denied. Obviously at this
15 stage of the game I have to look at whether or not there's
16 any evidence in the record, not the weight of it. There's
17 ample evidence to connect the defendant with the growing of
18 the marijuana, the actual amount is way in excess of the
19 inference dealing with possession with intent to
20 distribute. All of your arguments certainly can go to the
21 weight of the evidence as opposed to the existence of the
22 evidence and I respectfully decline your motion. Anything
23 else?

24 MR. GRIER: Judge, I would respectfully ask that my
25 client be allowed to issue a PR bond. He's been

TESTIMONY OF AMANDA HUGHEY

1 responsible and showed up for court and put him on notice,
2 of course, that this trial would continue without him. Of
3 course, he would have an opportunity if this is -- we could
4 save some time for in the morning if the Court would want
5 to go ahead and have the conversation with him about his
6 right to testify and not testify, and I would also ask you
7 to allow him to leave tonight on a PR bond.

8 THE COURT: Motion for a PR bond is denied, he's in
9 custody. Mr. Montgomery, please stand for me and raise
10 your right hand.

11 (The defendant was sworn.)

12 THE COURT: Mr. Montgomery, you can sit down. The
13 State has rested which means they have presented all of the
14 evidence they are going to present. Does he have a record
15 as far as for impeachment purposes?

16 MR. TAYLOR: No, Your Honor.

17 THE COURT: We are now at the stage of the trial where
18 you can present your own defense, you can call your own
19 witnesses, whoever you want to call they can testify as
20 long as it is relevant to the proceedings and introduce
21 relevant exhibits and obviously you can testify in your own
22 defense. You have the constitutional right provided to you
23 under the 5th Amendment of the Constitution of the United
24 States which basically says that no one can be compelled to
25 testify in a trial in which they have been charged with a

TESTIMONY OF AMANDA HUGHEY

1 crime, in other words you have the right to remain silent.
2 If you choose to testify you will be subject to the same
3 rules of evidence that all of the other witnesses are
4 subject to and you will be able to be cross examined on all
5 relevant exhibits or all relevant subjects. If you choose
6 not to testify, if you exercise your right to remain silent
7 so you don't have to get up and explain anything, then I
8 would tell the jury when I charge them or instruct them,
9 ladies and gentlemen of the jury, the defendant has not
10 offered any testimony in this case, you are not to infer
11 anything from the fact that he did not testify. He has the
12 absolute right to not testify and the State of South
13 Carolina has the burden of proving him guilty beyond a
14 reasonable doubt and he has absolutely no burden of proving
15 anything, he is presumed to be innocent. And I would
16 further tell them that the fact that you did not testify
17 should not be even discussed, mentioned or play into their
18 deliberations when they deliberate on your guilt or
19 innocence, it cannot be mentioned, it cannot be discussed,
20 cannot be part of the deliberations. I would further tell
21 them that you have the absolute right to remain silent,
22 it's a right that we all have under the Constitution. The
23 right to maintain your right to remain silent is obviously
24 a personal right, you can discuss it with your lawyer, you
25 can discuss it with your daddy, you can discuss it with

TESTIMONY OF AMANDA HUGHEY

1 anybody you want to, but ultimately it would be your
2 decision. Question, do you understand that right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that if you testify you
5 will be subject to cross examination?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: So you want to tell me now as to whether
8 you are going to testify or would you rather ponder it over
9 the evening and tell us in the morning?

10 THE DEFENDANT: I would rather ponder. Is there any
11 way you could let me go home and get a shower and a clean
12 change of clothes tonight?

13 THE COURT: No, sir.

14 THE DEFENDANT: Not at all, huh?

15 THE COURT: It's just not my policy. I have had too
16 many people say bye in the middle of a trial. Anything
17 else?

18 MR. GRIER: No, Your Honor.

19 THE COURT: The jury will be here at 9:30, I want
20 y'all to be here 9:00 sharp.

21 (Court adjourned for the evening and resumed at 9:30
22 A.m. on Wednesday, October 13, 2010.)

23 THE COURT: Are you going to offer any testimony?
24 What is the situation?

25 MR. GRIER: Yes, Judge. The defendant has indicated

TESTIMONY OF MICHAEL MONTGOMERY

1 he has considered our conversations yesterday and he has
2 indicated it is his desire to testify.

3 THE COURT: All right. Bring the jury in.

4 (The jury returned to the courtroom.)

5 THE COURT: Mr. Foreman, ladies and gentlemen, good
6 morning, hope you had a very pleasant evening. We've got a
7 little bit of testimony left, then we will start arguments.
8 You may call your first witness.

9 MR. GRIER: Thank you, Your Honor. I call Michael
10 Montgomery.

11 The witness, MICHAEL MONTGOMERY, was first duly sworn
12 and testified as follows, on:

13 DIRECT EXAMINATION

14 BY MR. GRIER:

15 Q Please state your name.

16 A Michael Lee Montgomery, II.

17 Q Mr. Montgomery, is this your dad in the courtroom
18 here?

19 A That's right.

20 Q How old are you, Mr. Montgomery?

21 A Twenty-eight.

22 Q What kind of work have you done in the past?

23 A I've been driving a truck since 2003, I had my own
24 truck, I opened and run my own trucking company in 2006.

25 Q Is that trucking company still in existence?

TESTIMONY OF MICHAEL MONTGOMERY

1 A No. I closed it up in November of 2009.

2 Q What happened to the trucking company?

3 A I had some money saved up, I pretty much was tired, I
4 was pretty much exhausted from running over the road all
5 of the time, I was just taking it easy you know, so --

6 Q Where were you living when you were running the
7 trucking company?

8 A To start with I was living at [REDACTED].

9 Q Is that in Chester?

10 A That's in Landlo, but I also was living in Heath
11 Springs, and then I moved to Chester I think it was in
12 April of 2009.

13 Q Had you lived in Chester during your 28 years prior
14 to that?

15 A Yeah. I've lived in Richburg, Chester County for a
16 little while and I also lived up off Pinkard Street up
17 there by the trusses for a little while.

18 Q Where do you consider you grew up?

19 A I was raised in Lancaster. I spent the first five
20 years of my life in Fort Lawn but went to school in
21 Lancaster, graduated from Lancaster, went one year to
22 college at USCL.

23 Q Is that the extent of your college, of your
24 education, your secondary education?

25 A Yes, sir.

TESTIMONY OF MICHAEL MONTGOMERY

1 Q What was your intention in going to college, what did
2 you want to do?

3 A I was planning on going to med. school. I started
4 studying chemistry but I had a life scholarship and I
5 ended up failing my Biology, I took my Chem. Two and
6 Biology together, I failed my Biology and that messed up
7 my scholarship so I had to go to work.

8 Q Okay. All right. You've got family in Chester as
9 well?

10 A Yes, sir.

11 Q Your mother lives in Chester, I think?

12 A That's right.

13 Q Other family here?

14 A Yeah. My grandparents also live in Chester.

15 Q All right. Mr. Montgomery, have you ever been
16 convicted of a crime?

17 A No, sir.

18 Q Have you ever testified in court before?

19 A No, sir.

20 Q Mr. Montgomery, you on September 30th of 2009, the
21 date that these allegations that you were manufacturing
22 marijuana and in possession with intent to distribute,
23 were you living on the [REDACTED]?

24 A Yeah, that's right.

25 Q How do you pronounce that?

TESTIMONY OF MICHAEL MONTGOMERY

1 A [REDACTED].

2 Q Okay. What was the number?

3 A [REDACTED].

4 Q All right. How long had you been living there?

5 A If I'm not mistaken I believe it was around April or
6 May when I moved to Chester. I was staying with a buddy
7 in Heath Springs but I think it was around April or May,
8 it may have been March, the landlord has the records, I'm
9 not real sure.

10 Q So you agree with what she testified to, you paid
11 your first rent in May, I believe?

12 A If that's what she said that had to be it.

13 Q So while you were living there were you working?

14 A No, actually I wasn't working. I had some money
15 saved up and I was taking it easy. I had a truck and car
16 already paid for and had my rent caught up and whatnot.

17 Q Did you have to seek financial assistance to pay your
18 rent?

19 A That's what she said but I don't remember it, I don't
20 remember doing that, if that was the case I don't
21 remember. I think that's what she was saying yesterday.

22 Q Well, how about on -- had you gotten a job at some
23 point while you were living on [REDACTED]?

24 A Well, I worked the day before this happened. I
25 had --

TESTIMONY OF MICHAEL MONTGOMERY

1 Q Well, tell me about that.

2 A I was at a buddy's house across about two or three
3 blocks over I think it was on a Sunday or Monday night and
4 one of his buddies came over and said they needed a hand
5 and if anybody needed a job so I was like, sure, I will go
6 to work. So we went and --

7 Q What kind of work?

8 A Hanging shingles and tying -- we tied down trailers
9 that evening but we went and bought the shingles for a job
10 that we were supposed to do the next day. He told me he
11 was going to pick me up the following morning about 7:00,
12 they finally showed up about 9:00, this was the day that
13 the door got kicked in and --

14 Q This is on the 30th of --

15 A Yeah, that's right, September 30th. So about 9:30 he
16 showed up and he said, "Look, we're not working today,
17 I've got to go run some errands." I thought it was kind
18 of strange, but anyway I left the house at 9:30 and went
19 about three or four blocks away and hung out.

20 Q Where did you hang out?

21 A At Kenny Melton's house.

22 Q And what did you do over there?

23 A We were just hanging around watching TV. He told me
24 that the police was riding the block pretty hot the day
25 before, he said, "Somebody is probably going -- is about

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1 to get busted around here, something is going on." And I
2 said, "Well, I will hang around here and see what
3 happens," you know.

4 Q Well, what did happen? How did you find out that you
5 were a suspect, from who?

6 A Well, I didn't know that I was a suspect. Looking
7 back I think it's kind of fishy that I was suppose to work
8 that day and he had me out of the house the following --
9 the day before I worked, then he said I was going to work
10 the next day and he never -- he showed up a couple of
11 hours late and then he said, "We're not going to work,
12 we've got to get materials." Looking back -- I
13 didn't really think nothing of it at the time, but looking
14 back I feel like something don't add up there, but anyway,
15 about 5:30 one of my neighbors called, Kenny's telephone
16 and said there was 20 police in my front yard. So Kenny's
17 wife gave me a ride to Lockhart because my mom stays
18 out -- well, she was staying out at Lockhart, she knows
19 Wendy Glenn so I was going to go see what was going on.

20 Q Who is Wendy Glenn?

21 A Chester County cop.

22 Q So eventually she was contacted, Ms. Glenn and you --

23 A Yeah. My mother wasn't at home, I sat out on her
24 back steps for awhile and I asked her neighbor, "Have you
25 seen mom?" She was leaving and she said, "Yeah, she's

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1 over there."

2 MR. TAYLOR: Your Honor, I'm going to object to
3 hearsay.

4 THE COURT: Sustained.

5 Q You cannot say what somebody said, you can say what
6 you observed or what you did.

7 A Okay.

8 Q So --

9 A Well, she come by and I got her to go get my mother
10 and Wendy showed up first about five minutes earlier and
11 then my mom and them showed up.

12 Q Okay. Well, did you go into custody at that point?

13 A Yeah.

14 Q That was in Lockhart or --

15 A That was in Lockhart. She told me what had happened,
16 she said, "What do you want me to do?"

17 Q You can't say what she said.

18 A Okay. I just asked her to give me a ride back
19 across -- I asked her to give me a ride to talk to them
20 and see what's it up, do you know what I'm saying? And
21 she said, "Well, I'm off duty "--

22 MR. TAYLOR: Objection, Your Honor.

23 Q Remember you can't say what she said.

24 THE COURT: Come on, play within the rules.

25 Q All right. Well, at that time did you know what the

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1 allegations were about?

2 A Yeah. My mother told me --

3 MR. TAYLOR: Objection, Your Honor.

4 Q You can't say what your mother told, you can't say
5 what anybody told you.

6 A Well, I have no other way --

7 THE COURT: Hold on. Don't ask the questions that
8 suggest hearsay answers, obviously he's not following the
9 rules.

10 Q Well, did you find out that you were accused of
11 growing marijuana during that conversation -- or during
12 the process --

13 THE COURT: As a result of a conversation with
14 whoever, did you find out that you were a suspect?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right, go ahead.

17 Q Well, Mr. Montgomery, you looked at all of these
18 pictures yesterday; is that right?

19 A Yes, that's right.

20 Q Are all of these pictures that you went through that
21 were placed into evidence, have you seen -- had you seen
22 any of this evidence before on Dupree Street in your
23 house?

24 A No, sir. I had tools stored back in that back
25 bedroom.

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1 Q Okay. All right. When you left your house on Dupree
2 Street on I believe you said at 9:30 or 10:00 on
3 September 30, 2010 (sic) was that stuff in your house?

4 A No, sir.

5 Q Do you know anything about all of the objects and
6 marijuana and all of the different things that are in
7 these pictures?

8 A The pictures I saw on the CD's, I don't think they
9 had most of those on there, but I saw pictures of plants,
10 they had plants on the back of the truck and plants on my
11 front porch.

12 Q Well, do you know anything about the plants from the
13 pictures that you saw yesterday that are in evidence or
14 anything about --

15 A As far as where they come from or anything like that
16 I can't say, I don't know.

17 Q Were they in your house when you left that morning of
18 September 30th of 2009?

19 A No, sir.

20 Q When is the first time that you have known that that
21 was alleged to be in your house?

22 A When --

23 Q Don't say what somebody told you, but when was it?
24 When were you presented with photos and asked questions
25 about what was in your house?

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1 A I wasn't presented with photos.

2 Q You never saw those until you had a lawyer and went
3 through the stuff?

4 A Right. Chuck Grant -- no, Chuck Starnes, he showed
5 me -- he had a CD and he had the pictures on there, he
6 showed me the pictures of the plants on the computer.

7 Q Okay. Chuck Starnes works in the public defender's
8 office here in Chester County?

9 A Right.

10 Q Okay. Well, you were arrested and eventually you
11 bonded out, correct?

12 A Yeah, that's right.

13 Q And you -- the day after -- well, I guess
14 September 30, the next day whatever -- I guess that would
15 have been October 1st, 30 days has September, Captain
16 Starnes (sic) I believe testified that he interviewed you
17 that next day and that you gave a statement.

18 A Yeah, that's right.

19 Q Did you, in fact, speak with the captain?

20 A Yes, sir.

21 Q And did you make those statements?

22 A Yeah. I was told if I was to plead guilty they would
23 leave loop holes in the case and that it would get
24 dismissed, but now that isn't what happened.

25 Q Well, were you asked about providing information and

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1 assisting them with --

2 A Well, he asked me to -- if I could give -- I said,

3 "Well, what do you want me to do, work for you?" I

4 believe that's how it was -- and he -- correct me if I'm

5 wrong. But I said, "Well, I can't go out there and be

6 two-faced to nobody." I said, "What do you want me to do,

7 go get three people?" And he said, "No, you've got to do

8 anything that I tell you to do." And I said, "No, I can't

9 do that."

10 Q Well, what did you tell him that you had done? Did

11 you tell him that had you sold marijuana to other people?

12 A Well, from what somebody else told me I was

13 considering it hearsay, but yeah, I did admit guilt

14 because I was told if I did they would leave the loop

15 holes in the case and it would get thrown out and there

16 wouldn't be nothing to worry about.

17 Q Okay. Well, were you sworn? Did you give -- did you

18 put your hand on the Bible or did you give an oath when

19 you gave that statement?

20 A No. I don't remember swearing in, no.

21 Q And you were promised some help if you would just --

22 A Well, I didn't really admit guilt, I just told him

23 what I was told to say, I didn't say I was guilty, you

24 know what I'm saying?

25 Q Okay. All right. Well, Mr. Montgomery, do you

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1 recognize that document?

2 A Yes, sir. But this document isn't the actual one
3 that I signed. The one I signed was totally black and he
4 said, "This is your rights right here." It was a black
5 square on here and he asked me to sign so I signed. But
6 this writing on here wasn't on here at the time I signed
7 it.

8 Q Was Officer Pendergrass, was Terry Pendergrass
9 present?

10 A I think she was in the other room. The officer here
11 at the front, Chuck, well, he was the one giving the
12 interview. But Ms. Pendergrass was the one that come and
13 got me out of the holding cell.

14 Q All right. Well, did you just talk to officer --
15 Captain Grant that one time, is that the only time you had
16 ever talked to him?

17 A As far as I -- well, up until that time we had a
18 run-in at the back of the courthouse after that, he told
19 me he smelled weed and had to search me and I said, "Well,
20 If I've got a choice I would rather you not search me."
21 And he said, "Well, we have to." Actually he wasn't the
22 one that searched me, Kito was the one that searched me, I
23 didn't have any weed on me that I was smoking, I was
24 actually coming up here, I had just walked out of the
25 courthouse. But so I called Bill Murphy later on that

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1 day, I said, "They were sitting in the car and when they
2 saw me they got out of the car and ran up saying they
3 smelled weed."

4 Q Whatever, you can't get into what Mr. Murphy
5 responded or whatever.

6 A Okay. Well, it come down to the point that it was
7 the dog catcher earlier that morning saying she smelled
8 marijuana.

9 THE COURT: Sir, please, comply with the rules, you
10 can't say what somebody else said. How much clearer can I
11 be?

12 THE DEFENDANT: Okay.

13 Q Well, Mr. Montgomery, let's just wrap it up here.
14 Were you growing marijuana in your house?

15 A No, sir.

16 Q Have you ever grown marijuana in your house?

17 A No, sir.

18 Q Can you explain -- do you know who put this marijuana
19 in your house?

20 A I'm assuming they've got to be affiliated with the
21 police but there's no way I can prove it, I wasn't there
22 all day. I was hoping they were going to have cameras on
23 the house but she said there was no cameras.

24 Q All right. Were you in possession of any marijuana
25 in the house at all on September 30th of 2009?

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1 A No, sir.

2 Q All right.

3 MR. GRIER: Answer any questions that the solicitor
4 may have for you.

5 THE DEFENDANT: Okay.

6 MR. TAYLOR: Just a few questions, Your Honor.

7 CROSS EXAMINATION

8 BY MR. TAYLOR:

9 Q Mr. Montgomery, just want to make sure I'm clear on a
10 couple of things that you said. You're familiar with
11 Ms. Debbie Thompson; is that right?

12 A Was that the landlord's name?

13 Q That's K and K Realty?

14 A That's right.

15 Q And did you sign a rental agreement with Ms. Thompson
16 back in May of 2009?

17 A Yes, sir.

18 Q I'm going to show you what has been admitted as
19 State's Exhibit number 95. Is that your signature there
20 on the bottom?

21 A Yes, sir.

22 Q That is? And Mr. Grier asked you about a piece of
23 paper that you had -- State's Exhibit 92 that we admitted
24 as evidence that you had signed when you were interviewed
25 by Captain Grant.

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1 A That is correct.

2 Q And is it your testimony that this document at the
3 top was not there?

4 A Well, the black square was there but the writing
5 wasn't on there, I assume something was messed up with the
6 photocopy. He said, "This is your rights right here," and
7 signed, there's wasn't but a black square, there wasn't no
8 writing on it.

9 Q You graduated from -- you went one year at USCL; is
10 that right?

11 A Yes, sir.

12 Q Is this your signature here on this document?

13 A It looks like it, it looks like it.

14 Q That's a yes or no answer.

15 A Yes, sir.

16 Q So you signed -- was this writing there where it
17 says, "Read to Michael L Montgomery at 10:54 by Chuck
18 Grant," was that writing there?

19 A Yes, sir.

20 Q So you were saying you knew it was a square here but
21 there wasn't anything here inside of it.

22 A Right. I know the Miranda rights anyway, but yeah,
23 it was a black square when I signed that paper.

24 Q So you did know your rights were being read to you.

25 A Not really. To be honest with you, no, not at the

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1 time, no. I thought it was a gimmick, you know what I'm
2 saying?

3 Q So you signed a blank piece of paper that didn't have
4 anything on it beyond just read to Michael L. Montgomery?

5 A That's correct.

6 Q Did you have any idea why you were signing that piece
7 of paper?

8 A Well, he said you've got to sign here, this is your
9 rights so I just signed it, I didn't even give it a second
10 thought. I was taking an order from a police officer.

11 Q Now, did you also say that your rent was caught up;
12 is that right?

13 A As far as I can remember, yes.

14 Q I'm going to show you what is marked State's Exhibit
15 Number 93. Do you recognize that?

16 A Yeah, it looks familiar. I didn't realize that I was
17 behind on the rent here.

18 Q Yeah. Do you deny that this was in your house, that
19 they found it in your house?

20 A I can't give a good confirmation either way, sir.

21 Q At the bottom of this document does it say that your
22 account is seriously delinquent?

23 A That's correct.

24 Q Did you make -- after this document was printed did
25 you go and make two cash payments to Deborah Thompson in

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1 regards to this account?

2 A I can't remember. I don't remember being behind on
3 the rent but I'm not going to argue with her, you know,
4 she's got the paperwork. If I was I guess she told me
5 that it wasn't that big a deal.

6 Q Do you live there, was this your house?

7 A Yeah, I lived in the house.

8 Q Do you know whether or not you were behind on your
9 rent? That's a yes or no question. Were you behind on
10 your rent?

11 A I don't remember.

12 Q Now, you left the house -- you say you left the house
13 that morning around 9:30 a.m. on September 30th.

14 A Yes, sir.

15 Q And you were under the impression that you were --
16 you had planned to do some work but that didn't work out
17 so you just left and went and kind of hung out around the
18 corner?

19 A Yes, sir.

20 Q I show you what is marked State's Exhibit 37. It's
21 your testimony that when you left the house there was --
22 there wasn't anything in your house related to growing
23 marijuana?

24 A That's correct.

25 Q And that this is the first time -- or when you were

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1 arrested you were at some point shown pictures of what was
2 supposedly in your house that day.

3 A No, they didn't show me the pictures that day.

4 Q But some time later you saw something.

5 A After I got out of jail, yes, they showed me
6 pictures. I didn't know if the pictures were cropped or
7 if they were actually in there.

8 Q So is it your testimony -- I'm sorry. You testified
9 that Captain Grant also wanted you to help with other
10 cases.

11 A Well, he just asked me for information, I was pretty
12 sure that's what they were doing the whole time. I said,
13 "What do you want me to do, work for you?" And he said,
14 "Yeah." I can't remember exactly the how or when but I
15 said -- I do remember I said, "What do you want me to do,
16 tell on three people or something?" And he said, "No,
17 you've got to do anything that I want you to do." And I
18 said, "I would rather not have to go be two-faced with
19 anybody." I did say if you could find something I could
20 do to be straight-up I'll do it. He asked me what it was
21 and I said, "I don't know." He said, "Think about it and
22 we'll get back with you later," but I never did hear from
23 him.

24 Q Did you say that you had sold marijuana to somebody?

25 A I don't remember exactly what I was told to say but I

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1 think I may have.

2 Q On direct examination did you just say that I sold
3 marijuana to somebody, that that's how this came up?

4 A Did I tell Chuck that?

5 Q Yeah.

6 A I believe I did. I was told if I admitted guilt, if
7 I would just admit I did it they would have the case
8 thrown out of court.

9 Q So it's your testimony that you left the house that
10 morning and you didn't have anything related to marijuana
11 in your house at all, not growing marijuana?

12 A That's correct.

13 Q No marijuana paraphernalia?

14 A That's correct.

15 Q Did you have any scales in your house?

16 A I may have had some metal scales now, but I don't
17 know for sure.

18 Q Any marijuana cigarettes?

19 A No, sir.

20 Q Any items used to smoke marijuana, any of that stuff
21 in your house that morning?

22 A No, sir.

23 Q I show you what's marked Exhibit 62. Do you
24 recognize that picture?

25 A Yeah, that's the counter in my house.

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- 1 Q What is that?
- 2 A It looks like a water bone.
- 3 Q What is that for?
- 4 A Smoking tobacco or marijuana.
- 5 Q What are these in the picture?
- 6 A That's a pair of scissors.
- 7 Q And here?
- 8 A That's a screw driver.
- 9 Q What is this document that's laying on the counter?
- 10 A I can't really tell, that may be a rental statement.
- 11 Q Would it be this rental statement?
- 12 A Looks like it.
- 13 Q Looks like it? Were you paying the utilities at this
- 14 house?
- 15 A Yes, sir.
- 16 Q Were they in your name?
- 17 A Yes, sir.
- 18 Q I show you what is marked State's Exhibit 94. Is
- 19 this a copy of your --
- 20 A Yeah, that's correct.
- 21 Q That's the last power statement you got from the
- 22 power company?
- 23 A That's right.
- 24 MR. TAYLOR: No further questions, Your Honor.
- 25 THE COURT: Redirect?

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1 REDIRECT EXAMINATION

2 BY MR. GRIER:

3 Q Mr. Montgomery, the solicitor was asking you about
4 when you saw the photos and I believe you said I did not
5 know if the pictures were cropped or they were actually in
6 there. What do you mean by that?

7 A When Chuck was showing me the pictures at the top of
8 the courthouse, see I didn't know it, I'm looking at
9 pictures, I didn't know that they could have been cropped
10 or if they were actually put in the house when they come
11 in and took pictures and then brought them back out,
12 whether or not -- I didn't know which way it was.

13 Q All right. When you looked at the pictures, was it
14 obvious the pictures were taken in your house?

15 A It looked like the same bedroom, yeah.

16 Q All right.

17 MR. GRIER: No more questions.

18 THE COURT: You may step down. Next witness?

19 MR. GRIER: Defense rests Your Honor.

20 THE COURT: Anything in reply?

21 MR. TAYLOR: No, Your Honor.

22 THE COURT: Mr. Foreman, ladies and gentlemen, that
23 concludes all of the testimony, I need about five or ten
24 minutes with the lawyers. We'll come back out and we'll
25 hear the arguments. The defendant will go first, because

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1 the State has the burden of proof they go second. Once
2 that is complete I will instruct you on the law and you may
3 start your deliberations. Please go back to your jury
4 room, do not discuss the case or do not begin any
5 deliberations.

6 (The jury left the courtroom.)

7 THE COURT: Y'all have heard me speak to the juror on
8 the end, she has informed us yesterday that she has a job
9 interview this afternoon. It may be that if we argue and
10 charge and it's getting close to the time of her to try to
11 get to Charlotte I may have to substitute her for an
12 alternate which I will randomly select. Any problem from
13 the State?

14 MR. TAYLOR: No, Your Honor.

15 THE COURT: From defense?

16 MR. GRIER: None, Your Honor.

17 THE COURT: Anything for the record before we come
18 back out for final arguments by the State?

19 MR. TAYLOR: No, Your Honor.

20 THE COURT: By the defendant?

21 MR. GRIER: Judge, I would just renew my motion for a
22 directed verdict, I have no additional grounds, the
23 principle would be that I think the State compromised the
24 chain of custody on the marijuana and that should have been
25 excluded, simply renew those motions.

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1 THE COURT: Same reason, respectfully denied.

2 MR. GRIER: All right. Thank you, Your Honor.

3 THE COURT: We will stand at ease.

4 (A break was taken.)

5 THE COURT: Gentlemen, are you ready?

6 MR. TAYLOR: Yes, Your Honor.

7 MR. GRIER: Yes, sir.

8 THE COURT: Ready.

9 (The jury returned to the courtroom.)

10 THE COURT: State waive opening on the law?

11 MR. TAYLOR: Yes, sir, Your Honor.

12 THE COURT: All right.

13 MR. GRIER: Mr. Foreman, ladies and gentlemen of the

14 jury, thank you for your service. The hardest part for me

15 is over, your work is not done and after our comments and

16 the Judge gives you the instruction our work will be done

17 and it will be turned over to you. We're not asked to make

18 a lot of sacrifices while being privileged to live in this

19 country and jury duty is one of the few things we're asked

20 to do. And we think about the men and woman fighting

21 overseas and sacrificing and making such huge sacrifices

22 they're making and you probably know some of those people,

23 well, it makes jury duty seem like not much of a burden

24 when you put it in the context of what people are doing for

25 the country right now and what they've done in the past for

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1 us, so we appreciate it. But what all of it is about is --
2 what our men and women are fighting for is our way of life,
3 for our Constitution, and one part of that Constitution is
4 the way that citizens are treated by the criminal justice
5 system and the components of the criminal justice system
6 and when the Constitution was framed it changed a lot of
7 things. And so it was a revolution, it was a revolution
8 for our freedom for individuals from almost all systems
9 were not very -- did not have many opportunities for
10 people, the little man, to have a fair shake and our
11 Constitution changed all of that, and the genius of it was
12 that what our forefathers put ahead of everything was this
13 freedom. And the Judge gave you an example of different
14 types of decisions that juries make, and in civil cases
15 where money is at stake the burden of proof is simply a
16 preponderance of the evidence, meaning more likely than
17 not, then the party that meets that burden and proves more
18 likely than not, probable, the preponderance of the
19 evidence prevails in a civil case when you're trying to
20 take somebody's money. When you're trying to take
21 somebody's freedom it's a whole different world because the
22 burden of proof is beyond a reasonable doubt. And I think
23 I mentioned it before, I'm going to mention it again and I
24 think the Judge will typically instruct you that beyond a
25 reasonable doubt is interpreted to mean the kind of doubt

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1 that would cause a reasonable person to hesitate to act, to
2 hesitate to convict in this case. I believe the Judge will
3 also charge you that if you are firmly convinced of the
4 defendant's guilt then you must convict, however if you
5 find that there is the real possibility that he might be
6 innocent then you must acquit him. I see this case kind of
7 like the old -- I was born in '55 but I -- as a young kid I
8 had an affection for cars and a '57 Chevy. When I was old
9 enough to start looking at cars a neighbor down the street
10 had a bright forest green '57 Chevy, it was beautiful, had
11 a nice paint job and I wanted it and I -- my dad -- it was
12 just beautiful sitting out there in that yard and I wanted
13 it. I went down there with my dad -- and a beautiful paint
14 job -- but we got in the car and the windows wouldn't roll
15 down, the upholstery was beat up, but none of the dolls
16 were off of it and rode it and the shocks were beat up on
17 it. And, you know, you look at this case and here is how
18 the State is -- how this case is positive to you, it's real
19 pretty on the outside in terms of trying to suggest that
20 Mr. Montgomery is guilty of this because it's -- we've got
21 all kinds of -- you're going to have a lot of pictures to
22 look at and it's real pretty on the outside like that '57
23 Chevy was that my dad talked me out of getting fortunately
24 because I never was mechanically inclined and I don't think
25 I could have done anything with it, but pretty on the

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1 outside isn't what this case is about. You have got to
2 look on the inside of this and the Constitution tells you
3 how to look at it, that's going to be your job, and I
4 submit to you that there is abundant evidence that
5 Mr. Montgomery is not guilty. First of all what I
6 cannot -- well, first of all when they went into the house
7 we know from the testimony that they had information that
8 Mr. Montgomery was involved with drugs or something. Well,
9 what that -- the inference there is that somebody was
10 telling them something and as you heard from Mr.
11 Montgomery, if you cooperate with us and you can help
12 yourself if you can provide us and help us make a bust.
13 Well, somebody obviously has benefited and we know that law
14 enforcement was able to get to this thing, get everything
15 there and pack up and be gone in an hour and a half. We
16 know that Mr. Montgomery was not there when they got there
17 and we know that he was not there from -- it's
18 uncontradicted that he wasn't there from 9:30 or 10:00 in
19 the morning until he actually turned himself in. Most
20 certainly somebody benefited from suggesting that
21 Mr. Montgomery was involved in this, had an opportunity to
22 place the -- and presumably would have had to have access
23 to what was found in that house to put it there, but that
24 opportunity was there and it existed. Well, when Mr.
25 Montgomery turned himself in he wasn't found at the house,

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1 he certainly wasn't -- you know, they had a bunch of pretty
2 pictures but they really could not directly -- and you're
3 going to look at them and they're good pictures but they
4 really couldn't connect them to him directly. And so what
5 they did is what they do and that is police procedure is to
6 take him in and ask him and try to get him to make a
7 statement and to offer him something in exchange for giving
8 a statement, and when they offer you something and promise
9 you they're going to let you go and that everything is
10 going to be all right and you can help yourself and all of
11 those things, people might not be intuitive but we know
12 that people's will can be overcome by the desire to get out
13 of stuff and promises being made. And, you know, they
14 didn't have -- Officer Grant didn't have enough -- for some
15 reason he didn't want y'all to know what was said in
16 getting that statement. I can't understand why we can't
17 record stuff so we know what was said, and the way that
18 that was conducted. It just seems so simple and it just
19 seems we are spending a tremendous amount of money on
20 resources in making cases then why can't we record that
21 sort of thing so that we know what really happened in
22 there. But I submit to you that my client gave -- said
23 what they wanted to hear in exchange for what he thought
24 what would have resulted. He had no criminal record and he
25 wasn't savvy or sophisticated about dealing with the police

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1 and he believed that he would be able to -- that this would
2 go away, he was told it would go away if he would just say
3 what they wanted to hear and I believe that's what he did.
4 You know, other reasons that cast doubt on the validity of
5 the case are simply that the opportunity to connect
6 Mr. Montgomery, the house wasn't surveilled. They don't --
7 prior to them going in if they believed that he was the one
8 why not surveil the house and find out and catch whoever is
9 there and put them on the scene. It certainly would have
10 been seemingly the best way to tie this case down and to
11 remove the doubts about what really happened. The
12 opportunity to fingerprint. There is nothing -- you know,
13 I don't know, these all have good surfaces on them, they
14 had pipes. I guess the Judge will tell you I think you can
15 tear open all of these envelopes and look at all of this
16 stuff, you know, why not? They've got nothing forensic and
17 it could have been done but that wasn't done. So ladies
18 and gentlemen, you know, there's a lot of nice pictures and
19 this is nice, shiny -- it's like that nice shiny Chevy
20 also, a lot of stuff here, piles of it for you to look at
21 and to go through and most certainly you are going to look
22 at this and you might say, "Well, he's probably guilty.
23 All right." If you say he's probably guilty, well, then
24 you have met the burden of proof -- the State has met its
25 burden of proof if this were a civil case, this isn't a

CLOSING ARGUMENTS

1 civil case. The proof has to be beyond a reasonable doubt
2 to protect the rights of the individual and I submit to you
3 I won't go through them again, lawyers are always tempted
4 to keep talking but certainly I have made my argument and I
5 think I have pointed out the things that I'm just asking
6 you to consider in terms of most certainly the holes in the
7 case create a reasonable doubt and most certainly we
8 believe that when you consider the evidence that the State
9 presents they have not met their burden of proof. And when
10 you go back and deliberate each of you, of course, must be
11 guided by your own conscience in what you do and each of
12 you must live with your conscience in terms of the way that
13 you view the evidence, and I submit to you that certainly
14 you will entertain what the other folks say but when all is
15 said and done I believe you will find the defendant not
16 guilty and I ask you to return that verdict. Thank you.

17 MR. TAYLOR: Your Honor, Mr. Grier, Mr. Foreman,
18 ladies and gentlemen of the jury. As Mr. Grier said this
19 is the time that you --

20 THE COURT: Hold on one second for me, I apologize.

21 (Break in proceedings.)

22 MR. TAYLOR: This is the time that your work starts.
23 The State's burden in this case is to prove it to you
24 beyond a reasonable doubt. Beyond a reasonable doubt does
25 not mean beyond any possible doubt, there's no way that we

CLOSING ARGUMENTS

1 could do that, but what it does mean is for you to use your
2 common sense to decide the facts in this case and, this
3 case to me screams out for you to use your good everyday
4 sense to know what was going on. Michael Montgomery is
5 charged with manufacturing marijuana and possession with
6 intent to distribute. What are the real kind of issues in
7 this case? [REDACTED], whose residence is that? I
8 think it is undisputed that that residence belonged to
9 Michael Montgomery. He signed a rental agreement in May of
10 2009, he had utilities there in his name -- and you'll have
11 these items to look at -- signed a rental agreement. He
12 had power bills in his name, he made rent payments to
13 Ms. Deborah Thompson who runs K and K Rental Property, is
14 the rental landlord I guess for that property, he did that
15 as late as September 21, 2009, nine days before this house
16 got hit he is still making payments to the rental company.
17 So whose property is it? It's got to be his. That is
18 important because we also have to establish and it is in
19 the Judge's charge, custody and control of the premises,
20 that becomes very important in terms of the possession with
21 intent to distribute marijuana charge and it's also
22 important for the manufacturing marijuana charge. This
23 house -- it was -- it's a grow house, there's nothing in
24 there but really stuff to manufacture and grow marijuana.
25 Mr. Montgomery is saying that, "Well, when I left the house

CLOSING ARGUMENTS

1 that morning, none of this stuff was set up in the house,
2 some kind of way the police came in and set these items up
3 and I had no knowledge of it." You look at these
4 photographs, you take a hard look at them and you see, be
5 honest, are the police going to go through that much
6 trouble to try to put something in his house that doesn't
7 belong there? They got information that he was growing
8 marijuana in the house, they searched the house and they
9 find it, it's marijuana all over the house, it's items to
10 grow marijuana all over that house in different rooms in
11 different places in the house and you have photographs of
12 that. There are jars in the kitchen in a cupboard with
13 marijuana in them. Is there any reason that the police
14 would go through all of that to put that in somebody's
15 house to set them up for that? There's no reason for that.
16 There were 19 plants, there were grow lights, foil, wooden
17 posts, power cords, soil, windows were sealed, there were
18 22 of these lights in place in that house to run this
19 operation. He was behind in his rent, he was behind in his
20 power bill, he wasn't doing nothing in that house but
21 growing and smoking marijuana, that's all it was. That's
22 all it was. You will have the statement, too. Mr.
23 Montgomery, which he says -- well, he says he talked to
24 Detective -- Investigator Grant but what Officer Grant did
25 tell you he said, this was not what he really said, that he

CLOSING ARGUMENTS

1 signed a blank piece of paper except for some writing in
2 the middle, that he had no idea what that really meant and
3 what rights or anything that he was giving away on that.
4 His signatures, I think if you would take a look at them,
5 were the same on the rental agreement as they were on this
6 document. He doesn't say he didn't sign it but it also
7 goes to establish that you have two different signatures,
8 two different places, he signed them both. He definitely
9 made the conversation with the detective, he just is trying
10 to tell you, "Well, I didn't really tell them that, it was
11 my house and I didn't really tell them that I was growing
12 marijuana," trying to hint around there was some kind of
13 conspiracy in this which there just was not. There were a
14 lot of pictures that went in, I hated to bore you with
15 those but I had to get them in. There were a lot of pieces
16 that went in for you to consider but when you take all of
17 those pieces together and look at them all together you
18 will be firmly convinced beyond a reasonable doubt. These
19 two charges -- as I said he's charged with manufacturing
20 marijuana, that's one decision that you have to make, you
21 also have to consider whether or not he was in possession
22 of marijuana with intent to distribute. Now, another item
23 that is important about possession with intent to
24 distribute, sometimes we refer to it at PWID, is the amount
25 of marijuana that is in that house and you will get an

CLOSING ARGUMENTS

1 instruction on it. If you add up these marijuana analysis
2 results, positive results by agent -- Officer Hughey, they
3 add up to about 138 grams total of marijuana. There is an
4 inference that you will be charged by the Judge, you don't
5 have to follow that inference, that is not necessarily the
6 law but it is something for you to consider, anything over
7 28 grams of marijuana that somebody is in possession of you
8 can find that they are possessing that amount with the
9 intent to distribute because of the volume of it. Okay?
10 So you can have simple types of possession, he is way over
11 that for you to consider and I think that's critically
12 important in deciding whether or not he possessed this
13 marijuana, whether intent to distribute it. And he had
14 other items in there, cigarettes that were in there, scales
15 that were also in there that can be used to weigh out
16 marijuana, marijuana that can be distributed out to other
17 people. It is very difficult to sit in judgment of another
18 person, you have a very difficult job and it is not easy,
19 but I want you to have the courage to also consider you do
20 have a job to do if you do find the evidence that is there
21 for your consideration that you find Mr. Michael Montgomery
22 guilty of both charges. The evidence is there for you to
23 consider and it is overwhelming. When we started this case
24 I said it's a fairly straight forward case and again I
25 think it is. He's growing it, he's selling it, he has got

CLOSING ARGUMENTS

1 a lot of it, it's in his house, he owns the house, he
2 controls the house. You look at those photographs, no way
3 you could think somebody -- Officer Grant testified those
4 plants to get to their level of maturity took several
5 months. This is not some overnight deal, something that
6 somebody just threw in there, this has been going on a long
7 time. He left rental agreements, he left his power bills
8 laying around, he got lazy, got sloppy, got caught, that's
9 what it boils down to. The evidence is there, ladies and
10 gentlemen. Find Michael Montgomery guilty of manufacturing
11 marijuana and possession with intent to distribute it.
12 Thank you.

13 THE COURT: Mr. Foreman, ladies and gentlemen, my
14 instructions are about ten or 12 or 15 minutes, is
15 everybody okay? Anybody need a bathroom break, anybody?
16 What I would like to do, Mr. Foreman, is I go around the
17 state holding court in all criminal cases, the first part
18 of this charge or the instructions deals with general
19 propositions of law that apply to all criminal cases and
20 once I finish that we will go into the specific charges in
21 this case, the two indicted offenses, that is manufacturing
22 marijuana and possession of marijuana with intent to
23 distribute. First of all let me remind you that the fact
24 that the defendant in this case was arrested, charged and
25 indicted, that is not evidence in the case and cannot be

JURY CHARGE

1 considered by you as evidence of guilt in the case, nor
2 does it create any presumption or inference of guilt.
3 These two indictments as I have told you simply contain the
4 written charges made against the defendant, it is the way
5 the case is brought into the courtroom. The indictments in
6 this case charge two offenses, growing or manufacturing
7 marijuana, possession of marijuana with intent to
8 distribute, each indictment charges a separate and distinct
9 offense. You must decide each indictment separately on the
10 evidence and the law applicable to it influenced by your
11 decision as to any other indictment. He may be convicted
12 on one and acquitted on the other, convicted on all or
13 acquitted on all, so you have to consider each one of them
14 separate and apart and you will be asked to write a
15 separate verdict of not guilty or guilty as to each
16 indictment and I will have a verdict form back there for
17 you to consider when you do that. As to these two
18 indictments the defendant has pled not guilty. A plea of
19 not guilty puts the burden on the State of South Carolina
20 to prove the defendant guilty beyond a reasonable doubt. A
21 person charged with committing a criminal offense in South
22 Carolina is never required to prove himself innocent. I
23 charge and instruct you it's an important Constitutional
24 rule of law that a defendant in a criminal trial no matter
25 what the seriousness of the charge may and will always be

JURY CHARGE

1 presumed to be innocent for which the indictments were
2 issued unless guilt has been proven by evidence satisfying
3 you of that guilt beyond a reasonable doubt. The
4 presumption of innocence does not end when you begin your
5 deliberations but it stays with the defendant throughout
6 the trial until you reach a verdict of guilt based on
7 evidence satisfying you of that guilt beyond a reasonable
8 doubt. I emphasize to you that the presumption of
9 innocence is not a mere legal theory, it's just not a legal
10 phrase either, it's a substantial Constitutional right to
11 which every defendant is entitled unless you, the jury, are
12 satisfied from the evidence of the defendant's guilt beyond
13 a reasonable doubt. What is a reasonable doubt? The law
14 in our state says simply a reasonable doubt is the kind of
15 doubt that would cause a reasonable person to hesitate to
16 act. Obviously the State has the burden of proving the
17 defendant's guilt beyond a reasonable doubt. Proof beyond
18 a reasonable doubt is proof that leaves you firmly
19 convinced of the defendant's guilt. There are very few
20 things in the world that we know with absolute certainty
21 and in criminal case the law does not require proof that
22 overcomes every possible doubt. If based on your
23 consideration of the evidence you are firmly convinced that
24 the defendant is guilty of the crimes charged then you must
25 find the defendant guilty. If on the other hand you think

JURY CHARGE

1 there's a real possibility that the defendant is not guilty
2 you must give the defendant the benefit of the doubt and
3 find him not guilty. Let me remind you once again, ladies
4 and gentlemen, that during the trial of this case you and I
5 have had certain duties to perform. You, as I told you
6 earlier, are the judges of the facts, I am the judge of the
7 law, so if at any time during the trial of this case I have
8 looked like I have some opinion about the facts please
9 disregard that. The law does not allow me to have any
10 opinion whatsoever about the facts, you are the sole
11 finders of the facts in the case. Therefore if I yawned or
12 raised my eye browse or stretched or smiled or frowned
13 that's just me sitting up here, I don't have any opinion
14 about these facts, that is your duty. You are the fact
15 finders in the case, that is your sole job, I have nothing
16 to do with that. Because you are the finders of facts
17 obviously you must determine the credibility of the
18 witnesses who have testified in this case. Credibility
19 simply means believability. It becomes your duty as jurors
20 to analyze and to evaluate the evidence and determine which
21 evidence convinces you of its truth. I told you when we
22 started I would have been surprised if we did not hear
23 several versions of the facts in this case, you did and you
24 now must determine who is telling the truth. In finding
25 the facts, in determining the believability or credibility

JURY CHARGE

1 of witnesses who have testified you can believe one witness
2 over several, several over one, you can disregard
3 everything a witness says, you can believe everything a
4 witness says, you can believe a part and disregard the
5 other part. You have the right to determine who was
6 telling the truth, use your common ordinary sense in doing
7 that. You have the right to consider how the witness
8 looked in the witness stand, whether the witness has
9 exhibited to you any interest, bias, prejudice or other
10 motive in the case. We had one witness who testified in
11 the case who I qualified as an expert witness. Normally
12 our rules of evidence do not permit witnesses to testify
13 about opinions or conclusions, an exception to that rule is
14 what we call the expert witness rule. A witness who by
15 education and experience has become an expert in some art,
16 science or profession may state an opinion as to relevant
17 and material matters in which the witness claims to be an
18 expert and may also state the reason for the opinion. You
19 should consider any expert opinion evidence in this case
20 like any other evidence and give it the weight you think it
21 deserves. An expert witness' testimony is to be given no
22 greater weight than that of any other witness simply
23 because the witness is an expert, further you are not
24 required to accept an expert's opinion even though it is
25 not contradicted. And the last general proposition of law

JURY CHARGE

1 before we get to the two offenses is in this case a
2 statement alleged to have been made by the defendant has
3 been admitted into evidence in this case. While I have
4 determined, or the Court has determined that it is
5 admissible I instruct you that you make the ultimate
6 decision of whether or not the defendant actually made the
7 statement, and if he did make the statement you must
8 determine whether the statement was made by the defendant
9 voluntarily and of his own free will. This means that the
10 statement was not caused by pressure, force, fear, threats
11 or coercion or intimidation or by any hope or promise of
12 leniency or a reward of any kind. In determining whether
13 the statement was voluntarily you should consider both the
14 characteristics of the defendant and the details of the
15 questions. Some of the factors that you may consider are
16 the age of the defendant, his education or lack thereof,
17 his mental ability or capacity, his intelligence, the
18 defendant's background or environment, the place and length
19 of the detention, the nature of the questioning, and the
20 advice or lack thereof to the defendant's Constitutional
21 rights including but not limited to the right to remain
22 silent, the right of any statement can be used against him
23 in court. The right to have a lawyer present, if he cannot
24 afford a lawyer the Court will appoint him one, that he can
25 stop making a statement at any time. The State has the

JURY CHARGE

1 burden of proving beyond a reasonable doubt that the
2 statement was voluntary, therefore you must determine it
3 was and you may give the statement any further
4 consideration that you deem proper. Now, let's turn to the
5 two indictments, the first one I will talk to you about is
6 growing or manufacturing marijuana. Under our laws in the
7 State of South Carolina it is codified -- common law is
8 codified or statutory laws in these books under section
9 44-53-379A1B2, that's a long law, but it simply says this:
10 It is unlawful to grow or manufacture marijuana in this
11 state. In order to prove the defendant violated the
12 statute the State must prove to you beyond a reasonable
13 doubt that the defendant did, in fact, manufacture and/or
14 grow marijuana on the date alleged in the indictment. And
15 our courts have defined the word manufacture means to
16 produce, prepare, process, plant, cultivate, grow or
17 harvest. So the State has to prove to you beyond a
18 reasonable doubt that he produced, prepared, converted,
19 processed, planted, cultivated, grew or harvested
20 marijuana. The other statute we are dealing with or the
21 other indictment is an indictment for possession of
22 marijuana with intent to distribute. To prove possession
23 the State must prove beyond a reasonable doubt that the
24 defendant had both the power and the intent to control the
25 disposition or use of the marijuana. Possession may be

JURY CHARGE

1 either what we call actual or constructive. Actual
2 possession means the marijuana was in the actual physical
3 custody of the defendant, constructive possession means
4 that the defendant had dominion and control or the right to
5 exercise dominion and control over either the marijuana
6 itself or the property on which the marijuana was found.
7 Mere presence at the scene where the drugs were found is
8 not enough to prove possession. Actual knowledge of the
9 presence of the marijuana is strong evidence of the
10 defendant's intent to control its disposition or use. The
11 defendant's knowledge and possession may be inferred when a
12 substance is found on the property under the defendant's
13 control. However, this inference is simply an evidentiary
14 fact to be taken into consideration by you along with the
15 other evidence in the case and to be given the weight you
16 decide it should have. The State also must prove beyond a
17 reasonable doubt that the defendant intended to distribute
18 the marijuana. Distribute means to deliver a drug other
19 than by administering or dispensing a drug. Intent may be
20 shown by acts and conduct of the defendant in other
21 circumstances from which you may naturally and reasonably
22 infer intent. In determining whether the defendant had the
23 intent to distribute the marijuana you may consider the
24 circumstances surrounding the defendant's alleged
25 possession, you may consider the amount of the substance

JURY CHARGE

1 alleged to have been possessed, the manner in which it was
2 allegedly possessed, the place where it was allegedly
3 possessed, and other factors which you consider to be
4 important. You must find that the defendant did not intend
5 to have marijuana solely for his own use. I further charge
6 you that possession of 28 grams -- which is one ounce --
7 28 grams or one ounce of marijuana creates an inference
8 that the defendant possessed the marijuana with intent to
9 distribute it. This inference does not relieve the State
10 from proving beyond a reasonable doubt that the defendant
11 had the intent to distribute it, it is simply an
12 evidentiary fact to be taken into consideration by you
13 along with all of the evidence in the case and be given the
14 weight you decided it should have. If you find that the
15 State has failed to prove beyond a reasonable doubt that
16 the defendant is guilty of possession with intent to
17 distribute marijuana then you may consider whether the
18 State has proven beyond a reasonable doubt that the
19 defendant is guilty of simple possession of marijuana.
20 Simple possession simply includes or does not -- does not,
21 does not include the intent to distribute marijuana.
22 Mr. Foreman, ladies and gentlemen, your verdict must be
23 unanimous, it must be based solely on the evidence that
24 we've heard in the courtroom. You have no friends to
25 reward, no enemies to punish. You must make a very

JURY CHARGE

1 reasoned decision based on the evidence as to both
2 indictments. As I said your verdict must be unanimous, all
3 12 must agree. Mr. Foreman, when y'all have decided on
4 each indictment you will sign it, knock on the door and
5 tell the bailiff that you're prepared to deliver the
6 verdict. The verdict on growing or manufacturing marijuana
7 is very simple, it is either not guilty or guilty. Once
8 you've made that decision you check the appropriate block,
9 sign your name and you will be through with that one. The
10 one on the indictment for the offense of possession of
11 marijuana with intent to distribute, that one is a little
12 bit different because you would consider whether or not he
13 had it in his possession, if the State proved that beyond a
14 reasonable doubt, and if he did, did he have it in his
15 possession with the intent to distribute, and I just told
16 you all of what you can consider on that. If you found
17 that he -- if you found him not guilty on that charge then
18 you would have what we would call a lesser included
19 offense, you have got the big offense and then you've got
20 the little one inside of it, you would have to decide
21 whether or not he simply just had simple possession of the
22 marijuana without intent to distribute, guilty or not
23 guilty on that. So you will have two verdict forms to
24 consider, growing manufacturing is just a guilty, not
25 guilty. The possession with intent to distribute if you

JURY CHARGE

1 find him not guilty on that then you have to consider the
2 lesser included. If you find him guilty on the possession
3 with intent to distribute then you don't have to worry
4 about the second one. If you have any questions whatsoever
5 about that you let me know. In just a few minutes I am
6 going to let you retire to your jury room. Out of an
7 abundance of caution -- and I have discussed this with the
8 lawyers since you are two hours away from when you have to
9 leave, and you might make a decision quick or you may be
10 here a long time, but out of an abundance of caution so you
11 don't miss your job interview, jobs are so tough right now,
12 I'm going to replace you with an alternate. And Madam
13 Clerk, put the two names of the alternates and pull them
14 out randomly for me, please, we'll decide which one is
15 going to do it. Mr. Foreman, if you have any questions
16 during the deliberations write them out on a piece of
17 paper, you will have some paper back there, and send them
18 to me, sometimes I can answer them, sometimes I can't, it
19 just depends on what your question is, but I will send you
20 back some explanation. I'm going to let you retire to your
21 jury room in just a second as soon as we can decide which
22 alternate we are going to use. I'm going to ask you, do
23 not start deliberating, I have to ask the lawyers if I have
24 left anything out or I need to add anything and then we
25 have to make sure we have all of the exhibits, once we do

JURY CHARGE

1 that it takes two or three minutes. We will send the
2 verdict forms back in the courtroom with you -- in the jury
3 room with you and then you may start your deliberations.
4 It's 11:00, if you see that you think you're going to be
5 there and need lunch you let us know, we'll order you
6 lunch. If you see that we're going to get through before
7 lunch, I have squeezed out sausage biscuits, that might be
8 all I can do. Randomly, Ms. Young, which one is Ms. Young?
9 It has to be, I'm going to elevate you, ma'am, give me your
10 name again, please, ma'am?

11 THE JUROR: Felicia Chisholm.

12 THE COURT: Ms. Chisholm, we're going to excuse you
13 and thank you for being here but I just don't want you to
14 miss your job interview, they're just -- I know how tough
15 the job market is. Okay. Let Ms. Young go back, let the
16 alternate sit in a separate place. Thank you.

17 (The jury left the courtroom.)

18 THE COURT: On behalf of the State any requested
19 additions or deletions or objections to the charge?

20 MR. TAYLOR: No, Your Honor.

21 THE COURT: Likewise by the defendant?

22 MR. GRIER: None, Your Honor.

23 THE COURT: Gentleman, would you please come forward,
24 review the verdict form and also make sure you have all of
25 the evidence in hand to go to the jury room.

JURY CHARGE

1 (Break in proceedings.)

2 THE COURT: Let the record reflect that the lawyers as
3 well as the court reporter and the wonderful clerk of court
4 have reviewed the exhibits, all are in order, they are
5 being sent back along with the two verdict forms that have
6 been approved by the attorneys, and it is 11:02. Thank
7 you.

8 (The jury began deliberations.)

9 THE COURT: Let the record reflect I have got a
10 question from the jury. Present in the courtroom are the
11 solicitor, defense counsel and defendant. The question is
12 simple, "Where is the police statement I enjoyed making?"
13 It's an oral statement already, right?

14 MR. TAYLOR: Yes, sir.

15 THE COURT: So we have no written copy?

16 MR. TAYLOR: There is no written copy of the recorded
17 statement.

18 THE COURT: Do you agree with that?

19 MR. GRIER: Yes, sir.

20 THE COURT: So the response would be the statement was
21 oral, nothing in writing, nothing recorded. How is that?

22 MR. TAYLOR: That's fine.

23 MR. GRIER: I would prefer it just be there is no
24 written statement.

25 MR. TAYLOR: Your language sounds fine, Judge.

JURY VERDICT

1 THE COURT: I'm going to respond there is no written
2 statement.

3 (The jury resumed deliberations.)

4 THE COURT: Gentlemen, I am informed we have a
5 verdict. Is the State ready to receive it?

6 MR. TAYLOR: Yes, sir, Your Honor.

7 THE COURT: Is the defendant ready to receive it?

8 MR. GRIER: Ready, Your Honor.

9 THE COURT: Bring the jury in please.

10 (The jury returned to the courtroom.)

11 THE COURT: Mr. Foreman, I understand y'all have
12 reached a verdict?

13 THE JUROR: Yes, sir.

14 THE COURT: If you would hand it to the bailiff,
15 please, sir. All right, ma'am, you may publish the
16 verdict.

17 THE CLERK: Your Honor, this is case number
18 2010-GS-12-37, State of South Carolina versus Michael L.
19 Montgomery, as to the offense of growing and manufacturing
20 marijuana, we find the defendant guilty, we unanimously
21 agree, George Mayfield as foreman on October 13, 2010. As
22 indictment number 2010-GS-12-38, the State versus Michael
23 L. Montgomery, as to the offense of possession of marijuana
24 within intent to distribute we, the jury, find the
25 defendant not guilty. As to the lesser included offense

JURY VERDICT

1 possession of marijuana we, the jury, find the defendant
2 guilty, we unanimously agree. Foreperson George A.
3 Mayfield, signed October 13, 2010. If this is your verdict
4 please say so by the raising of your right hands. Thank
5 you.

6 THE COURT: Anything else from the jury before I
7 dismiss them?

8 MR. GRIER: Your Honor, I would ask for an individual
9 polling.

10 THE COURT: All right. Would you do that, Madam
11 Clerk, or do you want me to do it?

12 THE CLERK: I will be glad to do it.

13 THE COURT: They're just simply going to ask you is
14 that your verdict and is it still your verdict, as she
15 calls she will ask you the question and if you would please
16 stand.

17 THE CLERK: Foreman George A. Mayfield, is this your
18 verdict and do you still ascend?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Donna J. Winchester, is this your verdict
21 and do you still ascend?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Donald Funderburke, is this your verdict
24 and do you still ascend?

25 THE JUROR: Yes, ma'am.

JURY VERDICT

1 THE CLERK: Tia M. Womack, is this your verdict and do
2 you still ascend?

3 THE JUROR: Yes, ma'am.

4 THE CLERK: James A. Tucker, is this your verdict and
5 do you still ascend?

6 THE JUROR: Yes, ma'am.

7 THE CLERK: Jameka S. Ward, is this your verdict and
8 do you still ascend?

9 THE JUROR: Yes, ma'am.

10 THE CLERK: Curtis C. Clark, is this your verdict and
11 do you still ascend?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: Thank you. Saundra S. McWatters, is this
14 your verdict and do you still ascend?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Douglas E. Peay, is this your verdict and
17 do you still ascend?

18 THE JUROR: Yes, ma'am.

19 THE CLERK: Donna B. Varnadore, is this your verdict
20 and do you still ascend?

21 THE JUROR: Yes, ma'am.

22 THE CLERK: Sherry M. Ammons, is this your verdict and
23 do you still ascend?

24 THE JUROR: Yes, ma'am.

25 THE CLERK: Jacqueline Hardin, is this your verdict

SENTENCING HEARING

1 and do you still ascend?

2 THE JUROR: Yes, ma'am.

3 THE CLERK: I believe that's it judge. I'm sorry.

4 John Morton, is this your verdict and do you still ascend?

5 He's not here? He's not here, he was the alternate.

6 THE COURT: All right. We have polled the jury,
7 anything else?

8 MR. GRIER: No, Your Honor.

9 (The jury was dismissed at this time.)

10 THE COURT: All right. Bring the defendant forward,
11 please.

12 MR. TAYLOR: Your Honor, may I approach just a moment?

13 (Break in proceedings.)

14 THE COURT: All right. Mr. Grier, are you ready -- we
15 are in position to sentence the defendant, Michael
16 Montgomery, II?

17 MR. GRIER: We are ready, Your Honor.

18 THE COURT: Anything you want to tell me?

19 MR. GRIER: Well Judge, I think you know a lot about
20 the young man, you probably heard on direct examination,
21 the headline of this young man is that he has never been in
22 trouble before, never been in the courtroom for being in
23 any trouble and never been a person that acted violently or
24 acted in any way to harm people. Judge, his parents split
25 up when he was young and they both loved him and nurtured

SENTENCING HEARING

1 him and he has lived with both and had contact with them.
2 His dad is in the courtroom and, of course, would speak.
3 His dad worked for Springs Industries for years and like so
4 many people as that faded lost that job and he went back to
5 the seminary and now runs a non-profit to assist families
6 that are homeless and does such, but obviously he is here
7 to speak on behalf of his son. Judge, Mr. Montgomery was a
8 distinguished high school student, honor student, went to a
9 year of college and he went on and started his own
10 business, had a trucking company and I think with the help
11 of his grandmother went to trucking school which I don't
12 know if you've seen it out here between Lancaster and
13 Chester I believe is where he went and took the initiative
14 to do that, got his own rig and was -- the family describes
15 it as was quite successful with that. And my client didn't
16 appreciate it, but Judge, I think through the family and
17 through my experience with Mr. Montgomery while he has
18 always been respectful to me and I haven't had any issues
19 with him ever being in any way belligerent or disrespectful
20 to me I think there has been some disconnect with his
21 reality most certainly and based on things that had
22 transpired you know that we had a psychological evaluation
23 done and he came back competent and most certainly I don't
24 think there was any issue with his competency to conform
25 with Blair. But his parents both describe a young man who

SENTENCING HEARING

1 as I is said distinguished, able to maintain a business and
2 then things fell apart for Mr. Montgomery to the point
3 where most certainly over the last year he has -- and maybe
4 a little bit prior to this incident, but there was a period
5 of homelessness and he's been living in Columbia in a
6 homeless shelter for certainly since earlier on this year,
7 I'm not quite sure when. And I've seen him, he has come up
8 to see me and he has been in the university the facilities
9 to communicate with me by e-mail and we have stayed in
10 touch, Your Honor. And of course, he has exhibited some
11 signs of what -- I minored in psychology but I don't
12 pretend to be a psychologist, but certainly episodes of
13 paranoia and such, Judge. His dad will tell you just as
14 well, Judge, that during the psychological evaluation
15 process he was hopeful that there would be some mechanism
16 found through that process to help Michael with finding out
17 more about his disconnect -- with his perceived disconnect
18 at least according to his family. And Judge, I honestly
19 think the jury has spoken, the evidence is in and there is
20 a lot of evidence most certainly but Mr. Montgomery has
21 never wavered on his version of what happened and the facts
22 of this case in terms of that and there may be some again
23 evidence of some disconnect there, Your Honor, that
24 while -- that he really hadn't been able to -- we discussed
25 working out various plea bargains and such but it was never

SENTENCING HEARING

1 really an option. Judge, I'm asking you --

2 THE COURT: There was an option because I discussed it
3 at length with you, the solicitor and even with his dad.

4 MR. GRIER: Let me rephrase that, it wasn't an option
5 that we were able to get developed very far, Your Honor.
6 And Judge, I'm asking you to fashion a sentence that would
7 allow him to -- I'm asking you to fashion a split sentence.
8 I believe the young man needs whatever assistance that
9 might be available for him through a mental health
10 assessment perhaps, and certainly his dad is going to ask
11 for that, and I think his dad knows him better than anybody
12 in this courtroom and he feels like he certainly is a
13 redeemable young man and a young man who has no history of
14 going down the wrong road but now he does. Judge, we're
15 begging for mercy for Mr. Montgomery. My understanding --
16 and I think our system here got his jail time but I was
17 unable to get that because he has been sick, but my
18 understanding is that Mr. Montgomery spent about 40 days in
19 the Chester County Detention Center. Judge, I'm asking you
20 to give him a sentence that would allow him even if it
21 involves not giving him credit for that time, if the Court
22 would entertain a sentence that would allow him to serve
23 the maximum time in the Chester County Detention Center
24 with some substantial sentence hung over his head, some
25 substantial commitment to the community through community

SENTENCING HEARING

1 service and other options while allowing him to work with
2 the various mental health organizations and pursue that and
3 follow their recommendations as part of that. We're
4 certainly asking the Court to be merciful since this is his
5 first time to stand before the Judge on any nature for
6 anything other than traffic offenses.

7 THE COURT: Anything you want to tell me,
8 Mr. Montgomery?

9 THE DEFENDANT: I just ask you for your leniency, sir.

10 THE COURT: Dad? First of all let me commend you. I
11 notice you have been here all week and from my observations
12 it appears obviously you didn't condone or still don't
13 condone what your son has done but you stood by him, I
14 admire you for that. We all have situations where our
15 children don't do exactly what we want them to do. Quite
16 frankly I talked to you yesterday and begged that your son
17 would acknowledge his growth of this stuff and would have
18 given him a lot of consideration for his admission of
19 guilt.

20 MR. GRIER: Judge, could I just follow-up on that
21 briefly? Mr. Montgomery was a partner in trying to
22 communicate with his son and we pursued those options very,
23 very vigorously particularly as a result of his feelings in
24 trying to help his son.

25 THE COURT: Yes, sir.

SENTENCING HEARING

1 THE WITNESS: Your Honor, first let me say I
2 appreciate your patience and fairness and I want to just
3 tell you a little bit about my son. The first part of his
4 life he was -- I couldn't have asked for a better son, he
5 was a scholar, he was mannerly, no problems in school,
6 people complimented him. Small problems when he got into
7 high school, nothing that he didn't work out. He joined a
8 youth group his last two years of high school and he was an
9 honor student. In the 6th grade he was tested by Duke
10 University for the TIPS program in the standardized to see
11 if he could enter that and he was given college credit. He
12 did not enter that program, but he is mentally and in his
13 ability he was to have been gifted. His first year of
14 college he started having problems, he started pre-med, if
15 he would have applied himself he would be a doctor today.
16 He started to do drugs I think during that time and
17 admitted to me the things that he was doing and it was a
18 complete personality change that was noted not only by
19 myself but by his friends and other family members. And he
20 pulled himself up after a period of time, got a truck
21 driving license and started a business and did fairly well
22 for awhile and then again there was another bout with drugs
23 and he admitted in detoxing himself and fell back into
24 irrational behavior, irrational thoughts, pulled back out
25 again, formed his own trucking business and there was a

SENTENCING HEARING

1 history of drug abuse. He has alienated himself from the
2 family with the things he has done, his choices and his
3 temperament and everybody has noted a complete change in
4 the personality. He has been a good man even through that.
5 He has not stolen to my knowledge and he has not been
6 violent to my knowledge, he at times is respectful, and I
7 just feel strongly that drugs are the result of where he
8 is. Of course, he is responsible for the choices he's
9 made. And I know you gave him an option and we tried, if
10 it would have been my decision it would have been taken. I
11 tried and thought he was convinced until right before we
12 convened after lunch yesterday and he changed his mind
13 again, and again, that's an example of his thought process
14 is not normal. It's my hope that in your sentencing that
15 you will give him some type of help in drug rehabilitation
16 and evaluation, psychological evaluation, something that he
17 can turn this around and come out with the potential that
18 he has and be productive.

19 THE COURT: Thank you. Anybody else? Anything from
20 the solicitor's office? He has no prior record?

21 MR. TAYLOR: That's correct, Your Honor, just traffic
22 offenses.

23 THE COURT: Well, Mr. Montgomery, I really don't
24 understand this whole situation. The solicitor's office,
25 me, your dad, all we wanted you to do is admit this. The

SENTENCING HEARING

1 evidence was just overwhelming that it was your house and
2 you were involved and you were doing it, and I quite
3 frankly do not believe a word you said today concerning it
4 just happened to be in there after you left that morning.
5 The jury found like I would have found if I were sitting in
6 the jury room, whether or not you were growing it for
7 possession with intent to distribute I think they gave you
8 the benefit of the doubt on that. But you just have not
9 been appreciative of our laws, you came up with some cock
10 and bull motion yesterday about marijuana being legal, and
11 you haven't taken advantage of your father's -- your dad's
12 unwavering support. I just don't understand. But choosing
13 to do this and choosing the break the laws in the manner
14 you have you obviously have got to be punished. You're
15 looking at five years in the state department of
16 corrections on one charge and 30 days on the other, you
17 would have been looking at five years on both charges had
18 they convicted you of the possession with intent to
19 distribute. From my observations I don't think probation
20 is an appropriate sentence. I will comply with your dad's
21 wishes, I will recommend that you be placed in the
22 addiction treatment unit in the department of corrections.
23 But my sentence is you be committed to the state department
24 of corrections for a period of 54 months. Good luck to
25 you. 30 days on the possession to run concurrent. Good

SENTENCING HEARING

1 luck to you.

2 (END OF THE HEARING.)

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1 I, the undersigned, Michael C. Watkins, Official
2 Court Reporter for the Sixth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the foregoing is
4 a true, accurate and complete transcript of record of the
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for Chester County, South Carolina, on
8 the 11th -12th days of October, 2010.

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

11

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April 28, 2011.

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Michael C. Watkins
Court Reporter

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FORM 5

STATE OF SOUTH CAROLINA

County of Chester

IN THE COURT OF COMMON PLEAS

2011 CP 120597

Michael Lee Montgomery II

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED

1 2011 NOV 14 PM 3:03

CLERK OF COURT
CHESTER CO S.C.

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Turbeville
2. Name and location of Court which imposed sentence Circuit Court Chester, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-12-037
(b) 2010-GS-12-038

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Oct 13, 2010 54 months(b) Oct 13, 2010 30 days (concurrent)

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓ jury trial

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Appealed from the judgment of conviction. Still waiting on a response.

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. SC Commission on Indigent Defense / Division of Appellate Defense

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Waiting on a decision.

ii. _____

iii. _____

(c) the date of each such result:

i. Still waiting

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Waiting on my appellate attorney to file.

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) There were no witnesses in the court room. This is against the 6th Amendment.
 (b) ~~There were no witnesses in the court room. This is against the 6th Amendment.~~ Back →
 (c) I was framed and the arresting officer wasn't in court.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) There were no witnesses in the room of discovery.
 (b) ~~There were no witnesses in the room of discovery.~~ Back →
 (c) The arresting officer knows that I was framed.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) I haven't yet taken the time to file the other reports.
 (b) I am still incarcerated.

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Public Defender Mark Grier "Yes"
 (b) your trial, if any? Public Defender Mark Grier "Yes"
 (c) your sentencing? " " "Yes"
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Still waiting to hear back from my appellate attorney. "Yes"
 (e) preparation, presentation or consideration of any petitions, motions or

applications with respect to this conviction, which you filed?

No

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Mark Grier PO Box 1809
Laconaster, SC 29721
 ii. Robert M. Pachak "Appellate Attorney" PO Box 11589
Columbia, SC 29211-1589

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Mark Grier - Trial
 ii. Robert M. Pachak - Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

Asking to be set free from custody and this be removed from my record.

20. Are you now under sentence from any other court that you have not challenged?

No.

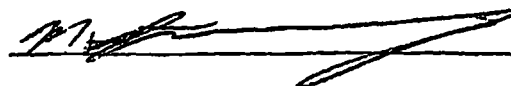
Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Clarendon)

VERIFICATION

I, Michael Lee Montague II, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 3rd day of October, 2011.

Burton H. Hixley (L.S.)
Notary Public

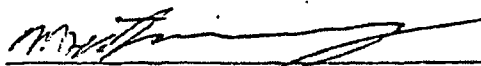
My Commission Expires: 09-29-2018

FILED
2011 NOV 15 P 3:03
CLERK OF COURT
CHESTER CO S.C.

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

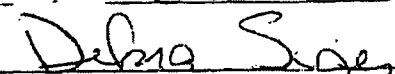
I, Michael Lee Montgomery II, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

21 day of Oct, 2011.


Notary Public

My Commission Expires: 11-4-2015

FILED
2011 NOV 15 P 3:03
CLERK OF COURT
CHESTER CO S.C.

- 1) ① Marijuana was legalized in South Carolina in 1993 in SS 12-21-5010 of the South Carolina Code of Laws.
- 1) ② Marijuana is no longer a controlled substance and is therefore legal in South Carolina according to SS 12-21-5020 of the South Carolina Code of Laws.
- The judge lived in the court room during trial and said that there is no legalization of marijuana in South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER	)	
	)	
Michael Lee Montgomery II #343230,	)	2011-CP-12-0597
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed November 15, 2011¹, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Chester County. The Applicant was indicted at the January 2010 term of the Court of General Sessions for Chester County for growing/manufacturing marijuana (2010-GS-12-037) and possession with intent to distribute marijuana (2010-GS-12-088). He was represented by Mark Grier, Esquire. On October 13, 2010, the Applicant proceeded to trial and was convicted as indicted to growing/manufacturing marijuana, and convicted of the lesser included charge of possession of marijuana first offense. He was sentenced by the Honorable Doyet A. Early III, to confinement for fifty-four (54) months for growing/manufacturing marijuana and thirty (30) days for possession of marijuana first offense, with the sentences to run concurrent.

A timely Notice of Appeal was filed and an Anders brief was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v.

¹ At the time the application was filed, Applicant's direct appeal was still pending, preventing him from proceeding with the application; however, the appeal has now been completed.

Montgomery, Op. No. 2012-UP-412 (S.C. Ct. App. filed July 11, 2012). The Remittitur was returned on July 27, 2012.

Attached herewith and incorporated herein by reference are the records of the Chester County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Violation of his Sixth Amendment, in that;
 - a. "There were no witnesses in the court room and on the motion of discovery,"
 - b. "I was framed and the arresting officer wasn't in the court."
2.
 - a. "Marijuana was legalized in South Carolina in 1993 in §12-21-5010 of the South Carolina Code of Laws,"
 - b. "Marijuana is no longer a controlled substance and is therefore legal in South Carolina according to §12-21-5020 of the South Carolina Code of Laws. The judge lied in the courtroom during the trial and said that there is no legalization of marijuana in South Carolina."

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning

of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

Respectfully submitted,

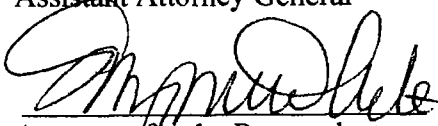
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE WHITE
Assistant Attorney General

By:


Attorneys for the Respondents
P.O. Box 11549
Columbia, S.C. 29211

March 18, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

) IN THE COURT OF COMMON PLEAS
) SIXTH JUDICIAL CIRCUIT

Michael Lee Montgomery, II,

2012-CP-12-0597

Applicant,

v.

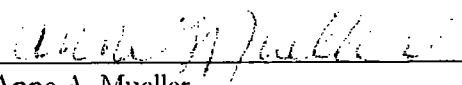
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Vanessa Cason, Esquire
P.O. Box 2842
Greenville, South Carolina 29602


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 18th day of March, 2013.

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHESTER
4 2011-CP-12-0597
5

6 Michael Montgomery
7 vs.
8 State of South Carolina
9

10
11 Lancaster, South Carolina
12 February 3, 2014
13 Before the Honorable Brian P. Gibbons
14

15 APPEARANCES

16 For the State: Mary Williams
17 For the Applicant: Vanessa Cason
18

19 Reported by: Michael C. Watkins
20 Official Court Reporter
21
22
23
24
25

1 Mark Grier: 3

2 Certificate: 14

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4 NO EXHIBITS

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1 MS. WILLIAMS: May it please the Court? The next case
2 we're going to do is Michael Lee Montgomery, that's a couple
3 of pages down on your list there. This case is
4 2011-CP-12-0597. Mr. Montgomery pled guilty -- excuse me,
5 there was a jury trial with Judge Early and he received a
6 term of 54 months and another term of 30 days for possession
7 of marijuana and growing and manufacturing marijuana. He
8 has completed that sentence and is no longer in the
9 department of corrections. He does wish to proceed today
10 and I will turn that over to Ms. Cason.

11 THE COURT: Ms. Cason?

12 MS. CASON: Thank you, Your Honor. May it please the
13 Court? Mr. Montgomery does wish to proceed, and he does not
14 wish to testify but wishes to call Mr. Mark Grier as a
15 witness.

16 THE COURT: All right. Are you ready to proceed? All
17 right, call your witness.

18 MS. CASON: Call Mark Grier to the stand.

19 The witness, MARK GRIER, was first duly sworn
20 and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. CASON:

23 Q. Mr. Grier, you represented Mr. Montgomery; is that
24 correct?

25 A. That's correct.

1 Q. And what was he charged with?

2 A. He was charged with manufacturing marijuana.

3 Q. Okay. And after a trial what was he sentenced to?

4 A. I believe it was a five year sentence if I'm not
5 mistaken.

6 Q. All right. During the course of your representation of
7 Mr. Montgomery, did you have an opportunity to have
8 conversations with him?

9 A. I had several conversations. Had a pretty lengthy
10 email exchange with -- Michael was living in Columbia at the
11 time and it really wasn't convenient for him to come in, but
12 we did meet a couple of times, I think, back and forth with
13 the email probably mostly.

14 Q. Did you receive all of the discovery that was available
15 to you at the time you represented him?

16 A. Yes, as far as I know. I didn't see, you know,
17 anything to suggest that the State was withholding what they
18 intended on presenting or any exculpatory evidence.

19 Q. Okay. During the trial was there a witness who
20 indicated that there had been a confidential informant in
21 this matter?

22 A. I'm not sure, I can't remember.

23 Q. Do you remember Chuck Grant testifying at the trial?

24 A. I remember him testifying, yes.

25 Q. And do you remember basically what his testimony was?

1 A. You can refresh my memory, but I guess basically I do.

2 As far as details I'm not sure, no.

3 Q. He was with the sheriff's office; is that correct?

4 A. Yes.

5 Q. And he was assigned to the drug enforcement unit?

6 A. That's right, yeah.

7 Q. Do you know whether or not he actually indicated

8 that -- how the arrest of Mr. Montgomery came about?

9 A. You know, my recollection is that they did have
10 information but I can't remember specifically, you know,
11 what it was. You could refresh me to what he testified to.

12 Q. Okay. Well, then I'll just go directly to the
13 transcript. On page 56 of the transcript there was a
14 question --

15 MS. CASON: May I approach, Your Honor?

16 THE COURT: Yes, ma'am.

17 Q. On page 56 of the transcript, was Mr. Grant questioned
18 about where he got the information that Mr. Montgomery was
19 growing marijuana?

20 A. That's on --

21 Q. On page --

22 A. I see it, 21. No, I don't think that --

23 Q. Yeah. On page 55, yes.

24 A. On 55?

25 Q. It starts on 55.

1 A. Okay, yeah. "Initially received information about
2 marijuana being distributed from that residence and also
3 being manufactured or grown inside of the residence."

4 Q. Did you object at that point?

5 A. I objected -- well, not to that question specifically,
6 but, you know, I did just about the purchase of it, yeah.

7 Q. About the purchase. Did Mr. Montgomery talk with you
8 at all about making sure that the informant was named and
9 present in the courtroom?

10 A. I don't recall that but he could have.

11 Q. Did you believe that it was important for the informant
12 to be named and present in the courtroom or at least on the
13 witness list?

14 A. I didn't hear that last part.

15 Q. Did you believe it was important that the confidential
16 informant was in the courtroom or at least on the witness
17 list?

18 A. Apparently not enough to, you know, compel that.

19 Q. Do you know who the arresting officer was?

20 A. No. Pendergrass? This is Chester County and I'm not
21 really that familiar with, putting faces to the names is
22 difficult there for me.

23 Q. So if I said that Tracey Pendergrass was the arresting
24 officer, would that be about correct?

25 A. I believe that's correct, yeah, I believe so.

1 Q. Did Mr. Montgomery ask that Mister -- that Tracey
2 Pendergrass be present, or at least present in the courtroom
3 or named as a witness?

4 A. I believe that he did, yeah.

5 Q. Okay. And is there a reason that Mr. Pendergrass was
6 not in the courtroom or named as a witness?

7 A. I made the tactical decision that it wouldn't benefit
8 him. As far as calling him as a witness?

9 Q. Yes.

10 A. I didn't see any benefit as calling him as a witness.

11 Q. And did you inform Mr. Montgomery of that?

12 A. I did. We had a conversation about -- he had asked me,
13 you know, to subpoena I believe everybody from the governor
14 to the sheriff, you know, in his emails to me and we had
15 some conversation about what we were going to produce from
16 that. I don't know that he said, "I want you to do it." I
17 don't -- I believe that if he would have insisted on it I
18 would have. But my recollection is we had a conversation
19 about it and when it got down to the nitty-gritty he
20 couldn't name any benefit that it would produce and that's
21 why it wasn't done.

22 Q. Based on my questions today about the confidential
23 informant and the arresting officer not being present, do
24 you believe that in any way that Mr. Montgomery was not
25 granted a fair trial because of that?

1 A. What was the first part of that? Weren't there two
2 things?

3 Q. Because the two witnesses that he wanted called were
4 not called or were not in the courtroom, do you believe that
5 caused him not to have a fair trial?

6 A. That's for this Judge to decide, I suppose. I don't
7 mean to be elusive to it. But my response is I thought we
8 presented the very best case we could to give him the best
9 chance he could of prevailing and, you know, if that answers
10 your question. I think it was fair as it could have been.

11 Q. In your conversations with Mr. Montgomery about the
12 witness, Tracey Pendergrass, did Mr. Montgomery give you
13 information that came from the officer, Officer Pendergrass,
14 about his case?

15 A. Could you be more specific? I mean, I don't recall.
16 It seems I believe it was Officer Pendergrass he had had
17 some contact with previously, and, you know -- I don't know.

18 Q. Did he give you information that Officer Pendergrass
19 indicated that he was perhaps being framed?

20 A. I can't remember that if that was the case. I mean,
21 I -- you know -- I know that Mr. Montgomery certainly
22 believes that he was and that was the defense but I can't
23 recall what that would be.

24 Q. But if you would have had that information would that
25 have led you to call Officer Pendergrass as a witness?

1 A. Probably, yes.

2 Q. So would you say that because you didn't call Officer
3 Pendergrass you didn't have the information?

4 A. Well, I didn't have any -- certainly didn't have
5 anything independent. I can't recall being told that, you
6 know, Pendergrass, you know, was saying he was framed. It
7 seems like Michael did suggest something that, you know,
8 that Pendergrass had said that, you know, would be
9 beneficial to him and I can't recall what it was. But he
10 did talk about Pendergrass being subpoenaed and, you know,
11 we had conversations about how that would benefit him is all
12 I can tell you is going through the process. And, you know,
13 it did not -- to me as far as strategy goes I did not
14 believe it was going to be beneficial to him, and in fact,
15 believed that calling a lot of the people that he wanted to
16 call was going to be more damaging to him, it would buttress
17 the State's case in many respects.

18 Q. Okay. And you all talked -- you talked to Mr.
19 Montgomery and you all agreed finally on what witnesses you
20 would call on his behalf.

21 A. I believe we did, that is my recollection. His father
22 was in the conversation, and, you know -- yes, I think we
23 did.

24 MS. CASON: Thank you. No further questions.

25 THE COURT: Ms. Williams?

1 CROSS EXAMINATION

2 BY MS. WILLIAMS:

3 Q. Mr. Grier, can you tell me a little bit about how you
4 came to represent Mr. Montgomery in this matter?

5 A. Well, I'm assistant public defender and this is a
6 Chester County case, I'm assigned to Lancaster. When -- the
7 best information I could tell you is that my boss, Mike
8 Lifsey, was originally assigned to represent Mr. Montgomery.
9 I think Mr. Montgomery lost confidence in him because I
10 think Mr. Montgomery from what -- including Mr. Montgomery's
11 statements to me that Mr. Lifsey just wasn't, you know,
12 wasn't following up on things that he wanted him to do or
13 communicating with him. And I think if I recall correctly
14 the precipitating factor was I think Mr. Montgomery was
15 upset that there was a request that he have a forensic
16 evaluation and I think Mr. Montgomery was adverse to that is
17 my recollection that when I got involved. I had a
18 relationship with his father and that didn't factor in
19 directly -- I never spoke with his father about his case
20 period until after Mr. Montgomery and I had spoken. But I
21 believe that I was selected to take, you know, that
22 assignment after Mr. Lifsey felt like his relationship with
23 Mr. Montgomery had deteriorated to the point where Mr.
24 Montgomery didn't have confidence in him.

25 Q. And he was not on trial for an undercover buy in this

1 case; is that correct?

2 A. No, he was not.

3 Q. And you have no specific information from Mr.

4 Pendergrass that would have been beneficial to your

5 recollection today.

6 A. Not from Pendergrass, or from anybody. You know,

7 Mr. Montgomery apparently -- I don't know how to phrase it

8 really, but, you know -- like I guess is the best word, it

9 was the female, I believe, Pendergrass, right? Not like in

10 any sort -- but he just trusted her and didn't believe that

11 she would be adverse to him somehow.

12 MS. WILLIAMS: Thank you so much for your time.

13 THE COURT: Any redirect?

14 MS. CASON: Yes, just a couple of questions.

15 REDIRECT EXAMINATION

16 BY MS. CASON:

17 Q. Do you know how the case began, the case against Mr.

18 Montgomery?

19 A. What the factor was that got this on law enforcement's

20 radar?

21 Q. Yes.

22 A. Honestly I believe that it was just information off the

23 street as such is how they started monitoring him is my

24 recollection.

25 Q. Do you know if a search warrant was ever issued for his

1 residence?

2 A. I don't believe it was until they -- beforehand?

3 Q. Yes.

4 A. No. I'm pretty certain that it was to go in and to
5 make the bust.

6 Q. And that information would have come from a
7 confidential informant?

8 A. I would have to look and see, you know, where the
9 information to obtain the probable cause came from. It
10 would have to have -- at least from a magistrate I assume
11 would have had to have believed it came from a reliable
12 source.

13 MS. CASON: No further questions.

14 THE COURT: Thank you, sir, you may step down.

15 MS. CASON: Your Honor, that's Mr. Montgomery's case.

16 THE COURT: Ms. Williams, anything in response?

17 MS. WILLIAMS: Nothing further, Your Honor.

18 THE COURT: All right. Arguments? Ms. Cason?

19 MS. CASON: Your Honor, Mr. Montgomery believes that
20 the search warrant that was issued initially when this case
21 began came from a confidential source, and he believes that
22 he is entitled to know who that confidential source was.
23 That person was never added to the witness list, that person
24 was never actually named, and because he did talk with his
25 attorney and his attorney never did make inquiry as to the

1 confidential informant, he believes that he would be
2 entitled to a new trial because he believes he would have a
3 right to question that person. In addition he believes that
4 the officer, the arresting officer who was not on the
5 witness list and who was not named in this case should have
6 been at the trial and should have been questioned, he should
7 have had an opportunity to question that person also and
8 because of that he would be entitled to a new trial.

9 THE COURT: All right. Thank you, Ms. Cason.
10 Ms. Williams?

11 MS. WILLIAMS: I believe there's some case law out
12 there about entitlement to the confidential informant
13 information. But in any event he's failed to show what
14 benefit those individuals would have given to his trial and
15 we request that the post conviction relief be denied.

16 THE COURT: All right. Application for post conviction
17 relief is denied. Ms. Williams, if you would prepare the
18 order?

19 (End of the hearing.)

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2 I, the undersigned, Michael C. Watkins, Official Court
3 Reporter for the Sixth Judicial Circuit of the State of South
4 Carolina, do hereby certify that the foregoing is a true,
5 accurate and complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned case
7 relative to appeal, in the Court of Common Pleas for Chester
8 County, South Carolina, on the 3rd day of February, 2014.

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

11

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May 29, 2014

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Michael C. Watkins
Court Reporter

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STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER.)

IN THE COURT OF COMMON PLEAS

2011-CP-12-0597

Michael Lee Montgomery, II,)
Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

FILED
2014 FEB 26 PM 3:28
CLERK OF COURT
CHESTER CO. S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 15, 2011. An evidentiary hearing was convened on February 3, 2014, at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by Vanessa Cason, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, Mark Grier, Esquire ("Counsel"), testified. Applicant did not wish to testify. This Court had before it the records of the Chester County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

At the time of hearing, Applicant was no longer incarcerated. Applicant was indicted for growing/manufacturing marijuana (2010-GS-12-0037) and possession with intent to distribute marijuana (2010-GS-12-0088). Applicant was represented by Mark Grier, Esquire. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Following a guilty verdict, Judge Early sentenced him to fifty-four (54) months for manufacturing/growing marijuana and to a

concurrent term of thirty (30) days for possession of marijuana (first offense).

A notice of appeal was filed, and an Anders brief was submitted on Applicant's behalf.¹ The appeal was dismissed. State v. Montgomery, Op. No. 2012-UP-412 (S.C. Ct. App. filed July 11, 2012). The remittitur was sent on July 27, 2012.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "There were no witnesses in the courtroom. This is against the 6th Amendment.
 - a. "There were no witnesses on the motion of discovery."
2. "Marijuana was legalized in South Carolina in 1993 in SS12-21-5010 of the South Carolina Code of Laws."
 - a. "Marijuana is no longer a controlled substance and is therefore legal in South Carolina according to SS12-21-5020 of the South Carolina Code of Laws. The judge lied in the court room during trial and said that there is no legalization of marijuana in South Carolina."
3. "I was framed and the arresting officer wasn't in court."
 - a. "The arresting officer knows that I was framed."

At the PCR hearing, Applicant questioned Counsel regarding his failure to identify who had made the controlled purchase of marijuana which ultimately led to a search warrant at his house and his failure to call certain members of law enforcement as witnesses for the defense. This court construes these claims as claims of ineffective assistance of counsel in failing to investigate these matters and in failing to call the named individuals as witnesses at trial.²

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe

¹ Anders v. California, 386 U.S. 738 (1967).

² To the extent that Applicant's allegations can be construed as a claim of lack of evidence to support his conviction, such

the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's

claim is inappropriate for PCR and is therefore denied and dismissed. S.C. Code Ann. § 17-27-20(a)(6).

unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Failure to Investigate / Failure to Call Witnesses

Applicant asserts that Counsel should have ensured that Applicant knew the identity of the person who had made an undercover purchase prior to issuance of the warrant and that Counsel should have called the officer who arrested him as a witness at trial.

During the pre-trial Jackson v. Denno³ hearing, Captain Chuck Grant of the Chester County Sheriff's Office mentioned that the investigation had begun with a controlled purchase of marijuana.⁴ (Tr. p. 33, lines 14-16.) After that purchase, a search warrant was obtained for Applicant's residence at [REDACTED]. (Tr. p. 33, lines 17-21.) The charges at trial were based upon the search of residence. No charge was brought as a result of the controlled purchase. At PCR hearing Counsel did not recall if the person who made the purchase was named. However, there is no evidence that obtaining this information would have been beneficial to Applicant.

Applicant also suggested that Agent Pendergrass should have been called as a defense witness or interviewed by Counsel. In the trial transcript Agent Pendergrass was mentioned as having been present when Applicant was provided with rights warnings and during the interview in which Applicant admitted that he was growing marijuana at the residence. (Tr. p. 35, lines 10-15; p. 37, lines 13-18; p. 69, line 24 – p. 70, line 13; p. 129, lines 8-13.) It was also mentioned that Agent

³ Jackson v. Denno, 378 U.S. 368 (1964).

⁴ Counsel objected to mention of the controlled buy before the jury. The objection was sustained and the jury instructed to disregard the testimony. (Tr. p. 56, lines 1-9; p. 56, line 21 – p. 57, line 2.)

Pendergrass may have been present at the execution of the search warrant at Applicant's home. (Tr. p. 57, lines 13-21.) Agent Pendergrass did not testify at the PCR hearing.

With regard to his claim regarding the arresting officer, it appears Applicant may be referring to Deputy Wendy Glenn. Captain Grant testified to receiving a call from Glenn asking if he was looking for Applicant. (Tr. p. 38, lines 2-10; p. 68, lines 19-21; p. 77, line 24 - p. 78, line 1.) Applicant testified at trial that his mother knew Glenn, and he had gone to his mother's house because of her acquaintance with Glenn when he found out police were at his home. (Tr. p. 123, lines 15-21.) Glenn did not testify at PCR hearing.

Counsel testified that he often communicated with Applicant via e-mail as Applicant lived in Columbia but did meet with him a few times. Counsel recalled that Applicant asked that many people be subpoenaed for the trial. Counsel decided that there would be no benefit in calling Agent Pendergrass at trial. When asked if he had any information that Agent Pendergrass would confirm Applicant's position that Applicant was framed, Counsel replied that he could not recall having such information. Counsel reflected that several of the witnesses Applicant thought should appear would have in fact only served to buttress the State's case against him.

Based on the evidence presented at hearing, I find that Applicant has failed to meet his burden of showing that Counsel's performance was outside reasonable professional norms. Moreover, Applicant has failed to produce any evidence which the additional witnesses could have provided. Therefore, this Court finds that Applicant has also failed to demonstrate prejudice such that the result of trial would have been different but for Counsel's alleged shortcomings. See for example Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is



supported only by mere speculation as to the result); Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005)(applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence).

CONCLUSION

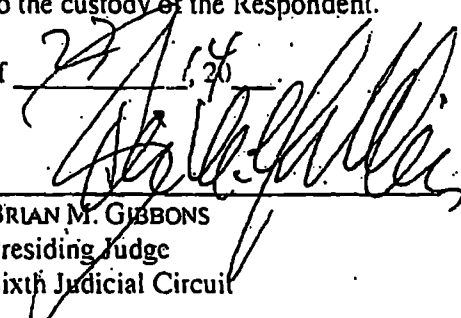
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2 day of July, 2014


 BRIAN M. GIBBONS
 Presiding Judge
 Sixth Judicial Circuit

, South Carolina.

WITNESSES

T. Pendergrass (Chester Co. Sheriff's Office)

K. Clark

DOCKET NO. 2010-GS-12-037

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2010

ARREST WARRANT NUMBER/DOA

M250414 (DOA-10-1-09)

ACTION OF GRAND JURY

TRUEBILL

Foreperson of Grand Jury
Date: *Jan-11-10 David L. Montrose*

VERDICT

James A. Montgomery

Paul H.

Foreperson of Petit Jury
Date: *10-13-10*

210

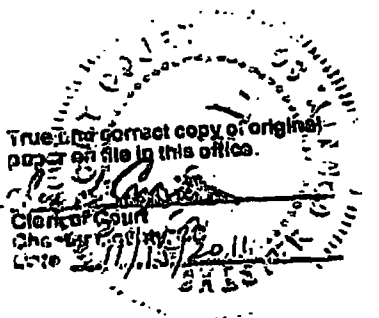
MICHAEL L. MONTGOMERY, II

THE STATE
vs.

Indictment for

Growing / Manufacturing Marijuana

SC Code: § 44-53-370(a)(1), (b)(2)
CDR Code: 0186
Class: Felony, F



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

INDICTMENT
2010-GS-12-037

At a Court of General Sessions, convened on January 11, 2010, the Grand Jurors of Chester County present upon their oath:

GROWING / MANUFACTURING MARIJUANA

That MICHAEL L. MONTGOMERY, II did in Chester County on or about September 30, 2009, grow and manufacture marijuana in violation of Section 44-53-370(a)(1), (b)(2), *Code of Laws of South Carolina, (1976), as amended.*

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

made and provided.



Douglas A. Barfield, Jr., SOLICITOR



COUNTY OF 212 Chester
STATE VS.
MICHAEL L. MONTGOMERY II
AKA:
Race: W Sex: M Age: 28
DOB: [REDACTED] SS#: 212-12-1212
Address: [REDACTED]
City, State, Zip: CHESTER, SC 29706
DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: MANUFACTURING/GROWING MARIJUANA

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0186
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST [Signature] 68299
Taylor, Christopher D SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 54 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>8.40</u>
TOTAL	\$	\$ <u>288.40</u>

Clerk of Court/ Deputy Clerk: [Signature]

Court Reporter: [Signature]

SCCA/217 (06/2010)

INDICTMENT/CASE#: 2010-GS-12-037

A/W#: M250414

Date of Offense: 9/30/2009

S.C. Code §: 44-53-0370(b)(2)

CDR Code #: 0186

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund - original

Other: [Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

ARREST WARRANT

213

M-250414

STATE OF SOUTH CAROLINA

County/ Municipality of

Chester

THE STATE

20090777

Michael L. Montgomery, II

against

Address:

Chester, SC 29706-

Phone:

SSN:

Sex:

Race:

Height:

Weight:

DL State:

DL #:

DOB:

Agency ORI #:

Reporting Agency:

Chester County Sheriff

Issuing Officer:

T. Pendergrass - 0173

Offense: Drugs / Manuf., poss. of other sub. in Sch. I, II, III

or Flunitrazepam or analogue, w.i.l.d. - 1st offense

Offense Code:

0186

Code/Ordinance Sec:

44-53-0370(b)(2)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Michael L. Montgomery II
on 10-1-2009

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Chester Magistrate District 2

2740 Dawson Drive

Law Enforcement Center

Chester, SC 29706

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Chester

Personally appeared before me the affiant
being duly sworn deposes and says that defendant Michael L. Montgomery, II
did within this county and state on or about 09/30/2009
State of South Carolina (or ordinance of X County/ Municipality of Chester)
in the following particulars:

DESCRIPTION OF OFFENSE:

Drugs / Manuf., poss. of other sub. in Sch. I, II, III or Flunitrazepam or analogue, w.i.l.d. - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On September 30, 2009, the subject Michael E. Montgomery, did violate the laws of the State of South Carolina by manufacturing
19 marijuana plants inside his residence. This incident occurred at Chester, SC 29706.

* Police Investigation

* 19 Marijuana Plants

* 225.4 grams of marijuana

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Chester

Affiant's Address

2740 Dawson Drive

Chester 29706-

Affiant's Telephone

(803)581-5217

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

If appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/30/2009defendant Michael L. Montgomery, IIdid violate the criminal laws of the State of South Carolina (or ordinance of Chester) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Manuf., poss. of other sub. in Sch. I, II, III or Flunitrazepam or analogue, w.i.l.d. - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 10/01/2009

Signature of Issuing Judge

(L.S.)

Judge's Address

Law Enforcement Center

Chester, SC 29706-5122

Judge's Telephone

(803)581-5136

Issuing Court:

X Magistrate

Municipal

Circuit

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WITNESSES

T. Pendergrass (Chester Co. Sheriff's Office)

X. Pender X

DOCKET NO. 2010-GS-12-038

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2010

ARREST WARRANT NUMBER/DOA

M250417 (DOA-10-1-09)

ACTION OF GRAND JURY

TRUPER III

MICHAEL L. MONTGOMERY, II

THE STATE
VS.

Foreperson of Grand Jury
Date: *Jan-11-10* *David E. Minard*

VERDICT

GUILTY lesser included

Charge of POSC of

Marijuana

Foreperson of Petit Jury
Date: *10-13-10* *2610*

Indictment for

Possession With Intent to Distribute
Marijuana

SC Code: § 44-53-370(a)(1), (b)(2)

CDR Code: 0186

Class: Felony, F

True and correct copy of original
paper on file in this office.
Class of Court
Chester County, SC
Date *2/10/2011*

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

INDICTMENT
2010-GS-12-038

At a Court of General Sessions, convened on January 11, 2010, the Grand Jurors of Chester County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

That MICHAEL L. MONTGOMERY, II did in Chester County on or about September 30, 2009, possess with intent to distribute, dispense, or deliver marijuana, a controlled substance in violation of Section 44-53-370(a)(1), (b)(2), *Code of Laws of South Carolina, (1976), as amended*.

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



Douglas A. Barfield, Jr., SOLICITOR



STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Chest

VS.

MICHAEL L. MONTGOMERY II

AKA:

Race: W Sex: M Age: 28

DOB: SS#:

Address:

City, State, Zip: CHESTER, SC 29706

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: POSSESSION OF MARIJUANA 1ST OFFENSE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-12-038

A/W#: M250417

Date of Offense: 9/30/2009

S.C. Code § : 44-53-0370(b)(2)

CDR Code #: 0186

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(d)(4) of the S.C. Code of Laws, bearing CDR Code # 0659

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

ATTORNEY

Taylor, Christopher D

SC Bar# 68299

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☒ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10-65-12-037
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 8.40
TOTAL		\$ 288.40

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender's Office

Other: _____

☐ Condition Discharge, § 44-53-450(2) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 0136

Sentence Date: Oct 13, 2010

ARREST WARRANT

M-250417

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

THE STATE

against

Michael L Montgomery, II

Address:

Chester, SC 29706-

Phone:

SSN:

Sex: M Race: W Height: 6 3 Weight: 220

DL State:

DL #:

DOB:

Agency ORI #:

Prosecuting Agency: Chester County Sheriff

Issuing Officer: T Pendergrass - 0173

Offense: PWID Marijuana

Offense Code: 0186

Code/Ordinance Sec: 44-53-0370(b)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be dealt with according to the law. The accused

(L.S.)

Signature of Judge

Date:

RETURN

A of this arrest warrant was delivered to defendant Michael L Montgomery, II on 10-1-2009

Signature of District Attorney Law Enforcement Officer

RETURN WARRANT TO:

Chester Magistrate District 2

2740 Dawson Drive

Law Enforcement Center

Chester, SC 29706

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STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

Personally appeared before me the affiant T Pendergrass

being duly sworn deposes and says that defendant Michael L Montgomery, II did within this county and state on or about 09/30/2009

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Chester in the following particulars:

DESCRIPTION OF OFFENSE PWID Marijuana

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On September 30, 2009, the subject Michael Lee Montgomery, did violate the laws of the State of South Carolina by possessing with the intent to distribute 225.4 grams of marijuana. This incident occurred at Chester, SC 29706. This offense occurred in Chester County, SC.

*Police Investigation

*225.4 grams of marijuana

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

Affiant's Address 2740 Dawson Drive

Chester 29706-

Affiant's Telephone (803)581-5217

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on or about 9/30/2009 defendant Michael L Montgomery, II

did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Chester) as set forth below:

DESCRIPTION OF OFFENSE: PWID Marijuana

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Issuing Court:

☒ Magistrate ☐ Municipal ☐ Circuit

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