

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

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S.C. Supreme Court

JAMES BABB,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000719

APPENDIX

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS

2007-GS-23-7963

2007-GS-23-7964

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

JAMES MELVIN BABB,
DEFENDANT.

ORIGINAL

February 1 and 2, 2010
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE; and a jury.

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

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Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

1
2 THE COURT: Mr. Bouton, are you going to call your
3 case?

4 MR. BOUTON: Yes, Your Honor.

5 We're here on the State v. Fallin and Babb. The
6 State is ready to proceed. I anticipate a suppression
7 motion, as well as --

8 THE COURT: All right. Well, let's get -- let's see
9 if we can pick a jury before we break for lunch --

10 MR. BOUTON: Yes, sir.

11 THE COURT: -- so we can cut them loose.

12 Do you have any voir dire? Does anybody have any
13 voir dire they want?

14 MR. WARDER: Your Honor, I don't have any special
15 voir dire, your standard. It's a drug case and, you know,
16 the standard.

17 THE COURT: All right. Two charges apiece?

18 MR. BOUTON: Yes, sir.

19 THE COURT: We've got 35 coming. So we'll probably
20 have to clear some space.

21 MR. BOUTON: Judge, I -- 10 strikes for the State?
22 It's joint Defendants.

23 THE COURT: 10 for the State? What did you say?

24 MR. BOUTON: Joint Defendants, Judge.

25 THE COURT: Why would you get 10?

1 MR. BOUTON: 14-7-1110.

2 THE COURT: Will they get 10, too?

3 MR. BOUTON: I believe it's just five.

4 THE COURT: Why don't we just make it a level playing
5 field?

6 MR. BOUTON: It's up to you, Judge.

7 THE COURT: Let's just go five and five. It will go
8 faster that way.

9 MR. BOUTON: Yes, sir.

10 THE COURT: Any objection from the Defense?

11 MR. WARDER: Let me consult with my client.

12 THE COURT: All right. Well, I'll give them 10,
13 if -- I mean --

14 MR. WARDER: Your Honor, we have multiple Defendants.
15 I think the Defense is entitled to the strikes. I can see
16 no reason why the State's strikes should be increased.

17 THE COURT: Except for the statute.

18 MR. WARDER: That was legislators that didn't
19 understand the procedure. Your Honor.

20 THE COURT: Oh, I'll pass that on.

21 All right. We'll give 10 to the State and five to
22 each Defendant.

23 Do we have enough for that?

24 It's going to be close. I only have 35 jurors.

25 MR. SULLIVAN: We'll need an alternate, also.

1 THE COURT: What?

2 MR. SULLIVAN: We'll need an alternate, also.

3 THE COURT: All right. We'll go five and five. Five
4 for the State and five for the Defendants.

5 Who's going to call your strikes?

6 MR. SULLIVAN: We need to get closer together.

7 MR. WARDER: Yes.

8 (Pause.)

9 THE COURT: Mr. Bouton --

10 MR. BOUTON: Yes, sir.

11 THE COURT: -- how would you get 10 strikes?

12 I'm reading this statute.

13 MR. BOUTON: Judge, I don't have a copy of the
14 statute in front of me.

15 THE COURT: Well, I'm just wondering if mine -- it's
16 14-7-1110.

17 Do y'all see it?

18 MR. BOUTON: No, sir.

19 THE COURT: They can -- the statute -- well, let's
20 read it and see if it's been amended. "In no case where
21 there is more than one Defendant jointly tried or more
22 than 20 pre-emptory challenges allowed in all to the
23 Defendants. And, in misdemeanors, when there is more than
24 one Defendant jointly tried, no more than 10 pre-emptory
25 challenges are allowed to all the Defendants. In

1 felony" -- well, there it is. They did amend it. No,
2 it's right there.

3 We'll make it five for the State and 10 for the
4 Defendants. That way --

5 Is that agreeable since I don't have enough?

6 MR. WARDER: Yes, sir.

7 THE COURT: The intent is that they get half what you
8 get.

9 MR. BOUTON: That's fine.

10 THE COURT: So five and 10, or five, five, and five.

11 MR. BOUTON: Yes, sir.

12 THE COURT: Okay. Bring the jury in.

13 (WHEREUPON, the jury panel entered the courtroom.)

14 THE COURT: All right. Ladies and gentlemen, welcome
15 up to Courtroom #4.

16 Thank you for your patience.

17 We've been handling some other matters. But we're
18 now ready to proceed into the trial of the case of the
19 State of South Carolina v. Troy Daniel Fallin. He is
20 charged in two indictments. The first one is 2007-9551.
21 It alleges that he did in Greenville County on April 29,
22 2007, possess with intent to distribute or aid, abet,
23 conspire to possess with the intent to distribute a
24 quantity of a controlled substance, Alprazolam, or Xanax,
25 such possession being unlawful.

1 The next indictment for Mr. Troy Daniel Fallin is
2 07-9549. It alleges that he did in Greenville County on
3 or about April 29, 2007, knowingly sell, manufacture,
4 deliver, or bring into the State of South Carolina, or did
5 knowingly provide financial assistance or otherwise aid,
6 abet, attempt, or conspire to sell, manufacture, deliver,
7 or bring into the State, or was knowingly in actual or
8 constructive possession of more than 28 grams of
9 methamphetamine, known as crank, in violation of the laws
10 of South Carolina.

11 The other indictments are the State v. James Melvin
12 Babb. In indictment 07-7963, it alleges that James Melvin
13 Babb did in Greenville County on or about April 29, 2007,
14 knowingly sell, manufacture, deliver, or bring into the
15 State of South Carolina, or did knowingly provide
16 financial assistance or otherwise aid, abet, attempt, or
17 conspire to sell, manufacture, deliver, or bring into the
18 State or was knowingly in actual or constructive
19 possession of more than 28 grams of methamphetamine, also,
20 known as crank, in violation of the laws of this state.

21 And, finally, on indictment 07-7964, it alleges that
22 James Melvin Babb did in Greenville County on or about
23 April 29, 2007, possess with intent to distribute, or aid,
24 abet, or conspire to possess with the intent to distribute
25 a quantity of a controlled substance, Alprazolam, known as

1 Xanax, against the laws of the State of South Carolina.

2 Now, to these indictments, both of these gentlemen
3 have pled not guilty. And, as such, that entitles them to
4 certain rights which belong to every citizen and everyone
5 charged with a crime. And that is that every person who
6 is charged with a crime is presumed innocent, unless and
7 until the State can prove them guilty beyond any
8 reasonable doubt of each and every element of each offense
9 that they are charged with. I want you to, please,
10 remember that throughout the course of these proceedings,
11 that the burden of proof is always on the State, and that
12 anyone charged with a crime is presumed innocent. And
13 proof must be presented beyond a reasonable doubt.

14 I, also, want to tell you that these indictments are
15 just what they appear to be, they're pieces of paper.
16 They are the formal documents which allow this case -- or
17 these cases to wind their way through the system to arrive
18 here in court for disposition. And you should not make
19 any presumption nor take any inference from the fact that
20 these documents have been typed up and presented. They
21 are not evidence and shouldn't be considered evidence in
22 any manner whatsoever.

23 Now, as I told you downstairs, what we're going to do
24 is qualify you to serve on this jury in this case. So I'm
25 going to ask you a series of questions to do just that to

1 ensure that we have a fair and impartial jury in this
2 case.

3 Before I do that, I'm going to ask the attorneys to
4 stand and introduce themselves and their clients.

5 Mr. Bouton.

6 MR. BOUTON: Good afternoon. My name is Bill Bouton.
7 I'm an assistant solicitor here in Greenville County.

8 This is my co-counsel, Samantha Adair. And, also, sitting
9 with us is Greta McIntyre, our investigator.

10 THE COURT: All right. Thank you, Mr. Bouton.

11 Mr. Warder.

12 MR. WARDER: I'm Richard Warder. I practice law.
13 And it's my privilege to be here today. And I represent
14 James Babb, who is seated on the end down there in the
15 blue tie.

16 THE COURT: All right. Thank you, sir.

17 Mr. Sullivan.

18 MR. SULLIVAN: I am Tim Sullivan. I practice law
19 here in Greenville. And I represent Mr. Fallin.

20 THE COURT: Thank you, sir.

21 JURY QUALIFICATION

22 THE COURT: All right. Ladies and gentlemen, is
23 there any member of the jury panel who is related by blood
24 or marriage, or has a business, personal, or social
25 relationship with any of the attorneys involved in this

1 case, or any member of the Thirteenth Circuit Solicitor's
2 Office? If so, please, stand.

3 Yes, ma'am. Your name?

4 JUROR #110, BABETTE JONES: Babette Jones.

5 THE COURT: Yes, ma'am.

6 JUROR #110, BABETTE JONES: I'm very familiar with
7 Mr. Richard Warder through my mother that worked in Family
8 Court for 37 and a half years. So I'm familiar with him,
9 and being an ex-probation and parole agent.

10 THE COURT: Well, would the fact that you're an
11 ex-probation and parole agent and that your mother -- that
12 you know Mr. Warder, would that impair your ability to be
13 fair and impartial in this case to both the State and the
14 Defendants?

15 JUROR #110, BABETTE JONES: Yes, sir.

16 THE COURT: Okay. Thank you, ma'am.

17 Is there any member of the jury panel related by
18 blood or marriage, or have a business, personal, or social
19 relationship with either Mr. James Melvin Babb or Mr. Troy
20 Daniel Fallin? If so, please stand.

21 (There was no response.)

22 THE COURT: Okay. Now, I'm going to read a list of
23 potential witnesses in this case. Please pay attention,
24 because I'm going to want to know if you have a
25 relationship with any of these folks: Detective Mary

1 Ashley Thomas, Officer Ben Cothran, Officer Chris Reider,
2 Officer John Dempsey, Captain Mike Gamble or Mike Gambell,
3 Richard Pepper, Deputy Hal Harris, James Armstrong, Kara
4 Bennick, Renee Pruitt, Iva Bracken, Grant Forrester, and
5 Christian Freeman. Is there any member of the jury panel
6 who is related by blood or marriage, or has a business,
7 personal, or social relationship with any of those persons
8 whose names I have just read? If so, please, stand.

9 Yes, sir. Your name?

10 JUROR #2, JEREMY ADAMS: Jeremy Adams.

11 THE COURT: Okay.

12 JUROR #2, JEREMY ADAMS: I am a friend of Mary
13 Ashley.

14 THE COURT: It's Mary Ashley Thomas. Is that one and
15 the same?

16 JUROR #2, JEREMY ADAMS: Yes, sir.

17 THE COURT: And your name again?

18 JUROR #2, JEREMY ADAMS: Jeremy Adams.

19 THE COURT: All right. Would the fact that you're a
20 friend with her impair your ability to be fair and
21 impartial in this case to both the State and the
22 Defendants?

23 JUROR #2, JEREMY ADAMS: No.

24 THE COURT: Could you follow the law as I would give
25 it to you throughout the course of the trial?

1 JUROR #2, JEREMY ADAMS: Yes.

2 THE COURT: Okay. Thank you, sir.

3 Is there any member of the jury panel who has any
4 knowledge about the events that are alleged in these
5 indictments? If so, please, stand.

6 (There was no response.)

7 THE COURT: Is there any member of the jury panel, or
8 a family member, or friend who has ever been the victim of
9 or charged with this type of offense? If so, please,
10 stand.

11 JUROR #10, WILLIAM BARBARE: Simple possession of
12 marijuana.

13 THE COURT: Well, your name, sir?

14 JUROR #10, WILLIAM BARBARE: William Barbare.

15 THE COURT: Would -- the fact that you have been
16 charged with that offense, would that limit your
17 ability -- or impair your ability to be fair and impartial
18 to both the State and the Defense?

19 ✓ JUROR #10, WILLIAM BARBARE: Yes, sir.

20 THE COURT: All right. Thank you.

21 Is there any member of the jury panel who is aware of
22 any bias or prejudice towards either the State or the
23 Defendants? If so, please, stand.

24 (There was no response.)

25 THE COURT: Is there any member of the jury panel who

1 is a member of or a contributor to a group whose primary
2 concern is the promotion of law enforcement or victims
3 rights such as MADD, SADD, or CAVE? If so, please, stand.

4 (There was no response.)

5 THE COURT: And is there any member of the jury panel
6 who knows of any reason whatsoever why you should not
7 serve in this case with particular emphasis on your
8 ability to be fair and impartial to both the State and the
9 Defense? If so, please, stand.

10 All right. Your name?

11 JUROR #10, WILLIAM BARBARE: William Barbare.

12 THE COURT: Tell me about it.

13 JUROR #10, WILLIAM BARBARE: When I was charged with
14 the simple possession of marijuana, it wasn't mine. And
15 they found it on the passenger side --

16 THE COURT: We don't need to hear all the facts.

17 Thank you very much.

18 Let me see the lawyers up here, please.

19 (WHEREUPON, a side bar was held with the Court and
20 the attorneys.)

21 THE COURT: I'm sure you want him.

22 MR. WARDER: He would make a good foreman.

23 THE COURT: What do you all say about Jones?

24 Isn't that her name?

25 THE CLERK: Yes, sir, Babette Jones.

1 MR. SULLIVAN: Oh, the probation officer. We
2 probably would strike her.

3 THE COURT: Well, do y'all have a motion?

4 MR. BOUTON: On Jones?

5 THE COURT: Yes.

6 MR. BOUTON: On Barbare, yes, sir.

7 MR. SULLIVAN: We have one on Jones, but not on
8 Barbare.

9 THE COURT: What about Adams?

10 Adams is okay. The other two are gone.

11 Okay. Anything else?

12 (There was no response.)

13 MR. SULLIVAN: We're going to let Barbare go and the
14 probation agent go?

15 THE COURT: Yes.

16 MR. SULLIVAN: Judge, are you going to ask them about
17 are they related law enforcement?

18 THE COURT: I'm done with voir dire.

19 What do you want?

20 MR. SULLIVAN: Are they related by blood or marriage
21 to law enforcement?

22 THE COURT: Okay. I'll ask them. You know, I asked
23 for requested voir dire before we started.

24 MR. SULLIVAN: I thought that would be standard.

25 (WHEREUPON, the side bar was concluded.)

1 THE COURT: Is there any member of the jury panel who
2 is related by blood or marriage to any member of law
3 enforcement? If so, please, stand.

4 Yes, sir. Your name?

5 JUROR #173, MATTHEW REAVES: Matthew Reaves.

6 THE COURT: All right. Mr. Reaves.

7 Your name, ma'am?

8 JUROR #138, JENNIFER MARTIN: Jennifer Martin.

9 THE COURT: To each of you, I want to ask, does the
10 fact that you are -- well, let me ask --

11 Mr. Reaves, how are you related?

12 JUROR #173, MATTHEW REAVES: My father, Stan Reaves,
13 works for ATF.

14 THE COURT: Okay. And Ms. Martin?

15 JUROR #138, JENNIFER MARTIN: I've got a sister that
16 is a lieutenant at the prison.

17 THE COURT: Would the fact that you two are related
18 to a person who is involved in law enforcement limit your
19 ability to be fair and impartial to both the State and the
20 Defense?

21 JUROR #173, MATTHEW REAVES: No, sir.

22 THE COURT: Ms. Martin?

23 JUROR #138, JENNIFER MARTIN: Yes, sir.

24 THE COURT: Why is that?

25 JUROR #138, JENNIFER MARTIN: I don't know.

1 THE COURT: All right. Thank you very much.

2 Yes, ma'am. Your name?

3 JUROR #153, DENA NALLEY: Dena Nalley.

4 My sister-in-law works for the school district law
5 enforcement.

6 Does that apply?

7 THE COURT: All right. Your name, sir?

8 JUROR #231, HAROLD WHITE: Harold White.

9 I have a niece that's on the police force, but it's
10 out of state.

11 THE COURT: Would the fact that each of you has
12 someone who's related to -- you are related to someone
13 who's involved in law enforcement limit your ability to be
14 fair and impartial in this case?

15 JUROR #231, HAROLD WHITE: No.

16 THE COURT: Okay. Ms. Nalley?

17 JUROR #153, DENA NALLEY: No, sir.

18 THE COURT: Thank you very much.

19 Are you ready?

20 THE CLERK: Yes, sir.

21 JURY SELECTION

22 THE CLERK: When I call your name, if you'll, please,
23 stand and await for further instructions.

24 ' Juror #229, Bruce West.

25 (Bruce West, a white male, stood.)

1 THE CLERK: What says the State?

2 MR. BOUTON: Please present this juror.

3 THE CLERK: What says Defendant Babb?

4 MR. WARDER: Swear the juror, please.

5 THE CLERK: All right. Sir, please, bring your
6 things with you. Come have a seat in the jury box.

7 Juror #19, Vivian Boykin.

8 (Vivian Boykin, a white female, stood.)

9 THE CLERK: What says the State?

10 MR. BOUTON: Please present this juror.

11 THE CLERK: What says Defendant Babb?

12 MR. WARDER: Please swear the juror.

13 THE CLERK: Ms. Boykin, please, come have a seat in
14 the jury box.

15 Juror #75, Edith Gleason.

16 (Edith Gleason, a white female, stood.)

17 THE CLERK: What says the State?

18 MR. BOUTON: Please present this juror.

19 THE CLERK: What says the Defendants?

20 MR. WARDER: Please swear the juror.

21 THE CLERK: Ma'am, please, bring your things and come
22 have a seat in the jury box.

23 Juror #22, Nelia Bridges.

24 (Nelia Bridges, a white female, stood.)

25 MR. BOUTON: Please present this juror.

1 THE CLERK: Thank you.

2 What says the Defendants?

3 MR. WARDER: Please swear the juror.

4 THE CLERK: Ma'am, please, bring your things and come
5 have a seat in the jury box.

6 Juror #201, Patricia Sparks.

7 (Patricia Sparks, a white female, stood.)

8 THE CLERK: What says the State?

9 MR. BOUTON: Please present this juror.

10 THE CLERK: Thank you.

11 What says the Defendants?

12 MR. WARDER: Please excuse the juror from the trial
13 of this matter.

14 THE CLERK: All right. You may be seated. You've
15 been excused from this case.

16 Juror #204, Kent Stroh.

17 (Kent Stroh, a white male, stood.)

18 THE CLERK: What says the State?

19 MR. BOUTON: Please present this juror.

20 THE CLERK: What says the Defendants?

21 MR. WARDER: Please excuse the juror from the trial
22 of this matter.

23 THE CLERK: Sir, you may be seated. You've been
24 excused from this case.

25 Juror #10, William Barbare --

1 THE COURT: No.

2 THE CLERK: I beg your pardon.

3 You may be seated, sir.

4 Juror #2, Jeremy Adams.

5 (Jeremy Adams, a white male, stood.)

6 THE CLERK: What says the State?

7 MR. BOUTON: Please present this juror.

8 THE CLERK: What says the Defendants?

9 MR. WARDER: Please excuse the juror from the trial
10 of this matter.

11 THE CLERK: Sir, you may be seated.

12 Juror #167, David Pierson.

13 (David Pierson, a white male, stood.)

14 THE CLERK: What says the State?

15 MR. BOUTON: Please present this juror.

16 THE CLERK: What says the Defendants?

17 MR. WARDER: Please swear the juror.

18 THE CLERK: Sir, please, come have a seat in the jury
19 box.

20 Juror #181, John Robinson.

21 (John Robinson, a white male, stood.)

22 THE CLERK: What says the State?

23 MR. BOUTON: Please present this juror.

24 THE CLERK: What says the Defendants?

25 MR. WARDER: Please excuse the juror from the trial

1 of this matter.

2 THE CLERK: Sir, you may be seated. You have been
3 excused from this case.

4 Juror #216, Della Vaughn.

5 (Della Vaughn, a white female, stood.)

6 THE CLERK: What says the State?

7 MR. BOUTON: Please excuse this juror.

8 THE CLERK: Ms. Vaughn, you may be seated. You've
9 been excused from this case.

10 Juror #231, Harold White.

11 (Harold White, a white male, stood.)

12 THE CLERK: What says the State?

13 MR. BOUTON: Please present this juror.

14 THE CLERK: What says the Defendants?

15 MR. WARDER: Please excuse the juror from the trial
16 of this matter.

17 THE CLERK: Sir, you may be seated. You've been
18 excused from this case.

19 Juror #145, Kenneth McKinney.

20 (Kenneth McKinney, a black male, stood.)

21 THE CLERK: What says the State?

22 MR. BOUTON: Please excuse this juror.

23 THE CLERK: Mr. McKinney, you may be seated. You've
24 been excused from this case.

25 Juror #104, Quiwanna James.

1 (Quiwanna James, a back female, stood.)

2 THE CLERK: What says the State?

3 MR. BOUTON: Please present this juror.

4 THE CLERK: What says the Defendants?

5 MR. WARDER: Please swear the juror.

6 THE CLERK: Ma'am, please, have a seat in the jury box.

7 Juror #108, Paula Johnson.

8 (Paula Johnson, a back female, stood.)

9 THE CLERK: What says the State?

10 MR. BOUTON: Please present the juror.

11 THE CLERK: What says the Defendant?

12 MR. WARDER: Please excuse the juror from the trial
13 of this matter.

14 THE CLERK: You may be seated. You've been excused
15 in this case.

16 Juror #126, Stephen Knight.

17 (Stephen Knight, a white male, stood.)

18 THE CLERK: What says the State?

19 MR. BOUTON: Please present this juror.

20 THE CLERK: What says the Defendants?

21 MR. WARDER: Please excuse the juror from the trial
22 of this matter.

23 THE CLERK: Sir, you may be seated. You've been
24 excused from this case.

25 Juror #153, Dena Nalley.

1 (Dena Nalley, a white female, stood.)

2 THE CLERK: What says the State?

3 MR. BOUTON: Please present this juror.

4 THE CLERK: What says the Defendants?

5 MR. WARDER: Please excuse the juror from the trial
6 of this matter.

7 THE CLERK: You may be seated, ma'am. You've been
8 excused from this case.

9 Juror #76, Michelle Glenn.

10 (Michelle Glenn, a white female, stood.)

11 THE CLERK: What says the State?

12 MR. BOUTON: Please present the juror.

13 THE CLERK: What says the Defendants?

14 MR. WARDER: What number?

15 THE CLERK: #76.

16 MR. WARDER: Please swear the juror.

17 THE CLERK: Ma'am, please, come have a seat in the
18 jury box.

19 Juror #132, Marie Lemanski.

20 (Marie Lemanski, a white female, stood.)

21 THE CLERK: What says the State?

22 MR. BOUTON: Please present this juror.

23 THE CLERK: Thank you.

24 What says the Defendants?

25 MR. WARDER: Please excuse the juror from the trial

1 of this matter.

2 THE CLERK: You may be seated, ma'am.

3 Juror #162, Arthur Pace.

4 (Arthur Pace, a white male, stood.)

5 THE CLERK: What says the State?

6 MR. BOUTON: Please excuse this juror.

7 THE CLERK: Sir, you may be seated. You've been
8 excused in this case.

9 Juror #144, Meredith McGinnis.

10 (Meredith McGinnis, a white female, stood.)

11 THE CLERK: What says the State?

12 MR. BOUTON: Please present this juror.

13 THE CLERK: Thank you.

14 What says the Defendants?

15 MR. WARDER: Please swear the juror.

16 THE CLERK: Ma'am, please, bring your things and come
17 have a seat in the jury box.

18 Juror #218, John Vernon.

19 (John Vernon, a white male, stood.)

20 THE CLERK: What says the State?

21 MR. BOUTON: Please present this juror.

22 THE CLERK: What says the Defendants?

23 MR. WARDER: Please swear the juror.

24 THE CLERK: Sir, please, come have a seat in the jury
25 box.

1 Juror #140, Jennifer McDowell.

2 (Jennifer McDowell, a white female, stood.)

3 THE CLERK: What says the State?

4 MR. BOUTON: Please present this juror.

5 THE CLERK: What says the Defendants?

6 MR. WARDER: Please excuse the juror from the trial
7 of this matter.

8 THE CLERK: Ma'am, please, be seated. You've been
9 excused in this case.

10 Juror #221, Meredith Wade.

11 (Meredith Wade, a white female, stood.)

12 THE CLERK: What says the State?

13 MR. BOUTON: Please present this juror.

14 THE CLERK: What says the Defendants?

15 MR. WARDER: Please swear the juror.

16 THE CLERK: Ma'am, please, come have a seat in the
17 jury box.

18 Juror #158, Tanya Novak.

19 (Tanya Novak, a white female, stood.)

20 THE CLERK: What says the State?

21 MR. BOUTON: Please present this juror.

22 THE CLERK: What says the Defendants?

23 MR. WARDER: Please swear the juror.

24 THE CLERK: Ma'am, please, come have a seat in the
25 jury box.

1 Juror #113, Julia Joyce.

2 (Julia Joyce, a white female, stood.)

3 THE CLERK: What says the State?

4 MR. BOUTON: Please present this juror.

5 THE CLERK: What says the Defendants?

6 MR. WARDER: Please swear the juror.

7 THE CLERK: Ma'am, please, bring your things and come
8 have a seat in the jury box.

9 THE COURT: One alternate, one and two.

10 THE CLERK: Juror #26, Jack Burgess.

11 (Jack Burgess, a white male, stood.)

12 THE CLERK: What says the State?

13 MR. BOUTON: Please present this juror.

14 THE CLERK: What says the Defendants?

15 MR. WARDER: Please excuse the juror.

16 THE CLERK: Sir, you may be seated.

17 Juror #183, Carol Sanders.

18 (Carol Sanders, a white female, stood.)

19 THE CLERK: What says the State?

20 MR. BOUTON: Please present this juror.

21 THE CLERK: Thank you.

22 What says the Defendants?

23 MR. WARDER: Please swear the juror.

24 THE CLERK: Ma'am, please, come have a seat in the
25 jury box.

1 THE COURT: All right. To those of you who were not
2 selected, you are free to go. Please call back the juror
3 information line after 6:00 tonight.

4 Thank you.

5 (WHEREUPON, the remaining members of the jury panel
6 exited the courtroom.)

7 THE COURT: Any exceptions or objection to the jury
8 as impaneled?

9 MR. BOUTON: Not from the State.

10 MR. SULLIVAN: None from the Defense, Your Honor.

11 INTRODUCTORY REMARKS

12 THE COURT: Ladies and gentlemen, I think you all
13 have won the lottery. I mean that sincerely. It's an
14 incredible honor, privilege, and responsibility to serve
15 on a jury. It just doesn't happen that often. It is, as
16 I've said before, I think, downstairs, the pinnacle of
17 your civic responsibilities in peacetime. So we
18 appreciate you being here. And I hope you will find it to
19 be a rewarding experience when you have concluded your
20 service.

21 I want to tell you that we have a dispute about the
22 facts in this case. It couldn't be resolved in any other
23 fashion than to ask a jury to come up and listen to those
24 facts and listen to the evidence and make a decision about
25 how to resolve this dispute. So that's what we are going

1 to ask you to do.

2 I would remind you, again, that the indictments that
3 I read to you are not evidence and they should not be
4 construed by you in any form or fashion to be evidence.
5 You should make no inference or presumption as to guilt or
6 innocence based on the fact that these documents have been
7 typed up and used to present this case in the courtroom
8 for your consideration.

9 Please, also, remember that every citizen who is
10 charged with a crime is presumed innocent unless and until
11 the State, who always has the burden of proof as the
12 charging body, can prove them guilty beyond any reasonable
13 doubt of each and every element of each offense that
14 they're charged with. So, please, keep that in mind
15 throughout the course of the proceedings as well.

16 I'll give you a little road map for the trial, and
17 that is, I divide it into five parts. The parts are not
18 of equal length. The first part will be when we return
19 from lunch, the attorneys will give you their opening
20 statements. The second part of the trial is the meat and
21 potatoes, and that is the presentation of the testimony
22 and the evidence in the case. The third part of the trial
23 will be the closing arguments by the attorneys when they
24 advocate their positions. The fourth part of the trial
25 will be my charge to you on what the law is as it relates

1 to this case. And then the fifth part of the trial will
2 be when you all retire to the jury room to deliberate the
3 case and resolve the dispute.

4 So that's a little bit of a road map, so you'll know
5 procedurally where we are in the case. I hope it helps a
6 little bit. But the parts are not of equal length. And,
7 of course, the meat and potatoes are the main course. And
8 that usually takes the longest amount of time.

9 I'll ask you to do probably many things throughout
10 the course of the trial. But there are three main things
11 I will ask you to do. The first is we've gone through all
12 this lengthy process of questioning you all to make sure
13 that you can be fair and impartial. And we ask you to do
14 that, and I ask you to do that, by keeping an open mind
15 throughout the course of the proceedings. Do not make up
16 your mind until the end of the case when it is your case
17 to decide. Wait and listen to all the evidence and
18 testimony and weigh it in making your decision.

19 I ask you to pay attention throughout the course of
20 the trial as well. And that seems like a simple thing.
21 But I admit, I'm probably one of the world's worst at
22 letting my mind wander. And I want to tell you, I ask you
23 to pay particular attention, because if you do let your
24 mind wander and you miss some evidence that's presented,
25 it may turn out to be crucial in deliberations. And you

1 would be at a disadvantage in your deliberations if you
2 were not paying attention.

3 Finally, I ask you and instruct you not to talk about
4 this case with anyone until you're free to deliberate on
5 it. That means, don't talk about the case with the
6 bailiffs. Don't talk about it when we break for lunch in
7 just a moment with whomever you may see or talk to over
8 lunch. Don't do independent research. Don't go on the
9 Internet. Don't go visit the scene, although you don't
10 know anything about it yet. But don't talk about the
11 case.

12 Because even an innocent comment from someone who's
13 not involved in the case might impact your mind set or
14 your state of mind about the case, and that would not be
15 fair to these parties. It would not be fair to your fellow
16 jurors. And it wouldn't be fair to yourselves to allow
17 someone who is not making the sacrifices that you are
18 making to have any input into the outcome of this case.
19 We don't care what they think. We don't want to know what
20 they think. We're only interested in what you, as a jury,
21 think and how you will resolve this dispute. So I hope it
22 makes sense to you why we don't want you to talk about it.

23 I'll tell you real quickly that you all are the sole
24 judges of the facts in this case. A trial judge is not
25 allowed to have an opinion about the facts. So don't

1 think by anything I say or do throughout the course of the
2 trial that I have an opinion about the facts. I do not.
3 The law does not allow it. And that is entirely up to you
4 all to judge the facts, and that is who to believe, who
5 not to believe, what is true, and what is not true. That
6 is entirely up to you.

7 That same law that makes you the sole judge of the
8 facts makes me the sole judge of the law. So if you have
9 any idea about what you think the law is or what the law
10 should be and it disagrees with what I tell you the law is
11 throughout the course of the trial, then you'll swear an
12 oath in just a moment to set aside your own opinion and
13 apply the law precisely as I state it to you.

14 Now, I'm going to ask you to stand in just one
15 second, take an oath, put you under oath, and then we'll
16 excuse you for lunch. I'm going to ask y'all to be back
17 in your jury room at 2:30. That's an hour. And when you
18 get back, I'm going to ask you all to elect a foreperson,
19 if you can do that. The foreperson is the jury's
20 moderator in deliberations and spokesperson in the
21 courtroom, should that become necessary.

22 So if you all can make that election, I would love
23 for you to do it. If not, I can do it for you. One rule
24 about that, there will be no campaigning during your lunch
25 hour. Okay. And there is an absolute spending limit. We

1 spend zero to decide who wins that election. But it is an
2 important function. It's sort of a promotion without a
3 raise in pay, but we do need a foreperson.

4 All right. With that, ladies and gentlemen, I'm
5 going to ask you to stand, take an oath, and excuse you
6 for lunch.

7 THE CLERK: Please raise your right hand. The proper
8 response is, "I will."

9 (WHEREUPON, the jury was sworn at approximately
10 1:21 p.m.)

11 THE CLERK: Thank you.

12 THE COURT: Ladies and gentlemen, if you will,
13 please, go with the bailiff and they will show you the
14 back way in and out. You all have a pleasant lunch.
15 We'll see you back at 2:30.

16 Thank you.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 1:21 p.m.)

19 THE COURT: Okay. Anything before we break?

20 MR. BOUTON: No, Your Honor.

21 MR. WARDER: Nothing from the Defense.

22 THE COURT: What's the State's position on bond?

23 MR. BOUTON: We would leave it up to the Court's
24 discretion, Judge.

25 MR. WARDER: Your Honor, they've shown up every time,

1 they've been out on bond and not broken any condition. I
2 would urge you to leave them out to -- both at lunch and
3 this evening.

4 THE COURT: Well, I'm not going to cross that bridge
5 until I get to it.

6 We'll let them out for lunch.

7 See you all at 2:30.

8 What are the issues? Is there some suppression
9 issue?

10 MR. BOUTON: Yes, sir.

11 I anticipate three witnesses for the suppression
12 hearing.

13 THE COURT: All right. You all be back at 2:15.

14 See you then.

15 (WHEREUPON, a lunch break was taken.)

16 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, and 6
17 were marked for identification only.)

18 THE COURT: Are you all ready?

19 MR. BOUTON: Your Honor, may it please the Court.

20 I believe we have a suppressions hearing. I, also,
21 would like to give you a heads up. I believe there's
22 going to be a Jackson v. Denno. There's a pre-statement
23 by Defendant Fallin. I just ask that we incorporate that
24 in the suppressions hearing.

25 THE COURT: Yes. Let's do it all at once.

1 I see that Mr. Sullivan has risen.

2 MR. SULLIVAN: Yes, I have, Your Honor.

3 This whole case involves a unanimous tip from an
4 unknown person, not knowing where they are, who they are.
5 They still don't know who is it. And I've got a couple of
6 Supreme Court cases. One of them is Florida v. J.L. I
7 have a copy for the Court where -- and a copy of the
8 incident report. The police received a unanimous tip that
9 a young black male would be on the street corner in a
10 striped shirt carrying a gun.

11 The police went to the street corner and observed
12 three young black males. One had a striped shirt on.
13 They patted him down and they found a gun. And the Court
14 said that that was not -- they suppressed the gun as
15 evidence. I mean, a tip without reliability or indicia of
16 criminal activity was not enough to make the stop, the
17 Terry stop and frisk.

18 In the incident case, the police received a call that
19 a person would be at a motel in a certain colored car and
20 they would be leaving with some drugs. In that case
21 and another case, Alabama v. White, which was a similar
22 case, they said that was enough because it was indicative
23 of future activity. But in Florida v. J.L., that was a
24 very close call and very strong dissent. In Alabama v.
25 White, the case did not warrant a search warrant with the

1 information they had.

2 When the people left the motel, the officer said, at
3 first, that the driver didn't have his seatbelt on. But
4 then, he said that a car got between them and he pulled
5 him over and he did have his seatbelt on.

6 THE COURT: Well, let's see -- before you do your
7 arguments, let's hear the evidence and see what they've
8 got.

9 MR. SULLIVAN: Okay.

10 THE COURT: I don't mean to be short, but let's put
11 that up and see what they have and then argue the facts.

12 MR. BOUTON: Yes, Your Honor.

13 The State would call Detective Thomas to the stand.

14 THE CLERK: Place your left hand on the Bible and
15 raise your right hand.

16 WHEREUPON,

17 MARY ASHLEY THOMAS,
18 after first having been duly sworn, testified as follows:

19 THE CLERK: Please be seated.

20 And state your full name for the record.

21 THE WITNESS: Mary Ashley Thomas.

22 DIRECT EXAMINATION

23 BY MR. BOUTON:

24 Q Please state your full name for the record.

25 A Mary Ashley Thomas.

1 Q Detective Thomas, who do you work for?

2 A Greenville City Police Department.

3 Q Were you working for them back on April the 29th, 2007?

4 A I was.

5 Q And where were you working?

6 A I had desk duty that morning.

7 Q And what does that mean?

8 A You sit at the front desk at the law enforcement
9 center and you answer all calls that come in through
10 telephone, e-mail. Anyone who walks in through the front
11 door, you handle their call.

12 Q Did you receive a call that lead to the investigation
13 of this case?

14 A Yes, sir.

15 Q And, briefly, just tell the Court about that call.

16 A I received a call through the front desk of the law
17 enforcement center. We do have caller ID. It was an
18 anonymous call that came through. And it was a male on
19 the phone that gave a tip stating that there were several
20 males that were bringing a large amount of narcotics from
21 Atlanta to Greenville. And he gave a description of their
22 vehicle, a description of the males, and the kind of drugs
23 they would be bringing through.

24 Q Do you remember what the description of the vehicle
25 was?

1 A A purple Saturn.

2 Q Okay. Did he provide you with names of individuals
3 that might be involved in this?

4 A He did.

5 Q And do you remember offhand who those names were?

6 A Fallin. And I can't recall the other.

7 Q There were two others in addition to Fallin?

8 A Yes. There were three altogether.

9 Q What did you do with this information?

10 A I passed it on to Officer Reider, who was working on
11 the road at that time.

12 Q Did this caller provide his name to you?

13 A No, he did not.

14 Q Did you ask him what his name was?

15 A I did.

16 Q And he --

17 A He was scared.

18 Q Okay. Did this individual provide any other forms of
19 communication to you?

20 A He, also, sent me an e-mail with the three pictures
21 of the three males.

22 Q Okay. And what were these pictures like, if you
23 could just describe them?

24 A ~~I just remember three white males being in the~~
25 pictures.

1 Q Were they facial shots? I mean, were you able to
2 recognize anybody? Not you personally, but how --

3 A Yes, you could. They were good quality pictures.

4 Q Do you still have that e-mail?

5 A No, sir.

6 Q Okay. What did you do with that e-mail -- or did you
7 forward that e-mail on to anyone?

8 A I did. I forwarded it to Officer Reider.

9 MR. BOUTON: Thank you, Detective.

10 Please answer any further questions

11 MR. SULLIVAN: I only have a few.

12 CROSS-EXAMINATION

13 BY MR. SULLIVAN:

14 Q You have no idea who made this call?

15 A No, sir.

16 Q And you have no record of the call?

17 A No, sir.

18 Q And you have no record of the pictures?

19 A I don't personally, no.

20 MR. SULLIVAN: Nothing further, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. WARDER:

23 Q With regard to a recording of those calls, aren't
24 those recordings kept for two years down there?

25 A I'm not sure about that.

1 Q So there might be in the police file -- in police
2 custody some sort of recording of that, a voice recording
3 of that very call?

4 A Maybe in communications. We don't have access to
5 that, sir.

6 Q And did this individual give his name?

7 A No, he didn't.

8 Q Okay. And did this individual give you any
9 information about himself that you would know to be able
10 to judge him?

11 A No, sir.

12 Q And how long was the conversation you had with him?

13 A It was a good amount of time, but I can't recall an
14 exact time limit.

15 Q Did you ask him any questions to determine his
16 credibility and his believability?

17 A I can't recall.

18 Q You didn't ask him his education or what he did for a
19 job?

20 A No, sir. That's not common practice.

21 Q Okay. And for all you knew, at that time, this could
22 have been a prank call, or it could have been somebody
23 trying to set somebody up, or it could have been somebody
24 trying to report a crime?

25 A It could have been, yes, sir.

1 MR. WARDER: Thank you.

2 MR. BOUTON: Thank you, Officer.

3 The State would call Officer C.C. Reider to the
4 stand.

5 THE CLERK: Place your left hand on the Bible and
6 raise your right hand.

7 WHEREUPON,

8 CHRISTOPHER CHARLES REIDER,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Thank you.

11 Please be seated.

12 Please state your full name for the record.

13 THE WITNESS: Christopher Charles Reider.

14 DIRECT EXAMINATION

15 BY MR. BOUTON:

16 Q Officer Reider, who do you work for?

17 A Greenville City Police Department.

18 Q And were you working for them on April 29th, 2007?

19 A I was.

20 Q Did you receive a call from Detective Thomas on that
21 day?

22 A I did.

23 Q And what did Detective Thomas tell you?

24 A Detective Thomas told me that she had received a call
25 through the front desk, that a gentleman had called in and

1 stated that there was a group of individuals at the Econo
2 Lodge on Orchard Park Drive, and that they were bringing
3 in a shipment of methamphetamines from the Atlanta area.
4 She provided me with a vehicle description, license plate,
5 and stated that it would be -- I believe she gave me the
6 license plate. I know she gave me the color of the car.
7 But there was registration -- or she did let me know that
8 the registration would come back to a Troy Fallin.

9 Q What did you do in receipt of this information?

10 A I'm sorry?

11 Q What did you do when you received this information?

12 A Because of the amount of information that was given,
13 I drove over to the Econo Lodge and went through the
14 parking lot. And the purple Saturn was one of the first
15 vehicles I came into contact with. When I ran the vehicle
16 license plate through my mobile data terminal, it did come
17 back registered to Mr. Fallin. .

18 Q And were you able to receive an e-mail from Detective
19 Thomas?

20 A I did. Through my incoming computer, I did.

21 Q Were you able to view photos of the individuals in
22 your car?

23 A Yes, sir.

24 Q Okay. What did you do after observing the car? What
25 did you do next?

1 A Because the information, up to this point, had been
2 corroborated thus far, I felt we had enough information to
3 go ahead and start setting up on the vehicle to see if
4 there was anything that we could -- any activity we could
5 see coming from it that would lead to what this person had
6 called in about. So we did set up on the car for several
7 hours.

8 Q Do you mean performed surveillance on the vehicle?

9 A Yes, sir.

10 Q And who else was with you?

11 A It was myself, Sergeant Bob Gamble, Officer Ben
12 Cothran, Officer John Dempsey, and Corporal Richard
13 Pepper.

14 Q Who, actually, was watching the vehicle?

15 A Officer Cothran.

16 Q Do you know where he was in relation to the vehicle?

17 A I'm sorry. Say that again.

18 Q Do you know where he was in relation to the vehicle?

19 A There -- where the vehicle was sitting at, where the
20 motel is, directly across is the backside of a strip
21 center. Where Officer Cothran was, from what I could see,
22 he was behind the strip center facing the Econo Lodge
23 where he could see where the vehicle was. He was looking,
24 basically, at the rear of the vehicle.

25 Q Were you in radio contact with Officer Cothran at

1 this time?

2 A Yes, sir.

3 Q What did Officer Cothran relay to you?

4 A He told me that he had two white males that were
5 coming out of -- we didn't know which room, but they were
6 coming out and approaching the vehicle, and were placing
7 items into the back -- in the trunk area of the vehicle.

8 Q All right. What next?

9 A The vehicle exited. From where I was sitting at, I
10 could see directly into the vehicle. I identified
11 Mr. Fallin as the driver, Mr. Babb as the passenger. Per
12 the pictures I had received, I conducted a traffic stop.

13 Q Specifically, how far away were you when that vehicle
14 was leaving?

15 A We were across the street from one another, so 30, 40
16 feet maybe.

17 Q And what time of day was this?

18 A This was in the morning. It was clear. The sun was
19 out.

20 Q Describe the vehicle. Did it have tinted windows?

21 A It did not.

22 Q What did you observe when you saw this vehicle
23 leaving the parking lot?

24 ~~A They exited, made a right-hand turn onto Orchard Park~~
25 heading towards Patewood Drive. Mr. Fallin was not

1 wearing a seatbelt at that time. That was the reason I
2 got in behind the vehicle to execute a traffic stop. I
3 had a vehicle that made an improper lane change in front
4 of me and cut me off from Mr. Fallin. I had to go around
5 them to conduct the stop. And I did conduct the stop on
6 Mr. Fallin just before Patewood Drive for a seatbelt
7 infraction.

8 Q And where exactly is this location? Is it -- can you
9 just describe briefly?

10 A If you turn off of Haywood Road onto Orchard Park
11 Drive, you have Haywood Road and Patewood Drive where the
12 hospital complex is, and Orchard Park is the road in
13 between that connects the two. And that's where we were.

14 Q Is it close to 385?

15 A Fairly close, yes, sir.

16 Q All right. What did you observe when you approached
17 the vehicle at the traffic stop?

18 A When I approached the vehicle, like I said,
19 Mr. Fallin was driving. Mr. Babb was in the passenger
20 seat. I identified myself and let Mr. Fallin know the
21 reason for the traffic stop. And I did see that, yes, at
22 this point in time, he did have his seatbelt on. He had
23 corrected the problem.

24 I advised him that it was still our policy that I had
25 to issue some sort of either a -- what we call a field

1 interview card or a warning citation for the reason for
2 the infraction. So I got his driver's license and
3 whatnot.

4 Q Okay. At this point, what was your intent with
5 regards to the investigation of the anonymous tip?

6 A At this point, I'm not going to write a ticket or
7 anything like that. So I'm going to take the information
8 of the occupants, Mr. Fallin and Mr. Babb, based off all
9 the information we had received. I was going to document
10 that on -- it's called a lead sheet, and pass that on to
11 our vice and narcotics unit.

12 Q What did you observe when talking with Mr. Fallin?

13 A When I was speaking to Mr. Fallin, I observed that he
14 would not make direct eye contact with me. His hands were
15 shaking. He would rub his hands continuously on his legs,
16 similar to what somebody would do when they're nervous and
17 they're wiping sweat off. His hands were visibly shaking.
18 And there were two points at which he would put his hands
19 in between his legs in order to -- what I observed to be
20 trying to conceal the shaking of his hands, because it was
21 visible.

22 Q Were there any other officers present at the car at
23 this time?

24 A Officer Dempsey was my backup officer at the time.

25 Q What else did you observe inside the vehicle?

1 A Inside the vehicle, there were numerous soda bottles.
2 There was a lot of fast-food -- i can't remember the exact
3 ones, but there was fast-food bags and wrappers in the
4 vehicle.

5 Q Any luggage, backpacks?

6 A There was one backpack directly behind the driver,
7 which was Mr. Fallin.

8 Q What did you do at this point? Did you return to
9 your car?

10 A I did. I went back to my vehicle to run their
11 information.

12 Q All right. Did you discuss what you observed with
13 any other officers?

14 A I believe when I went back, due to the amount of
15 officers that had shown up, I had several of them leave.
16 Because based off the behavioral indications, I was going
17 to attempt to ask for consent to search the car. And I
18 didn't want to have an overabundance of police officers
19 there.

20 Q And, real quick, I want to back up. Have you ever
21 had any training in narcotics interdiction?

22 A I have.

23 Q How many hours, roughly, for the Court?

24 A Well over 100.

25 Q All right. You made the decision to ask for consent

1 to search. Did you return to the vehicle?

2 A Yes, sir, I did.

3 Q And what happened?

4 A When I went back to the vehicle, I had Mr. Fallin
5 step out of the vehicle. I explained to him my normal
6 practice. I don't have my report, so I can't tell you
7 verbatim what I said. But I told him that he wasn't going
8 to get a citation. And I asked for consent to search the
9 vehicle. And he stated that I could.

10 Q Okay. Did you ask any further questions after he
11 gave you consent?

12 A He tried to go back towards the vehicle, so I asked
13 him to come back. And I was going to ask him more
14 specific questions, which is what I normally do. And I
15 broke it down as far as, is there marijuana in the
16 vehicle, is there cocaine in the vehicle, crack cocaine.
17 And I listed specific narcotics to see if I would get a
18 behavioral change when I got to anything.

19 Q Did you notice any behavioral changes when you asked
20 specific questions?

21 A When I asked, specifically, about methamphetamine and
22 when I asked, specifically, about Ecstasy.

23 Q Okay. Did you search the vehicle?

24 A Yes, sir, I did.

25 Q And what did you discover?

1 A In the trunk, I located three plastic bags that
2 contained a crystal-like substance that field-tested on
3 the side of the road as methamphetamine.

4 Q Let's back up real quick. What did you observe first
5 when you opened the trunk?

6 A When I opened the trunk, there was one bag to the
7 right. There was a lot -- it was really junky. I
8 remember that. There was a lot of things strewn about.
9 There was a bag on the right. And there was a box kind of
10 in the far back towards the back seat. That caught my
11 attention first.

12 Q Was there an Eddie Bauer backpack?

13 A Yes.

14 Q And did you begin to search that first?

15 A That is the first place I went to.

16 Q And what was the first thing you discovered when you
17 opened that?

18 A Two glass pipes that had a white residue that, from
19 my experience, is used for smoking methamphetamine.

20 Q What did you do at this point?

21 A I immediately secured Mr. Fallin and Mr. Babb.

22 Q All right. Do you know where Mr. Fallin was secured?

23 A As far as who -- where he was, I could not recall.

24 Q Okay. Did you continue your search?

25 A I did.

1 Q And you stated that you found three baggies of what
2 lab tested positive for methamphetamine?

3 A Yes, sir.

4 Q All right. Did you field test them at the scene?

5 A We did.

6 Q And they tested positive?

7 A They tested positive.

8 Q What else did you locate inside the backpack?

9 A Inside the backpack, along with the two glass pipes
10 and the three baggies, were butane torches, butane torch
11 fuel.

12 Q Specifically, how about the baby bottles?

13 A There were two Gerber, I believe, baby bottles with a
14 white -- not a white, excuse me, but a clear substance in
15 them.

16 Q What did you think when you saw that clear substance?

17 A Two bottles, butane fuel, a meth lab, a mobile meth
18 lab.

19 Q Did that cause concern for you?

20 A It did. It was an officer-safety issue.

21 Q And what did you do as a result of that?

22 A I immediately asked Mr. Fallin what was in the
23 bottles.

24 Q And what did he say?

25 A He stated that it was GHB.

1 Q Okay. And what is GHB?

2 A Gamma-hydroxybutyric acid.

3 Q Is that an illegal substance?

4 A It is.

5 Q Besides what you found in the Eddie Bauer backpack,
6 were there any other narcotics located in the vehicle?

7 A In the backpack that was directly behind the driver,
8 Mr. Fallin, there was nothing inside the backpack. But on
9 the outside, there was a blue vial. And whenever it -- it
10 screwed open. And when I unscrewed it, it had a crystal
11 substance that, also, did test positive in the field for
12 methamphetamine.

13 Q Okay. What did you do with all the narcotics that
14 you found?

15 A Everything was seized and placed in my vehicle.

16 MR. BOUTON: Thank you, Officer.

17 Please answer any further questions.

18 CROSS-EXAMINATION

19 BY MR. SULLIVAN:

20 Q So you have no idea who phoned this tip in?

21 A No, sir.

22 Q And y'all observed the vehicle for several hours?

23 A I'm sorry. Could you say that again?

24 Q You observed the vehicle for several hours?

25 A Yes, sir.

1 Q Did you send anybody to get a warrant?

2 A No, sir.

3 Q Why not?

4 A There was no reason to have a warrant at that point
5 in time.

6 Q The activity of two fellows coming out of a motel, is
7 that normal, putting some luggage in a car?

8 A That's normal, yes, sir.

9 Q So, at this time, you have no indication of any
10 criminal activity at all, other than the anonymous tip?

11 A Other than the anonymous tip.

12 Q And does your car have an in-car video?

13 A No, sir, it does not.

14 Q So you're saying that he pulled out without the
15 seatbelt. But, by the time you saw him, he had it on?

16 A Whenever I executed the traffic stop, he had put it
17 on.

18 Q There was really no reason to stop him?

19 A There was. I had probable cause, at that point in
20 time, that he had violated South Carolina state law.

21 Q And it was your intention to write a citation and
22 take the information?

23 A It was my intention, yes, sir.

24 Q And then because they had a trashy car, you figured
25 they were drug dealers; correct?

1 A No, sir.

2 Q Because he was nervous?

3 A No, sir.

4 Q Then why did you ask him out of the car and ask to
5 search the car if you were just going to give him a
6 citation, a warning ticket for a seatbelt violation?

7 A If you could, just word that question a little bit
8 different. Because it's all over the place.

9 Q Okay. Your intent was to give him a warning or a
10 seatbelt violation?

11 A My ultimate intent was to gather the information of
12 the occupants and place that information into a lead
13 sheet, and turn it over to our vice and narcotics unit.

14 Q Okay. Why did you not do that?

15 A Because I had behavioral indications, through my
16 training and experience, that led me to believe there was
17 possible criminal activity.

18 Q Because he was nervous?

19 A With the totality of the circumstances, as far as all
20 the information that was being given to us, the fact that
21 it was corroborated --

22 Q The information --

23 THE COURT: Wait a minute. Let him finish.

24 MR. SULLIVAN: Okay.

25 THE WITNESS: The fact that the information was being

1 corroborated, the e-mails that were sent to me did,
2 clearly, identify Mr. Fallin and Mr. Babb, who I was able
3 to identify prior to the execution of my traffic stop, the
4 behavioral changes that are indicative of persons involved
5 in criminal activity, all that led to my asking for
6 consent to search the vehicle.

7 BY MR. SULLIVAN:

8 Q So he was nervous?

9 A Yes, sir. He was visibly nervous.

10 Q At a traffic stop?

11 A Yes.

12 Q And he had a trashy car?

13 A I'm not going to say his car was trashy. That's --

14 Q Some empty bottles and McDonald's --

15 A My patrol car looks that way right now. So I can't
16 say his car was trashy.

17 Q So then you went from -- you went to the consent to
18 search from his nervousness?

19 A No, sir. Like I stated before, the request for
20 consent to search was based off of all the indicators that
21 were present.

22 Q Which would have been, clearly, the anonymous tip,
23 without which, you wouldn't have stopped the car at all?

24 A Exactly.

25 MR. SULLIVAN: I have nothing further.

1 THE COURT: Any redirect?

2 I'm sorry. Mr. Warder, I apologize.

3 CROSS-EXAMINATION

4 BY MR. WARDER:

5 Q Officer, you said you received some photos over your
6 in-car computer; is that right?

7 A Yes, sir, I did.

8 Q Were these mug shot photos?

9 A No, sir, they weren't. They were taken in a normal
10 social setting.

11 Q Okay. Were they all the Defendants together, or were
12 they three separate photos of three separate people?

13 A If I recall, I believe it was three separate photos.

14 Q Okay. Now, anyway, you were told that somebody was
15 going to come from Atlanta and meet these people and
16 deliver them a large shipment of drugs?

17 A No, sir. I was told that they were coming back from
18 the Atlanta metro area with a shipment of narcotics.

19 Q Okay. You weren't told they were supposed to meet
20 anybody?

21 A Not that I recall, no, sir.

22 Q Okay. And you said something about that's the bag
23 that was in the trunk?

24 A Yes, sir.

25 Q Okay. And in that bag, what narcotics were found?

1 A Xanax, methamphetamine, and the liquid GHB.

2 Q Okay. The three bags of methamphetamine were found
3 in that bag?

4 A Yes, sir.

5 Q And the baby bottle of what you attributed to be GHB?

6 A Yes, sir.

7 Q And were there some pills in that bottle -- that bag?

8 A There were.

9 Q Okay. Was the first time you saw that bag was when
10 it was in the trunk of the car?

11 A That was in the trunk.

12 Q Okay. When you took it out of the trunk, had you
13 seen that bag earlier that day?

14 A Not me, no.

15 Q It wasn't in the possession of either one of the
16 Defendants sometime earlier that you observed?

17 A I couldn't say, no. My first contact with the
18 Defendants was when they exited the Econo Lodge.

19 Q Okay. There was a check found there. Was that found
20 in that bag?

21 A Yes, sir.

22 Q Okay. And you said there was another bag behind the
23 seat that had a blue vial on it?

24 A Yes, sir, behind the driver's seat.

25 Q Did you take that bag?

1 A No, sir.

2 Q Okay. You just took the vial off of it?

3 A I was able to take that off. It was like on a key
4 ring.

5 Q Is the rest of the contents still in that bag?

6 A From what I recall, yes, sir. Nothing has been taken
7 out of it.

8 Q What was in that bag -- or what is in that bag?

9 A In that bag right there?

10 Q Yeah.

11 A There's several items. There's an empty lottery
12 ticket -- or scratch-off tickets. There's a check. There
13 is the red box that -- the red and white box that the
14 three bags were located in. There's several different
15 items in there.

16 Q Okay. In the photographs I got, there was some other
17 black bag or a black fold-up thing, is that in that bag?

18 A Yes, sir. Are you talking about -- yes, sir, it's in
19 there.

20 Q What is that?

21 A I don't know. It's part of the bag.

22 MR. WARDER: Thank you.

23 THE WITNESS: Yes, sir.

24 THE COURT: Redirect?

25 MR. BOUTON: Real quickly.

REDIRECT EXAMINATION

BY MR. BOUTON:

Q How long have you been on the road?

A Five years and 11 months.

Q All right. And you observe normal nervousness with any traffic stop?

A Oh, yes, sir.

Q Is there a difference between the nervousness you witnessed in this case and what you would on a normal traffic stop?

A There was. Mr. Fallin was advised, clearly, at the beginning of the traffic stop after we had our initial contact that he would not be getting a citation or anything, but his nervousness, actually, escalated.

Q And how do people normally react when they're told they're just getting a warning ticket?

A A lot of times, they're very glad. They breathe a sigh of relief, if you will. And, normally, their whole demeanor changes.

MR. BOUTON: Thank you, Officer.

THE COURT: Thank you, sir.

You can step down.

MR. BOUTON: The State calls also Officer Dempsey.

~~THE CLERK: Sir, please, place your left hand on the Bible and raise your right hand.~~

1 WHEREUPON,

2 JOHN MICHAEL DEMPSEY,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you, sir.

5 Please be seated.

6 Please state your full name for the record.

7 THE WITNESS: John Michael Dempsey.

8 DIRECT EXAMINATION

9 BY MR. BOUTON:

10 Q Officer Dempsey, were you present when Officer Reider
11 conducted this traffic stop on April 29th, 2007?

12 A Yes, sir.

13 Q What was your role in the assisting of that traffic
14 stop?

15 A I was a backup officer.

16 Q Okay. Did you approach the vehicle when it was
17 pulled over?

18 A I did.

19 Q And where did you approach it?

20 A The passenger side.

21 Q And did you observe Officer Reider's interaction with
22 Mr. Fallin, the driver, during that stop?

23 A I did.

24 Q And, please, tell the Court what you observed.

25 A Officer Reider was speaking with Mr. Fallin. He

1 stated that, you know, why he pulled him over. He was
2 just going to give him just a warning ticket. I noticed
3 Mr. Fallin trying to pull his driver's license out and he
4 displayed extreme nervousness.

5 Q And, if you could, be more detailed. How did he
6 display extreme nervousness?

7 A He seemed to have trouble trying to get his driver's
8 license out of his wallet. His hands were shaking a good
9 bit, a lot more so than a normal traffic stop. He kind of
10 fumbled around with that for a few seconds.

11 And, finally, when he handed his driver's license, he
12 began to wipe his hands on his thighs. And then he stuck
13 his hands between his legs and closed his legs on them to
14 either hide or stop his shaking.

15 Q All right. When Officer Reider began to search the
16 vehicle, where were you standing?

17 A I stood back towards my vehicle with Mr. Babb and
18 Mr. Fallin.

19 Q And did Officer Reider inform you to take these
20 Defendants into custody?

21 A Yes, he did. Mr. Fallin, I did.

22 Q Okay. And what did you do with Mr. Fallin?

23 A I went and placed him in handcuffs, double-locked
24 them, and checked the proper fit. I read him his Miranda
25 rights from a card and placed him in the back of my patrol

1 car and -- because it was warm that day, I cut the air
2 conditioner on to make sure he didn't get overheated in
3 the car.

4 Q Did he indicate to you that he understood his Miranda
5 rights?

6 A He did.

7 MR. BOUTON: Please answer any further questions.

8 MR. SULLIVAN: No questions of this Officer.

9 CROSS-EXAMINATION

10 BY MR. WARDER:

11 Q After you read him his Miranda rights, did he make
12 any statement?

13 A No, sir. I just placed him in the back of my car.

14 Q Did anybody make any statement to you that day?

15 A Not that I recall.

16 Q Were you there when my client was Mirandized?

17 A No, I was not. I wasn't dealing with him.

18 Q Did you take any part in the search?

19 A No, sir.

20 MR. WARDER: Thank you.

21 MR. BOUTON: Thank you, Officer.

22 THE COURT: All right. Thanks.

23 You can step down.

24 MR. BOUTON: Judge, I know I told you I was going to
25 put up three. I have one more brief witness.

1 THE COURT: Well, we're doing two hearings, so I'm
2 going to cut you some slack on that.

3 MR. BOUTON: Yes, sir.

4 The State would call Officer Cothran to the stand.

5 THE CLERK: Sir, please, place your left hand on the
6 Bible and raise your right hand.

7 WHEREUPON,

8 BENJAMIN HENRY COTHRAN,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Thank you.

11 Please be seated.

12 Please state your full name for the record.

13 THE WITNESS: Benjamin Henry Cothran.

14 DIRECT EXAMINATION

15 BY MR. BOUTON:

16 Q Officer Cothran, were you involved in this
17 investigation that took place on April 29th, 2007?

18 A I was.

19 Q And, please, tell the Court about your involvement.
20 What did you, actually, do yourself?

21 A I was notified by Officer Reider that he had obtained
22 information about a possible drug transaction that
23 occurred on Orchard Park at the Econo Lodge. The possible
24 suspect vehicle was a purple Saturn. I had parked my
25 vehicle back behind the T.J. Maxx building in an elevated

1 parking lot adjacent to the hotel parking lot and set up
2 an observation post.

3 Q Did you observe the purple Saturn in the parking lot?

4 A I did.

5 Q And how far away did you set up from that purple
6 Saturn?

7 A My first observation post was probably in the
8 neighborhood of 85 to 90 yards.

9 Q Did that change?

10 A Yes, sir.

11 Q How close did you get?

12 A I scooted up to where I was probably 60 to 65 yards
13 away from the car. And then my final observation post, I
14 was probably about 40 to 45 yards away from the car.

15 Q Did you have anything to help assist you in observing
16 this vehicle?

17 A Yes, sir. I had a pair of binoculars.

18 Q Did you notice anyone go to that vehicle during your
19 observation before these two Defendants?

20 A Before the two Defendants, no, sir.

21 Q How long were you waiting before Mr. Fallin exited
22 the building -- or what did you observe and how long did
23 that take before you observed the Defendants?

24 A I had -- was holding the observation post for
25 approximately two hours.

1 Q Did you notice any of these Defendants?

2 A Yes, sir.

3 Q And did you have photos? Were they forwarded to you
4 from Officer Reider?

5 A Yes, sir.

6 Q To your MDT?

7 A Yes, sir, my mobile data terminal, yes.

8 Q Were you able to positively identify Mr. Fallin?

9 A Yes, sir.

10 Q What did he do when he exited the hotel room?

11 A I observed him exit Room #130, approach the purple
12 Saturn, and place a black backpack in the trunk of the
13 vehicle.

14 Q What did he do next?

15 A He returned to Room #130, exited the room a few
16 moments later with a plastic bag that I was able to
17 observe the writing of T.J. Maxx on the side. He
18 disappeared down the breezeway to where -- I'm familiar
19 with the area to know there was a trash receptacle. He
20 then again returned to the room.

21 And then Mr. Fallin and Mr. Babb exited the room
22 carrying bags, and placed them in the purple Saturn.

23 Q Okay. Do you remember, specifically, who was
24 carrying what?

25 A Mr. Fallin was carrying a darker black backpack and

1 placed it in the trunk on the first trip. On the second
2 trip, he was, also, carrying another bag. I'm not real
3 sure where that ended up. And then Mr. Babb was carrying
4 what appeared to be an ice cream maker.

5 Q What did they do on the final trip to the car?

6 A They emptied the belongings into the trunk, went and
7 got in the vehicle, and exited the parking lot.

8 Q All right. Did you radio Officer Reider, at this
9 point, and tell him that they were leaving?

10 A Yes, sir.

11 Q Were you present at the traffic stop?

12 A When I returned to my vehicle, they had already
13 initiated the traffic stop. As I approached the back of
14 Officer Reider's car, myself and three or four other
15 officers were already on scene. Officer Reider asked me
16 for officer presence to step back to keep the pressure
17 down. The situation appeared to be safe. And myself and
18 Corporal Pepper went back to the post office, which was
19 probably 400 yards away.

20 MR. BOUTON: Thank you, Officer.

21 Please answer any further questions.

22 CROSS-EXAMINATION

23 BY MR. SULLIVAN:

24 Q Did you ever try to locate a fellow named John
25 Leopard?

1 A Did I? No, sir.

2 Q And his name was mentioned along with Mr. Fallin and
3 Mr. Babb?

4 A Yes, sir.

5 Q How about who rented the room?

6 A The room was rented to a Christine Freeman.

7 Q Did you ever talk to Ms. Freeman?

8 A No, sir, I did not.

9 Q So the activities that you observed, without the tip,
10 would have been normal activities of people checking out
11 of a motel room?

12 A Yes, sir.

13 MR. SULLIVAN: Nothing further.

14 CROSS-EXAMINATION

15 BY MR. WARDER:

16 Q Just so I can clear it up. This is the black bag
17 that you saw them take and put in the trunk of the car?

18 A It looks similar.

19 Q It looks similar or it looks just like it?

20 A I cannot confirm nor deny that. It appears to be
21 similar, yes, sir.

22 Q And who had that bag when you saw it?

23 A Mr. Fallin.

24 Q Okay. And did you see my client take anything but
25 the ice cream maker to the car?

- 1 A I don't recall.
- 2 Q Okay. The ice cream maker seems odd.
- 3 A Yes, sir.
- 4 Q It, certainly, seems like something you would
5 remember?
- 6 A Yes, sir.
- 7 Q And you only saw my client come out of the room once;
8 is that right?
- 9 A Yes, sir.
- 10 Q And he went straight to the car with an ice cream
11 maker?
- 12 A Yes, sir.
- 13 Q And he placed it in the trunk?
- 14 A He placed it in the car. I'm not sure whether it
15 ended up in the back seat or the trunk.
- 16 Q Okay. So it was placed in the car. And then did you
17 see him get in the car?
- 18 A I don't recall. At one point, I had laid down supine
19 behind the retaining wall to keep from being observed.
- 20 Q Okay. How long was it before you observed the car
21 again after the time that you saw him put the ice cream
22 maker in the car?
- 23 A 10 to 15 seconds when I heard the engine crank up and
24 determined it was probably safe to --
- 25 Q When you observed the car 15 seconds later, where

1 were the occupants seated at?

2 A I could not tell from my vantage point.

3 Q You couldn't tell who was the driver?

4 A No, sir.

5 Q You couldn't tell who was the passenger?

6 A No, sir.

7 Q Okay. What did the car do then?

8 A It exited the parking lot at the closest entrance to
9 me between the hotel and the back of the strip center.

10 Q Okay. And did you maintain your observation post
11 until the car got out of sight?

12 A I don't recall.

13 Q Did you immediately get in your car and pursue?

14 A I went back to my car, yes, sir. My car was parked
15 probably 100 yards away.

16 Q Did you then later come to the site of arrest and
17 participate in any of that?

18 A I pulled up. But I did not participate in any of the
19 search, seizure, or traffic stop.

20 Q Did you observe it at all?

21 A For all intent purposes, no. As I said, as I
22 approached the back of Officer Reider's car, I was advised
23 that there were probably too many officers already on
24 scene and, if I could, just to fall back, which I promptly
25 did.

1 MR. WARDER: Okay. Thank you.

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you, sir.

4 You can step down.

5 MR. BOUTON: That's all the State's evidence as far
6 as the suppression and the Jackson v. Denno is concerned.

7 THE COURT: What do you want to tell me?

8 MR. SULLIVAN: Judge, just without the anonymous
9 tip -- in the Florida v. J.L. case, without any indicia of
10 further criminal activity, this case of two guys leaving a
11 motel, I mean, that's totally unreliable --

12 THE COURT: Wait a minute.

13 It didn't say indicia of other criminal activity, it
14 said indicia of reliability.

15 MR. SULLIVAN: Of some criminal activity.

16 THE COURT: Which case?

17 MR. SULLIVAN: The J.L. case.

18 THE COURT: It's in that context. "We hold that an
19 anonymous tip lacking indicia of reliability of the
20 contemplating of Adams and White does not justify a stop
21 and frisk whenever and however it alleges the illegal
22 possession of a firearm."

23 MR. SULLIVAN: And it goes on to Page 217. The
24 Alabama White case is a very close call. It's more
25 similar than this, I admit. And there was a good dissent,

1 as we know, not worth a whole lot in the Alabama White
2 case. Our position is that these officers observed --
3 without this tip from who knows who and why, this case
4 wouldn't be here today.

5 THE COURT: That's true.

6 But this case is easily distinguishable from those.
7 It's distinguishable from State v. Willard and State v.
8 Rogers as well. This case doesn't hinge on -- this is not
9 an investigatory stop based on an anonymous tip. This
10 stop is based on violation of the traffic laws. He saw
11 him without a seatbelt. He made the stop. And he got
12 consent to search.

13 So even though -- let's assume that the stop was
14 Unconstitutional, which I find that it was Constitutional
15 based on the evidence that's been presented to me. Even
16 if it's Unconstitutional, the consent procured is per se
17 invalid unless it is both voluntary and not an
18 exploitation of the unlawful detention. And I don't have
19 any evidence to show that it was not voluntary or it was
20 an exploitation.

21 MR. SULLIVAN: Judge, I go back to the point on the
22 traffic stop. They would not have been watching that car
23 without the tip.

24 THE COURT: There's nothing wrong with watching the
25 car, though.

1 What's wrong with that?

2 MR. SULLIVAN: Without the tip, they wouldn't have
3 been -- they wouldn't have been in the area without the
4 tip.

5 THE COURT: No.

6 MR. SULLIVAN: C.C. Reider was there. And he
7 initiated the stop because it was a purple Saturn
8 mentioned in the tip with the photos.

9 THE COURT: Well, there's no question that the tip
10 put him on to this, but it's not illegal for the police
11 to, in public, watch a vehicle, watch people. And the
12 whole -- your theory about it is interrupted by the fact
13 that Mr. Fallin was not wearing a seatbelt. He was pulled
14 over for a traffic violation, was approached, and was told
15 he wasn't going to get a ticket. And, yet, his conduct
16 was such that it alerted the officer.

17 And I agree with you, he was, certainly, predisposed
18 to do it. But there has been no evidence to refute the
19 fact that he's qualified to make those judgments and he
20 made that judgment. And Mr. Fallin consented to the
21 search. The investigatory stop was not the result of an
22 anonymous tip.

23 MR. SULLIVAN: I beg to differ, but I respect your
24 ruling.

25 THE COURT: Okay.

1 MR. WARDER: Your Honor, two things. Of course, for
2 the record, I would join in with the motion that has been
3 previously argued.

4 And, Your Honor, I would move to be allowed for the
5 objections of co-counsel to apply to mine without me
6 having to stand up every time during the trial and say, I
7 join in that motion.

8 THE COURT: That's fine with me.

9 MR. SULLIVAN: And the same thing with me.

10 THE COURT: Yes. What's good for the goose is good
11 for the gander.

12 There may come a point to where you don't want to
13 join in his objections, though, Mr. Warder, or,
14 Mr. Sullivan. So you all have to --

15 MR. SULLIVAN: I understand.

16 THE COURT: -- distinguish those.

17 MR. WARDER: And, Your Honor, I don't have an
18 accurate recollection as to the time, but I know the law
19 changed on stopping for a seatbelt violation alone. I
20 think, originally, it was enacted, the seatbelt fine, you
21 couldn't pull somebody over. And the legislature has
22 since changed that law. And I can't remember whether 2007
23 was under the original --

24 THE COURT: Well, certainly, we can check that out.
25 But my point is, under the Willard case, 647 S.E.2d 252,

1 it says, "Undoubtedly, a law enforcement officer may
2 request permission to search at any time. However, when
3 an officer asks for consent to search after an
4 Unconstitutional detention, the consent procured is per se
5 invalid unless it is both voluntary and not an
6 exploitation of the unlawful detention."

7 So my ruling is that even if this was an unlawful
8 stop, traffic stop, that there's been nothing to show that
9 the consent wasn't voluntary, or whether it was the result
10 of an exploitation.

11 MR. WARDER: Just trying to help out where I can.

12 THE COURT: Thank you, Mr. Warder.

13 Anything else?

14 MR. BOUTON: No, Your Honor.

15 THE COURT: Are you all ready?

16 The jury has probably sufficiently bonded back there
17 by now.

18 Do we have a foreperson?

19 THE BAILIFF: Yes.

20 MR. BOUTON: Judge?

21 THE COURT: I knew there was something else. It
22 never fails.

23 MR. BOUTON: I don't think you ruled on the statement.

24 THE COURT: Well, that's true. We didn't argue --
25 What did he say?

1 MR. BOUTON: He only says, "GHB" when asked by the
2 officer about what was in the bottle.

3 THE COURT: Okay. Any -- -

4 MR. WARDER: I was waiting for the statement. I
5 missed the statement, Your Honor.

6 THE COURT: He said that it was GHB.

7 MR. SULLIVAN: I think it was a consent to search is
8 what they wanted to know. Did he voluntarily give the
9 consent to search? Unfortunately, he did give them the
10 consent.

11 THE COURT: Okay. I don't think they're contesting
12 the validity.

13 MR. SULLIVAN: He told me he did.

14 THE COURT: John Vernon is the foreperson.

15 Are we ready?

16 MR. BOUTON: Yes, Your Honor.

17 (WHEREUPON, Court's Exhibit No. 1 was marked for
18 identification and admitted into evidence.)

19 THE COURT: Mr. Warder, I believe the seatbelt law
20 changed on December 9th of 2005, I think.

21 Isn't that right?

22 MR. WARDER: Time flies so fast.

23 THE COURT: Yes, it does.

24 (WHEREUPON, the jury came into open court at
25 approximately 3:06 p.m.)

1 THE COURT: Mr. Foreman, and, ladies and gentlemen of
2 the jury, welcome back.

3 Thank you for your patience.

4 We were taking care of some legal matters that were
5 essential. And I guess maybe I forgot to tell you that
6 from time to time, I may have to ask you all to leave the
7 courtroom so we can discuss legal matters. We're not
8 trying to deceive you in any way. But there's things that
9 need to be discussed outside your presence for a lot of
10 reasons. But one might be, for instance, we would discuss
11 a piece of evidence that might not be admissible. So you
12 shouldn't hear it if it's not admissible. And that's why
13 we do it. We're not trying to deceive you.

14 But, anyway, thank you for your patience.

15 And thank you for agreeing to serve, Mr. Vernon.

16 Thank you.

17 MS. ADAIR: May it please the Court.

18 THE COURT: Yes, ma'am.

19 OPENING STATEMENTS

20 MS. ADAIR: Defense counsel.

21 Ladies and gentlemen of the jury, as the Judge
22 mentioned earlier, my name is Samantha Adair. And I'm an
23 assistant solicitor here in the Thirteenth Circuit
24 Solicitor's Office. My job is to prosecute criminal cases
25 here in Greenville County. And I, along with my

1 co-counsel, Bill Bouton, work for the elected Solicitor,
2 Bob Ariail.

3 This afternoon, I'm briefly going to tell you three
4 things. First, I'm going to tell you what this case is
5 about. Second, I'm going to tell you what the State has
6 both the duty and requirement to prove. And, third, I'm
7 going to tell you how the State intends to prove its case.

8 Now, first, what this case is about. This is a case
9 about being caught with drugs red-handed. Second, how
10 the State -- excuse me. Second, what the State has got a
11 duty and requirement to prove. The State has a duty to
12 prove that these Defendants did possess drugs, that those
13 drugs were methamphetamine, that they had either actual or
14 constructive possession of those drugs, and that they
15 possessed, at least, 28 grams of those drugs.

16 The State, also, has a duty to prove that these
17 Defendants possessed a controlled substance, that they had
18 actual or constructive possession of the controlled
19 substances, and that they possessed those substances with
20 the intent to distribute those substances.

21 And, third, how the State intends to prove its case.
22 The State will call Detective Mary Ashley Thomas with the
23 Greenville Police Department. She will testify about how
24 she was working at the front desk of the law enforcement
25 center back on April 29th, 2007. She will testify that

1 she received an anonymous tip that a large quantity of
2 drugs was coming in from Atlanta. She'll testify about
3 what she did with that tip.

4 Next, the State will call Officer Ben Cothran with
5 the Greenville Police Department. Officer Cothran will
6 testify about how he set up on the Econo Lodge here in
7 Greenville County on Orchard Park Drive. He will testify
8 about how he watched the car the Defendants were driving,
9 what he observed the Defendants do, and what he observed
10 the Defendants have in their possession.

11 The State will, also, call Office C.C. Reider with
12 the Greenville Police Department. Officer Reider will
13 testify about what he observed these Defendants do, and
14 the traffic stop that he initiated on these Defendants.
15 And he will talk about the behavior that these Defendants
16 displayed. He will talk about the search that he
17 performed on the vehicle that they were in, and what he
18 found inside that car.

19 Next, the State will call Kara Bennick, a property
20 and evidence supervisor with the Department of Public
21 Safety. Ms. Bennick will testify about what property and
22 evidence is and the safeguards that are in place to ensure
23 that evidence is not tampered with.

24 And, finally, the State will call James Armstrong, a
25 forensic chemist with the Department of Public Safety.

1 Mr. Armstrong will testify about the methods that he uses
2 to test drugs, what he found these drugs to be, and the
3 weight of these drugs.

4 And, finally, at the conclusion of the case, after
5 you've heard all the testimony and considered all the
6 evidence, you'll be firmly convinced that these Defendants
7 are guilty.

8 Thank you for your time.

9 MR. SULLIVAN: May it please the Court?

10 THE COURT: Yes, sir.

11 MR. SULLIVAN: Mr. Warder, Mr. Bouton, and Ms. Adair.

12 Ladies and gentlemen, as you know, I'm Tim Sullivan.
13 I'm the public defender. I've been appointed to represent
14 Mr. Fallin in this case. I'm going to be brief. I'm not
15 like a lot of lawyers who like to hear themselves talk.

16 There are four criminal charges in this case, two on
17 Mr. Fallin and two on Mr. Babb. It's not an all or none.
18 You can find each one guilty of both, or you can find, for
19 example, Mr. Fallin guilty of one, but not guilty of the
20 other. The same thing with Mr. Babb. You have to look at
21 each case and listen to the evidence and see who is guilty
22 of what. There's no doubt that somebody is guilty of
23 something here. There's no question about that. We're
24 not going to deny it. But what you have to decide is who
25 is guilty of what. And when you hear all the evidence, I

1 think you'll find that Mr. Fallin was guilty of possession
2 of some Xanax.

3 Thank you.

4 MR. WARDER: This is a case I don't agree with much
5 that's been said so far. I will try and help you get
6 information that will help you decide this case.

7 Now, your job will be, of course, to weigh and
8 measure the evidence. You'll hear at the end of the case
9 how you do it. But you need to know now that you need to
10 look for certain things so that when His Honor charges you
11 on the law, you'll be able to measure and weigh it to the
12 things, the issues, and the elements that His Honor tells
13 you about.

14 Now, it's often said incorrectly, I think, that
15 jury's are the fact finders. Because that -- those words
16 mean that you must find some facts. You'll have to find
17 what are the credible, truthful, and believable facts.
18 You could find, for example, that there are no facts that
19 have been proven in this case. The whole case could go on
20 and if everything you heard either wasn't believable, was
21 contradicted with equal force, or wasn't proven beyond a
22 reasonable doubt, you would find that there were no facts.
23 Because jurors take the believable, credible facts and
24 then they apply them to the elements. And they apply them
25 to each Defendant.

1 The Solicitor has already grouped me together in
2 these Defendants. We're these Defendants. We're not
3 these Defendants. We're James Babb, who has a criminal
4 case that is being tried with Mr. Fallin. Everything that
5 applies to James Babb doesn't apply to Mr. Fallin. And
6 everything that applies to Mr. Fallin doesn't apply to
7 James Babb. Your job, His Honor will tell you at the end
8 of this case, is to weigh the facts separately to each
9 Defendant.

10 So it's fair to tell you, at this point, that your
11 job is twice as complicated as it usually is in a trial.
12 Because you have to keep in your mind which facts apply to
13 which Defendant. Because you're going to have to
14 separately consider the innocence and guilt of each
15 Defendant. And you'll have to consider what was proven by
16 those facts that relate to that particular Defendant.

17 So when you sit down in your jury room and you turn
18 to the first argument, which will be whichever Defendant
19 you determine you should decide the facts about first,
20 then you'll remember all the facts. And then you'll try
21 and sort out which one applies to that Defendant. And I
22 tell you that now because knowing it going in will be much
23 easier than thinking back and not knowing that you had to
24 look for that.

25 In this particular case, we're not only grouped

1 together by the Solicitor's Office as these Defendants, we
2 are with the police. The police charged everybody in the
3 car, everybody around. And your case will develop as
4 they've taken no evidence to say which belongs to which.
5 There will be no fingerprints. It just wasn't worth
6 fingerprinting to see who touched stuff, who handled
7 stuff, and whose stuff was what. They want us to be and
8 they want you to think that we're these Defendants.

9 And I'll talk to you at the end of the case about
10 lack of evidence, when something could be proved and
11 wasn't. But, right now, it's enough to know that you've
12 got to look at it as what it is. This is two cases that
13 are being tried together. And it's important that you
14 know that His Honor will tell you that the mere presence
15 at the scene of a crime isn't guilt. In other words, you
16 don't convict somebody because they were simply there when
17 something illegal was going on.

18 And His Honor will further tell you, at the end of
19 this trial, that knowledge of something is important in
20 deciding whether you possess it, because you cannot
21 possess something you don't know is there. For example,
22 if this pitcher here was full of some illegal substance,
23 although it's only a short distance from you, you,
24 certainly, wouldn't possess it. And, likewise, if
25 somebody planted something in your car, got in with

1 something.

2 So you'll be deciding the issue of whether or not my
3 client, James Babb, as well as Mr. Fallin, had the
4 individual elements that would indicate possession. So I
5 tell you that so you can look for these things during the
6 trial as the testimony goes on. Now, when you see
7 something that indicates -- you've got to -- I'm going to
8 ask you to mentally note as to who it applies to and
9 what's inferable from it.

10 So we're about to begin the two trials that will be
11 held together. I ask you to keep an open mind as to the
12 guilt or innocence of my client, James Babb, whom it's my
13 duty, and my privilege, and my honor to protect.

14 I thank you very much.

15 THE COURT: All right.

16 MR. BOUTON: Your Honor, the State calls Detective
17 Thomas to the stand.

18 THE CLERK: Place your left hand on the Bible and
19 raise your right hand.

20 WHEREUPON,

21 MARY ASHLEY THOMAS,
22 after first having been duly sworn, testified as follows:

23 THE CLERK: Ma'am, please, be seated.

24 Please state your full name for the record.

25 THE WITNESS: Mary Ashley Thomas.

DIRECT EXAMINATION

1

2

BY MR. BOUTON:

3

Q Good afternoon, Detective.

4

A Good afternoon.

5

Q Who do you work for?

6

A The Greenville City Police Department.

7

Q And how long have you worked for them?

8

A About seven years.

9

Q And what is your rank with the police?

10

A Detective.

11

Q Were you working on the date of April 29th, 2007?

12

A I was.

13

Q And in what capacity were you working?

14

A I had what we consider desk duty.

15

Q And what does that mean?

16

A It's a position that's rotated out amongst the road

17

officers. You sit at the front desk of the law

18

enforcement center and answer all incoming phone calls,

19

persons walking into the front desk to file complaints or

20

turn themselves in to be arrested.

21

Q Did you receive a phone call that led to an

22

investigation for why we're here today?

23

A Yes, sir.

24

Q And, please, just tell the jury a little bit about

25

that phone call.

1 MR. WARDER: Objection, Your Honor, hearsay.

2 THE COURT: No. This is -- overruled. This is
3 the -- her duties as an investigative officer.

4 Go ahead.

5 THE WITNESS: I received an anonymous phone call at
6 the front desk of the law enforcement center from an
7 unknown male, who did give me some information on the two
8 Defendants, that they would be bringing a large shipment
9 of methamphetamine and other types of drugs from the
10 Atlanta area into Greenville, and they would be at a
11 Greenville -- a local Greenville motel with those drugs.

12 BY MR. BOUTON:

13 Q Did this caller identify what kind of vehicle the
14 Defendants would be driving?

15 A He did.

16 Q And what was that?

17 A A purple Saturn that was registered to Troy Fallin.

18 Q And where did they say this automobile would be
19 located?

20 A At the Econo Lodge off Orchard Park Road.

21 Q Did the caller mention anybody else besides these two
22 Defendants that might be involved?

23 A I believe there was one other name mentioned.

24 Q Okay. In addition to the phone call, did you receive
25 an e-mail?

1 A Yes.

2 MR. WARDER: Your Honor, I think my objection
3 continues.

4 THE COURT: Well, she's not offering it for the truth
5 of the matter asserted. She is offering it to explain --
6 well, you all come up here.

7 (WHEREUPON, a bench conference was held.)

8 THE COURT: Mr. Foreman, and, ladies and gentlemen of
9 the jury, this is one of those times where I have to
10 excuse you. We'll be right back with you. Don't talk
11 about the case. And we'll be right back with you.

12 (WHEREUPON, the jury was excused from open court at
13 approximately 3:22 p.m.)

14 THE COURT: All right. Mr. Warder.

15 MR. WARDER: Your Honor, not only is what we're doing
16 hearsay, but it violates our clients Constitutional
17 protections under the confrontation clause. This person
18 unanimously, supposedly, is giving information and I can't
19 cross-examine that person. I can't test that information.
20 I can't show how that person got that information, whether
21 that was believable or should be. And it's so
22 prejudicial, Your Honor. I would even move for a mistrial
23 on what's happened already in this trial.

24 Your Honor, I'm in the situation where the
25 policemen's case is now blusterous by the allegations of

1 somebody on the end of a telephone that I don't have any
2 idea who it is. And I just can't get a fair trial that
3 way. The whole theory of people coming in the courtroom
4 and we confront our accusers -- my client's accuser is
5 somebody anonymous, somebody on a telephone. And a
6 policeman is telling them what the accuser said.

7 THE COURT: Mr. Sullivan, anything you want to add?

8 MR. SULLIVAN: Judge, even -- as you indicated in the
9 side bar, as a result of what she said, it is based on
10 what she's going to say. Without her saying it, they
11 wouldn't have gone to the motel without the information
12 that she got. I don't see how you can bootstrap it.

13 THE COURT: Yes, sir, Mr. Bouton.

14 MR. BOUTON: Your Honor, I would cite State v. George
15 Anthony Brown. In that case, the Supreme Court held -- of
16 South Carolina held that a police officer's testimony
17 about complaints they had received in a neighborhood prior
18 to setting up their surveillance was admissible and not
19 hearsay purposes of explaining why officers began their
20 surveillance of the defendant's apartment.

21 I think that is analogous in the situation we have
22 here, Your Honor. And I'd also -- Officer Reider, who
23 received that information from Detective Thomas, should
24 also be able to testify. They're not offering it for the
25 truth of the matter asserted, Your Honor. They're

1 offering it to explain why the officer chose to do what he
2 did.

3 THE COURT: And I am going to overrule your
4 objection.

5 But I would -- let's limit specific conversations you
6 can talk about as much as you can.

7 MR. BOUTON: Yes, sir.

8 THE COURT: Let's eliminate as much of the prejudice
9 as possible. But under the -- I think that case is right
10 on point and we'll accept it.

11 MR. WARDER: Your Honor, for the record, I want my
12 mistrial motion on the record.

13 THE COURT: It's denied.

14 MR. SULLIVAN: I join in with Mr. Warder.

15 THE COURT: Denied.

16 MR. BOUTON: Judge, before the jury comes in, I plan
17 on asking her about receiving the photos of the
18 individuals.

19 THE COURT: Okay. I think that she can say that she
20 received it and forwarded it on.

21 MR. BOUTON: Yes, sir.

22 THE COURT: And that's, certainly -- I mean, that's
23 pretty good cross-examination material that they're not
24 here for us to examine.

25 MR. BOUTON: Yes, sir.

1 THE COURT: Okay. Anything you want to say about
2 that, gentlemen?

3 (There was no response.)

4 THE COURT: No.

5 Okay. This is a note from the jury. It says,
6 "Please have them speak up, having trouble hearing them."

7 So, Mr. Bouton, you have a soft voice.

8 Let's make this a Court's Exhibit.

9 Bring the jury in.

10 (WHEREUPON, Court's Exhibit No. 2 was marked for
11 identification and admitted into evidence.)

12 (WHEREUPON, the jury came into open court at
13 approximately 3:27 p.m.)

14 THE COURT: Before we start back, if you all have
15 trouble hearing, just raise your hand and signal to us
16 somehow and we'll try and correct it.

17 Mr. Bouton.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. BOUTON:

20 Q Detective Thomas, in addition to the phone call you
21 received, did you, also, receive an e-mail from this
22 anonymous caller?

23 A Yes. The caller wanted to make sure that we had
24 pictures.

25 Q What did you do with this information?

1 A Since I was at the front desk and wasn't able to
2 leave to go investigate this call that came in, I passed
3 the information on to Officer Reider, who was on the road
4 at that time. And he was able to investigate.

5 Q Were you able to determine who this anonymous caller
6 was?

7 A No, sir.

8 Q Do you have a copy of that e-mail that was sent to
9 you today?

10 A No, sir.

11 MR. BOUTON: Please answer any questions the Defense
12 might have for you.

13 THE COURT: Cross.

14 CROSS-EXAMINATION

15 BY MR. SULLIVAN:

16 Q So you have no basis that this is reliable
17 information at all, do you? Reliability, you had no idea
18 who called it in?

19 A I don't know who called it in, no, sir.

20 Q So you had no prior experience with this anonymous
21 person to know about the reliability?

22 A I don't know because I don't know who he was. I
23 don't know if I had previous contact with him or not.

24 MR. SULLIVAN: No further questions.

25 THE COURT: Mr. Warder.

CROSS-EXAMINATION

BY MR. WARDER:

Q Your equipment down there doesn't show the phone number of somebody that makes a call?

A It was a blocked number.

Q Okay. So the caller blocked their number and didn't want the police to know?

A Yes, sir.

Q Okay. The person that made this call, was that a familiar voice? Do they call in all the time?

A I don't know. I don't answer the phone all the time, so I couldn't say.

Q And did you, personally, talk to the person?

A Yes, sir.

Q Okay. How long was your conversation?

A I can't give you an exact amount of time, but it was a good amount of time.

Q 30 minutes?

A Probably a little bit longer than 30 minutes.

Q 45 minutes?

A I can't give you an exact number.

Q Did you make notes of it?

A I can't recall.

Q If you made notes, would you put them in a file that would be down at the police department?

1 A No, sir, not necessarily.

2 Q When you say "not necessarily," does that mean that
3 you might have notes down there that reflect this call?

4 A No. There's no notes at the law enforcement center.

5 Q Did you record the call?

6 A I didn't, no.

7 Q Was the call recorded?

8 A I'm not sure if that line is recorded or not. You
9 would have to speak with our communications.

10 Q Did you check the log so that we'd have the recording
11 here today?

12 A No, sir. That wasn't my job that day.

13 Q Well, you knew you were coming to court today, didn't
14 you?

15 A No, sir.

16 Q They didn't subpoena you?

17 A Recently, yes, sir, not three years ago.

18 Q Okay. When you recently got your subpoena, did you
19 get the stuff that would support your testimony? Did you
20 look for it, the notes and the tape?

21 A The information I received that day, my job was to
22 pass it on to the road officers. And that is what I did.

23 Q Yes, ma'am. And you're a trained police officer?

24 A Yes, sir.

25 Q Trained at the SLED Academy; is that right?

1 A Yes, sir.

2 Q Okay. And you knew today that your job as a police
3 officer would be to offer testimony in court, didn't you?

4 A Yes, sir.

5 Q Okay. And they taught you down there that the
6 evidence, the recordings and the notes, are important when
7 you go to court; is that right?

8 A Yes, sir.

9 Q And you didn't bring them, did you? That's right,
10 too, isn't it?

11 A Right.

12 MR. WARDER: Thank you.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MR. BOUTON:

16 Q Detective Thomas, did you look for this e-mail when
17 preparing for trial?

18 A Yes, I did. The City had changed our e-mail accounts
19 about a year and a half ago. And that e-mail account no
20 longer existed.

21 MR. BOUTON: Thank you.

22 THE COURT: Anything else?

23 (There was no response.)

24 ~~THE COURT: Thank you, Officer.~~

25 You can step down.

1 Thank you.

2 MS. ADAIR: The State calls Officer Ben Cothran.

3 THE CLERK: Place your left hand on the Bible and
4 raise your right hand.

5 WHEREUPON,

6 BENJAMIN HENRY COTHRAN,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Thank you.

9 Please be seated.

10 Please state your full name for the record.

11 THE WITNESS: Benjamin Henry Cothran.

12 DIRECT EXAMINATION

13 BY MS. ADAIR:

14 Q Officer Cothran, where are you employed?

15 A The Greenville City Police Department.

16 Q And how long have you been employed there?

17 A A little over six years.

18 Q And what is your current position?

19 A I'm assigned as a school resource officer at Beck
20 Academy Middle School.

21 Q Have you always been a school resource officer?

22 A No, ma'am, for approximately a year and a half now.

23 Q What made you -- what influenced your decision to
24 become a resource officer?

25 A When the position came open, an opportunity to work

1 with children, I put in for the nomination process and was
2 selected.

3 Q When this incident occurred back on April 29th of
4 2007, were you working as a resource officer?

5 A No, ma'am. I was working road patrol.

6 Q And, Officer Cothran, what type of training and
7 experience have you had that has aided you in your job
8 responsibilities?

9 A I completed nine weeks at the South Carolina Criminal
10 Justice Academy in the early part of the year of 2004. We
11 have a 40-hour re-certification per year training, as well
12 as some additional training and routine certification.

13 Q Okay. And, Officer Cothran, I'm going to focus your
14 attention now to this incident.

15 A Yes, ma'am.

16 Q Were you working back on April 29th of 2007?

17 A Yes, ma'am.

18 Q Were you working day shift or the night shift?

19 A Day shift.

20 Q And what are your hours, typically, on the day shift?

21 A 7:00 a.m. to 7:00 p.m.

22 Q And can you, please, explain a little bit for the
23 jury how you became involved in this case.

24 A I was notified by Officer Reider that he had received
25 information about a possible drug deal at 50 Orchard Park

1 at the Econo Lodge --

2 MR. WARDER: Objection to that as hearsay, Your
3 Honor, as to what his information was.

4 THE COURT: Yes.

5 Just don't talk about what he said. But he can talk
6 about what he did as a result of the communication.

7 MR. WARDER: And I would, also, make that on the
8 grounds of the confrontation clause, for the record, Your
9 Honor.

10 THE COURT: Officer Reider is here to be
11 cross-examined.

12 Okay. Go ahead.

13 BY MS. ADAIR:

14 Q So you received some information from Officer Reider?

15 A Yes, ma'am.

16 Q And what did you do when you received that
17 information?

18 A I set up an observation post behind the strip center
19 at T.J. Maxx that is adjacent to the parking lot of the
20 Econo Lodge.

21 Q Did you observe anything when you were at that
22 vantage location, that vantage point?

23 A Yes, ma'am. I was -- Officer Reider had given me the
24 information about a specific car. I did observe the
25 vehicle in the parking lot. And I maintained eye contact

1 with it for approximately two hours.

2 Q Were you, also, watching a hotel room?

3 A Yes, ma'am.

4 Q And what room number were you watching?

5 A 130.

6 Q Officer Cothran, I'm showing you what's been
7 previously marked as State's Exhibit No. 1. Do you
8 recognize this?

9 A Yes, ma'am.

10 Q How are you able to recognize this?

11 A That is a map of the Orchard Park-Haywood Road-Pelham
12 Road area for which that was my patrol beat for
13 approximately two years.

14 Q Does this map appear to be altered in any way?

15 A No, ma'am.

16 Q And does it accurately reflect the incident location?

17 A Yes, ma'am.

18 MS. ADAIR: Your Honor, at this time, I move to admit
19 State's Exhibit No. 1.

20 THE COURT: Any objection?

21 MR. WARDER: Your Honor, at the present time, there's
22 insufficient basis for the map and no foundation.

23 THE COURT: It's an aerial photograph.

24 MR. WARDER: Yes, sir.

25 But it hasn't been tied in with the testimony yet.

1 And usually we tie stuff in before we offer it into
2 evidence.

3 THE COURT: This is the location where he set up the
4 surveillance?

5 MS. ADAIR: Yes, sir.

6 THE COURT: I think it's tied in. I'm going to
7 overrule your objection. It's admitted.

8 (WHEREUPON, State's Exhibit No. 1 was admitted into
9 evidence.)

10 BY MS. ADAIR:

11 Q Officer Cothran, I'm going to have you step down and,
12 please, point out for the jury where you were positioned
13 when you observed the purple Saturn. I know it's hard to
14 see. If you could maybe pull the map a little closer so
15 the jury can get a better look.

16 THE COURT: And keep your voice up, Officer, so we
17 can record your testimony.

18 THE WITNESS: Yes, Your Honor.

19 The Econo Lodge is located at 50 Orchard Park. It is
20 this L-shaped building and the rectangular building on top
21 of it. My observation post -- my first observation post
22 was back here in this corner. I had parked my patrol
23 vehicle behind the corner of the dumpsters behind T.J.
24 Maxx so it would not be observed.

25 My first observation post was through the tree line,

1 looking from this area to this area right here. My second
2 observation post, I had moved up approximately halfway to
3 where I could still see this area of the parking lot, as
4 well as the front side of these rooms right here. My
5 third and final observation post is right here at the
6 corner of this building near some trash cans behind a
7 hedgerow and a concrete abutment.

8 BY MS. ADAIR:

9 Q Thank you.

10 You can have a seat.

11 Officer Cothran, were you using any devices to help
12 you view the hotel room?

13 A Yes, ma'am. I was using binoculars.

14 Q And how far away were you from the purple Saturn and
15 that hotel room from your vantage point?

16 A The first observation post was approximately 90 to 95
17 yards. When I moved up, it was probably close to 60 to 65
18 yards from the parking lot area, an additional 20 to the
19 room. My third and final vantage point was approximately
20 40 to 45 yards from the vehicle, and then probably 60 to
21 65 yards from the hotel room.

22 Q And was there anything obstructing your view as you
23 were watching the hotel room and the car?

24 A No, ma'am.

25 Q So you had a clear line of sight from where you were

1 to the car and to the hotel room?

2 A Yes, ma'am.

3 Q And where in relationship to the hotel room was the
4 car parked?

5 A The car was parked approximately 20 to 25 yards
6 almost directly in front of it, just a little off to the
7 left.

8 Q Officer Cothran, when you were observing the hotel
9 room and watching the car, did you have an idea what these
10 Defendants looked like?

11 A Yes, ma'am.

12 Q And I think you may have said this earlier, but how
13 long did you observe the hotel room and the Saturn?

14 A Approximately two hours.

15 Q And were you able to, eventually, observe these
16 Defendants exit the hotel room?

17 A Yes, ma'am.

18 Q And how were you sure that it was these Defendants?

19 A The photographs that I obtained across my mobile data
20 terminal had names attached to them.

21 Q And so from what you observed, you were able to look
22 at these Defendants and know that those were the
23 Defendants that you had received photos of in the e-mail?

24 A Yes, ma'am.

25 Q And what did you observe these Defendants do?

1 A At approximately 11:45 --

2 MR. WARDER: Your Honor, I'm going to object to what
3 did you observe these Defendants do unless the actions
4 were both Defendants. Then I ask that the witness, at
5 least, differentiate for us. I think the question is
6 confusing.

7 THE COURT: All right. No more speaking
8 observations.

9 Just ask him to be specific about what he observed.

10 MS. ADAIR: I believe he was going to answer that.

11 THE COURT: Okay.

12 THE WITNESS: At approximately 11:45 that morning, I
13 observed a white male wearing a gray shirt and blue jeans
14 exit Room #130. Based on the photographs I had received,
15 I believe that person to be Troy Fallin. He exited the
16 room, approached the back of the purple Saturn with a dark
17 or black-colored bag. He placed it in the trunk. He then
18 re-entered Room #130.

19 A few moments later, Mr. Fallin -- the Defendant I
20 believed to be Mr. Fallin exited the room again carrying a
21 plastic bag, which had T.J. Maxx written across it. He
22 made a right out of the room and approached the breezeway,
23 from which my experience of working the area led me to
24 believe that he was going to the trash receptacle as
25 there's one located in the breezeway.

1 A few moments later, he returns from the breezeway
2 and re-enters Room #130. A few moments later, I observed
3 Mr. Fallin exit the room carrying some bags, along with
4 Mr. Babb. Mr. Babb was carrying -- I had it written down
5 as an ice cream machine. I observed them approach the
6 vehicle, stow the bags between the trunk and rear seat,
7 and begin to get into the vehicle.

8 BY MS. ADAIR:

9 Q Officer Cothran, I just want to clarify your
10 testimony a little bit more.

11 A Yes, ma'am.

12 Q Who did you observe carrying the black backpack?

13 A That would be Mr. Fallin.

14 Q And where exactly did he place the backpack?

15 A Into the trunk.

16 Q And how were you sure that the person you saw
17 carrying the backpack was, in fact, Troy Fallin?

18 A From the picture I received, the closest was good
19 enough that with the use of binoculars, I was able to make
20 a positive identification.

21 Q And what time did you observe them exit the hotel
22 room for the first time?

23 A The first time Mr. Fallin exited --

24 Q Approximately.

25 A -- 11:45.

1 Q And do you see the Defendant, Troy Fallin, in the
2 courtroom today?

3 A I do.

4 Q Can you point him out for the jury?

5 A Mr. Fallin is wearing the green-checkered shirt.

6 Q And do you see the Defendant, James Babb, in the
7 courtroom today?

8 A I do.

9 Q Can you point him out for the jury?

10 A He's wearing a white long-sleeve shirt.

11 Q And so what did the Defendants do once they entered
12 the car?

13 A I had laid supine down behind the concrete abutment
14 to keep from being seen. When I heard the car crank back
15 up, I leaned up and saw them back up and begin to exit the
16 property. At that time, I radioed Officer Reider and
17 advised him the vehicle was on the move.

18 (Pause.)

19 MR. WARDER: Your Honor, if it please the Court, the
20 Defendant Babb has no objection to the pictures.

21 THE COURT: All right.

22 MR. SULLIVAN: No objection, Your Honor.

23 THE COURT: Okay.

24 (WHEREUPON, State's Exhibit Nos. 2, 3, 4, 5, and 6
25 were admitted into evidence.)

1 BY MS. ADAIR:

2 Q Officer Cothran, I'm showing you what's been
3 previously marked as State's Exhibit Nos. 2 through 6.
4 Please take a look at these photos. Are you able to
5 recognize these pictures?

6 A Yes, ma'am.

7 Q And how are you able to recognize them?

8 A The photographs are views of the hotel and the
9 parking lot from my different observations points from
10 that morning.

11 Q Do these photos appear to be altered in any way?

12 A No, ma'am.

13 Q And is the scene depicted in these photos in
14 substantially the same condition as it was back on April
15 29th, 2007?

16 A Yes, ma'am.

17 MS. ADAIR: Your Honor, at this time, I move for
18 State's Exhibit Nos. 2 through 6 to be admitted into
19 evidence.

20 THE COURT: I think without objection, if I'm not
21 mistaken.

22 MR. SULLIVAN: No objection.

23 MR. WARDER: No objection.

24 BY MS. ADAIR:

25 Q Officer Cothran, if you wouldn't mind stepping down

1 one more time and sort of doing a type of show and tell,
2 and point out for the jury what's depicted in each of
3 these photos.

4 A This is listed as State's Exhibit No. 2. This shows
5 the view from the hotel where I was at my third and final
6 vantage point, where I observed the -- both Defendants
7 exit the hotel room and go to the car. Their car would
8 have been in this spot right here.

9 State's Exhibit No. 3 is a close-up of Room #130 from
10 my third and final vantage point. It, clearly, shows the
11 door past the pool house.

12 State's Exhibit No. 4, also, shows a close-up of Room
13 #130 where a placard beside the room is plainly visible.

14 State's Exhibit No. 5 is more of a close-up from the
15 parking lot from my observation point. The vehicle would
16 have been right here.

17 And State's Exhibit No. 6 is another view from my
18 observation post, my third and final observation post,
19 showing -- pointing to where the car was.

20 Q Thank you, Officer Cothran.

21 Just leave those right there and have a seat.

22 All right. Let's go back just a little bit. What
23 did you do when you observed the Defendants pull out of
24 the parking lot?

25 A I notified Officer Reider on my Nextel radio.

1 Q Did you then get in your car?

2 A Yes, ma'am. I went back to retrieve my car.

3 Q Okay. And then did you, also, try -- or did you make
4 your way to where Officer Reider was?

5 A Yes, ma'am. I was able to catch up with Officer
6 Reider and a couple other officers after he initiated the
7 traffic stop.

8 Q What did you do at that point?

9 A As I approached the rear of Officer Reider's car, I
10 was -- Officer Reider had said that due to the fairly --
11 the number of officers that were already on scene, to keep
12 from influencing any undue officer presence, he requested
13 that I pull back with another officer that pulled up at
14 the same time I did, Corporal Pepper.

15 We then pulled back to the post office, which was
16 probably about 400 yards away from the traffic stop and
17 out of sight.

18 Q Officer Cothran, did you do anything else, any other
19 type of investigation on this case?

20 A We -- Corporal Pepper and I went back to the hotel
21 room in an attempt to secure it. Due to the checkout time
22 being 12:00, housekeeping had already cleared it out.

23 Q Did you locate anything else in -- that you thought
24 would be important in the case?

25 A I did locate the T.J. Maxx bag in the dumpster.

1 Q Was there anything in that bag that you thought would
2 have any evidentiary value?

3 A No, ma'am.

4 Q I want to ask you just a few more questions, too.
5 Were you able to determine who the hotel was rented to?

6 A Yes, ma'am. The hotel had a record that the room was
7 rented to Christine Freeman of Greenville.

8 Q I'm sorry?

9 A Of Greenville.

10 Q And how did the person pay for the hotel room?

11 A With cash.

12 Q Okay. And were you ever able to locate this person?

13 A No, ma'am.

14 Q During your entire two hours that you're observing
15 the hotel room and you observed both Defendants exit the
16 hotel room and you observed Mr. Fallin enter and exit the
17 hotel room, did you ever see a female present?

18 A No, ma'am.

19 Q And after these Defendants pulled out, did you see a
20 female come out?

21 A No, ma'am.

22 Q So a female was not present in the car and you never
23 saw her in the room?

24 A Correct. No, ma'am.

25 MS. ADAIR: Thank you.

1 I don't have any more questions. Please answer any
2 questions that Defense counsel may have.

3 And, Judge, permission to publish these to the jury.

4 THE COURT: Cross.

5 MR. SULLIVAN: I'll let them look at the pictures.

6 THE COURT: Okay.

7 CROSS-EXAMINATION

8 BY MR. SULLIVAN:

9 Q On the person that rented the room -- I'm going by
10 your report. Do you have this in front of you?

11 A Yes, sir, I do.

12 Q This is where, supposedly, there was major drug
13 activity at that place; correct?

14 A Yes, sir.

15 Q It was rented on 4-27, two days before this?

16 A Yes.

17 Q And the person that rented it, Christine Freeman, she
18 gave a South Carolina driver's license with her address,
19 gave her description of birth date, height, weight, town,
20 and you never found that person with all that information?

21 A No, sir.

22 Q And the information that you were given about this
23 massive drug deal was James Babb, John Leopard, and Troy
24 Fallin. Did you ever find a John Leopard?

25 A No, sir.

1 Q You had the same information that you had on the
2 other two?

3 A Yes, sir.

4 Q In your observation, again, in your report, you said
5 that you saw go out to the breezeway a white male exit and
6 return a few minutes later, and a white male exit the
7 same room that appeared to be James Babb; is that
8 correct?

9 A Yes, sir. I observed the subjects place more bags in
10 the vehicle.

11 Q What kind of bags were they?

12 A I don't recall.

13 Q And then an ice cream machine?

14 A Yes, sir.

15 Q What, like a churn?

16 A Yes, sir.

17 Q Like you would make ice cream?

18 A Yes, sir.

19 Q And then when you returned, the room had been cleaned
20 up by housekeeping?

21 A Yes, sir.

22 Q And there was no evidence of any criminal activity?

23 A No, sir.

24 MR. SULLIVAN: Mr. Warder.

25 MR. WARDER: Thank you.

CROSS-EXAMINATION

1

2

BY MR. WARDER:

3

Q Officer, the black bag that you saw Mr. Fallin with,

4

is that it here?

5

A It looks similar, yes, sir.

6

Q About the same size?

7

A Yes, sir.

8

Q About the same color?

9

A Yes, sir.

10

Q And you told us Mr. Fallin put that in the trunk of

11

the car?

12

A Yes, sir.

13

Q And you told us Mr. Fallin made, at least, two trips
14 out. Was it more than two, or was it just two?

15

A He made three trips out total.

16

Q Okay. He came out twice and took stuff to the car,
17 and then went back to the room?

18

A He exited the room to the car. He exited the room to
19 the trash receptacle. And he exited the room the third
20 and final time and then left in the vehicle.

21

Q And the third and final time, my client was with him?

22

A Yes, sir.

23

Q And my client was carrying an ice cream churn?

24

A Yes, sir.

25

Q And it was broad daylight?

1 A Yes, sir.

2 Q I believe that the last time that you observed
3 anything there was about noon or about 11:00?

4 A Yes, sir, approximately 11:45.

5 Q Okay. And it was a sunny day?

6 A Yes, sir.

7 Q Now, the pictures that have been introduced, did you
8 take them that day?

9 A No, sir, I did not.

10 Q Were they taken close in time to when this happened?

11 A No, sir.

12 Q Okay. And so we couldn't -- that isn't how bright it
13 was. The pictures do show how close you were; is that
14 right?

15 A Yes, sir.

16 Q Okay. And I take it those pictures weren't taken
17 with some lens that would magnify the closeness, but
18 they're taken with a lens that would accurately portray
19 it?

20 A Yes. It was a digital camera, I believe.

21 Q And what we see in them is about the views you would
22 have had?

23 A Yes, sir.

24 MR. WARDER: Thank you.

25 MS. ADAIR: Judge, just one question briefly.

REDIRECT EXAMINATION

BY MS. ADAIR:

Q So during the two hours that you were observing the hotel room and you were observing the car, did you observe any other people enter or exit the hotel room besides these two Defendants?

A No, ma'am.

MS. ADAIR: Thank you.

That's all I have.

THE COURT: Okay. Thank you, sir.

You can step down.

MR. BOUTON: The State calls Officer Reider to the stand.

THE CLERK: Sir, please, place your left hand on the Bible and raise your right hand.

WHEREUPON,

CHRISTOPHER CHARLES REIDER,
after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please be seated.

Please state your full name for the record.

THE WITNESS: Christopher Charles Reider.

DIRECT EXAMINATION

BY MR. BOUTON:

Q Good afternoon, Officer Reider.

1 Who do you work for?

2 A Greenville City Police Department.

3 Q And how long have you worked for them?

4 A Five years and 11 months.

5 Q And what is your position with them? What do you do
6 on a given day?

7 A I work uniform patrol.

8 Q And what does that mean?

9 A Answer routine calls for service, conduct criminal
10 investigations, and conduct pro-active enforcement.

11 Q What kind of training did you have to become a police
12 officer?

13 A I went through eight weeks at the South Carolina
14 Criminal Justice Academy in Columbia.

15 Q How long is that program?

16 A Eight, nine weeks. It's been a long time ago.

17 Q And, in addition to that training, did you receive
18 any other training in the course of your being an officer?

19 A I've received numerous amounts of advanced training.

20 Q Did you ever receive any training in narcotics
21 interdiction?

22 A Yes. I've received well over 100 hours through
23 different organizations.

24 Q What did you do before you were a police officer?

25 A I worked a couple months for Charter Communications

1 as a technician. And, before that, I was a United States
2 Marine.

3 Q Were you working for the police department on April
4 29th, 2007?

5 A I was.

6 Q And did you receive a call from Detective Thomas on
7 that morning?

8 A Yes, I did.

9 Q Do you remember what time, roughly, you received the
10 call?

11 A I would say probably somewhere late 9:00.

12 Q In addition to that call, did you receive an e-mail
13 from Detective Thomas?

14 A I did.

15 Q How did you receive that e-mail?

16 A The e-mail came across through my in-car computer.

17 Q After receiving the phone call and that e-mail, what
18 did you do in response to that information that you
19 obtained?

20 A After gathering that information, I went to the Econo
21 Lodge on Orchard Park Drive to try to locate the purple
22 Saturn that I was advised would be there. And I did
23 locate it.

24 Q That Econo Lodge, where is that located?

25 A It's on Orchard Park Drive between Haywood Road and,

1 I think it's Branding Way.

2 Q Is that within the City of Greenville?

3 A It is.

4 Q Is that downtown?

5 A No. It's over on the east side, just right off of
6 385 and Haywood Road.

7 Q Did you spot the vehicle that morning?

8 A I did.

9 Q And you said it was a purple Saturn?

10 A It was.

11 Q Were you able to determine who it was registered to?

12 A By running the registration through South Carolina
13 DMV, it did come back registered to Mr. Fallin.

14 Q What did you do after you observed the vehicle?

15 A Based off the information I had received and
16 confirming the vehicle was the vehicle we were looking
17 for, I contacted additional officers, to include my
18 supervisor, to let him know the information that we had
19 received, and that I had confirmed the vehicle was at the
20 location. And I requested permission to set up on it and
21 try to conduct a narcotics investigation.

22 Q And when you say "set up on it," what do you mean?

23 A Basically, that's surveillance. We're just going to
24 sit and watch it.

25 Q Who was helping you with this?

1 A That day was Officer Cothran, Officer Dempsey,
2 Corporal Richard Pepper, and Sergeant Bob Gamble.

3 Q Were you, personally, watching the vehicle?

4 A No, I was not.

5 Q Who was personally watching the vehicle?

6 A Officer Cothran.

7 Q Where were you stationed?

8 A I was directly across the street sitting in the
9 parking lot of the apartment complex.

10 Q Were you able to communicate with Officer Cothran?

11 A I was.

12 Q How were you able to do that?

13 A Through the two-way radios that the city has.

14 Q What information did Officer Cothran relay to you?

15 A He let me know -- I couldn't tell you the exact time.
16 But we had been sitting watching the vehicle for what
17 appeared to be a couple of hours. He let me know that two
18 gentlemen were coming out of the room. He identified them
19 as white males. He let me know that one had come out and
20 placed a black bag into the trunk of the car and had gone
21 back in.

22 A few minutes later, he let me know that the same
23 individual had come out and gone into the hallway,
24 breezeway of the motel. And then several minutes later,
25 he let me know that both -- two individuals were coming

1 out of that room, getting in the vehicle, and that vehicle
2 was now moving.

3 Q Did you observe that vehicle leave the Econo Lodge
4 parking lot?

5 A I did.

6 Q And where were you when you observed the vehicle
7 leave the parking lot?

8 A I was sitting in a parking space facing Orchard Park
9 Drive directly across the street from the Econo Lodge at
10 the apartments. I can't remember the name offhand. I'm
11 sorry. But it's directly across the street,
12 approximately, I'd say, 30, 40 feet from the entrance to
13 the Econo Lodge.

14 Q What did you observe in the vehicle?

15 A When the vehicle came to the exit -- to the
16 entrance/exit of the motel, through the pictures I had
17 received, I immediately recognized Mr. Fallin as the
18 driver and Mr. Babb as the front seat passenger. I did
19 observe Mr. Fallin was not wearing a seatbelt when he
20 turned from private property onto Orchard Park Drive.

21 Q Did this vehicle have tinted windows?

22 A It did not.

23 Q What time of the day was it when they left?

24 A It was getting into the afternoon, somewhere between
25 11:00 and 12:00, a clear day, sun shining.

1 Q What happened when it exited?

2 A Well, Mr. Fallin exited out of Orchard Park -- or,
3 excuse me, out of Econo Lodge onto Orchard Park Drive. He
4 made a right-hand turn going towards Patewood Drive. I
5 exited the apartment complex to pursue the vehicle for an
6 infraction of the driver not wearing a seatbelt.

7 While doing so, a brown or tan Suburban -- I can't
8 remember right offhand -- made an improper turn right in
9 front of me cutting me off from Mr. Fallin. I went around
10 that vehicle and did execute a traffic stop on
11 Mr. Fallin's vehicle.

12 Q And, if you wouldn't mind, would you step down
13 quickly and just show the jury where that traffic stop
14 was?

15 A Do you want me to move this closer?

16 Q Sure.

17 THE COURT: Keep your voice up, please, sir.

18 THE WITNESS: Yes, sir.

19 Do you want to know where the traffic stop took
20 place?

21 BY MR. BOUTON:

22 Q Yes, sir.

23 A The traffic stop, actually, took place right within
24 this small area. There's a median right in here, enough
25 space for two vehicles and that's where the traffic stop

1 was initiated.

2 Q Did you pull behind the purple Saturn?

3 A I did.

4 Q Thank you.

5 You may have a seat.

6 Did you approach the vehicle after the stop -- after
7 you made the stop?

8 A I approached the vehicle, identified myself, and the
9 reason for the stop.

10 Q Anybody else with you? Did another officer approach
11 the vehicle as well?

12 A Officer Dempsey did as my backup.

13 Q What did you do when you approached the vehicle?

14 A I approached the vehicle, identified myself, Officer
15 Reider with Greenville City Police Department. The reason
16 I'm stopping you today is because you were not wearing a
17 seatbelt. Mr. Fallin had corrected the problem and I
18 observed that. And I did tell him, I see, at this point
19 in time, you did take care of that. I am not going to
20 write you a citation for that. But it is our policy that
21 I do have to record your information. I will need your
22 driver's license, registration, and insurance.

23 Q Was he able to provide you with that information?

24 A He was.

25 Q And what did you observe when taking that information

1 from him?

2 A Mr. Fallin was extremely nervous. His hands were
3 visibly shaking. Even after I told him that no
4 enforcement action would be taken as far as him not
5 getting a ticket or anything, his level of nervousness,
6 actually, began to escalate. He would rub his hands
7 continuously on his thighs, which is similar to somebody
8 that is nervous. Their hands start to sweat and they
9 begin to wipe it. He would place his hands between his
10 legs. He did this on two occasions in order to, in my
11 experience, conceal --

12 MR. WARDER: Objection to his opinion as to why it
13 was done.

14 THE COURT: I sustain that.

15 Go ahead.

16 BY MR. BOUTON:

17 Q You noticed him put his hands between his legs?

18 A He did.

19 Q Did the Defendant make eye contact with you?

20 A Mr. Fallen would not make direct eye contact with me.

21 Q What else did you observe inside the vehicle?

22 A Inside the vehicle, I observed numerous soda bottles,
23 fast-food wrappers, fast-food bags, things of that nature.

24 Q Did you observe any bags inside the vehicle?

25 A Directly behind Mr. Fallin was a black book bag.

1 Q What did you do after obtaining the information from
2 Mr. Fallen?

3 A After getting that information, I went back to my
4 patrol car. I ran the information through South Carolina
5 DMV and through our warrant system. Once I received back
6 information that everything was good through both systems,
7 I made a second approach to the vehicle and had Mr. Fallin
8 step out of the vehicle.

9 Q All right. What did you tell him?

10 A I'm sorry?

11 Q What did you tell him at this point?

12 A When I had Mr. Fallin step out of the vehicle, I
13 asked him for consent to search his vehicle.

14 Q All right. And what did he tell you?

15 A He said, Sure, go ahead.

16 Q At that point, what did you -- where was Mr. Fallin?
17 Where did you put him?

18 A Well, he was -- tried to walk back to the car. And I
19 brought him back and went into a more lengthy questioning
20 as far as the vehicle prior to sending him to the back of
21 my patrol car.

22 Q Okay. Real quickly. At this point, how many
23 officers are around?

24 A Myself, Officer Dempsey, and Sergeant Gamble.

25 Q What other follow-up questions did you ask

1 Mr. Fallin?

2 A I broke down to Mr. Fallin if there were any weapons,
3 knives, guns, bombs, anything like that in the vehicle.

4 No. I asked him, specifically, drugs, was there any
5 marijuana in the vehicle, was there cocaine in the
6 vehicle, crack cocaine. And I broke this down through
7 each specific drug so I could try to see if there was a
8 behavior change upon hitting any certain type of narcotic.

9 Q Did you observe any behavior changes in response to
10 any of the questions?

11 A Two times.

12 Q And what were those two questions?

13 A When I asked about methamphetamine, there was a break
14 in eye contact. And he would look away from me. When I
15 asked about Ecstasy, Mr. Fallin would break eye contact and
16 look away from me.

17 Q Was Mr. Babb in the vehicle at this point?

18 A He was the front seat passenger.

19 Q Did you ask him for his identification?

20 A I did.

21 Q And did he provide it to you?

22 A No, he did not.

23 Q What did you do with Mr. Babb at this point?

24 A I went around, had Mr. Babb step out of the vehicle,
25 and placed him -- basically, had him escorted to the back

1 of our patrol vehicles with Officer Dempsey.

2 Q Did you search the vehicle at this point?

3 A I did begin a search of the vehicle.

4 Q Tell the jury about that. Where did you start with
5 your search?

6 A I started the search of the vehicle in the passenger
7 compartment. It started in the front right passenger
8 side. And I worked my way around the car, like it's a
9 clock, going clockwise. I did not find any contraband or
10 illegal substances until I got to the trunk area where I
11 opened the trunk and located the black bag that is right
12 there and located meth -- what was later field-tested to
13 be methamphetamine.

14 Q All right. Well, let's back up real quick. When you
15 first located the backpack -- is this the backpack here on
16 the table?

17 A It is.

18 Q What did you first observe?

19 A When I opened it up, the first thing I saw were two
20 glass pipes with a white residue. Through my training and
21 experience, it's commonly used for smoking
22 methamphetamine.

23 Q Is this the backpack we're talking about?

24 A Yes, sir.

25 Q What did you do when you found the pipes?

1 A I immediately had Mr. Fallin and Mr. Babb placed into
2 custody.

3 Q Did you continue with your search?

4 A I continued to search, at that point, yes, sir.

5 Q And you mentioned -- what else did you find in
6 addition to the pipes?

7 A Once I started taking the contents of the bag out
8 from -- the pipes were the first thing I found, then I
9 found butane torches. The only way I can kind of explain
10 it, it's like a lighter, but it's not really a lighter
11 like a Bic lighter would be. It's an actual torch.
12 Butane fuel, that was in a bottle, two Gerber baby bottles
13 with a clear liquid inside of them in a pink and white
14 box. And when I opened the box, it contained three
15 packages of methamphetamine. It's a crystal substance,
16 which did test positive as methamphetamine, and a blue
17 pill bottle that contained Xanax.

18 Q All right. Did you find anything else in the
19 backpack?

20 A Just normal -- just paper items.

21 Q How about the baby bottle?

22 A I'm sorry?

23 Q Baby bottle?

24 A Yes, sir. I found two baby bottles with clear
25 liquid.

1 Q What was your reaction to seeing the clear liquid?

2 A Seeing that and then having the butane torches
3 and things like that, immediately, I thought there was
4 possibly --

5 MR. WARDER: Objection to what he thought, Your
6 Honor.

7 THE COURT: Okay. I'll sustain what he thought. But
8 he can testify about what he did as a result.

9 BY MR. BOUTON:

10 Q As a result of finding the baby bottles with the
11 liquid, what did you do?

12 A I needed to know if it was a meth lab. So I asked
13 Mr. Fallin what was in the bottles.

14 Q What did he say?

15 A He told me it was GHB.

16 Q What's GHB?

17 A GHB is a gamma-Hydroxybutyric.

18 Q And what is that?

19 A It's a narcotic, formally -- what a lot of folks know
20 as the date-rape drug.

21 MR. SULLIVAN: Judge, I object to that. They're not
22 charged with that, Your Honor. They're charged with Xanax
23 and methamphetamine.

24 THE COURT: Well, it's already asked and answered,
25 Mr. Sullivan.

1 BY MR. BOUTON:

2 Q What did you do with the evidence -- you said you
3 found what you assumed to be methamphetamine?

4 A Yes, sir.

5 Q Was that field-tested, also?

6 A It was. It was field-tested on the scene.

7 Q And did it test positive?

8 A I did get a positive reaction for methamphetamine.

9 Q And what is a field-test for the jury, just so they
10 know?

11 A What it is is the actual company -- there's several
12 different companies, but we use NIK is what it's called.
13 And it's a packet, a clear packet. It has three vials in
14 it. And what you do is you take a small piece of the
15 suspected drug and you place it inside. And then what you
16 do is you break three little ampules, one at a time, and
17 then you shake it.

18 And if it does react, it's going to turn a certain
19 color. It's going to tell you on there. And the NIK for
20 methamphetamine will turn blue. And this turned blue.

21 Q Did you find any other illegal substances in the
22 vehicle?

23 A I'm sorry. As far as -- there's several places I
24 found it.

25 Q I'm sorry. That wasn't in the trunk?

1 A Yes, sir. There's the black book bag that was behind
2 the driver. There was nothing inside the bag. But on the
3 outside of the bag was a blue vial on a key chain attached
4 to the zipper. Inside of that was, also, a crystal-like
5 substance that, also, did field-test positive for
6 methamphetamine.

7 Q All right. When you find an illegal substance or
8 contraband, what do you do with all the stuff that you
9 find?

10 A It's seized. It's removed from the vehicle and taken
11 in my custody.

12 Q And you, personally, seized it yourself?

13 A I did.

14 Q And what did you do with all the stuff that was
15 seized?

16 A Everything that was taken out of the vehicle, of an
17 evidentiary nature was placed into my patrol car, and it
18 was locked.

19 Q And we're going to come back to exactly what you
20 found. But what do you do with that -- with all the
21 contraband that you seize after you place it in your car?

22 A I'm sorry. Could you just --

23 Q Where did you take it?

24 A Okay. Once we clear, everything is taken to our
25 property and evidence, which is at the law enforcement

1 center.

2 Q And, just briefly, just tell the jury what property
3 and evidence is.

4 A It's a safe, secure storage area where we can store
5 any of our evidence, found items, things that are seized,
6 anything that has to do with any of our cases. Whatever
7 we put our hands on and we take from somebody, we put in
8 this secure facility.

9 Q What did you do when you got to property and
10 evidence?

11 A When I got there, I did an itemized list of
12 everything that I, personally, had taken and made sure it
13 was all documented, which is with the time, the date, the
14 location, my initials, how I number everything, what it
15 is, how much of it there is. And this is turned into
16 evidence.

17 Q These itemized lists, are they commonly referred to
18 as P&E sheets?

19 A Yes, sir.

20 Q And that's the way you itemize what you find?

21 A Yes.

22 Q Are these the three P&E sheets you filled out?

23 A These are mine, yes.

24 Q And is -- and does that correspond with what's in the
25 backpack?

1 A Do you want me to go through everything?

2 Q We'll go by -- there's a couple specific items I want
3 to ask you about.

4 A Okay.

5 Q First of all, do you see the pipes in there that you
6 seized as the first thing you saw?

7 A Yes, sir.

8 Q And, if you don't mind, I know you've got the sheets
9 there, just go through what else you found inside the
10 backpack that you seized.

11 A Do you want me to take them out or just read it off?

12 Q I think you can take them out.

13 THE COURT: They're not in evidence, so don't publish
14 it to the jury yet.

15 MR. WARDER: Your Honor --

16 BY MR. BOUTON:

17 Q If you can, just identify it.

18 A Say it out loud?

19 Q Yes.

20 A There's two butane torches, a neon butane lighter, a
21 bag of hypodermic needles, a set of digital scales, clear
22 plastic bag with residue in it, more smaller plastic bags,
23 a piece of a plaid shirt that the pipes were wrapped up
24 in, inner part of the bag that I -- just looks like it's
25 part of the bag, I don't know exactly what its purpose is,

1 a plastic Johnson & Johnson box, a pink and red box that I
2 located the methamphetamine in, several scratch-off
3 lottery tickets, a note pad, and a check --

4 Q We'll get to that --

5 A A personal check. That's about it.

6 Q Does all that correspond -- except for the drugs,
7 does that all correspond to what you seized in the trunk
8 on April 29th, 2007?

9 A Yes, sir.

10 Q All right. And you took this down to property and
11 evidence and you signed this into property and evidence;
12 is that correct?

13 A I did.

14 Q And is property and evidence a secure location where
15 these items were kept?

16 A That's correct.

17 Q Do you recognize your signature on those sheets --

18 A I do.

19 Q -- that you signed. And did you date it?

20 A Yes. I did date it.

21 Q All right. Where did you get this evidence from --
22 where did you get -- excuse me. Where did you get this
23 material that you seized? Where did you pick that up
24 today?

25 A Where did I get this today?

1 Q Yeah.

2 A From property and evidence. I had to sign it out.

3 Q All right. So all of these items are the same items
4 that you seized from the purple Saturn on April 29th?

5 A Yes, sir.

6 MR. BOUTON: Your Honor, at this time, I would like
7 to mark -- can I mark them as one backpack?

8 THE COURT: I think you're going to have to have them
9 marked individually.

10 It's for identification purposes; is that right?

11 MR. BOUTON: Yes, sir.

12 THE COURT: Why don't we do this.

13 Ladies and gentlemen, this is a little housekeeping
14 work. So, if you would, I'll ask you to step back to your
15 jury room and we'll get back with you shortly. Don't talk
16 about the case.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 4:16 p.m.)

19 THE COURT: Okay. Let's have them marked.

20 Officer, you can step down with the court reporter.

21 Defense Counsel, you're welcome to come watch, if
22 that's what you want to do.

23 (WHEREUPON, State's Exhibit Nos. 7, 8, 9, 10, 11, 12,
24 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 were
25 marked for identification only.)

1 (Pause.)

2 THE COURT: Now, I believe Mr. Warder has a couple of
3 objections he wanted to put on the record about the
4 introduction of some of the evidence.

5 MR. WARDER: Yes.

6 I objected to the lottery tickets on the grounds of
7 relevancy and lack of probative value.

8 THE COURT: Well, that could cut both ways. I mean,
9 some juror on there might think they were supporting
10 education.

11 MR. WARDER: Yes.

12 THE COURT: So it could cut both ways. So I overrule
13 that.

14 You were going to object to the GHB, I believe, or
15 are you? I mean, you talked about it.

16 MR. WARDER: Yes.

17 MR. SULLIVAN: They're not charged with that. It was
18 found. They're not charged.

19 THE COURT: Okay. Well, they're not -- I believe the
20 State has an argument with respect to that.

21 MS. ADAIR: We do, Judge.

22 Just that the GHB was found in the backpack. When
23 Officer Reider asks the Defendant Fallin what these
24 bottles are, he identifies them as GHB. It goes to show
25 his knowledge of what was in the backpack.

1 THE COURT: Okay. Pretty good logic. I'm going to
2 overrule that objection.

3 And with respect to your hearsay objection as to what
4 Officer -- Detective Thomas heard over the phone and your
5 mistrial motion, I would, also -- I don't know what case
6 the State cited, but I'm looking at State v. Thompson, 575
7 S.E.2d 77. It states that evidence is not hearsay unless
8 it's an out-of-court statement offered to prove the truth
9 of the matter asserted. Additionally, an out-of-court
10 statement is not hearsay if it is offered for the limited
11 purpose of explaining why a government investigation was
12 undertaken, citing United States v. Love, 767F.2d 1052,
13 1985. Cert was denied on that.

14 And, in the Thompson case, they said, "Here these
15 statements were not entered for their truth, but rather to
16 explain why the officers began their surveillance. These
17 statements are not hearsay. And, therefore, the trial
18 judge committed no error in allowing these statements into
19 evidence."

20 So I just wanted to put that on the record to clarify
21 my ruling.

22 MR. WARDER: Yes, sir.

23 THE COURT: Okay. And I think we've got a plea
24 that -- just a quick short plea.

25 MR. SULLIVAN: On this ruling, when would it ever be

1 allowed to be used?

2 THE COURT: When they're used -- if that's the only
3 reason they make the stop. It's okay if a tip -- that's
4 exactly what it is is a tip for them to surveil. They
5 made a legitimate traffic stop.

6 MR. SULLIVAN: That's the J.L. case. They got a tip
7 and found the gun. So that would be --

8 THE COURT: They got a tip and found the gun, right.
9 But they had no other reason to search.

10 MR. SULLIVAN: Exactly, Your Honor.

11 THE COURT: Yes. I mean, that's -- there's an
12 intervening --

13 MR. SULLIVAN: Traffic stop.

14 THE COURT: Yes. It's legitimate. And then he gave
15 consent. Even if the traffic stop was protectoral, his
16 consent was voluntary and --

17 MR. SULLIVAN: Just like Williams?

18 THE COURT: Yes.

19 (WHEREUPON, a break was taken.)

20 THE CLERK: Okay. Are we ready to go?

21 MR. BOUTON: Yes, Your Honor.

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

23 (WHEREUPON, the jury came into open court at
24 approximately 4:44 p.m.)

25 THE COURT: All right. Mr. Bouton.

CONTINUED DIRECT EXAMINATION

BY MR. BOUTON:

Q Officer Reider, we were discussing the items in the backpack and the items you found inside the backpack. Is that all? I believe these have been marked now as State's Exhibit Nos. 7 through 18; is that correct?

A Yes, sir.

MR. BOUTON: Your Honor, at this time, the State would move to admit State's Exhibit Nos. 7 through 18 into evidence?

THE COURT: Any objection, other than those previously stated?

MR. WARDER: Are they all marked as one number? When we say State's Exhibit Nos. 7 through 8 into evidence, is that everything in evidence?

THE COURT: It's the contents of the backpack.

MR. WARDER: Okay. Other than the objection we've touched on, no other objections, Your Honor.

THE COURT: Thank you very much.

(WHEREUPON, State's Exhibit Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 were admitted into evidence.)

BY MR. BOUTON:

Q Officer, can we just kind of go through and talk about each one very briefly?

1 A Yes, sir.

2 Q State's Exhibit No. 7, do you have that in front of
3 you?

4 A Yes, sir.

5 Q What is that?

6 A This is butane lighter fluid.

7 Q All right. I'm going to grab each one and put it on
8 the table. And what is that used for?

9 A It's to refill your butane torches or your lighters
10 that you light with that type of fuel.

11 Q And State's Exhibit No. 8?

12 A State's Exhibit No. 8 is the scales, digital scale.

13 Q And what is that commonly used for?

14 A This is commonly used to weigh narcotics. And it
15 still has residue on it.

16 MR. WARDER: Your Honor, I object to all this. And
17 here's what I object to, that some of those things have
18 more than one use.

19 THE COURT: Okay.

20 MR. WARDER: They attribute whatever they want.

21 THE COURT: Okay. Well, you can cross-examine him on
22 that, certainly. It's just his testimony.

23 MR. WARDER: I understand, but...

24 BY MR. BOUTON:

25 Q What's State's Exhibit No. 9?

1 A State's Exhibit No. 9 is the blue torch lighter.
2 Q State's Exhibit No. 10?
3 A State's Exhibit No. 10 is the clear torch lighter.
4 Q How about State's Exhibit No. 11?
5 A State's Exhibit No. 11 is the bag of hypodermic
6 needles.
7 Q Is there anything in those needles?
8 A No, sir.
9 Q Okay. How many is it?
10 A Two.
11 Q What's State's Exhibit No. 12?
12 A State's Exhibit No. 12 are the glass pipes with the
13 residue on them.
14 Q And how many are there?
15 A There's two.
16 Q State's Exhibit No. 13?
17 A State's Exhibit No. 13 is the bag with the individual
18 plastic baggies of different sizes.
19 Q Do you know how many plastic baggies are in there?
20 A No, sir. They're falling out now. I couldn't tell
21 right offhand. I would estimate probably about 100, if
22 not more. There's two to a stack. And there's well
23 over -- I would have to guesstimate. There's well over
24 50. There's small ones as well.
25 Q State's Exhibit No. 14?

1 A State's Exhibit No. 14 is the red and pink box.

2 Q And what is significant about that?

3 A This is what had the three packs of methamphetamine
4 in it.

5 Q State's Exhibit No. 15?

6 A State's Exhibit No. 15 is the piece of plastic or
7 rubber. It's commonly what the medical field would use to
8 tie off an arm. If that's what it's used for, I can't
9 say. But that's how I identified it.

10 Q State's Exhibit No. 16?

11 A State's Exhibit No. 16 is a check to Mr. Babb.

12 Q And what -- you said to Mr. Babb?

13 A Yes, sir.

14 Q Please describe what's on the check, please.

15 A The check is -- do you want me to read who it's from?

16 Q Sure.

17 A Okay. It's from Roger Ensley. This was signed on
18 February 18th of 2007, for \$40 to Mr. Babb as a charitable
19 donation. It's check #1360.

20 Q You say as a "charitable donation"?

21 A Yes, sir.

22 Q Where is that written on the check?

23 A Down where it says "For."

24 Q Is the check signed on the back?

25 A It is not.

1 Q It's made out to James Babb?

2 A It is.

3 Q Was this check found inside that black book bag?

4 A It was, yes, sir.

5 Q What is State's Exhibit No. 17?

6 A A pack of lottery tickets, scratch-off lottery
7 tickets.

8 Q How many? You don't have to count them.

9 A There's probably about a dozen or more.

10 Q Any of them a winner? Do you know?

11 A I think there was.

12 Q What's the last one, State's Exhibit No. 18?

13 A Yes, sir. And it's the bag, the book bag that
14 everything was contained in.

15 Q Okay. Everything that's sitting on that table right
16 there, was it found in that bag?

17 A Everything that's right there, yes, sir. There was
18 more, but...

19 Q Sure. And this was found in the trunk; correct?

20 A Yes, sir.

21 Q I'll show you this bag. Please don't pull any of it
22 out.

23 A Okay.

24 Q But can you look inside and identify what's in the
25 bag?

1 A It's a --

2 THE COURT: Don't describe it. Just can you identify
3 it?

4 THE WITNESS: Oh, okay.

5 I do recognize everything in the bag.

6 BY MR. BOUTON:

7 Q And how can you identify what's in that bag?

8 A It has my initials on it for seal. It has the case
9 number and the date.

10 Q And who put that on there?

11 A I did.

12 Q All right. Are these all the narcotics that were
13 seized in the car?

14 A They are.

15 Q And when you were inventorying these narcotics and
16 checking them into property and evidence, what is your
17 process? Please tell the jury what you do.

18 A What I'll do, each individual substance is within
19 itself. So what I have to do is take a bag, put the
20 substance in it, put my name, the date, the case number,
21 and heat seal it. It's marked on our property and
22 evidence sheet. And they're all turned in inside of the
23 bag. The entire property and evidence sheet is placed
24 into the bag and turned over to property and evidence.

25 Q All of these items are heat sealed separately?

1 A Yes, sir.

2 Q Do you weigh the items before heat sealing them?

3 A We do have to weigh each one.

4 Q And do you inventory that on one of your property and
5 evidence sheets?

6 A It is. It's noted.

7 Q What are the weights of the drugs that were seized?

8 A A field weight was 62.9 grams of methamphetamine, 200
9 milliliters of suspected GHB, and 48-1/2 Xanax pills.

10 Q The Xanax pills, did you find a prescription for
11 either one of these individuals with the pills that were
12 found?

13 A I did not.

14 Q What were they in?

15 A They were in a blue pill bottle, just a blue pill
16 bottle unmarked.

17 Q There was not a label on that pill bottle?

18 A No, there was not.

19 Q All right. All of the methamphetamine that was --
20 that you seized, where, specifically, was that found in
21 the vehicle?

22 A It was in the red box, which was in the bag located
23 in the trunk.

24 Q Okay. Now, there was some that was not located in
25 the backpack; is that correct?

1 A That is correct.

2 Q And where was that found?

3 A The blue vial was on -- it was attached to the book
4 bag, the black book bag that was behind Mr. Fallin in the
5 rear portion of the passenger compartment. And it was
6 attached to the zipper portion through like a key chain,
7 key ring.

8 Q All of the drugs that you placed in property and
9 evidence, you signed for, you put the date on the P&E
10 sheets; is that correct?

11 A I did.

12 Q And how did you obtain those drugs today for trial?

13 A I had to go back down to property and evidence today
14 and sign it out.

15 Q And is your signature on the property and evidence
16 sheets that you signed?

17 A It is.

18 Q Very briefly. Is there a reason why you seized all
19 the items that are on this table?

20 A The majority of what's over there, the reason I
21 seized it is because it's materials that commonly are used
22 in either the --

23 MR. WARDER: Objection, Your Honor.

24 THE WITNESS: -- sale or use of narcotics.

25 THE COURT: Wait a minute. He's objected.

1 MR. WARDER: Your Honor, he's attributing some common
2 use for the items. The reason they were seized is they
3 were found with other things that were seizable.

4 THE COURT: Well, he can testify -- he was asked why
5 he seized them. It goes to his state of mind. So I'm
6 going to allow the question.

7 BY MR. BOUTON:

8 Q There were other things in the vehicle that you did
9 not seize; is that correct?

10 A That is correct.

11 Q All right. Why did you seize these items?

12 A Well, specifically, the pipes are a common tool used
13 to smoke methamphetamine. The torches are what is used as
14 a heat source to heat the bowl, the glass bowl. The
15 syringes and the piece of rubber to tie off are for
16 persons that prefer to inject if that is what they want to
17 do. The red box was seized because that is what contained
18 the methamphetamine. The digital scales were seized
19 because that is what is commonly used to weigh narcotics.
20 And on top of that, it does have crystal residue on it.
21 The individual baggies were seized because that is the
22 common practice of packaging and distributing of
23 narcotics. And the bag because, well, it contained
24 everything.

25 Q Based on your experience in dealing with narcotic

1 seizures and cases you've dealt with, do you know how much
2 the value of this methamphetamine is?

3 MR. WARDER: Objection.

4 THE COURT: Yes.

5 MR. WARDER: Lack of foundation.

6 THE COURT: Yes. Build him up and see if he's got a
7 basis to make it.

8 BY MR. BOUTON:

9 Q How long have you been on the road?

10 A Five years and 11 months.

11 Q If you can put an amount, how many drug arrests have
12 you made in that time?

13 A Drug-related, somewhere in the neighborhood of 80,
14 90.

15 Q What kind of training did you have as far as drug
16 interdiction goes?

17 A I'm trained through multi-jurisdictional county drug
18 task force and criminal patrol and highway interdiction.
19 I'm trained through the International Narcotics
20 Interdiction Association through highway interdiction.
21 I'm trained through the Drug Interdiction Assistance
22 Program, known as DIA, through bolt currency seizures and
23 interdiction. I'm trained through the National Criminal
24 Enforcement Association with over 70 hours of
25 counter-terrorism and drug interdiction training. That's

1 about it.

2 Q In layman's terms, what does this training provide
3 you with the ability to do on your given job?

4 A Whenever I stop a car, I'm trained to conduct a
5 roadside interview to spot deception and techniques that
6 are commonly used. Basically, I'm trained to stop a car
7 and be able to find out if there's any reason that they
8 are conducting criminal activity. And my training has
9 proven extremely successful.

10 Q In that training, you said 80 to 100 stops that
11 you've made. The arrests you've made, have they been
12 drug-related offenses?

13 A Yes, sir.

14 Q How many of those deal with methamphetamine?

15 A Methamphetamine is not common. This is the third --
16 I'd say third that I've done just of methamphetamine.

17 Q Okay. Now, has there been a wide range of charges as
18 far as possession with intent to distribute, trafficking?

19 A As far as what I've made?

20 Q Yes, sir.

21 A Yes, sir. Everything from simple possession to
22 trafficking.

23 Q In that training and in your experiences, have you
24 been able to determine what an average user of meth might
25 pay for a drug and what the normal street-level prices

1 might be for methamphetamine?

2 A Yes, sir. Through the El Paso --

3 MR. WARDER: Objection.

4 THE COURT: What?

5 MR. WARDER: Unless he has a basis of something other
6 than what he was told, that's hearsay.

7 THE COURT: Well, as a result of his training, does
8 he have an opinion? I think he can answer that question.

9 MR. WARDER: Training can be hearsay.

10 THE COURT: Well, okay, Mr. Warder, overruled.

11 Go ahead.

12 THE WITNESS: Through the El Paso Intelligence
13 Center, commonly known as EPIC, they give us a list every
14 year of the current drug trends, everything from what's
15 normal -- what we'll normally see to how much it costs.

16 So in 2007, commonly, that was going to run you -- a
17 normal user \$20 to \$40, what we call a hit or small bag.
18 The amount that we seized was upwards in street value of
19 \$10,000.

20 MR. BOUTON: Thank you, Officer.

21 Please answer any questions the Defense may have.

22 THE COURT: Okay. Cross.

23 CROSS-EXAMINATION

24 BY MR. SULLIVAN:

25 Q When the officer called you about them leaving the

1 motel, did he just mention a black bag or they were
2 carrying several bags?

3 A I only heard something about a black bag.

4 Q Did he mention that they were, also, carrying other
5 bags?

6 A I don't recall offhand.

7 Q Did he mention that somebody had an ice cream
8 machine?

9 A Not to me. I don't recall that, no, sir.

10 Q Did you find an ice cream machine?

11 A That does not stick out in my mind. I can't say I
12 did or didn't.

13 Q Now, the methamphetamine that's been introduced,
14 55.58 grams, were found in three bags. Where were those
15 three bags found?

16 A The three bags were in the red box, which was inside
17 the black backpack in the trunk of the vehicle.

18 Q And then there was a bottle containing a rock
19 substance of methamphetamine, .45 grams. Where was that
20 found?

21 A Which one was that? I'm sorry.

22 Q The other methamphetamine is .45 grams. There's two
23 different containers.

24 A You're going to have to be more -- because I'm
25 looking at my P&E sheet, and if it's what I think you're

1 talking about --

2 Q It's a bottle. You've got three bags containing --

3 A Okay.

4 Q -- that's a 55 --

5 A Okay.

6 Q -- then you have the bottle containing the rock
7 substance?

8 A Yes, sir. Okay. That's the blue vial.

9 Q Okay. Was that found on the zipper?

10 A Yes, sir. That's the one that was found on the
11 zipper on the bag which was behind the driver.

12 Q Behind the driver?

13 A Yes, sir.

14 Q And the largest amount was in the black bag?

15 A That's the one that was in the box in the bag that
16 was in the trunk.

17 Q And the check to Mr. Babb was in the black bag?

18 A That is correct.

19 Q Now, you have the -- you interviewed and looked at --
20 I think the officer testified it was a warm day and he
21 placed the guy in the car with the air conditioner. Did
22 the fellows have on short-sleeve shirts? I think it was
23 described as a white male, T-shirt?

24 A I'm not going to say for sure, because I don't recall
25 what everybody was wearing that day. So -- but I can only

1 assume, and I'm not going to do that.

2 Q You had a lot of contact with Mr. Fallin?

3 A That is correct.

4 Q Did you observe any needle marks on Mr. Fallin?

5 A I couldn't even identify that. I'm not medically
6 certified. I wouldn't know what to look for.

7 Q They're called tracks in the drug trade.

8 A Oh, yes, sir. I'm familiar with that.

9 Q Did you notice any tracks on Mr. Fallin while you
10 were talking to him and he had his arms out?

11 A No, sir.

12 MR. SULLIVAN: Thank you.

13 THE COURT: Mr. Warder.

14 CROSS-EXAMINATION

15 BY MR. WARDER:

16 Q You didn't notice any tracks or needle marks on
17 either one of them, did you?

18 A I can't say I did see anything like that, no.

19 Q In this investigation, are you the lead officer in
20 it?

21 A I would be considered so, yes.

22 Q If somebody was going to order a fingerprint or
23 something, would that be the lead officer's job?

24 A That would be our job, yes.

25 Q Okay. Did you order any fingerprints on the lighter

1 fluid?

2 A Nothing that I seized was fingerprinted, no.

3 Q Okay. You didn't ask anybody to fingerprint it?

4 A No. I did not put it in, no.

5 Q And to ask for that, you would only have to fill out
6 a simple request form; is that right?

7 A I would have noted that on the lab analysis where I
8 requested it to be chemically tested. I would have
9 requested a fingerprint analysis, as well, and I did not.

10 Q Did you ask for a fingerprint analysis either on the
11 inside or the outside of the scale?

12 A Nothing that I seized had any requests for a
13 fingerprint analysis, no.

14 Q And this had an on and off button?

15 A That's correct.

16 Q And a shiny metal surface there?

17 A That's right.

18 Q And you never asked for a fingerprint analysis on it
19 at all?

20 A No, I did not.

21 Q Okay. And State's Exhibit No. 10 is a --

22 MR. BOUTON: Judge, I object --

23 THE COURT: Wait a minute.

24 What?

25 MR. BOUTON: He stated he didn't ask for fingerprints

1 on any of the stuff. I don't think we need to go through
2 every single piece.

3 THE COURT: It's cross. So I'll let him do it, give
4 him wide range.

5 Go ahead, Mr. Warder.

6 BY MR. WARDER:

7 Q State's Exhibit No. 10, did you ask for any
8 fingerprint analysis?

9 A No, sir, I did not.

10 Q And you said this is what people hold to melt the
11 crack?

12 A To light something, yes, sir.

13 Q Okay. And, likewise, State's Exhibit -- the metal or
14 plastic more straight looking -- State's Exhibit No. 9,
15 did you ask for any --

16 A No, sir.

17 Q And these pipes, you said these are the actual -- are
18 these ceramic?

19 A No. I can't -- I don't know. I mean, they're glass.
20 They could be ceramic. I don't know what they're made out
21 of. But I do know that they're --

22 Q Slick, glass pipes?

23 A Oh, I'd agree, yes, sir.

24 Q Did you ask for any fingerprint analysis to see who
25 was smoking them?

1 A No, I did not.

2 Q The rubber tie, did you try and fingerprint it?

3 A No, sir.

4 Q That was State's Exhibit No. 15?

5 A Uh-huh.

6 Q The lottery tickets, you can trace them to the place
7 they were, actually, bought, can't you?

8 A I don't know. I've never tried that before. I
9 couldn't say. I'm sure you could probably go through the
10 State someday somehow.

11 Q They're uniquely numbered, aren't they?

12 A They are, yes, sir.

13 Q And, I guess, the State would keep track?

14 A I would hope so.

15 Q You didn't try and see who had bought them, did you?

16 A No, sir.

17 Q And there's still a penny in the bottom of the bag
18 that I see here?

19 A Okay.

20 Q You didn't fingerprint it?

21 A Nope.

22 Q There's a check here that's from Roger -- is it
23 Lindsey?

24 A Ingley or Ensley.

25 Q Do you have any evidence that the check was ever in

1 my client's possession?

2 A No, sir. I can't say that.

3 [REDACTED]

4 A February, wasn't it?

5 [REDACTED] 2-18-07. Do you have any idea whether it was written
6 on 2-18-07, or any time around then?

7 A I cannot say, sir. I don't know.

8 [REDACTED] You found it on 4 --

9 [REDACTED] 4-29.

10 Q Okay.

11 [REDACTED] 4-29 of 2007.

12 Q Do you know whether it's good or not?

13 A Oh, no, sir. I don't know.

14 Q Do you know whether that person exists, that Ensley
15 fellow?

16 A I really don't know.

17 Q The check looks like it belongs -- it says
18 "Operation" at the top and it has a --

19 A The Milton Bradley game.

20 Q A figure on the back that looks like -- you don't
21 know anything about it, except it was in the bag?

22 A That is correct, sir.

23 Q You don't know whether it had been given to my client
24 at any time by anybody?

25 A I don't know, no, sir. I don't know.

1 Q And it's quite possible he's never seen this?

2 A I would have to say it is possible he never saw it.

3 MR. WARDER: Thank you, Officer.

4 THE COURT: Redirect.

5 MR. BOUTON: Nothing further.

6 THE COURT: All right. Thank you, sir.

7 You can step down.

8 It's 5:15. Do you have a short witness?

9 MR. BOUTON: We have one short witness, Judge, that
10 we can take care of in a few minutes.

11 MS. ADAIR: The State calls Officer Dempsey.

12 THE CLERK: Sir, please, place your left hand on the
13 Bible and raise your right hand.

14 WHEREUPON,

15 JOHN MICHAEL DEMPSEY,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you.

18 Please be seated.

19 Please state your full name for the record.

20 THE WITNESS: John Michael Dempsey.

21 DIRECT EXAMINATION

22 BY MS. ADAIR:

23 Q Officer Dempsey, where are you employed?

24 A The Greenville Police Department.

25 Q And how long have you been employed there?

1 A Coming up on five years.

2 Q What is your current position?

3 A Uniform patrol officer.

4 Q And were you employed in the same position back on
5 April 29th, 2007?

6 A Yes, ma'am.

7 Q Have you had any training or experience that has
8 aided you in your job responsibilities?

9 A Nine weeks at the Criminal Justice Academy, 40-hour
10 week, re-certified every year. And I took a three-day
11 patrol interdiction class.

12 Q Let's focus our attention on this incident. Were you
13 working back on April 29th, 2007?

14 A Yes, I was.

15 Q Day shift or night shift?

16 A Day shift.

17 Q And what are your hours on the day shift?

18 A 7:00 a.m. to 7:00 p.m.

19 Q Can you explain to the jury how you were involved in
20 this case?

21 A To assist Officer Reider with a traffic stop in
22 reference to this incident.

23 Q What did you observe when you got to where Officer
24 Reider had these Defendants pulled over?

25 A I observed a purple in color Saturn and two males,

1 one driver, one passenger inside.

2 Q Were you able to observe the Defendant, Troy Fallin?

3 A Yes, I was.

4 Q Do you see him in the courtroom today?

5 A I do.

6 Q Can you point him out for the jury?

7 A The gentleman in the green-checkered shirt closest to
8 the wall.

9 Q And were you able to observe James Babb, also, in the
10 car?

11 A Yes, I was.

12 Q Do you see him in the courtroom?

13 A The gentleman in the blue tie and white long-sleeved
14 shirt.

15 Q What did you observe when you approached the vehicle?

16 A I observed Mr. Fallin attempting to getting his
17 wallet -- or he had his wallet out. He was attempting to
18 pull his driver's license out. He seemed to be having
19 trouble, fumbling around. His hands were extremely shaky.

20 After he gave his license and other information to
21 Officer Reider, he ended up taking his hands and just
22 wiping them on his legs and, eventually, stuck them
23 between his legs and closed them to control it, it looked
24 like.

25 Q In your training and experience, Defendant Fallin's

1 behavior, what does that indicate to you?

2 A Nervousness.

3 MR. WARDER: Objection.

4 MR. SULLIVAN: Objection, Your Honor.

5 THE COURT: Sustained. He can state his personal
6 opinion about the man's appearance.

7 But don't try and qualify him as an expert.

8 MS. ADAIR: Okay.

9 BY MS. ADAIR:

10 Q And what happened after you observed the Defendant
11 Fallin display this extreme nervousness?

12 A He stepped out of the vehicle, outside of it to the
13 rear. He came to speak with Officer Reider.

14 Q And what did you do at that time?

15 A I stepped back. At which time, Officer Reider asked
16 him to come step back with me, Mr. Babb and Mr. Fallin.

17 Q At any time, did Officer Reider ask you to do
18 anything with Defendant Fallin?

19 A After he had located drug paraphernalia in the trunk,
20 he asked me to place Mr. Fallin into custody, at which
21 time I did.

22 Q Did you read him his Miranda rights?

23 A I did. After he was handcuffed, I read him his
24 rights from my card.

25 Q Can you read for the jury what you read to the

1 Defendant?

2 A Yes, ma'am.

3 It's called -- when I went to the Criminal Justice
4 Academy -- I don't know if they still issue them or not,
5 but I got one when I went. It says, Suspects Miranda
6 Warning. I make it a common practice every time I arrest
7 somebody that this is going to be read to them. And it's
8 from this card. I've had it for almost five years now.
9 There's seven bullets to it. I'm just going to read them
10 to you.

11 The first one, You have the right to remain silent.
12 Anything you say can and will be used against you in a
13 court of law. You have the right to talk to an attorney
14 and have him or her present with you while you are being
15 questioned. If you cannot afford to hire an attorney, one
16 will be appointed to represent you for any questioning, if
17 you wish. You can decide at any time to exercise these
18 rights and not answer any questions or make any
19 statements.

20 And then I ask on the card as well, Do you understand
21 each of these rights I've explained to you? I pause. I
22 look at them to make sure they know what the question was.
23 And once they answer, the last bullet is, Having these
24 rights in mind, do you wish to speak with me? And I go
25 from there, yes or no.

1 Q Did the Defendant Fallin appear to understand his
2 rights when you read them to him?

3 A Yes, ma'am. He stated he understood his rights that
4 I just read to him from the card.

5 Q What did you do after you Mirandized the Defendants?

6 A I went ahead and placed them in the back of my patrol
7 car. Since it was at the end of April, you know, South
8 Carolina gets warm. So I made sure I cut the air on so he
9 wouldn't get hot and everything and it would stay cool in
10 there.

11 Q Did you have any other involvement in this case?

12 A No, ma'am.

13 MS. ADAIR: Thank you.

14 Please answer any questions Defense counsel might
15 have.

16 CROSS-EXAMINATION

17 BY MR. SULLIVAN:

18 Q You saw Mr. Fallin wiping his hands off?

19 A Yes, sir.

20 Q They were sweaty?

21 A Yes, sir, I assume.

22 Q But you cut the air conditioner on in the car because
23 it was a warm day?

24 A Right.

25 Q Okay. So he wouldn't sweat anymore?

1 A Correct.

2 Q So he was in a hot car with policemen all around him
3 and he was sweating?

4 A We weren't surrounding the car, no, sir.

5 Q He could see you?

6 A After he stepped out of the vehicle.

7 Q And he could see the other officer, C.C. Reider?

8 A Yes. When Officer Reider went to the window.

9 MR. SULLIVAN: That's all.

10 THE COURT: Mr. Warder.

11 MR. WARDER: Your Honor, if it please the Court, I
12 don't have any questions of this witness.

13 THE COURT: Okay. Any redirect?

14 MS. ADAIR: None, Judge.

15 THE COURT: Thank you, sir.

16 You can step down.

17 Thank you very much.

18 Mr. Foreman, and, ladies and gentlemen of the jury,
19 it's 5:20. I probably kept you a little bit later than I
20 should have. I hope that's not too inconvenient for you.
21 We're going to break for the day. I'm going to ask you to
22 be back at 9:30 in the morning.

23 Please remember not to talk about the case with
24 anybody. We know it's human nature that you want to talk
25 about it and the people that you'll be with will want to

1 talk to you about it. Just explain to them why. And
2 protect the rights for these parties as you would
3 want them protected for your own family and for
4 yourselves.

5 You all have a pleasant evening. And we'll see you
6 at 9:30 in the morning.

7 Thank you.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 5:21 p.m.)

10 THE COURT: All right. Anything before we break?

11 MR. BOUTON: Not from the State.

12 THE COURT: What's the State's position with respect
13 to bond?

14 MR. BOUTON: Judge --

15 THE COURT: What is it, trafficking what?

16 MR. BOUTON: 28.

17 MR. SULLIVAN: Seven to 28 is the range on
18 Mr. Fallin.

19 THE COURT: Okay. Well, it's on both of them;
20 right?

21 MR. BOUTON: Seven to 30 on Mr. Babb.

22 THE COURT: Okay. Well, I'll tell you, I think we'll
23 take them into custody.

24 You all have a pleasant night.

25 Anything else from the Defense before we go?

1 MR. SULLIVAN: Nothing.

2 THE COURT: Thank you.

3 (WHEREUPON, the proceedings were concluded at
4 approximately 5:22 p.m., to be reconvened on
5 Tuesday, February 2, 2010.)

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1 TUESDAY, FEBRUARY 2, 2010

2 THE COURT: What's the decision?

3 MR. SULLIVAN: Mr. Fallin is going to plead.

4 THE COURT: All right. Let's go ahead.

5 Mr. Fallin wants to plead guilty. Why don't we
6 accommodate him.

7 ~~Are we offering something?~~

8 MR. BOUTON: That would be preferable, Judge.

9 THE CLERK: Mr. Bouton, does he need to sign these?

10 MR. BOUTON: Yes.

11 THE CLERK: Your Honor, this is case 2007-GS-23-9549,
12 State v. Troy Daniel Fallin, indicted for trafficking
13 methamphetamine, pleading to the same, first offense.

14 In the case of 2007-GS-23-9551, Mr. Fallin is
15 indicted for possession of a controlled substance with
16 intent to distribute, pleading to the same, also, first
17 offense.

18 Sir, please, raise your right hand.

19 WHEREUPON,

20 TROY DANIEL FALLIN,
21 after first having been duly sworn, testified as follows:

22 THE COURT: All right. Mr. Fallin, in the last 24
23 hours, have you had any drugs, alcohol, or medication?

24 DEFENDANT FALLIN: No, sir.

25 THE COURT: Are you sober today and know what you're

1 doing?

2 DEFENDANT FALLIN: I'm sorry.

3 THE COURT: Are you sober today?

4 DEFENDANT FALLIN: Yes.

5 THE COURT: Okay. You're up here on two indictments.

6 I'm going to go through this with you, although they've
7 been published to you before.

8 The first one is 07-9549. [REDACTED]

9 Greenville County on [REDACTED]

10 [REDACTED] [REDACTED] [REDACTED]

11 provide financial or other assistance, aid, abet, or
12 attempt to conspire, to sell, manufacture, deliver, or
13 bring into South Carolina, or you were in actual or
14 constructive possession of more than 28 grams of
15 methamphetamine. It carries seven to 30 years. This is a
16 violent offense, which means no parole. It's a serious
17 offense. And if you get convictions for three or more
18 serious offenses, you're eligible for life in prison
19 without parole.

20 Do you understand that?

21 DEFENDANT FALLIN: Yes, sir.

22 THE COURT: You're, also, up here on 07-9551. It
23 alleges you did in Greenville County on [REDACTED]
24 possess with intent to distribute a quantity of
25 Alprazolam. And PWID, this carries up to five --

1 Is that right?

2 MR. BOUTON: Yes, sir.

3 THE COURT: Five years, \$5,000.

4 Do you understand that?

5 DEFENDANT FALLIN: Yes.

6 THE COURT: Understanding the nature of the charges
7 against you and the maximum possible punishment, how do
8 you want to plead?

9 DEFENDANT FALLIN: Guilty.

10 THE COURT: [REDACTED] forced you in any way or
11 coerced you, threatened you, or promised you anything to
12 get you to enter that plea?

13 DEFENDANT FALLIN: No, sir.

14 THE COURT: Do you understand that you have an
15 absolute right to continue the trial that you're in where
16 you would be continued to be presumed innocent unless and
17 until the State could prove you guilty beyond any
18 reasonable doubt of each and every element of each offense
19 you're charged with?

20 DEFENDANT FALLIN: Yes, sir.

21 THE COURT: You'd have a right to continue to
22 confront and cross-examine the witnesses and the evidence
23 put up against. You'd have a right to compel in court all
24 competent and relevant evidence in your own defense or you
25 could remain silent. Your silence cannot be held against

1 you. And you can never be compelled to incriminate
2 yourself.

3 Do you understand all of those rights?

4 DEFENDANT FALLIN: Yes, sir.

5 THE COURT: And do you want to give all of those
6 rights up to enter this plea?

7 DEFENDANT FALLIN: Yes, sir.

8 THE COURT: Are you guilty?

9 DEFENDANT FALLIN: Yes.

10 THE COURT: Are you totally and completely satisfied
11 with your lawyer?

12 DEFENDANT FALLIN: Absolutely.

13 THE COURT: Do you have any complaints you want to
14 make against anybody with respect to how you've been
15 treated in this case?

16 DEFENDANT FALLIN: No, sir.

17 THE COURT: Have you had enough time to view all the
18 evidence?

19 DEFENDANT FALLIN: Yes.

20 THE COURT: Okay. I've heard -- is what you've heard
21 in the courtroom presented by the State so far true for --
22 substantially true and correct?

23 DEFENDANT FALLIN: Yes.

24 THE COURT: All right. And you knew about the
25 methamphetamine that has been marked for ID?

1 DEFENDANT FALLIN: Yes.

2 MR. SULLIVAN: Xanax.

3 THE COURT: And the Xanax as well?

4 DEFENDANT FALLIN: Yes.

5 THE COURT: Any other facts you need?

6 MR. BOUTON: Your Honor, just that Mr. Armstrong is
7 here to testify about the weight. What was in the
8 backpack was 55.58 grams. What was in the key chain was
9 .45 grams. And there were 45 Xanax pills.

10 THE COURT: Do you believe that's correct?

11 DEFENDANT FALLIN: Yes.

12 THE COURT: I'm going to accept the plea. I'm going
13 to defer sentencing and we'll --

14 Where do you want him to reside pending sentencing?

15 MR. BOUTON: Judge, can Mr. Sullivan and I approach
16 about that?

17 THE COURT: Yes.

18 (WHEREUPON, a bench conference was held.)

19 THE COURT: Before we -- Mr. Fallin, tell me just in
20 your own words what went on.

21 MR. SULLIVAN: Go back to when you told me about --
22 starting on Friday.

23 DEFENDANT FALLIN: On Friday, I went to James Babb's
24 house to hang out. He sent ~~Chris [redacted]~~ with his own
25 money to go rent a ~~hotel room~~. I went and dropped him off

1 at that location and went back to his house to work on a
2 computer that he had. I did errands on Saturday while,
3 also, staying at the house.

4 And then he called back on Saturday evening about
5 11:00, 12:00 and asked me to come back to the hotel. And
6 we stayed there and partied until the morning.

7 THE COURT: What do you mean you "partied"?

8 DEFENDANT FALLIN: Smoked methamphetamine, took GHB,
9 took Xanax.

10 THE COURT: Okay. And did you -- now, when you took
11 him to the motel on Friday, did you -- what did you take
12 him with?

13 DEFENDANT FALLIN: He had his own -- that black bag.
14 I didn't know what was in there at the time, but by
15 Sunday, I did know.

16 THE COURT: Well, when did you find out what was in
17 there?

18 DEFENDANT FALLIN: During the partying.

19 THE COURT: Who else was present?

20 DEFENDANT FALLIN: We were the only two that I know
21 of while I was there.

22 THE COURT: Okay. Why -- and he owns a house or has
23 a house here in Greenville?

24 DEFENDANT FALLIN: Yes.

25 THE COURT: Well, why would you take him to a motel?

1 DEFENDANT FALLIN: That's just what he wanted to do.

2 THE COURT: You don't know why?

3 DEFENDANT FALLIN: No.

4 THE COURT: Who's the name on that check?

5 MR. SULLIVAN: Babb.

6 THE COURT: No. Who wrote the check?

7 MR. SULLIVAN: Ingles [sic] from Greensboro, somebody
8 in North Carolina.

9 THE COURT: Do you know him?

10 DEFENDANT FALLIN: I have never heard of that person.

11 MR. SULLIVAN: Robert Ingles [sic], something like
12 that.

13 MR. BOUTON: Ensley.

14 THE COURT: You do not know him?

15 DEFENDANT FALLIN: No, I don't.

16 THE COURT: Did you cook methamphetamine with him?

17 DEFENDANT FALLIN: No.

18 THE COURT: What were the digital scales for?

19 DEFENDANT FALLIN: Selling, measuring.

20 THE COURT: Okay. So Mr. Babb was selling?

21 DEFENDANT FALLIN: Yes.

22 THE COURT: Did you assist him in that regard?

23 DEFENDANT FALLIN: No, sir.

24 THE COURT: Well, you facilitated him to do that; is
25 that right? You drove him to the motel?

1 DEFENDANT FALLIN: I dropped him off at the hotel,
2 yes.

3 THE COURT: Okay. And then when it was time to go,
4 you facilitated leaving with all the drugs and all the
5 other paraphernalia; is that correct?

6 DEFENDANT FALLIN: Yes, sir.

7 THE COURT: With respect to the two pipes that have
8 been entered into evidence, did you --

9 DEFENDANT FALLIN: Yes.

10 THE COURT: -- smoke out of those pipes?

11 DEFENDANT FALLIN: Out of one of them, yes.

12 THE COURT: All right. Any other questions you want
13 to ask, Mr. Solicitor?

14 MR. BOUTON: No, sir.

15 THE COURT: All right. Thank you.

16 We'll be back with you later.

17 MR. SULLIVAN: The only thing he told me is that
18 after Christine went and rented the room and he went back,
19 he never saw her again.

20 THE COURT: Is that correct?

21 DEFENDANT FALLIN: Yes. She just rented the room.
22 That was it.

23 THE COURT: Thank you very much.

24 Are we ready? Is everybody ready?

25 MS. ADAIR: Yes, sir.

1 THE COURT: Let's bring the jury in.

2 (WHEREUPON, the jury came into open court at
3 approximately 9:59 a.m.)

4 THE COURT: All right. Ladies and gentlemen, welcome
5 back.

6 Thank you for your patience once again.

7 We want to tell you that the case against Mr. Troy
8 Fallin has been resolved.

9 All right. The State may proceed.

10 MS. ADAIR: The State calls Kara Bennick.

11 THE CLERK: Ma'am, please, place your left hand on
12 the Bible and raise your right hand
13 WHEREUPON,

14 KARA BENNICK,
15 after first having been duly sworn, testified as follows:

16 THE CLERK: Thank you.

17 Please be seated.

18 Please state your full name for the record.

19 THE WITNESS: Kara Bennick.

20 DIRECT EXAMINATION

21 BY MS. ADAIR:

22 Q Ms. Bennick, where are you employed?

23 A The Greenville County Department of Public Safety,
24 the property and evidence section.

25 Q And how long have you been employed there?

1 A I've been employed by the county for 11 years.

2 Q What is your title?

3 A I'm the supervisor of the property and evidence
4 department.

5 Q And how long have you been in that capacity?

6 A Six years.

7 Q What, if any, training have you had that's assisted
8 you in the performance of your job?

9 A Besides being in the field for many years in
10 different areas of it, I, also, have completed many
11 courses, including the International Association of
12 Property and Evidence. I've completed 40 hours training
13 with them, as well as hosted conferences and classes for
14 them and with them throughout various states.

15 Q And can you just briefly explain for the jury what
16 your duties as property and evidence supervisor are?

17 A Besides administrative duties, I, also, take in and
18 receive evidence.

19 Q And so just sort of building on that, can you just
20 talk to the jury a little bit about what property and
21 evidence is?

22 A Property and evidence is the section that takes in
23 anything incoming from the officers from the road that
24 needs to be secured and held as evidence or property for
25 individuals.

1 Q And is it a secured facility?

2 A It is a secured facility.

3 Q Can you talk a little bit about those security
4 features?

5 A Yes. In addition to having key security, we, also,
6 have cameras, swipe locks, combination locks on a lot of
7 the items. Everything is under surveillance all the time.

8 Q Who has access to property and evidence?

9 A There are four individuals that have unlimited
10 access, and that is the four people who work in the
11 property room full-time.

12 Q And how does evidence come into your or a member of
13 your staff's possession?

14 A It can either come directly from the officer or it
15 can come in through the after-hours process.

16 Q Can you talk a little bit about that?

17 A During hours, the officers will come directly to the
18 counter and bring us the stuff. We'll inventory it with
19 them, package it up, and place it in a secured location.

20 After hours is a secured system that we have worked
21 out that the girls from the records office are trained,
22 they come down and they take the items from the officers
23 and they secure them in lockers. Or they can use a drop
24 box, which the officer can do directly. If an item is
25 small enough, it can go into a drop box in a secured

1 location.

2 Q Okay. When the records clerk takes the evidence, is
3 that called temporary storage?

4 A Yes. It's considered a temporary storage process.

5 Q And how was the evidence received in this case? I'll
6 let you look at these property and evidence sheets and see
7 them.

8 A All of the evidence in this case was taken in through
9 the temporary storage process.

10 Q And what do you do with the evidence once it is
11 received?

12 A Once a person, through the temporary storage process,
13 would receive it -- that means it's too large for the drop
14 box. So it's received by an individual from the records
15 department and placed into a locker or secured location
16 that it will fit into pending one of us coming in the
17 following day and picking it up and checking it in to a
18 permanent storage.

19 Q And if you look on those property and evidence
20 sheets, who placed all of these items into evidence?

21 A Delores Flores was the receiving clerk.

22 Q Was there an officer that, actually, physically
23 turned them into storage?

24 A Yes, Chris Reider.

25 Q Ms. Bennick, if you don't mind stepping down for one

1 second and taking a look at all these items on the table.
2 I just want to make sure that these items correspond with
3 the property and evidence sheets.

4 A Yes, they do.

5 Q Okay. Thank you.

6 You can have a seat.

7 And can you explain for the jury what the purpose of
8 a property report or a property and evidence sheet is?

9 A All items coming into the property area must be
10 accompanied by a report. And it gives detailed
11 information of what is contained and what they're
12 submitting. It gives us a description and amount of the
13 items, weight, or number of items.

14 Q And are these sheets always with the items that they
15 correspond with?

16 A Yes. This begins to establish a chain of custody.
17 And these reports will accompany this evidence wherever it
18 goes. Whomever touches it will have to sign for the
19 responsibility of the evidence.

20 Q Okay. Let's turn our attention back to those sheets.
21 Can you look, and do you recognize any signatures on those
22 sheets?

23 A Yes.

24 Q Okay. Whose names are on those?

25 A Delores Flores is the records clerk that took the

1 evidence in initially. Iva Bracken then received it from
2 the temporary storage area. She was -- at that point in
3 time, she was a property clerk. James Armstrong received
4 the evidence to go to the lab. Renee Pruitt signed the
5 evidence back in. She is, also, an evidence clerk. Chris
6 Reider, who has signed it out, and then Chris, who has
7 signed it back out again.

8 Q Okay. And let's just back up a little bit. Delores
9 Flores, did you mention that she was in records at that
10 time?

11 A Yes.

12 Q And so she took it in through temporary storage?

13 A Yes.

14 Q And what date did she receive the evidence?

15 A April 29th, 2007.

16 Q And did she make any notations on there about how the
17 evidence was packaged?

18 A Yes. She has signed it as receiving it sealed.

19 Q Okay. Can you briefly explain what that means?

20 A If evidence comes into the property room already
21 sealed up by the officer and cannot be inventoried item by
22 item, then we indicate that it was sealed upon receiving
23 it.

24 Q Okay. And are you familiar with all of those peoples
25 signatures?

1 A Yes.

2 Q When were the substances taken out to be analyzed?

3 A James signed them out on May 2nd, 2007.

4 Q And where were those drugs kept prior to
5 Mr. Armstrong taking them out?

6 A Once we check them in from temporary storage, we put
7 them in a staging location in the vault area, which is a
8 secure location for the drugs. And then James will come
9 and check them out from that staging area.

10 Q Had anyone checked those substances out prior to
11 James coming in and taking them out to be tested?

12 A No, ma'am.

13 Q And you've already stated that those -- everything
14 was sealed when you received it?

15 A Yes.

16 Q Okay. And how are you aware of that? Were there any
17 initials, or heat seals, or anything like that?

18 A Yes. When the clerk receives the items, if they're
19 sealed, she indicates so by -- if it's sealed up, it will
20 have the officer's name, initials, and the case number on
21 the inside seal.

22 Q Okay. And what would you have done if they had not
23 been sealed?

24 A It would have been staged and not accepted into
25 evidence. It would have been staged in a holding area

1 waiting for the officer to come back and make any
2 corrections necessary.

3 Q Did you have any other involvement in this case?

4 A No, ma'am.

5 Q And I'm showing you what's marked for identification
6 as State's Exhibit Nos. 19 through 23, I believe. Without
7 opening it and without telling us what it is, can you just
8 look through and make sure those correspond with the
9 property and evidence sheets as well?

10 A Yes, ma'am, they do.

11 MS. ADAIR: Okay. Thank you, Ms. Bennick.

12 I don't have any more questions. Answer any
13 questions Defense counsel may have.

14 CROSS-EXAMINATION

15 BY MR. WARDER:

16 Q Are there any other sheets that would show anything
17 else checked in except the items you have here in the
18 courtroom today?

19 A Other than the items that are here, I wouldn't have
20 knowledge if there's other items that were checked out
21 before today. Because I don't have a sheet.

22 Q So there could be other items that the officers took
23 down and checked in that are not here today?

24 A I suppose there could be.

25 Q Okay. And you didn't inventory the place to find the

1 sheets that were associated with this case and bring them
2 up here?

3 A No. I did check out the drugs to the investigator
4 this morning.

5 Q Okay.

6 A But that's the only --

7 Q And when you looked at the table -- those items on --

8 A I'm sorry. I thought it was off.

9 Q When you looked at the items on the table, those were
10 on the sheets that you have in front of you?

11 A Yes, sir.

12 Q Okay. And if there's more items that were taken in,
13 you don't know whether there are or not more items down
14 there?

15 A Not in this particular case, I do not, sir.

16 MR. WARDER: Thank you.

17 MS. ADAIR: Just briefly.

18 REDIRECT EXAMINATION

19 BY MS. ADAIR:

20 Q Kara, when Officer Reider came down to property and
21 evidence, did he request everything that was under these
22 two case numbers?

23 A Today, yes.

24 Q Okay. And did you provide him everything that
25 property and evidence had under those case numbers?

1 A Yes, ma'am. But I did not check out the original
2 evidence to him. So I checked out what today was taken
3 out.

4 Q Okay. But when he came down today, he asked for
5 everything under the case numbers and you gave all that to
6 him?

7 A That was remaining for today, yes.

8 MS. ADAIR: All right. Thank you.

9 THE COURT: Thank you, ma'am.

10 You can step down.

11 MS. ADAIR: The State calls James Armstrong.

12 THE CLERK: Sir, please, place your left hand on the
13 Bible and raise your right hand.

14 WHEREUPON,

15 JAMES WILLIAM ARMSTRONG,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you.

18 Please be seated.

19 Please state your full name for the record.

20 THE WITNESS: James William Armstrong.

21 DIRECT EXAMINATION

22 BY MS. ADAIR:

23 Q Mr. Armstrong, where are you employed?

24 A I'm employed with the Greenville County Department of
25 Public Safety in the forensic division crime laboratory.

1 Q And how long have you worked with Greenville County?

2 A I've been with Greenville County for 13 years and 10
3 months.

4 Q And what is your title with Greenville County?

5 A I'm a criminalist.

6 Q Okay. How long have you held that position?

7 A My length of time in Greenville is 13 years and 10
8 months.

9 Q And what training and education did you receive to
10 become a criminalist or a forensic chemist?

11 A I have a Bachelor of Science Degree in Chemistry from
12 Erskine College. I've trained in the area of drug
13 identification for approximately one year under the
14 direction of our lab supervisor. I've attended numerous
15 instrumental analysis schools concerning the instruments I
16 use in my analysis. I've attended forensic chemist
17 seminars sponsored by the Drug Enforcement Administration
18 in Washington, D.C. And I've testified in federal, state,
19 and local courts as an expert in the area of drug
20 identification no fewer than 122 times.

21 Q Do you still receive training on occasion?

22 A Yes, ma'am, I do.

23 Q And what tasks do you perform as a forensic chemist
24 with Greenville County?

25 A As a forensic chemist, I analyze suspected controlled

1 substances and report my findings.

2 Q Okay. And, in the past 13 years that you've been a
3 forensic chemist, how many cases have you analyzed
4 chemical substances?

5 A Thousands.

6 Q And in how many cases have you analyzed a chemical
7 substance that turned out to be methamphetamine?

8 A Thousands.

9 Q And how many cases have you analyzed a chemical
10 substance that turned out to be Alprazolam?

11 A Thousands.

12 Q And have you received training by the South Carolina
13 Law Enforcement Division to analyze chemical substances?

14 A I have not received training from the South Carolina
15 Law Enforcement to, actually, analyze substances. We do
16 our in-house training as well as through DEA.

17 Q Okay. DEA. And how many times have you testified in
18 court about the results of a chemical analysis that you
19 performed?

20 A 122.

21 Q Okay. And you've stated earlier that you've been
22 qualified as an expert in federal and state court?

23 A Yes, ma'am.

24 Q Okay. And how many times?

25 A 122 times.

1 Q Okay. So every time you've testified, you've been
2 qualified as an expert?

3 A Yes, ma'am.

4 MS. ADAIR: Your Honor, at this time, the State moves
5 to have Mr. Armstrong qualified as an expert in the field
6 of drug analysis.

7 THE COURT: Any voir dire?

8 MR. WARDER: No, Your Honor.

9 THE COURT: All right. Well, I'm going to qualify
10 him as an expert.

11 Okay. Go ahead.

12 BY MS. ADAIR:

13 Q Mr. Armstrong, were you asked to analyze several
14 chemical substances in this case?

15 A Yes, ma'am, I was.

16 Q Can you, please, break down for the jury the three
17 different types of chemical substances you were asked to
18 analyze?

19 A The first substance I was asked to analyze was a rock
20 substance. I, also, had some tablets I was asked to
21 analyze, as well as a liquid sample.

22 Q And how did you obtain the chemical substances that
23 you just mentioned?

24 A I received them in the property and evidence room,
25 which is in the basement of the law enforcement center.

1 Q And how do you check them out of property and
2 evidence?

3 A I go to property and evidence and ask them to bring a
4 box or specified items for me to sign out. I sign them
5 out by way of a property and evidence sheet to give
6 custody to make sure I have custody of the item. And I
7 take it back to my office for analysis.

8 Q And what date did you check out the chemical
9 substances in this case?

10 A On May 2nd, 2007.

11 Q Mr. Armstrong, if you don't mind taking a look in
12 that bag that's right there in front of you. And, please,
13 just examine them without specifying what they are and
14 make sure that they correspond with the property and
15 evidence sheet that's in front of you.

16 A Yes, ma'am.

17 Q Okay. Do you recognize those exhibits?

18 A Yes, ma'am, I do.

19 Q Okay. How are you able to recognize those?

20 A The outer bag, which all the items are sealed on the
21 inside, have my initials and the date where I sealed it.
22 I have a heat seal above and below my initials. So if it
23 had been tampered with, I could tell my initials had been
24 removed or, actually, cut off.

25 Q Okay. And are your initials on all of the items that

1 are in that bag?

2 A Yes, ma'am, they are.

3 Q Okay. And when you picked them up from property and
4 evidence, were they sealed when you received them?

5 A Yes, ma'am, they were.

6 Q Okay. And how were you aware of that? Did they have
7 someone else's name or initials?

8 A When I receive the item, if it is not properly
9 sealed, I'll make a notation on the property and evidence
10 form in red ink stating that the items were not properly
11 sealed at the time of analysis. And I, also, make a
12 notation on the bag where I seal it myself that the item
13 was not properly sealed at that time. And I do not see
14 any notation of that on the evidence.

15 Q Okay. What did you do with those items once you
16 checked them out?

17 A I went back to my office to perform my analysis.

18 Q And, after you performed your analysis, what did you
19 do with them?

20 A I generated a report. And the items were all sealed
21 and taken back to property and evidence.

22 Q And you stated earlier that you heat sealed them, and
23 signed your initials, and put the date on there?

24 A Yes, ma'am.

25 Q Okay. Can you look on that P&E sheet and tell me

1 what date you turned them back in to P&E?

2 A I gave them back to Ms. Renee Pruitt on May 3rd,
3 2007.

4 MS. ADAIR: Your Honor, I move for State's Exhibit
5 Nos. 19 through 23 to be admitted.

6 THE COURT: Any objection?

7 MR. WARDER: No, Your Honor.

8 THE COURT: Okay. They're admitted.

9 (WHEREUPON, State's Exhibit Nos. 19, 20, 21, 22, and
10 23 were admitted into evidence.)

11 BY MS. ADAIR:

12 Q Mr. Armstrong, if you want to go ahead and pull all
13 of those items out of the bag.

14 A (Witness complied.)

15 Q We'll start with State's Exhibit No. 19. I believe
16 that's the larger bag of white substance?

17 A Yes, ma'am.

18 Q How did you analyze this white rock-like substance
19 found in these three smaller plastic bags?

20 A When I received the item, once again, the very first
21 thing is to make sure the item is sealed. I opened the
22 bag, put my initials and the date where I opened it to
23 confirm that it was sealed at the time I received it.

24 And then I inventory what's there with three bags and
25 test each bag individually. I did one bag and, actually,

1 did an individual weight of the rock substance out of the
2 bag, record my weight. I do a chemical spot test to give
3 me an indication of what I may or may not have in the
4 case. And then I perform an instrumental analysis to get
5 confirmation on that substance.

6 Q I think I heard you say you weigh them without the
7 bag weight?

8 A Without the bag. It's just the rock substance.

9 Q And what did your analysis on this substance reveal
10 that white rock-like substance to be?

11 A I found that this item, which is labeled as item
12 CCR-1, is three bags containing a rock substance that I
13 found to contain methamphetamine with a weight of 55.58
14 grams.

15 Q And did -- let's look at State's Exhibit No. 20.

16 A Yes, ma'am.

17 Q Is that -- can you just describe what that is?

18 A Like a -- it looks like a little bottle on a key
19 chain that had some rock substance in it.

20 Q And what did your analysis determine those substances
21 to be?

22 A I found this to be a bottle containing a rock
23 substance, which is item CCR-2. I found it to contain
24 methamphetamine with a weight of 0.45 grams.

25 Q So the large bag was 55.8 grams and the smaller bag

1 was .45 grams?

2 A .55.58 --

3 Q 58 -- excuse me.

4 A And .45.

5 Q Let's look at State's Exhibit No. 21. Why did you
6 analyze those 45 blue tablets?

7 A By looking at the tablets, we have reference
8 information sponsored by either the FDA and DEA where
9 tablet manufacturers produce, basically, like a
10 fingerprint of their tablets, and they give us the numbers
11 and letters. And those are highly regulated by the FDA.
12 And we have a list of those tablets by their markings and
13 we indicate them.

14 So when I opened up this, I looked at all the tablets
15 and made sure they're all the same markings. Then I
16 looked that marking up on our reference page and found
17 that -- I indicated it to be Alprazolam.

18 Q Just looking at that bottle that the 45 blue tablets
19 were found in, is there any type of pharmacist label on
20 that bottle?

21 A No, ma'am, there's not.

22 Q It's just a plain blue bottle?

23 A Yes, ma'am.

24 Q And what is -- is Alprazolam a controlled substance?

25 A Yes, ma'am, it is.

1 Q What's a common name for Alprazolam?

2 A Alprazolam is the main drug name. The common brand
3 name is Xanax.

4 Q And let's look at State's Exhibit Nos. 22 and 23.

5 MR. WARDER: Your Honor, I would object to relevancy
6 as to the analysis of those.

7 THE COURT: Well, overruled. I'm going to let him.

8 BY MS. ADAIR:

9 Q What did your analysis reveal these substances to be?

10 A Well, State's Exhibit No. 22, which is my item number
11 CCR-4A, is a bottle with approximately 214 milliliters of
12 liquid. I found it to contain what is known as 1.4
13 Butanediol.

14 And item CCR-4B, which is State's Exhibit No. 23, is
15 a bottle with approximately eight milliliters of liquid.
16 I found it to, also, contain 1.4 Butanediol.

17 Q In your career as a forensic chemist, have you ever
18 analyzed a substance that turned out to be 1.4 Butanediol?

19 A Yes, ma'am, I have.

20 Q And have you ever analyzed substances that turned out
21 to be GHB?

22 A Yes, ma'am, I have.

23 Q Can you tell the Court -- or tell the jury what GHB is?

24 MR. WARDER: Objection to this, Your Honor. It's not
25 relevant.

1 MS. ADAIR: Judge, I think we can clear it up.

2 THE COURT: No.

3 You all come up here for a second.

4 (WHEREUPON, a bench conference was held.)

5 BY MS. ADAIR:

6 Q Mr. Armstrong, is 1.4 Butanediol a controlled
7 substance?

8 A No, ma'am, it's not.

9 Q Okay. And what is 1.4 Butanediol commonly used for?

10 A From what I've read and understood, the 1.4
11 Butanediol is commonly used as an industrial solvent.

12 Q Okay. Is it intended to be ingested into the body?

13 A I would not want to ingest it, no.

14 Q In your experience as a forensic chemist, have you
15 ever seen a substance before seized as GHB, but later
16 tested positive for 1.4 Butanediol?

17 MR. WARDER: I would object to that as relevant, Your
18 Honor.

19 THE COURT: She's talking about his former
20 experience. I'll overrule it.

21 THE WITNESS: Yes, ma'am, I have.

22 BY MS. ADAIR:

23 Q And is it your opinion that 1.4 Butanediol is a
24 common substitute for GHB?

25 A From what I've read through my studies, yes, ma'am.

1 MS. ADAIR: Thank you.

2 I don't have any further questions.

3 MR. WARDER: I continue my objection to this, Your
4 Honor.

5 THE COURT: All right. Same ruling.

6 MS. ADAIR: Please answer any questions that
7 Mr. Warder has.

8 THE COURT: All right. Cross.

9 MR. WARDER: I have no questions of this witness.

10 THE COURT: Thank you, sir.

11 You can step down.

12 MR. BOUTON: May we approach briefly?

13 THE COURT: Okay.

14 (WHEREUPON, a bench conference was held.)

15 THE COURT: Mr. Foreman, and, ladies and gentlemen of
16 the jury, we've got one of those little legal issues we
17 need to deal with. It will be a short break, 10 or 15
18 minutes. We'll be right back with you.

19 Thank you.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 10:25 a.m.)

22 THE COURT: We'll be at ease for about 10 minutes or
23 so.

24 (WHEREUPON, a break was taken.)

25 THE COURT: Are you all ready?

1 MR. WARDER: Yes, sir.

2 THE COURT: Bring the jury in, please.

3 (WHEREUPON, the jury came into open court at
4 approximately 10:49 a.m.)

5 THE COURT: All right. Mr. Bouton.

6 MR. BOUTON: The State calls Troy Fallin.

7 THE CLERK: Mr. Fallin, if you'll, please, come
8 around and place your left hand on the Bible and raise
9 your right hand.

10 WHEREUPON,

11 TROY DANIEL FALLIN,
12 after first having been duly sworn, testified as follows:

13 THE CLERK: Thank you.

14 Please be seated.

15 Sir, please, state your full name for the record.

16 THE WITNESS: Troy Daniel Fallin.

17 THE CLERK: Speak up.

18 THE WITNESS: Troy Daniel Fallin.

19 DIRECT EXAMINATION

20 BY MR. BOUTON:

21 Q Mr. Fallin, I'm going to ask you to speak up.

22 A Yes, sir.

23 Q I'm going to get right to it. Did you come in here
24 and plead guilty this morning?

25 A Yes, I did.

1 Q And what did you plead guilty to?

2 A Trafficking methamphetamine and possession with the
3 intent to distribute Xanax.

4 Q Okay. Let's get a little background from you. Where
5 do you live?

6 A Circle in Greer, South Carolina.

7 Q That's in Greenville County?

8 A Yes.

9 Q What do you do?

10 A As a hobby, I work on computers.

11 Q Do you do that for a job or anything?

12 A Not currently, no.

13 Q You've done that in the past?

14 A Yes.

15 Q All right. Do you know Mr. Babb?

16 A Yes, I do.

17 Q How do know him?

18 A I met him through a relative of his.

19 Q Okay. And what kind of relationship do y'all have?

20 A Drug related.

21 Q Okay. And what do you mean by that?

22 A He was a supplier and I bought from him and, also,
23 hung out with him and smoked.

24 Q I'm going to ask you to speak up a little bit more.

25 I don't think the jury can hear you.

1 You said he was your supplier?

2 A Yes. He was my supplier.

3 Q And you said something else after that?

4 A Oh, we, also, hung out and partied, smoked
5 methamphetamine together.

6 Q I'm going to take you back to April 29th, 2007.

7 A Okay.

8 Q What happened leading up to that day, that day when
9 you were arrested? Talk about that Friday.

10 A Friday, I went over to his house to work on a
11 computer that he did have. He sent Christie Freeman off
12 with money to buy or rent a hotel room. I dropped him off
13 at the hotel room and went back to his house to continue
14 working on the computer. I fell asleep that night and
15 then woke up the next day.

16 Q Real quick, I'm going to stop you. What hotel room
17 did you take him to?

18 A Econo Lodge, Room #130.

19 Q How did you take him there?

20 A I drove my car.

21 Q What kind of car do you have?

22 A A neon Saturn, four-door.

23 Q What color is it?

24 A Purple.

25 Q You took him Friday night to the hotel room?

1 A I dropped him off, yes.

2 Q And then you went back to his house?

3 A Yes.

4 Q What did you do Saturday?

5 A I ran some errands, went and took a shower at my
6 house. And then I went back to his house later that
7 evening.

8 Q And then what happened?

9 A He called and told me to come back to the hotel
10 around 11:00, 12:00 midnight.

11 Q Did you return to the hotel?

12 A Yes, I did.

13 Q And was anybody else present?

14 A No, just him.

15 Q What did y'all do that night?

16 A Partied at the hotel.

17 Q When you say "partied," you have to be more specific.
18 What did you do?

19 A Smoked methamphetamine, drank GHB, and took Xanax.

20 Q Is the GHB you drank in those baby bottles right
21 there?

22 A Yes, sir.

23 Q How did you smoke the methamphetamine?

24 A Out of the glass pipes that were in evidence.

25 Q There are two pipes in there. Do you have a

1 particular pipe?

2 A He probably had one and I had one, yes. We brought
3 our own.

4 Q Are those the pipes you're talking about?

5 A Yes, sir.

6 Q Whose backpack is this?

7 A That is James Babb's.

8 Q Have you seen it before?

9 A Yes, I have.

10 Q Was he carrying that Friday when you dropped him off?

11 A Correct.

12 Q Did you know what was in it that Friday?

13 A Not on the Friday, no.

14 Q What are these?

15 A Scales to measure and weigh.

16 Q Did you see these Saturday night?

17 A I had seen them before Friday, yes.

18 Q What are they?

19 A They're used for measuring and weighing.

20 Q Why do you measure and weigh drugs?

21 A For sales.

22 Q Okay. And who would sell them?

23 A I'm sorry?

24 Q Who would sell the drugs?

25 A James.

1 Q Have you bought methamphetamine from James before?

2 A Yes, I have.

3 Q So you get there Saturday night and y'all partied?

4 A Uh-huh.

5 Q Smoked methamphetamine?

6 A Correct.

7 Q Do you know where the methamphetamine came from?

8 A I've heard it came from Atlanta.

9 MR. WARDER: Objection to what he heard, Your Honor.

10 THE COURT: Okay. He can't testify to hearsay.

11 BY MR. BOUTON:

12 Q Did you see methamphetamine Saturday night in the
13 hotel room?

14 A Yes.

15 Q All right. What did y'all do -- how late did y'all
16 stay up Saturday night? What did y'all do? Continue on
17 to the next morning.

18 A We probably stayed up all night. And then Sunday
19 morning at around 7:00, I went to eat at my house with my
20 best friend and spent about an hour and a half. And then
21 I went back to the hotel room.

22 Q What time did you get back to the hotel?

23 A Around 9:00.

24 Q What was Mr. Babb doing?

25 A Just sitting in the hotel room, as far as I know.

1 Q What did y'all do for the next couple of hours?

2 A Just continued to smoke. And then around 11:00 was
3 when checkout was. He called and asked for a late
4 checkout for 12:00 noon.

5 Q Does Mr. Babb live in Greenville?

6 A Yes, he does.

7 Q Where is his house?

8 A Avenue, Greenville, South Carolina.

9 Q Do you know why he rented the hotel room?

10 A No, I don't.

11 Q So y'all left the hotel room at approximately what
12 time?

13 A I'd say it was just around 12:00.

14 Q Have you ever seen this check before?

15 A Not until today, no.

16 Q Okay. Do you know who put the methamphetamine in
17 that bag?

18 A Which bag?

19 Q The bag on the table.

20 A The black bag?

21 Q Yes, sir.

22 A He packed up his own stuff.

23 Q No one else was in the hotel room with y'all that
24 night or the next morning?

25 A No.

1 Q Did you drive to Atlanta to get the drugs?

2 A No, I didn't.

3 Q And when y'all got in the car to leave the hotel
4 room, you knew Mr. Babb had methamphetamine in his
5 possession; is that correct?

6 A Correct.

7 Q Mr. Fallin, were any promises made to you to come in
8 here and testify today?

9 A No, sir.

10 Q Why did you plead guilty this morning?

11 A Because of the evidence, I felt I was going to get
12 convicted anyway. I figured I would own up to what I had
13 done.

14 MR. BOUTON: Thank you, Mr. Fallin.

15 Please answer any questions Mr. Warder might have.

16 CROSS-EXAMINATION

17 BY MR. WARDER:

18 Q When you pled guilty, you were told you were facing
19 between seven to 25 years; is that right?

20 A That's correct.

21 MR. BOUTON: Judge, I object.

22 THE COURT: No. I'm going to allow it. I think it
23 might go to bias.

24 BY MR. WARDER:

25 Q And who is going to decide -- in your mind, who is

1 going to decide whether you get seven or 25?

2 A I would assume the Judge.

3 Q Okay. And have you been sentenced yet?

4 A No, I have not.

5 Q And when are they going to sentence you?

6 A I wasn't given a specific time.

7 Q Are they waiting until after you testify?

8 A I don't know.

9 Q Well, you know you haven't been sentenced?

10 A Correct.

11 Q Do you think that what you say may have some effect
12 on what the sentence is?

13 A I was just owning up to what I had done.

14 Q Well, do you think that what you -- or how you
15 testify is going to change what the sentence is?

16 A It ~~is very possible, I guess.~~

17 Q Okay. And do you think if you testify like they want
18 you to, the sentence will be more or less?

19 MR. BOUTON: Judge, I object.

20 THE COURT: You've -- I'm going to sustain it.
21 You've exhausted that line of questioning.

22 BY MR. WARDER:

23 Q Now, when you pled guilty to trafficking, you
24 admitted that had you trafficked all of that amount over
25 there, didn't you?

1 A Yes.

2 Q And you did traffic all that amount? No question you
3 had it in your bag and carried it out to the car?

4 A It wasn't my bag, no. I didn't carry it to the car
5 either.

6 Q So the deputy didn't see you put that black bag in
7 the car?

8 A [REDACTED]

9 Q That is not true?

10 A No, it wasn't.

11 Q And so when the testimony was that you took it and
12 you put it in the back seat and the deputy was a few feet
13 away and saw you, that was untrue?

14 A There were multiple bags that were placed in the car.
15 I had three -- well, two and a tote by myself.

16 Q You didn't take --

17 A I did not take that bag to the car, no.

18 Q The black and brown Eddie Bauer bag?

19 A No.

20 Q Okay. And how many trips did you make to the car?

21 A At least, two.

22 Q And Mr. Babb never went out to the car once, did he?

23 A To get in it with his stuff, yes.

24 Q Okay. And you said to get in with what?

25 A With his possessions, yes, his bag.

1 Q Your testimony is that he carried that out instead of
2 the churn?

3 A There was no churn. I haven't figured out what that
4 is. There was no churn whatsoever. I don't know what
5 they're talking about.

6 Q Well, that detective said he was standing that close
7 to you and he saw a churn come out with Mr. Babb carrying
8 it?

9 A There wasn't any type of ice cream maker in my car.

10 Q Your attorney asked if it was one of those crank
11 churns and the deputy said, yes?

12 A I don't know why.

13 Q Did you see anything with a crank on top?

14 A No, sir.

15 Q Now, did you stay at Mr. Babb's house the night
16 before this?

17 A Friday evening, Saturday, yes.

18 Q Okay. And Mr. Babb wasn't there?

19 A No, he wasn't.

20 Q And you had in your possession in the bag this check
21 Saturday morning, didn't you?

22 A No. The bag was with him at the hotel room Saturday
23 morning. I've never seen that check before this trial.

24 Q You didn't pick the check up over at the house when
25 you were there alone and put it in your bag?

- 1 A No, sir.
- 2 Q Now, why were you over at his house alone?
- 3 A Working on the computer.
- 4 Q When you say "working," are you employed?
- 5 A No.
- 6 Q Pardon?
- 7 A No, I'm not.
- 8 Q And does it take money to use drugs, to buy drugs?
- 9 A Yes, it does.
- 10 Q And I take it when you didn't have a job and you
- 11 needed money, you sold drugs?
- 12 A No, I didn't.
- 13 Q That's not your scale that you used to sell drugs?
- 14 A No, sir, it's not.
- 15 Q These aren't your bags that you bagged it up in?
- 16 A No, sir, they are not.
- 17 Q And you said you did smoke it out of one of these
- 18 pipes?
- 19 A That's correct.
- 20 Q Did you keep it in your Guess box?
- 21 A No, sir.
- 22 Q Mr. Babb was -- you say spent the night alone there
- 23 before in the hotel?
- 24 A I have no idea if he spent the night alone Friday
- 25 evening, no. I have no idea if he did or not.

1 Q Do you know whether -- who was at the house when you
2 were over there?

3 A Nobody, as far as I know.

4 Q You were there alone in the house?

5 A I was upstairs on the second floor.

6 Q Do you have a key to the house?

7 A He let me have one at that time. I gave it back to
8 him when I went to meet him.

9 Q How long did you have a key to his house?

10 A A few hours.

11 Q Okay. Did you have the complete run of the house?

12 A Yes. But I stayed upstairs.

13 Q The car that the officers told us that the tip said
14 would be at the motel was your car, wasn't it?

15 A Yes, sir.

16 Q And your car was at the motel?

17 A That's correct.

18 Q You pled guilty to having the pills, too, didn't you?

19 A That's correct.

20 Q Okay. Had you taken the pills that day, too?

21 A Two of them, I believe.

22 Q Pardon?

23 A Two of them, I believe, that morning.

24 Q Okay. And you said you were smoking crack the
25 morning that you left the motel?

1 A Methamphetamine, yes.

2 Q Methamphetamine?

3 A Yes.

4 Q When you smoke methamphetamine, what's that do to
5 you?

6 A It just gives you energy, speed.

7 Q Does it change your memory or anything like that?

8 A Not to my knowledge, no.

9 Q Pardon?

10 A Not to my knowledge, no.

11 Q Does it distort your vision, like alcohol with a
12 drunk?

13 A No, sir.

14 Q Does it distort your memory?

15 A No, sir.

16 Q Is it a pleasurable experience?

17 A It just keeps you awake and gives you energy. That's
18 my experience.

19 Q Okay. And you smoked it just to get energy, not to
20 get high or anything like that?

21 A To get high, yes.

22 Q When you say you get high, then do you get
23 intoxicated high?

24 A No.

25 Q What kind of high do you get?

1 A I don't know how to explain it any further.

2 Q You haven't used methamphetamine enough to know what
3 the effect of it is. Is that what you're saying?

4 A I was addicted for about two years, yes.

5 Q You smoked it for two years?

6 A Yes.

7 Q Okay. Have you worked for two years?

8 A No.

9 Q When is the last time you really had a job, I mean,
10 public employment, if ever?

11 A November of '06.

12 Q Okay. And, of course, this arrest happened in April
13 of '07?

14 A That's correct.

15 Q You were living on your own; is that right?

16 A I was with my parents, yes.

17 MR. WARDER: Thank you.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20 BY MR. BOUTON:

21 Q Did Mr. Babb give you dope for fixing his computer?

22 A No. I did it just for fun.

23 Q Your testimony is that when you dropped Mr. Babb off
24 at the hotel, he got out of your car with that bag?

25 A That's correct.

1 Q All right. He had that bag with him the entire time?

2 MR. WARDER: Objection. He's leading.

3 THE WITNESS: That's correct.

4 THE COURT: Don't lead.

5 BY MR. BOUTON:

6 Q When you got back to the hotel on Saturday, was the
7 bag in the hotel room?

8 A Yes, sir.

9 Q When talking with your attorney, did he explain to
10 you the definition of trafficking?

11 A I don't believe so, no.

12 MR. WARDER: Objection to what his attorney
13 explained.

14 THE COURT: Well, it's his privilege. If he wants to
15 claim it, he can claim the attorney-client. It's up to
16 the client to claim it.

17 You can answer the question.

18 THE WITNESS: Okay. I mean, as far as I know, it's
19 just carrying it or driving it on the road, that's
20 trafficking.

21 BY MR. BOUTON:

22 Q So you understand by driving Mr. Babb with the dope,
23 you're guilty of the trafficking?

24 A That's correct.

25 MR. BOUTON: Thank you.

1 THE COURT: Anything else?

2 MR. WARDER: No, Your Honor.

3 THE COURT: Okay. You can stand down.

4 Call your next witness.

5 MR. BOUTON: Your Honor, the State rests.

6 THE COURT: Let me see the lawyers up here for a
7 second.

8 (WHEREUPON, a bench conference was held.)

9 THE COURT: All right. Ladies and gentlemen, again,
10 I have a legal issue that I need to deal with. This will
11 be short and sweet.

12 Please don't discuss the case. We'll be right back
13 with you.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 11:10 a.m.)

16 MOTIONS

17 THE COURT: Okay. We just had a bench conference.
18 Mr. Warder made his motions for directed verdict. I
19 denied them.

20 Anything else you want to put on the record with
21 respect to that, Mr. Warder?

22 MR. WARDER: I don't think I have to, but I want to
23 renew my motion for a mistrial.

24 THE COURT: Okay. And I, again, refer to the cases I
25 cited yesterday.

1 MR. WARDER: Yes, sir.

2 THE COURT: Mr. Babb, could you stand up for me,
3 please, and raise your right hand?

4 WHEREUPON,

5 JAMES MELVIN BABB,
6 after first having been duly sworn, testified as follows:

7 THE COURT: Mr. Babb, you have an absolute right to
8 testify in this case in your own defense. You have an
9 equal absolute right not to testify. And if you do not
10 testify, it cannot be held against you. And I will give a
11 strong charge to the jury, if you so desire, explaining
12 that to them.

13 There are a number of strategical issues involved
14 with whether or not you do testify. And I -- that's a
15 decision that you and your attorney have to make. No one
16 else can have input into that. But this has to be your
17 decision. And it's got to be freely and voluntarily made
18 with full knowledge of what your rights are.

19 Do you think that you understand what your rights are
20 with respect to testimony?

21 DEFENDANT BABB: I do.

22 THE COURT: And have you made a decision about
23 whether you want to testify?

24 MR. WARDER: Your Honor, in that regard, there would
25 be a motion on prior record impeachment that my client

1 would need to know probably to make a decision. In other
2 words --

3 THE COURT: Well, let's explore that.

4 What is it? What's his prior record?

5 MR. BOUTON: Judge, Mr. Babb has a conviction of PWID
6 methamphetamine on February 14th, 2006. It was a first
7 offense. He, also, has a possession of a controlled
8 substance schedule I to IV. That was, also, on the same
9 date, February 14th, 2006. I believe that is the extent
10 of his record.

11 THE COURT: Okay.

12 MR. WARDER: Your Honor?

13 THE COURT: What do you need to know? Do you need a
14 few minutes to discuss it with him?

15 MR. WARDER: Well, Your Honor, I would move, of
16 course, to not allow those convictions in because they're
17 prejudicial.

18 THE COURT: Well, they are very prejudicial.

19 MR. WARDER: And it exceeds any probative value. And
20 I think it would be unfair to let those convictions in.
21 So I would move to not allow that evidence.

22 THE COURT: Mr. Bouton, he doesn't want -- he wants
23 me to not allow you to impeach him with his prior
24 record.

25 MR. BOUTON: Yes, sir.

1 Your Honor, I think -- I mean, at the point of the
2 trial where we're at now, the issue is knowledge. And the
3 fact that he had nothing to do with methamphetamine, I
4 think it's probative.

5 THE COURT: Yes.

6 It's probative. But I tell you, the similarity
7 between the offenses is so acute that to name the offense
8 would be too prejudicial. I will allow you to establish
9 that he has prior convictions for felonies.

10 MR. BOUTON: Yes, sir.

11 THE COURT: Are they both felonies?

12 MR. BOUTON: I don't think the controlled substance
13 is, Judge.

14 THE COURT: But it's imprisonment for only six
15 months; right?

16 MR. BOUTON: Yes, sir.

17 THE COURT: Is that right?

18 No. It's possession with intent. Isn't that what
19 you told me?

20 MR. BOUTON: I believe looking at the sentencing
21 sheet, it's -- I believe he pled to just possession of a
22 controlled substance, Judge.

23 THE COURT: What was the sentence on that?

24 MR. BOUTON: Nine months HIP, suspended to six months
25 probation.

1 THE COURT: How could he have gotten that on a
2 possession? That's a six-month offense.

3 MR. BOUTON: Zero to one, Judge.

4 THE COURT: That's a one -year offense?

5 (There was no response.)

6 THE COURT: Check the CDR code.

7 MR. BOUTON: Yes, 0179.

8 Judge, it's indicted as possession of a controlled
9 substance.

10 THE COURT: You can't impeach him with it then.

11 MR. BOUTON: Yes, sir.

12 THE COURT: You can impeach him with the other one.
13 He's got a prior conviction for felony, the date and all
14 that is fine.

15 MR. BOUTON: Okay.

16 THE COURT: Why don't we give you five minutes to
17 discuss it with him. And we'll come back and crank it up
18 at 11:30.

19 (WHEREUPON, a break was taken.)

20 THE COURT: Okay. Have you made a decision?

21 DEFENDANT BABB: Yes, sir.

22 THE COURT: Do you know what you're going to do?

23 MR. WARDER: Yes, sir.

24 My client is going to take the stand, sir.

25 THE COURT: Okay. Let's bring the jury in.

1 (WHEREUPON, the jury came into open court at
2 approximately 11:31 a.m.)

3 THE COURT: Mr. Warder.

4 MR. WARDER: Your Honor, if it please the Court, we
5 would call James Babb, the Defendant.

6 THE COURT: Come around and be sworn.

7 THE CLERK: Mr. Babb, sir, if you'll, please, place
8 your left hand on the Bible and raise your right hand.

9 WHEREUPON,

10 JAMES MELVIN BABB,
11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you.

13 Please be seated.

14 Please state your full name for the record.

15 THE WITNESS: James Melvin Babb.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. WARDER:

19 Q Mr. Babb, where do you live at, sir?

20 A At in Greenville, South Carolina.

21 Q Okay. And whose house is that?

22 A It's my mom's.

23 Q Okay. Does your mom live with you?

24 A No, sir.

25 Q Okay. And does anyone live with you at that house?

1 A Yes, sir.

2 Q Who's that?

3 A Christie Freeman.

4 Q Okay. And what's the relationship with Ms. Freeman?

5 A She and I are really good friends. We've known each
6 other for quite a while now, so.

7 Q Are you romantically involved with her?

8 A No, not at all.

9 Q And, in April of 2007, who lived at that house with
10 you?

11 A Myself and Grant Forrester.

12 Q And who's that?

13 A That's just another friend of mine that -- I met
14 Christie through him, actually, so.

15 Q Now, on the night of the 28th and 29th, can you tell
16 us about that weekend?

17 A Sure.

18 Q Okay. What happened as far as who was there and what
19 the arrangements were?

20 A Okay. Christie was coming up for the weekend to help
21 me out with some stuff around the house. She does that a
22 lot for me, just some cleaning and straightening up. She
23 was thinking about moving in. She had gotten a hotel room
24 for herself as a refuge. And Friday night with the hotel
25 room, she didn't stay at the hotel. No one did.

1 Q Okay. Now, you said she got a hotel room?

2 A Yes.

3 Q Where had she got a hotel room at?

4 A That was at the Econo Lodge.

5 Q And was that Room #130 at the Econo Lodge?

6 A Yes, sir.

7 Q And that would have been Friday night?

8 A Yes, sir.

9 Q Okay. Did she live here?

10 A No, not at the time. She does now.

11 Q Okay. At that time, where did she live?

12 A She was in Laurens, South Carolina.

13 Q She had came up and got a room at the Econo Lodge?

14 A Yes, sir.

15 Q Okay. And who stayed in that room on that Friday
16 night?

17 A No one stayed Friday night. She just ended up
18 staying at the house.

19 Q Ms. Freeman stayed at the house?

20 A Yes, sir.

21 Q And what happened on Saturday?

22 A On Saturday, I was talking about I wish I could get
23 away for a minute. And she said, well, why don't I stay
24 here and keep cleaning, and you can take my room since I
25 already have it. So I said, great, thanks. So I took it.

1 Q Okay. So she stayed at your house?

2 A Yes, sir.

3 Q And you went to the Econo Lodge?

4 A Yes, sir.

5 Q What time did you go to the Econo Lodge?

6 A I think it was right around 4:00 or 5:00.

7 Q In the afternoon?

8 A Yes, sir.

9 Q Okay. And what did you do that night?

10 A I just wanted to relax. That's what I did. I
11 ordered pizza. I chilled. That was it, so.

12 Q Now, what did you take with you to the Econo Lodge?

13 A Actually, I didn't take anything. I went next door
14 to a store called T.J. Maxx. And I bought a shirt and
15 some toiletries from there, and that was it. Because I
16 wanted to relax and get away. That's all I had with me.

17 Q And that was in a T.J. Maxx bag?

18 A Yes, sir.

19 Q Now, there's been some testimony that you took the
20 Eddie Bauer bag the deputies saw Mr. Fallin take to the
21 car. Did you take this with you?

22 A No, sir.

23 Q On Friday night, was that bag in the room with you?

24 A On Friday night, I wasn't even in the room on Friday
25 night.

1 Q I'm sorry. On Saturday night, was that bag with you?

2 A No, sir.

3 Q Are you familiar with that bag? Have you seen it
4 before?

5 A I have seen it before, yes.

6 Q How many times have you seen it?

7 A A few, maybe under five.

8 Q Okay. And, on those occasions, that under five that
9 you saw it, who had it?

10 A Troy.

11 Q Troy Fallin?

12 A Yes, sir.

13 Q And what was he doing with it?

14 A He always had a bag. He always had one or two even.
15 I don't know what he did with them. I know he kept a lot
16 of computer stuff, and books, and things in them. But I
17 don't know exactly what was in his bags. He never
18 traveled lightly, though.

19 Q Tell us about Troy Fallin. How did you know him?

20 A I met him through a relative of mine. And I found
21 out that he could fix computers and stuff. And I had
22 three computers. And there was always something wrong
23 with them. So he just kind of stepped up to the plate and
24 was doing that for me.

25 Q Okay. He would work on your computers?

1 A Yes, sir.

2 Q Okay. And, on this particular weekend, when did you
3 get in touch -- or how did you get in touch -- or how did
4 you two meet up?

5 A I had seen Troy on Friday as well. He was at my
6 house working on a computer. And then when I went to the
7 hotel room on Saturday night, he stayed at my house. I
8 told him he could continue to stay and keep working on it.
9 I gave him a key temporarily for that time being so he
10 could keep working on my computer while I went over there
11 just to get away.

12 Q Okay. So that night when you went to the motel, Troy
13 and Ms. Freeman would have been at the house?

14 A Yes, sir, I believe so.

15 Q And what is the next time you saw either one of them?

16 A I saw Christie when I got out of jail after being
17 arrested for this. And I saw Troy when he came to pick me
18 up to bring me home. It was about 3:00 or 4:00 in the
19 morning on Saturday night, which was then Sunday morning.
20 Because I woke up. I was hungry and asked him if he
21 wanted to come over, I would buy breakfast if he did. And
22 he said, yes.

23 Q Did he contact you or did you contact him at 3:00
24 a.m.?

25 A I contacted him.

1 Q Okay. And how long was it before he showed up?

2 A Maybe 10 minutes.

3 Q Okay. And then what happened?

4 A I gave him money to go get some food. He went and
5 got it. He came back, we ate. He was on his phone
6 texting after that. And then he said he was going to go
7 meet a friend at IHOP and have breakfast. But we just had
8 breakfast. So I didn't understand that.

9 Q When he came to the room to get the food, did he
10 bring the bag with him?

11 A I do believe so, yes. He had one or two bags with
12 him, so that had to be one of them. I think that's the
13 one he, actually, had my laptop in that he was working on
14 for me.

15 Q When he went to get the food, did he take the bag
16 with him?

17 A He took all of his bags with him.

18 Q So he came to the room and stayed a short time and
19 then left again with the --

20 A Yes, sir.

21 Q How long was it before he came back with the food?

22 A Well, probably just 30 minutes for me and him, that
23 food. And then when he left again, it was a few hours
24 before he came back.

25 Q Okay. You two ate together?

1 A Yes, sir.

2 Q And that would have been around what time in the
3 morning?

4 A I would say anywhere between 3:00 and 4:00 probably.

5 Q And when you were done eating, then he left again?

6 A Shortly after, yes.

7 Q Okay. When he left at 3:00 or 4:00 in the morning,
8 did he take the bags with him?

9 A He always takes his bags everywhere he goes. He took
10 all the bags again.

11 Q Okay. And what's the next time that you saw Troy?

12 A When he came back to the room from meeting his friend
13 at IHOP. And I was still kind of half asleep. And I had
14 given him a key to the room as well. I said, here, I
15 won't have to get up and open the door for you if you take
16 this key.

17 So he took the key. And he woke me up when he came
18 in. And I guess that was probably around -- anywhere from
19 9:00 to 9:30.

20 Q So if he left at 4:00 or 5:00, then you would have
21 saw him four hours later?

22 A Yes, sir.

23 Q Okay. And what happened when he came back in the
24 room four hours later?

25 A He was telling me about the food he ate at IHOP, how

1 good it was. He asked me if he could take a shower before
2 we left. And I said, yes.

3 Q He took a shower then?

4 A Yes, sir.

5 Q Okay. And what happened after that?

6 A After that, we just left the room, basically. He put
7 his things in the car. And then when he was done, I
8 turned off the TV and picked up any trash or anything left
9 around the room. And then I went to the car and got in
10 and we left.

11 Q And the black bag that the deputy saw him take to the
12 car, did he take that to the car?

13 A Yes, sir.

14 Q And all the stuff that's on the table, did you see
15 that stuff that night?

16 A No, sir, I did not.

17 Q Okay. And had you handled that stuff?

18 A No, sir. And if they had fingerprinted any of it,
19 they would have found that to be true. I had not seen or
20 touched any of that.

21 Q Okay. Was -- Troy testified to smoking crack -- I
22 mean, smoking methamphetamine. Did you see him smoke
23 methamphetamine that night?

24 A No, sir, I did not.

25 Q Okay.

1 A But he did take a very long shower. So -- and he did
2 take the bag into the bathroom with him. I don't know if
3 that's what he was doing, but that's what I did observe.

4 Q Okay. Did you smoke any methamphetamine that night?

5 A No, sir, I did not.

6 Q What then happened?

7 A That's when we left. And then we were pulled over.
8 And they were talking about a seatbelt violation. And I
9 was sitting in the passenger seat eating cookies. Because
10 I wasn't nervous at all. I didn't think I had a reason to
11 be. And the next thing I know, they're asking me to get
12 out of the car. And shortly after, they handcuffed us.
13 And when we got to the detention center, I later asked the
14 officers there, I said, can you, please, give me a drug
15 test so that I can prove that I have not done that.

16 Q Would they do that?

17 A I don't know if they do it or not. I asked if they
18 would and they would not.

19 Q And Troy told them that he had GHB in these. Did you
20 know anything about the GHB he had, if he had it?

21 A No, sir.

22 Q I think the analysis was something else, but have you
23 seen these before?

24 A What is it?

25 Q They look like bottles with white caps on them?

1 A No, sir, I have not.

2 Q Had you seen the scales and that stuff before?

3 A No, sir. I've seen scales before, but not those in
4 particular, no.

5 Q Okay. Did you know what Troy did for a living?

6 A He didn't do anything as far as like job-wise, you
7 know. I did know he dealt sometimes with selling some
8 drugs here and there.

9 Q Okay. When you said that he dealt drugs, did you
10 have occasion to see him make trips and --

11 A I've heard him talk about it. I've noticed him
12 several times texting a lot on his phone and then leaving
13 and coming back, short trips. So I assumed that's
14 probably what might be going on. But I can't prove that.

15 Q Okay. Did you in any way have anything to do with
16 the drugs on that table over there?

17 A No, sir, I did not.

18 Q Okay. And had you seen -- the items in the bag --
19 I'm sorry. The items in this bag that have been
20 identified as methamphetamine, had you seen those before?

21 A Not until just now, no. And then the photos you
22 showed me of the evidence, but, no.

23 Q Okay. This is the first time you saw them was in the
24 courtroom here?

25 A Yes, when you showed me the photos.

1 MR. WARDER: Thank you.

2 Answer any questions the Solicitor might have.

3 THE WITNESS: Sure.

4 CROSS-EXAMINATION

5 BY MR. BOUTON:

6 Q Mr. Babb, you said you know Troy Fallin sold drugs?

7 A I suspected, yes.

8 Q You suspected or you know?

9 A Well, I can't prove it, but I had been told that, you
10 know.

11 Q Who told you that?

12 A Several people had told me that and -- you know.

13 Q Now, I just want to go back over a few things and
14 make sure I'm clear.

15 A Okay.

16 Q This Christine, you said she lived in Laurens; right?

17 A Yes, sir.

18 Q She lives with you now?

19 A She lives with me now, yes.

20 Q So she was coming up to move in with you around this
21 weekend; is that correct?

22 A Not at that moment, no. She was coming up to help me
23 straighten up some things at my own home. She wasn't
24 coming to move in until later. But she did, finally, move
25 in.

1 Q But y'all didn't have a romantic --

2 A No, sir, not at all.

3 Q Y'all were just friends?

4 A Yes, sir.

5 Q So she came up for the weekend to help you clean up?

6 A Yes, sir.

7 Q What exactly were y'all doing?

8 A What were we doing? She was helping me straighten up
9 some stuff, box up some things I wanted to throw away.
10 There was a lot of clutter I wanted to get rid of. I'm
11 not the best housekeeper in the world, but she is a great
12 aid for that sometimes.

13 Q Was she going to pay you rent?

14 A Yes, she was.

15 Q So she came up to help you clean up and you decided
16 you needed a break?

17 A Yes, sir.

18 Q So you send her to rent a room at a hotel?

19 A The room was for her. That's where she was going to
20 stay while she was up for the weekend. She was not going
21 to stay at my house overnight.

22 Q When did she go to rent the hotel? What time?

23 A Shortly after she got to town on Friday. I don't
24 know, probably maybe -- if I had to say, I would recall
25 between 1:00 and 3:00, or 4:00, somewhere in there.

1 Q How much does a room cost at the Econo Lodge?

2 A I do not recall, sir. It's not very expensive, I'm
3 sure.

4 Q Yeah. I'm not really familiar. Is it a nice hotel?

5 A It's clean.

6 Q It's clean?

7 A Yeah.

8 Q Simple?

9 A Simple, yes.

10 Q Is it a motel?

11 A I don't know if they call themselves a motel or a
12 hotel. I don't know.

13 Q So she comes on Friday. How did she get there?

14 A To the hotel?

15 Q Yeah.

16 A She drove her car.

17 Q So she drove up from Laurens. Do you have a car?

18 A Currently, no.

19 Q Did you have one back in April of 2007?

20 A Yes, I did.

21 Q What kind of car?

22 A It's a Mercury Sable, 1996. But I was not driving it
23 then. I had already turned the tag in on it.

24 Q Okay. She went and rented the room. She came up to
25 help you for the weekend; right?

1 A Yes, sir.

2 Q Did you give her a key to the house?

3 A She already had a key. I had given her a key before.

4 Q And she decided she was going to help clean up your
5 house. And, at some point, y'all had a discussion and she
6 said, I'm not going to stay at the hotel. I'm going to
7 stay here. And you decide, well, I'm going to use your
8 hotel; is that correct?

9 A Actually, what had happened was I had made a comment
10 about wanting to get away and it would be nice to. And
11 she said, Well, why don't you take the room and I'll stay
12 here and keep cleaning. And she said, That way, you can
13 get away. And I said, Okay, great. Thank you.

14 Q And these motels aren't -- I mean, you don't have to
15 pay in advance, do you? You just pay when you check out;
16 right?

17 A You pay in advance in any hotel, I think, to check
18 in.

19 Q You don't settle your bill then when you check out?

20 A I don't think so, no.

21 Q So you decide to go to the Econo Lodge to get away?

22 A Yes, sir.

23 Q And you call Mr. Fallin to come pick you up to take
24 you to the Econo Lodge; is that right?

25 A No, sir, it's not. He said he took me to the Econo

1 Lodge, but that's incorrect. He did not drop me off
2 there.

3 Q Who -- you just called him to come pick you up?

4 A Yes, sir, to bring me home again and to get some
5 food.

6 Q At 3:00 a.m.?

7 A Yes. Well, I wasn't going home at 3:00 a.m. At 3:00
8 a.m., I woke up. I was hungry. I called him to see if he
9 was awake and told him I would buy him breakfast if he
10 would come.

11 Q How did you -- did you go to the front desk to get a
12 key to the room when you got there?

13 A No. I got the key from Ms. Freeman.

14 Q Was it a regular key, a slide key?

15 A One of those card keys.

16 Q So she drove and dropped you off on Saturday?

17 A To the hotel?

18 Q Yeah.

19 A No. Actually, another friend of mine dropped me off
20 at the hotel. His name is Tommy. He just gave me a ride
21 there.

22 Q Did you call Tommy to come take you to the hotel?

23 A He was already at my house at the time, too.

24 Q When did Mr. Fallin show up at your house on
25 Saturday?

1 A He was already at the house as of Friday.

2 Q So you have Mr. Fallin, Tommy, Christine, and Grant
3 Forrester?

4 A I don't recall if Grant was there or not. But Tommy
5 had just gotten there right before I asked him to take me
6 to the hotel.

7 Q So everybody is at your house. How many bedrooms is
8 your house?

9 A It's, actually, a five-bedroom house.

10 Q A five-bedroom house?

11 A Yes.

12 Q How far away is it from the Econo Lodge?

13 A Maybe five minutes.

14 Q Okay. So Tommy takes you to the hotel at what time?

15 A It was probably around 3:00 or 4:00 in the afternoon,
16 I'm guessing, maybe as late as 5:00. I don't recall for
17 sure.

18 Q You have all these people at your house, why did you
19 want to get away?

20 A Because I just wanted some quiet time.

21 Q Had you had a stressful week?

22 A Pretty much so, yes.

23 Q What were you doing? What was your job? What were
24 you doing that week?

25 A Well, what stressed me out that week is my roommate

1 and I weren't exactly getting along. We were having a
2 rough week, and that's all. I just wanted to get away for
3 a minute where it was quiet.

4 Q Who was your roommate?

5 A That was Grant Forrester.

6 Q Where did he go? He wasn't there that weekend?

7 A I don't know what he did that weekend. I think he
8 was there in and out, possibly. But I think he was
9 feeling the same way I was. We were just not getting
10 along, so.

11 Q Well, if you're having a stressful situation with a
12 roommate and the roommate left, why do you need to leave?

13 A He didn't leave permanently. He was just gone for a
14 second or so. I just wanted to get away so I could get
15 away and get some quiet time.

16 Q So he was there Saturday?

17 A He was in and out Saturday. But I don't recall if he
18 was there at the time when you asked me if he was there.

19 Q Okay. And who, out of the five, took you to the
20 hotel again?

21 A Tommy.

22 Q Tommy. Troy stays at your house and he's fixing your
23 computer?

24 A Yes, sir.

25 Q And I'm sorry. I think I asked you earlier. Were

1 you working at this point?

2 A Yes, I was.

3 Q Where were you working?

4 A I do contract painting.

5 Q Contract painting. What does that mean?

6 A I do like faux finishing, and specialty painting, and
7 stuff.

8 Q You just go to certain sites, wherever the work is?

9 A Mostly word of mouth.

10 Q Outdoor, indoor?

11 A Both.

12 Q Both. So I assume normal business hours are 9:00 to
13 5:00?

14 A Right. Monday through Saturday or Monday through
15 Friday, yes.

16 Q Okay. So you wanted to get away on Saturday, and you
17 go to the Econo Lodge?

18 A Yes, sir.

19 Q What time again?

20 A Anywhere between, you know, 2:00, 3:00, 4:00 maybe as
21 late as 5:00, but I don't think so.

22 Q And what did you do when you got there?

23 A I just ordered a pizza, watched TV, and fell asleep.

24 Q All right. You ordered a pizza by yourself?

25 A Yes, sir.

1 Q But you woke up at 3:00 a.m.; is that right?

2 A Yes. Around that time, yes.

3 Q And you called Mr. Fallin to come pick you up?

4 A No. I called him because I was hungry. And I told
5 him I would buy him breakfast if he would come by and get
6 some money to go get some food. And he said, Okay.

7 Q And I forgot. When you got there, you said you went
8 to T.J. Maxx; right?

9 A That's before I got there, right before. Because
10 it's right beside of the Econo Lodge.

11 Q So you walked to T.J. Maxx and you bought some
12 clothes?

13 A I, actually, got dropped off at T.J. Maxx, bought a
14 shirt, bought some toiletries, and walked over to the
15 room.

16 Q All right. When you left your house on Saturday,
17 were you planning on staying the night at the Econo Lodge?

18 A Yes, I was.

19 Q And you're in your house, it's five minutes away and
20 you have all your clothes in your house. Why would you go
21 to T.J. Maxx and buy some clothes to stay one night in the
22 Econo Lodge that's five minutes from your house?

23 A I didn't go there to buy the clothes for that night.
24 I went there to buy clothes because I wanted to buy
25 clothes. I just ended up buying only one shirt, I think.

1 Q What about the toiletries? You don't have any
2 toiletries at your house?

3 A I do. But this was stuff that T.J. Maxx carries and
4 the place beside me carries. They have specialty stuff
5 sometimes you can't find other places. It was more of an
6 indulgence thing than anything else. It wasn't that I
7 needed the toiletries. It was just something that I saw
8 that I wanted.

9 Q I'm sorry. Repeat what you just said.

10 A I said it wasn't that I needed those toiletries. It
11 was just something I saw while I was there that I wanted
12 that I bought as well.

13 Q But you left your house with nothing?

14 A I did, yes.

15 Q To go stay at a hotel room?

16 A Yes, sir.

17 Q You mentioned in direct that you had seen scales
18 before. Where have you seen scales like that before?

19 A Where have I seen scales like that before? There are
20 places in town that sell them. I've seen them online. I
21 mean, they're pretty common.

22 Q Where online?

23 A Where online? There are websites that sell things of
24 that sort on there like, I mean, for all kinds or reasons.

25 Q I mean, I can understand searching online to buy

1 something that specific, but --

2 A I wasn't searching online for those.

3 Q But you just ran across a website that had a sale for
4 scales?

5 A I've had pop-up windows on my computer that were
6 scales, advertising for things like that. I wasn't
7 searching for them specifically.

8 Q And you said you knew Mr. Fallin sold drugs; is that
9 right?

10 A I said I suspected that he did. And I've been told
11 that he did.

12 Q So out of the five people at your house on Saturday,
13 why do you call the person you suspect is dealing drugs to
14 come pick you up at a hotel room?

15 A Because he told me that he would probably be awake
16 and I could call any time for him to come and get me. So
17 that's why I called him so late. Because I thought he
18 would be awake because he said he would be.

19 Q Why did he say he would be awake?

20 A He was working on my computer. He didn't say why he
21 would be awake. He just told me to call him if I was
22 ready. If he was awake, he would answer. If he wasn't
23 awake, it wouldn't wake him up, so don't worry about it.
24 So I called him first.

25 Q What time did he get there on Saturday to start

1 working on your computer?

2 A He got there on Friday, actually. I'm not sure he
3 even left.

4 Q Do you, typically, get up at 3:00 a.m. to order some
5 food?

6 A No. But I had been sleeping a lot since I was there
7 resting. So when I woke up, I was hungry.

8 Q You didn't have food with you at the hotel?

9 A I'm sorry.

10 Q You didn't have any other food there with you at the
11 hotel?

12 A I had ordered a pizza when I got there, but it was
13 gone.

14 Q You ate the whole thing by yourself?

15 A Oh, yeah.

16 Q Any other food in the hotel with you?

17 A No.

18 Q You said that when you got pulled over, you were
19 eating cookies?

20 A Right.

21 Q Where did those come from?

22 A Those cookies came from T.J. Maxx, as well, when I
23 went back the second time.

24 Q So you did have some other food in your hotel room
25 when you woke up at 3:00 a.m.?

1 A No. I didn't have them then. I walked over the next
2 morning and got them. And, when we left, I was eating
3 them.

4 Q So you went back to T.J. Maxx?

5 A Well, not to T.J. Maxx, the store right beside it.
6 It's a Dollar Store or something like that.

7 Q Okay. So you --- I'm getting confused on the timing
8 of things.

9 A Okay.

10 Q You went to T.J. Maxx when you arrived. At some
11 point, at 3:00 a.m., you called Mr. Fallin to come pick
12 you up and take you to get breakfast?

13 A Right.

14 Q Y'all go get breakfast?

15 A Well, he went. I stayed in the room. He went and
16 got it.

17 Q What did he bring you back to eat?

18 A He went to, I think, Jack in the Box.

19 Q Okay. What did you get?

20 A I don't remember.

21 Q Okay. And then after he comes back, at some point
22 after that, 3:30ish, when did you leave again to go get
23 some cookies?

24 A Actually, I just walked out of the room to get them
25 probably right before -- maybe 30 to 40 minutes before we.

1 left. When he was in the shower, I walked over and got
2 them.

3 Q What time do you think it was?

4 A Well, that would have been probably right at 11:00 or
5 so. Because we didn't leave the room until almost 12:00.
6 I had to call and get late checkout.

7 Q So right before you left, at about 11:00, you walked
8 out of the hotel room and walked to T.J. Maxx and bought
9 some cookies. Did you buy anything else?

10 A No.

11 Q And then you came back to the hotel room?

12 A Right.

13 Q Mr. Fallin is out of the shower, and y'all pack up
14 and get in the car?

15 A Yeah. Well, we were still there for another 30
16 minutes. After I got back, I was still waiting on him to
17 get out of the shower.

18 Q So 10:30ish, you went next door to T.J. Maxx to get
19 some cookies?

20 A No. It was about 11:00, actually.

21 Q Okay. 11:00. So Mr. Fallin brings you Jack in the
22 Box. Y'all eat together --

23 A Yes, sir.

24 Q -- at 3:30. And he leaves for an extended amount of
25 time?

1 A Yeah. He said he was going to have breakfast with a
2 friend of his at IHOP, but we had just eaten.

3 Q You said that bag was in his possession, along with
4 some other bags, computer bags; right?

5 A I don't know. It was a backpack, I think, not a
6 computer bag. I was thinking he had my laptop, actually,
7 in that bag when he came over.

8 Q So you saw that when he first arrived at 3:00 to come
9 get you some breakfast?

10 A Yeah.

11 Q And he leaves the hotel room with all the bags, goes
12 to get breakfast, comes back, and brings the bag and the
13 Jack in the Box --

14 A Well, when he came in the first time, he only brought
15 that bag. Because he pulled out my laptop to show me what
16 he had done on it. And then when he went to get the food,
17 he took that bag with him. When he came back the second
18 time, he brought all of his bags in.

19 Q So he comes back at 9:00, something like that, you
20 said, after he went and left to eat breakfast with
21 somebody else?

22 A No. It was a little later than that. Because we
23 didn't have -- he took a shower. And it was a long
24 shower. And I had to call for late checkout. So he asked
25 if he could take a shower when he got back. So I'm

1 thinking he got in the shower about 10:30.

2 Q How long of a shower was it?

3 A Over an hour, it seemed like.

4 Q So he got out. Did he -- you said he took that bag
5 and --

6 A Into the shower with him, yes.

7 Q Did he still have the computer in the bag?

8 A No. I had it on the bed with me.

9 Q He pulled it out?

10 A Yes. He pulled it out when he first got there to
11 show me what he had done.

12 Q Did you see anything else in that bag?

13 A No.

14 Q What was he carrying in the other bag?

15 A When he came in the first time?

16 Q Did he have the other bag the second time?

17 A He had the other bag the second time, his backpack.
18 I don't know what was in his backpack.

19 Q He takes a shower. Does he put back on the same
20 clothes?

21 A I don't recall.

22 Q Well, he didn't take any clothes out of that bag;
23 right?

24 A I don't know. I didn't see him take any clothes out
25 of any bag. But I don't remember if he changed in the

1 bathroom or not. I don't know if he changed clothes or
2 not. I do know he took a shower.

3 Q Mr. Babb, you've been convicted of a felony that
4 carries more than a year; is that correct?

5 A That carries what?

6 Q It --

7 A Yes. I've been convicted of a felony, yes.

8 Q When was that?

9 A That was in '06.

10 Q Was it February 14th, 2006?

11 A Yes, sir.

12 MR. BOUTON: Thank you.

13 THE COURT: Any redirect?

14 MR. WARDER: No redirect.

15 THE COURT: All right. You can step down.

16 Call your next witness.

17 MR. WARDER: Your Honor, may it please the Court.

18 I think we're going to rest at this time.

19 THE COURT: All right. Any reply?

20 MR. BOUTON: No, Your Honor.

21 THE COURT: Let me get the lawyers up here for a
22 second.

23 (WHEREUPON, a bench conference was held.)

24 THE COURT: All right. Mr. Foreman, and, ladies and
25 gentlemen of the jury, remember my little road map of the

1 trial. We've finished the first two parts. It's almost
2 12:00. And before we start the third part, I think we
3 ought to just go ahead and break for lunch at this time.

4 So it's noon. I would ask you to be back at 1:30.
5 Please don't discuss the case. It's almost yours. So you
6 all have a pleasant lunch and try to stay dry. We'll see
7 you at 1:30.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 11:54 a.m.)

10 THE COURT: Anything?

11 MR. WARDER: Nothing from the Defendant, Your Honor.

12 MR. BOUTON: No, sir, nothing from the State.

13 THE COURT: Do you renew all your motions?

14 MR. WARDER: Yes, sir. I need to renew all my
15 motions.

16 THE COURT: All right. Have you got any requests for
17 jury charges?

18 MR. WARDER: Mere presence. But I think you probably
19 would charge that.

20 THE COURT: Yes. I think it's in the charge.
21 Anything?

22 MR. BOUTON: I would ask for the hand of one is the
23 hand of all, constructive possession, as well as
24 circumstantial evidence.

25 THE COURT: Yes. Direct and circumstantial.

1 Okay. You all have a nice lunch.

2 (WHEREUPON, a lunch break was taken.)

3 THE COURT: Are you ready?

4 MR. WARDER: Yes, Your Honor.

5 THE COURT: Okay. Bring the jury in.

6 (WHEREUPON, the jury came into open court at
7 approximately 1:52 p.m.)

8 THE COURT: Ladies and gentlemen, thank you very
9 much.

10 We are ready to proceed. You all paid great
11 attention throughout the course of the trial. And I'd ask
12 you to continue to do so through the arguments of these
13 fine attorneys.

14 CLOSING ARGUMENTS

15 MR. WARDER: Mr. Foreman, ladies and gentlemen of the
16 jury, now comes the time that I get to talk to you a
17 little bit about what we've heard. And, as I told you in
18 my opening statement, your job here is to measure or weigh
19 the evidence. Now, the reason that is is because of a
20 Constitutional presumption that every citizen has where
21 they're presumed to be innocent. And, from that, the
22 burden upon the State falls and they must prove now --
23 prove the case beyond all reasonable doubt.

24 A reasonable doubt has been defined as the kind of
25 doubt that would just leave a mere possibility that the

1 Defendant is innocent. Guilt beyond a reasonable doubt
2 would leave one firmly convinced of their guilt. Our
3 Supreme Court has said it's the type of doubt that would
4 make one hesitate to act.

5 And, in this case, I submit to you there's many
6 reasonable doubts. There's many facts that one would
7 hesitate to act upon. And there's more than a real
8 possibility, there's many possibilities and even
9 probabilities of the Defendant's innocence.

10 Now, in the American system of justice, you return a
11 verdict of guilty or not guilty. And our law came from
12 England. And I always think that the English definitions
13 make it easier to keep in mind what you're doing. In
14 England, a jury would return a verdict that would say a
15 case was either proven or unproven. A proven case would
16 be one which we would say guilty, and an unproven case
17 would be one we'd say not guilty. But the words proven
18 really focuses on what the State has to do. They have to
19 prove it beyond all reasonable doubt. And if they do
20 that, then they've proven their case. If they do anything
21 less than that, it's an unproven case.

22 Now, the State seeks to do it by lumping the two
23 Defendants together, the one that's here now and the one
24 that started. You know, they started off talking about
25 the Defendants. And we started objecting because you have

1 to find individual verdicts to individual Defendants. And
2 one of the Defendants is gone now, though his presence was
3 at the trial. He knew he was guilty. He pled guilty. He
4 pled guilty through some deal and consideration. And then
5 he testified for the State. And I want to talk to you
6 about that in a minute. But I think we need to focus upon
7 what the real issue is in this case.

8 And, ultimately, what this case is about is who
9 possessed this black bag, because everything else was in
10 the black bag. This is a case about the black bag, and
11 the contents, and whose it was. And there's three
12 possibilities about that black bag. Of course, one
13 possibility would be my client had it. Another
14 possibility would be the new State's witness, the fellow
15 that used to be over there and ended up over here, had it.
16 And the State will argue to you, well, they both had it.
17 And I submit to you that you have to analyze the evidence.
18 You have to decide what's there.

19 And Troy Fallin -- my client said Troy had the bag.
20 He took it with him. He had it all the time. Troy said
21 that wasn't true. The police said that Troy Fallin had
22 it, and took it out, and put it in the car. Troy said
23 that wasn't true. And logic says that somebody would look
24 after it because it had all these things in it. And it
25 had those narcotics in it that they testified was worth

1 all the money.

2 And so I ask you to consider the evidence and see
3 what really has been shown. My client, no one saw him
4 with the bag. No one saw him dealing with it. No one saw
5 him have anything to do with it, except the new State's
6 witness, the fellow that started there and ended there.
7 He said, well, he said, it was James' bag and James had
8 it. And I never carried it to the car, and I never had
9 it. Why would the policeman that was -- had this view --
10 and this was an accurate view. The policeman had
11 binoculars. The policeman had this view taken with a
12 camera that he had, realistically, portrayed it. And he
13 had a pair of binoculars. And when we asked the policeman
14 about the bag, he said it was the same one with -- the
15 color just like it and the same shape. And the only one
16 that carried a bag out like that was ~~Iroy Fallin~~. The
17 policeman corroborates exactly what my client says.

18 What else does the evidence show? My client says,
19 you know, if they had just fingerprinted that or any piece
20 of it, it would have shown my prints weren't on it. And
21 the police, remember, they're the ones that decided not to
22 do it. And why didn't they do it? Because they want the
23 Defendants. They want to say, well, they jointly. And if
24 they don't examine the evidence, it makes it easier to put
25 this they jointly did it theory together. Because no one

1 has anything that says only one individual touched it or
2 handled it. And the police didn't fingerprint them.

3 My client said that when they arrested him, he asked
4 them to drug test him, and they didn't do it. And, you
5 know, that's true, you know, the -- when the Judge asks is
6 there any reply testimony, there was no policeman that
7 they could call that would deny that. That drug test
8 would have shown a lot. It probably would have shown who
9 didn't use drugs that night and who did. And my client
10 asked for that. No one saw my client with the bag. The
11 State has failed to prove beyond a reasonable doubt my
12 client's possession at any point in time of that bag.

13 Mr. Fallin that pled guilty. Of course, law
14 enforcement had seen him with it. I submit to you that if
15 you fairly looked at Mr. Fallin and what he had to gain
16 and what's happened in this case, it's easy to see what
17 he's intending to do. Troy Fallin started off a
18 Defendant. And he left the table of the Defense and he
19 made a deal. He made a deal where he would plead guilty.
20 And, after the trial was over, after it was all over, they
21 would decide what the sentence should be. And he admitted
22 that he thought what he said might have something to do
23 with it. And do you think he was trying to please them or
24 to displease them? Did he want them to think he had done
25 a good job for them or a bad job? And to do a good job,

1 he said things that put James Babb in trouble.

2 If the State went out and took money and paid a
3 witness for their testimony, we'd all be shocked. But the
4 State offers something more valuable than money. It
5 offers freedom, leniency. And it can offer that. And
6 that's what happened in this case. Troy Fallin saw a way
7 out, a way not to have his trial, a way not to have you
8 decide what was. His way out was he would just plead
9 guilty and then get some special treatment because he
10 blamed somebody else. And that's what this trial is
11 about. And he would do, I submit to you, anything to gain
12 leniency and freedom. He's a man that admitted he's a
13 drug trafficker. Do you think a drug trafficker would
14 slant, mislead, and lie about the truth to get a more
15 lenient sentence? What does your common sense tell you?
16 You know, whenever you buy something, you don't get
17 exactly what you pay for. In this, he's trying to buy his
18 freedom.

19 And the only thing that the State will be able to
20 point to is they'll say, well, that's it. That's joint
21 possession. In that bag was a check made out to my
22 client. What about that? And this bag and Troy Fallin,
23 the drug trafficker, were alone in my client's house. Do
24 you think a drug trafficker would pick up something that
25 belonged to somebody else? He, ironically, got caught

1 with a check he had stole from my client that night. And
2 I submit to you that this check does not indicate my
3 client had anything to do with that bag outside of being
4 lucky enough to have his possession put into it by the
5 witness that was there and then there, Troy Fallin.

6 This is a case all about what Troy said. Who had the
7 bag? And I told you that you don't always get what you
8 pay for. If you ever knew anybody that had money and went
9 out and tried to buy love, they might have got
10 companionship, but they didn't get love. Real love
11 doesn't come that way. If you ever knew anybody that had
12 money and tried to get friendship and loyalty, they didn't
13 get it. You don't buy friends. You don't buy loyalty.
14 When the money is gone, they're gone.

15 And, ladies and gentlemen, truth is like that. You
16 don't buy truth, because what you get isn't real truth.
17 That's what's happened here with the State's deal. They
18 tried to buy Troy Fallin's truth. And Troy Fallin sat up
19 there and told you his truth. And it's not real truth. I
20 submit to you the fair, the right and the just verdict in
21 this case is the verdict of not guilty, because it's
22 really an unproven case. And reasonable doubt has not
23 been erased away, but still remains.

24 Thank you very much.

25 THE COURT: Mr. Bouton.

1 MR. BOUTON: May it please the Court.

2 Mr. Warder.

3 Good afternoon, ladies and gentlemen, my co-counsel,
4 Ms. Adair, got up in front of you yesterday and she told
5 you we had some stuff that we had to prove beyond a
6 reasonable doubt and we planned to do that. And I'm here
7 today to tell you how we have done that and how we have
8 proven our case against Mr. Babb.

9 I want to briefly talk to you a little bit about the
10 law. Judge Miller is going to instruct you on the law
11 after I get done. I want you to listen to him. He's
12 going to tell you everything you need to know. A couple
13 of things I just want to hit on very briefly. I don't
14 have the best memory, so I wrote some of this stuff down
15 to make sure I get it right.

16 The first offense that Mr. Babb is charged with is
17 possession with intent to distribute a controlled
18 substance, these pills. If you find that Mr. Babb was in
19 possession of these pills and that he had the intent to
20 distribute them, he should be found guilty of possession
21 with intent to distribute a controlled substance. There
22 was no testimony of any prescription found on the pills.
23 You can see the pills yourself. No one had a prescription
24 for them that was found in the car. I submit to you that
25 he obtained possession of these illegally.

1 I, also, submit to you that he had the intent to
2 distribute them. We have a bunch of plastic baggies,
3 scales. All of this stuff tends to prove his intent. And
4 he might want to take some himself. Mr. Fallin might want
5 to take some himself as well. If you find he had any
6 intent, given all of this stuff here at the table, to
7 distribute, then you must find him guilty of possession
8 with intent to distribute a controlled substance.

9 Now, the trafficking is the second charge. And I'm
10 going to read to you really quickly what trafficking is
11 defined as. The Defendant did knowingly, sell,
12 manufacture, deliver, or bring into the State, or did
13 knowingly provide financial assistance or otherwise aid,
14 abet, attempt, or conspire to sell, manufacture, deliver,
15 or bring into the State or was in actual or constructive
16 possession of more than 28 grams, and he should be found
17 guilty of trafficking methamphetamine.

18 What's the most common word I said in that
19 definition? It's "or." You don't have to find him guilty
20 of all this stuff, only one thing. You don't have to
21 prove that he was manufacturing any of this stuff. You
22 don't have to prove that he was delivering it. You don't
23 have to prove that he was bringing it into the State. If
24 you find that he was in possession of 28 grams or more of
25 methamphetamine, he is guilty of trafficking. The

1 purpose, we do not have to prove.

2 Two of the three things, the elements, we have to
3 prove are relatively easy, in my mind. Y'all be the judge
4 of that. Methamphetamine. James Armstrong got up here
5 and testified. He's an expert. He testified it was
6 methamphetamine. He, also, testified that the weight is
7 greater than 55 grams. I submit that to you that's two of
8 the three. The final level is what we're here arguing
9 about, and that's whether or not this Defendant possessed
10 it.

11 Now, there's two types of possession. There's actual
12 and constructive possession. The Judge is going to
13 instruct you on all this stuff. Actual, you, actually,
14 have physical custody. It's in your pocket. Constructive
15 possession will be defined for you. But it's, basically,
16 when a person has dominion or control and they exercise
17 dominion or control over an object or the premises upon
18 which the object is located.

19 The backpack. Here, I submit to you that both of
20 these Defendants had control, the ability to control this
21 backpack and these drugs. Actual knowledge is strong
22 evidence of intent to control the drugs. I submit to you
23 that this Defendant had knowledge of what was in this bag.
24 And I'll get to that later. But one of these is a check
25 that was found with the drugs.

1 Now, the Judge is going to instruct you on the
2 difference between direct and circumstantial evidence.
3 I'm going to let the Judge tell you that. But he's, also,
4 going to tell you that knowing possession may be shared by
5 two or more individuals. You don't have to decide who
6 possessed it more than the other. If you believe that
7 they both had dominion and control over this backpack,
8 then you can find they were both in possession of the
9 methamphetamine.

10 One last thing about the law that I want to talk to
11 you about before I talk about the testimony is, the Judge
12 is going to tell you about a thing in the law we call the
13 hand of one is the hand of all. He's going to tell you
14 that one who joins with another to accomplish an illegal
15 purpose is reliable criminally for everything done by his
16 confederate incidental to the execution with a common
17 design or purpose. In other words, when two or more
18 people aid, abet, or encourage each other in the
19 commission of the crime, all being present, each is guilty
20 of the crime. In other words, if you think Mr. Babb isn't
21 a drug dealer, but he assisted in any way, encouraged in
22 any way, then he is just as guilty as Mr. Fallin.

23 Now, Mr. Warder, you know, obviously, his job is to
24 poke holes in any way he can in the facts. And he
25 mentioned a lot of things. He mentioned the fingerprints.

1 Officer Cothran stated he saw this bag being carried by
2 Mr. Fallin. First of all, I will say you can see where
3 this is, he's looking through binoculars. There were
4 numerous bags found inside the vehicle. You know, in
5 hindsight, two and a half years later, I wish things might
6 have been done differently, sure, that Officer Cothran
7 would have come to the vehicle and identified all of these
8 bags in the vehicle. He didn't do that. As you heard, he
9 left the scene. Do I wish we had got fingerprints on some
10 of this stuff? Sure. But we have to play with the hand
11 we're dealt. And I submit to you that all of the evidence
12 strongly points to this Defendant.

13 Mr. Warder hit on the testimony of Mr. Fallin and
14 Mr. Babb. And I'm going to discuss that right now. But
15 I, also, submit to you, before I even discuss their
16 testimony, the State, we have proven that this Defendant
17 had knowledge and possession of this methamphetamine,
18 which is greater than 28 grams.

19 But I would like to discuss the testimony of both of
20 the individuals. Mr. Warder kept saying the deal, the
21 deal that was given to Mr. Fallin to come in and testify.
22 I asked him directly, Were you promised anything to come
23 in here and plead guilty? No, he was not. He was sitting
24 at that table yesterday. What did he plead guilty to?
25 The exact charges that are on the trial docket. We didn't

1 drop any charges or reduce the offense or the level to
2 have him come in and plead guilty. I asked him was he
3 promised anything? No, he wasn't. He came in here and he
4 told you exactly what happened. His story is the one that
5 matches all the other outside evidence. And I will
6 explain to you the best I can what I mean. You can't
7 believe Mr. Babb and Mr. Fallin, because one of them is
8 lying. It's obvious. Their stories conflict.

9 Let's talk about Mr. Babb's testimony. In general,
10 the stories were unbelievable. They were ridiculous. Who
11 has a friend come up to their house and clean their house
12 for the weekend? She goes and rents a hotel Friday, but
13 decides not to stay. And then on Saturday, with four or
14 five other people in his house, he decides I'm going to
15 get away and I'm going to go to the Econo Lodge off of 385
16 to get away. I can't drive there. I have to have
17 somebody take me. He lives five minutes away. He doesn't
18 pack a bag. He doesn't pack toiletries.

19 He decides to go to T.J. Maxx to buy some clothes and
20 buy some toiletry items. That doesn't make sense. He
21 stated he knew that -- he thought Mr. Fallin was a known
22 drug dealer. Who's going to call a person you know or you
23 think is a known drug dealer to come pick you up at 3:00
24 a.m. and get food for you? If you think somebody is a
25 known drug dealer and you don't have anything to do with

1 it, wouldn't you try to distance yourself? Would you let
2 him stay in your house by himself and work on your
3 computers?

4 Of course, Mr. Warder wants to say, oh, yeah, he was
5 at his house by himself and picked up his \$40 check. So
6 he's going to go to the trouble of forging a check of
7 Mr. Babb's to pick up an extra \$40. He's a known drug
8 dealer, but he's not going to steal the computers he's
9 working on. He's not going to steal his car that's
10 sitting at the house. He has access to a five-bedroom
11 house and this is what he's going to steal. Think about
12 it. It isn't true. It's ridiculous. Mr. Babb spent all
13 week working painting houses. He's going to get up at
14 3:00 a.m. and order food. He just ate a whole pizza
15 himself.

16 The scales, he slipped up and admitted that he had
17 seen them before. I ask him where. Oh, just around, you
18 know, the stores, on the computer. Has anybody been on a
19 website and seen scales for sale, unless you happen to be
20 searching for one? Oh, pop-ups, pop-ups come up. That's
21 absurd. He slipped up and he tried to cover it.

22 You know, Mr. Babb is almost like a little boy, a
23 little Dutch boy at the dike. He's trying to plug his
24 fingers in all the holes in his story. And he,
25 eventually, ran out of fingers, because his story does not

1 match the outside information we have. And I'm not
2 talking about Mr. Fallin.

3 But what do we know? We know there was an anonymous
4 tip that said that these two individuals would be together
5 with a drug shipment from Atlanta. It matches
6 Mr. Fallin's story. Who rents -- who goes to a motel five
7 minutes from their house to get away on 385? The only
8 people who would live in Greenville -- I won't say that.
9 I take that back.

10 Who rents a hotel, motel near 385 when they live in
11 Greenville? Drug dealers. Because they want to distance
12 their drug activity from their own house, because people
13 like this anonymous tipster are out there. They don't
14 want their neighbors seeing suspicious vehicles coming in
15 delivering drugs. They're going to rent a hotel to get
16 away from them. We don't know who this anonymous tipster
17 was. It could have been a competitor. It could have been
18 a concerned citizen. It doesn't matter. It does not
19 matter. But what matters is the tipster's information
20 coincides with all the rest of the information and
21 coincides exactly with Mr. Fallin's story.

22 What else did Mr. Babb say that conflicted? He got
23 caught up, I think, when, at first, he said -- well, he
24 backtracked a couple of times. Once, he said Mr. Grant
25 Forrester was his roommate and he was the reason for his

1 difficulties. He wasn't there. Then he was there and he
2 was in and out. There wasn't any food in the hotel room.
3 But you were eating cookies when you got pulled over. Oh,
4 well, then I left Sunday and I went -- I forgot. I left
5 Sunday, walked again to T.J. Maxx, and bought some
6 cookies. Again, are you sure of the time? Oh, yeah, it
7 was 30 minutes before we left.

8 Officer Cothran came up here and testified that he
9 sat on surveillance for two hours. And no one walked in
10 or out of that hotel room. And then around 11:45 -- for
11 two hours, he sat there and watched. His whole job was to
12 watch the car and the hotel room, and nobody came out.
13 But, now, Mr. Babb is telling you he went and got cookies.
14 I believe Mr. Cothran would have noticed that -- Officer
15 Cothran, excuse me.

16 The Judge is going to instruct you that you cannot
17 only consider what the witnesses say, but, also, their
18 demeanor. You all were able to witness both witnesses,
19 Mr. Fallin and Mr. Babb. You could tell the way they were
20 acting, which one had something to hide. Mr. Babb had a
21 lot of stuff to say, a lot of stammering to talk about.
22 But one thing he didn't mention was this check. That's
23 the one thing he can't excuse, because it's physical and
24 it's here. He can call Mr. Fallin a liar. He cannot
25 explain this check, which was in the bag and it shows that

1 he knew what was in the bag.

2 You know, Mr. Warder said to use your common sense,
3 think about the deal that we gave Mr. Fallin. Mr. Fallin
4 came in here, accepted responsibility for what he did, and
5 he told the truth. Because it matches what Officer
6 Cothran said, what Reider said, and what the tipster said.

7 By the way, what else matches what Officer Reider
8 said? What is methamphetamine usually sold for? \$20 or
9 \$40. It, also, has charitable donation on it. You
10 wouldn't write meth sale on there, would you?

11 Mr. Fallin came in here today and he took the
12 responsibility for his involvement. He admitted what he
13 did. He admitted he hoped for a lighter sentence for
14 coming clean and admitting what he did. But there is no
15 reason for him to falsely accuse somebody who is
16 completely innocent for testifying. I mean, he's accepted
17 responsibility.

18 Y'all heard the range of what he's looking at.
19 Mr. Warder asked him. Why in the world if -- the smart
20 thing would have been to come in here and say, hey, you
21 know, it's all mine, I accept responsibility. The Judge
22 will be lenient. They're buddies, right, according to
23 Mr. Babb. He could get Mr. Babb off the hook. But he
24 came in here and told the truth. He admitted his
25 involvement. And he told the truth about Mr. Babb's

1 involvement.

2 What makes sense? Whose story fits? Whose story
3 makes sense? Mr. Fallin came in here and accepted
4 responsibility for his involvement. Now, I ask you to do
5 your duty and hold Mr. Babb responsible for his.

6 Thank you.

7 CHARGE ON THE LAW

8 THE COURT: Ladies and gentlemen of the jury, during
9 this trial, you and I have certain duties to perform. As
10 the trial judge, it is my responsibility to preside over
11 the trial of the case and to rule on the admissibility of
12 the evidence that's offered during the trial. It is,
13 also, my duty to charge you the law that's applicable to
14 this case. And it is your duty, as jurors, to accept and
15 apply the law as I now state it to you.

16 As I said in my opening comments, if you think you
17 have any idea as to what the law is or what the law should
18 be, you've sworn an oath to set aside your own view and
19 apply the law precisely as I state it to you. I would,
20 also, remind you in every case tried in this Court before
21 a jury, the jury is the sole and exclusive judge of the
22 facts. And a trial judge cannot comment on or have any
23 opinion about the facts of this case. So don't think by
24 anything I may have said or done throughout the course of
25 the trial that I have an opinion. I do not.

1 Now, I would instruct you, again, that the fact that
2 the Defendant was arrested, charged, and indicted in this
3 case is not evidence of guilt, nor does it create any
4 presumption or inference of guilt. These documents are
5 simply the formal written instruments which contain the
6 charge made against a Defendant. And they serve as the
7 formal documents by which this case is processed and
8 brought into court.

9 The indictments, in this case, allege two different
10 offenses against the Defendant. And the charges are
11 trafficking in methamphetamine and possession with intent
12 to distribute Alprazolam, or a controlled substance. Each
13 indictment charges a separate and distinct offense. And
14 you must decide each indictment separately on the evidence
15 and the law applicable to it uninfluenced by your decision
16 as to any other indictment.

17 The Defendant may be convicted or acquitted on any or
18 all of the offenses charged. And you will be asked to
19 write a separate verdict of guilty or not guilty for each
20 indictment.

21 Now, necessarily, your job, as jurors, includes that
22 you must determine the credibility or the believability of
23 the witnesses who have testified in this case. And it
24 becomes your duty, as jurors, to evaluate the evidence and
25 to determine which evidence convinces you that it is true.

1 In determining the believability of the witnesses,
2 you may believe one witness over several, or several over
3 one. You may believe a part of the testimony of a witness
4 and reject the remaining part. You may believe the
5 testimony of a witness in its entirety or reject that same
6 testimony in its entirety. You may consider whether the
7 witness has an interest in the result of the trial,
8 whether the witness is prejudiced towards either the State
9 or the Defense, the opportunity for the witness to have
10 seen the matters and things about which that witness has
11 testified, and the way the witness acts on the witness
12 stand or what we call a witness' demeanor.

13 You have, also, heard evidence that the Defendant was
14 convicted of a crime other than the one for which he is
15 now on trial. This evidence may be considered by you, if
16 you conclude it is true, only in deciding whether the
17 Defendant's testimony is believable and for no other
18 purpose. You must not consider the Defendant's prior
19 record as any evidence of the Defendant's guilt of the
20 charge we are trying today.

21 Now, the Defendant has pled not guilty to these
22 indictments. And that plea puts the burden on the State
23 to prove the Defendant guilty. A person charged with
24 committing a criminal offense in South Carolina is never
25 required to prove themselves innocent. And I charge you

1 that it is a cardinal and an important rule of the law
2 that the Defendant in a criminal trial will always be
3 presumed innocent of the crime for which an indictment has
4 been issued unless guilt has been proven by evidence
5 satisfying you of guilt beyond a reasonable doubt.

6 Now, what's a reasonable doubt? A reasonable doubt
7 is the kind of doubt which would cause a reasonable person
8 to hesitate to act. A reasonable doubt may arise from the
9 evidence which is in the case or from the lack or absence
10 of evidence in the case. And you all must determine
11 whether or not reasonable doubt exists as to the guilt of
12 the Defendant. I remind you that the State has the burden
13 of proving each and every element of a crime beyond a
14 reasonable doubt.

15 Now, there are two types of evidence which are,
16 generally, presented during a trial. They are direct
17 evidence and circumstantial evidence. Direct evidence is
18 the testimony of a person who claims to have actual
19 knowledge of a fact, such as an eyewitness. It is
20 evidence which immediately establishes the main fact to be
21 proved.

22 Circumstantial evidence is proof of a chain of facts
23 and circumstances indicating the existence of a fact. It
24 is evidence which immediately establishes collateral facts
25 from which the main fact may be inferred. Circumstantial

1 evidence is based on inference and not on personal
2 knowledge or observation. The law makes absolutely no
3 distinction between the weight or value to be given to
4 either direct or circumstantial evidence, nor is a greater
5 degree of certainty required of circumstantial evidence
6 than of direct evidence. And you should weigh all the
7 evidence in the case. After weighing all the evidence, if
8 you are not convinced of the guilt of the Defendant beyond
9 a reasonable doubt, you should find the Defendant not
10 guilty.

11 Now, if a crime is committed by two or more people
12 who are acting together in committing a crime, the act of
13 one is the act of all. A person who joins with another to
14 accomplish an illegal purpose is criminally responsible
15 for everything done by the other person which occurs as a
16 natural consequence of the acts done in carrying out the
17 common plan and purpose.

18 For example, two people can be guilty of killing
19 another person when only one of the two had a gun, there
20 was only one bullet, and only one of the two fired the
21 shot that caused the death. If two or more people are
22 acting together and are together assisting each other in
23 committing the offense, the act of one is the act of all,
24 or is sometimes said the hand of one is the hand of all.
25 The State must prove beyond a reasonable doubt by

1 competent evidence the theory of the hand of one is the
2 hand of all.

3 Now, a principle in a crime is one who either,
4 actually, commits the crime or who is present aiding,
5 abetting, or assisting in committing the crime. When a
6 person does an act in the presence of and with the
7 assistance of another, the act is done by both. Where two
8 or more acting with a common plan or intent are present at
9 the commission of a crime, it does not matter who,
10 actually, commits the crime, all are guilty. The hand of
11 one is the hand of all. Present at the commission of a
12 crime means to be sufficiently near to aid, abet, and
13 assist in the commission of the crime. I would tell you,
14 however, that mere presence at the scene of a crime is not
15 sufficient to convict one as a principle on the theory of
16 aiding and abetting.

17 Intent is, also, a necessary element. There must
18 have been a common design or intent to commit the crime.
19 And the crime must have been committed pursuant thereto
20 with the perpetrator aiding and abetting by some overt
21 act. Intent means intending the result which, actually,
22 occurs, not accidentally or involuntarily. And intent may
23 be shown by acts and conduct of the Defendant and other
24 circumstances from which you may naturally and reasonable
25 infer intent.

1 The Defendant is charged with possession with intent
2 to distribute a controlled substance. The State must
3 prove beyond a reasonable doubt that the Defendant
4 possessed the controlled substance with the intent to
5 distribute it. To prove possession, the State must prove
6 beyond a reasonable doubt that the Defendant had both the
7 power and the intent to control the disposition or use of
8 the controlled substance.

9 Possession may be either actual or constructive.
10 Actual possession means that the controlled substance was
11 in the actual physical custody of the Defendant.
12 Constructive possession means that the Defendant had
13 dominion and control or the right to exercise dominion and
14 control over either the controlled substance itself or the
15 property on which the controlled substance was found.
16 Again, mere presence at the scene where the drugs were
17 found is not enough to prove possession. But actual
18 knowledge of the presence of the controlled substance is
19 strong evidence of the Defendant's intent to control its
20 disposition or use.

21 The Defendant's knowledge and possession may be
22 inferred when a substance is found on the property under
23 the Defendant's control. However, this inference is
24 simply an evidentiary fact to be taken into consideration
25 by you, along with the other evidence in the case, and to

1 be given the weight you decide it should have. I will
2 tell you that two or more persons may have joint
3 possession of a drug.

4 Now, the State must, also, prove beyond a reasonable
5 doubt that the Defendant intended to distribute the
6 controlled substance. And distribute means to deliver,
7 other than by administering or dispensing, a drug. Intent
8 may be shown by acts and conduct of the Defendant and
9 other circumstances from which you may naturally and
10 reasonably infer intent.

11 And in determining whether the Defendant had the
12 intent to distribute the controlled substance, you may
13 consider the circumstances surrounding the Defendant's
14 alleged possession. You may consider the amount of the
15 substance alleged to have been possessed, the manner in
16 which it was allegedly possessed, the place where it was
17 allegedly possessed, and other facts which you consider to
18 be important. And you must find that the Defendant did
19 not intend to have the controlled substance solely for his
20 own use.

21 Now, the Defendant is, also, charged with trafficking
22 in methamphetamine. The State must prove beyond a
23 reasonable doubt that the Defendant knowingly sold,
24 manufactured, cultivated, delivered, purchased, brought
25 into this state, provided financial assistance or

1 otherwise aided, abetted, attempted, or conspired to sell,
2 manufacture, cultivate, deliver, purchase, or bring into
3 this state or was knowingly in actual or constructive
4 possession or knowingly attempted to become in actual or
5 constructive possession of the methamphetamine. The State
6 must, also, prove beyond a reasonable doubt that the
7 amount of the methamphetamine or any mixture containing
8 the methamphetamine was greater than 28 grams in
9 weight.

10 Now, ladies and gentlemen, there are two possible
11 verdicts which you may reach on each indictment. And
12 there's no significance in the order in which I state
13 them. One has to go first. And they are guilty or not
14 guilty.

15 We're going to send a verdict form back in the jury
16 room with you, Mr. Foreman. I think it's
17 self-explanatory. And if you have trouble understanding
18 it, let us know, of course.

19 I want to tell you that all 12 of you must agree on
20 your verdict. It has to be unanimous. It cannot be based
21 on sympathy, passion, prejudice, emotion, or any other
22 consideration which is not in evidence in this case.
23 Remember, you have no friends to reward and you have no
24 enemies to punish.

25 Now, ladies and gentlemen, I'm going to excuse you to

1 your jury room. I need to go over my charge to you on --
2 charge I've given to you on the law with the attorneys to
3 determine whether or not I've misstated something or
4 omitted something. But when you receive the verdict form,
5 along with all the evidence in the case, you may begin
6 your deliberations.

7 So, with the exception of Ms. Sanders, I will excuse
8 you all back to your jury room.

9 Thank you

10 (WHEREUPON, the jury was excused from open court at
11 approximately 2:36 p.m.)

12 THE COURT: Ms. Sanders, you're just as qualified as
13 the other 12 jurors, but the law only allows 12 to
14 deliberate. So I can't let you go back there with them,
15 but I want to thank you for your service.

16 You are now free to go. And I ask you to call back
17 after 6:00 tonight to find out when you next need to
18 either call back or report.

19 Thank you.

20 (WHEREUPON, Juror #183, Carol Sanders, exited the
21 courtroom.)

22 THE COURT: Any exceptions or objections to the
23 charge?

24 MR. BOUTON: No, sir.

25 MR. WARDER: No, Your Honor.

1 THE COURT: Really?

2 Okay. If you all will go through the evidence and
3 look at our verdict form and make sure it's agreeable.

4 (WHEREUPON, the proceedings were recessed at
5 approximately 2:38 p.m.)

6 THE COURT: Are you all ready? We've got a verdict.

7 MR. BOUTON: Yes, Your Honor.

8 MR. WARDER: Yes, sir.

9 THE COURT: Okay. Bring the jury in.

10 (WHEREUPON, the jury came into open court at
11 approximately 3:26 p.m.)

12 THE COURT: Mr. Foreman, I understand you've reached
13 a verdict.

14 JUROR #218, JOHN VERNON: Yes, sir.

15 THE COURT: Would you, please, hand it to the bailiff
16 for me, please, sir?

17 Thank you very much.

18 Madam Clerk, would you publish that for us, please.

19 VERDICT

20 THE CLERK: Your Honor, in the case of the State of
21 South Carolina v. James Melvin Babb, number one, as to the
22 charge of trafficking methamphetamine greater than 28
23 grams, we, the jury, find the Defendant guilty.

24 Number two, as to the charge of possession of a
25 controlled substance with intent to distribute, we, the

1 jury, find the Defendant guilty.

2 This is signed by Mr. Vernon, our Foreperson.

3 Ladies and gentlemen of the jury, if you agree these
4 are the verdicts you reached during your deliberations,
5 would you, please, raise your right hand.

6 (WHEREUPON, all jurors raised their hand.)

7 THE CLERK: Thank you.

8 THE COURT: Anything further from the jury from the
9 State?

10 MR. BOUTON: No, Your Honor.

11 THE COURT: From the Defense?

12 MR. WARDER: No, Your Honor.

13 THE COURT: All right. Mr. Foreman, and, ladies and
14 gentlemen of the jury, I want to thank you very much for
15 your service in this case. And I, also, because we have
16 such a large pool, ask you to make a choice. It's
17 probably pretty easy. And before I do that, did I make a
18 liar out of myself?

19 I hope you all feel satisfied and rewarded with your
20 service. And I guess I'm saying that because I'm going to
21 give you the option. You're through for the week, if you
22 want to be. If you want to call back in, you can call
23 back in after 6:00 to find out and report, if you so
24 desire.

25 But you all have done your service for the week. And

1 I want to thank you for that. I really hope that you do
2 feel rewarded with the work you've done. It is a heavy
3 responsibility and it's a great privilege. And we thank
4 you very much for your service.

5 You are now free to go. And if you choose not to
6 serve, then you're free to talk about the case. But if
7 you want to serve, don't talk about the case until you're
8 finished for the week.

9 Thank you very much.

10 Mr. Foreman, if you would, sign the indictments for
11 me, please.

12 Thank you all very much.

13 (WHEREUPON, the jury was excused from the courtroom
14 at approximately 3:31 p.m.)

15 THE COURT: What do you all want to tell me?

16 Tell me his prior criminal history. He was -- what
17 is it?

18 MR. BOUTON: Judge, you heard it during the trial.
19 It was those two convictions.

20 THE COURT: He got nine months house arrest.

21 MR. BOUTON: And then it looks like six months on the
22 controlled substance. It looks like it was an illegal
23 sentence -- a concurrent sentence.

24 THE COURT: Okay. In February of 2006, he got nine
25 months house arrest. So that, basically -- and then four

1 or five months later, this case.

2 All right. What do you want to tell me?

3 MR. WARDER: Your Honor, in this case, when he got
4 bond, Judge Hawley put him on house arrest. He, actually,
5 did a year and seven months on that house arrest, Your
6 Honor. During that time, he was periodically drug tested
7 and electronically monitored. He passed all of his drug
8 tests. The electronic monitoring, he was doing so well
9 that it was petitioned and Judge Hawley let him get off
10 after 19 months.

11 THE COURT: And the sentencing options are -- what is
12 it 10 to --

13 MR. WARDER: Seven to 30.

14 MR. BOUTON: Seven to 30.

15 THE COURT: And what's the other one, the possession
16 of a controlled substance? Is that a second offense?

17 MR. BOUTON: Yes, sir. It's zero to 10. I've got it
18 right here, Judge.

19 THE COURT: Up to 10 years -- no, excuse me. It's a
20 Schedule IV drug; right?

21 MR. BOUTON: I believe it was three.

22 THE COURT: Schedule III?

23 MR. BOUTON: Hold on one second. I'll confirm.
24 Schedule IV, you're right. I apologize.

25 THE COURT: Up to five years on that one?

1 MR. BOUTON: Yes, sir.

2 THE COURT: Okay. Anything you want to tell me?

3 DEFENDANT BABB: No.

4 I just came in here today and wanted to tell the
5 truth and hoped that would work for me, but it hasn't, so.

6 SENTENCING

7 THE COURT: Well, I don't believe I heard the truth
8 today.

9 I'll give him 15 on the trafficking and five on the
10 other one.

11 Good luck.

12 *****END OF TRANSCRIPT OF RECORD*****
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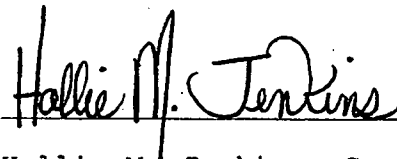
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 1st and 2nd days of February, 2010.

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

June 10, 2010

A handwritten signature in cursive script that reads "Hollie M. Jenkins". The signature is written in dark ink and is positioned above a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

FORM 5

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of Greenville)James Rabb, #339652)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2012-CP-23-

03342

APPLICATION FOR

POST-CONVICTION RELIEF

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 Perry Correctional Institution
430 Oaklawn Road, Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence Greenville County General Sessions
3. Name(s) of co-defendant(s) (if any) Trey Daniel Fillion
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 117-5-22-1-53

- (b) 1207-33-13-7004
- (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) February 4, 2010 15 yrs and 5 yrs concurrent
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty after a plea of not guilty
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

- i. S.C. Court of Appeals
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. 1/A
- ii. _____
- iii. _____

(c) the date of each such result:

- i. 1/A
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. 1/A
- ii. _____
- iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) 1/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attached pages. _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached pages. _____
- (b) _____
- (c) _____
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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____ J/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____ J/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____ J/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?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____ J/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____ J/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) No
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
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. Richard Warner, Jr.
- Funda J. Carter
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Indy Trial
- ii. Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate Sentence and Trial

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 Greenville)

VERIFICATION

I, James B. Babb, #339152, 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.

James B. Babb

SWORN to and subscribed before me this 30th
day of April, 2012.

Steven T. McIlwain (L.S.)
Notary Public

My Commission Expires: November 7, 2016

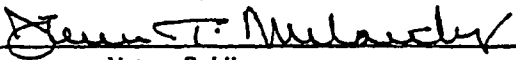
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, James Baob, #339152, 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
30th day of April, 2012.


Notary Public

My Commission Expires: November 7, 2016

Applicant contends that he can show that his conviction and sentence is in violation of the U.S. Constitution, S.C. Constitution and the laws of this State.

The Applicant is asserting a 4th, 5th, 6th and 14th Amendment violation which sets forth a prima facie violations of his constitutional rights.

The applicant grounds are constitutional dimensions. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demands of fair procedure.

It would be a denial of due process not to give the applicant an evidentiary hearing on the State & Federal Constitutional claims.

P.C.3. FORM 5 ADDITIONAL PAGES

10. State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

1. Counsel was ineffective for allowing the deliberate deception of my co-defendant's testimony.
2. Counsel failed to put the State's case through adversarial testing.
3. Counsel failed to challenge the chain of custody of the alleged drugs.
4. Counsel failed to challenge my co-defendant's prearranged plea agreement with the State.
5. Counsel failed to request to suppress co-defendant's statement.
6. Counsel failed to object to two prejudicial comments made by the trial judge.
7. Counsel ineffective for compelling the applicant to take the stand.
8. Counsel failed to object to the pitting of the witnesses by the solicitor.
9. Counsel failed to interview the prosecution's main witness. See trial transcript.
10. Ineffective of appellate counsel entitled to effective assistance of counsel on direct appeal as a right.
11. Counsel ineffective for failure to object to prior bad acts.
12. Counsel failed to object to the prosecution on misconduct.
13. Counsel allowed prosecution misconduct to take place.
14. Counsel should have requested a mistrial.
15. Counsel ineffective for failure to request a severance.
16. Counsel failed to properly argue the probable cause & stop in this case.
17. Wrongful consolidation of Defendants.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

1. My attorney did not do the necessary factual investigation on my behalf.

2. My attorney did not try to have my case settled in a manner that would have been to my best advantage.

3. My attorney did not advise me of all of my rights or cause any of the actions that were necessary to protect or preserve them.

4. My attorney never properly interviewed witnesses or did I interview

over and over again all the times. The fact that I did not interview

5. My attorney failed to pursue any of the legal resources that were available to him.

6. My attorney failed to function as the governments adversary in any sense of the word.

7. My attorney did not explain to me any of the elements of the crime charged.

8. My attorney failed to serve my cause in good faith.

9. Counsel failed to request a formal instruction to jury stating that the evidence of each party, plus the fact that the defendant was a minor, was sufficient evidence of guilt of the remaining defendant.

1. Counsel was ineffective for allowing the deliberative acceptance of any co-defendant's testimony.

Where co-defendant's credibility as witness was important issue in prosecution of methamphetamine, evidence of any understanding or agreement for leniency for co-defendants was relevant to his credibility, and jury was entitled to know of such understanding or agreement.

The bargain provided that in exchange for Fallin's testifying against Babb and pleading guilty to both charges lodged against him; the prosecution would recommend a low-end reduced sentence. See *Cambell v. Reed*, 594 F.2d 4. That a witness may curry favor with a prosecutor by his testimony was demonstrated when the prosecutor renegotiated a more favorable plea agreement with Fallin after Babb was convicted. See *Biglio v. United States*, 305 U.S. 100; *Boone v. Ponderick*, 341 F.2d 447, 451 (4th Cir.); *Pyle v. Kansas*, 317 U.S. 213; *Mooney v. Holoman*, 294 U.S. 103; *Lape v. Ill.*, 360 U.S. 164.

Applicant was denied his due process of law in violation of the 14th Amendment.

2. Counsel failed to put the state's case through adversarial testing. Nervousness is generally included as one of several grounds for finding reasonable suspicion and not a ground sufficient in and of itself. Counsel failed to challenge the state's case. *U.S. v. Hernandez-Alvarado*, 391 F.2d 1414. Defendant's alleged nervousness is insufficient to create reasonable suspicion. See *U.S. v. Saperschein*, 723 F.2d 1221, 1226 (nervousness is an inherently suspicious behavior trait).

The prolonged detention that followed the traffic stop and the warrantless search were unreasonable in violation of the 4th Amendment. Once the officer issued the oral warning stating that Fallin would not be charged for violating the seat belt law, and the computer check that they had no outstanding warrants, the justification for the stop ended, and the officers should have allowed them to leave at that time. Continued detention required a separate justification (which was lacking) and that the search required probable cause. The Constitution was violated when the detention extended beyond the valid reason for the initial stop. *Id.*, 391 F.2d 1414. Counsel failed to put the state's case through adversarial testing by not challenging the stop under *Gerry*, *Supra*. See also *U.S. v. Portea*, 199 F.2d 193.

3. Counsel failed to challenge the chain of custody of the alleged drugs.

The chain of custody is incomplete and was not established pursuant to Rule 5 (c), SCRCrimP. A complete chain of evidence tracing possession from the evidence's initial control to its final analysis, must be established as far as practicable. State v. Carter, 344 S.C. 419, 344 S.E.2d 835 (2001). A missing link in a chain of custody creates an issue of admissibility. The state did not submit the testimony of each individual who handled the evidence, nor did the state comply with Rule 5 (b). Trial court allowed the introduction of the evidence despite the missing links in the chain because the state allegedly demonstrated that the evidence had not been tampered with. See Chisolm, 584 S.E.2d 401.

4. Counsel failed to challenge my co-defendant prearranged plea agreement with the State.

The deliberate deception of a court and jurors by the presentation of evidence known to be false violates the Fourteenth Amendment. The same result obtains when the government/solicitor, although not soliciting false evidence, allows it to go uncorrected when it appears. Giglio v. United States, 405 U.S. 150 (1972). In other words, the state cannot create a materially false impression regarding the facts or the credibility of the witness.

Prosecutor falsehood alone do not automatically entitle a petitioner to relief. Relief is compelled when the false impressions are material, which means when "there is any reasonable likelihood that the false testimony could have affected the judgment of the jury". United States v. Agurs, 427 U.S. 97, 103; Wage v. Ill., 360 U.S. 264; Mooney v. Holohan, 394 U.S. 103; Campbell v. Reed, 594 F.2d 4 (4th Cir.); Boone v. Ponderick, 541 F.2d 131 (4th Cir.). The record will suggest a reasonable likelihood that during deliberations the jurors considered the false evidence or argument/plea deal. This does not entail an inquiry into whether the evidence might have made a difference in the outcome if it had not been considered.

5. Counsel failed to challenge/suppress my co-defendant's involuntary statement.

Statements are inadmissible at trial when they are made involuntarily. Brace v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989). A statement is made involuntarily when it is induced by a promise of leniency. State v. Peace, 291 S.C. 118, 382 S.E.2d 137 (1987).

6. Counsel ineffective because he failed to object to two prejudicial comments made by the trial judge. See trial transcript.

A trial judge must refrain from any comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of an accused, or any fact in controversy, State v. Smith, 288 S.C. 329, 342 S.E.2d 600, State v. Kennedy, Supra. The trial judge's remarks were neither slight nor innocent for they intimated the judge's opinion on witness credibility and controverted facts.

7. Counsel compelled the applicant to testify on his own behalf, also trial court.

The fifth amendment to the U.S. Constitution provides in part that "no person...shall be compelled in any criminal case to be a witness against himself. This provision governs state as well as federal criminal proceedings. Malloy v. Hogan, 345 S.Ct. 1489 Art 1 Sec 12 of the S.C. Constitution contains similar language. The fifth amendment does not prevent a defendant from making a voluntary choice to testify, but it prohibits compelled testimony. In order for testimony to be compelled, some degree of official coercion is necessary. See transcript pg. #193-207

During trial, at the request of defendant's attorney and out of the presence of the jury, the trial judge questioned the defendant as to whether or not he wished to take the stand in his own defense. The applicant contend that this conversation, along with his attorneys advise amounted to official coercion and induced him to testify in violation of the 5th amendment.

Counsel made it a point for me to testify to clear up some matters. See trial transcript pg. #209-6-25 #1104-1-10

8. Counsel failed to object to the "Pitting" of witnesses by the solicitor.

Burgess v. State, 329 S.C. 33, 91 495 S.E.2d 245, 445, no matter how a question is worded, anytime a solicitor asks a defendant in a trial, such as myself to comment on the truthfulness or explain the testimony of an adverse witness, the defendant such as myself is in effect being pitted against the adverse witness and hence co-defendant. See questions asked by the Solicitor in the testimony of Troy Daniel Fallon. This kind of argumentative questioning is improper. See State v. Beane, 316 S.C. 216, 447 S.E.2d 454; State v. Brown, 297 S.C. 17, 34 S.E.2d 609; State v. Sipes, 295 S.C. 144, 369 S.E.2d 145.

Counsel failed to object to the solicitor's questioning. Particularly when credibility is the crucial issue in a case, such as the case at bar, improper pitting of witnesses is prejudicial and cannot be waived harmless. See State v. Brown, Supra.

RECEIVED
MAY 10 2012

PAUL B. WILKINS
BIRMINGHAM COUNTY CHIEF OF COURT
505 FULTON STREET
BIRMINGHAM, AL 35201



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS	
	)	CASE NO: 2012-CP-23-3342	
COUNTY OF GREENVILLE	)		
	)		
James Babb, SCDC # 339152,	)	AMENDMENTS TO	
Applicant,	)	POST CONVICTION	
	)	RELIEF APPLICATIONS	
vs.	)		
	)		
THE STATE OF SOUTH CAROLINA,	)		
Respondent.	)		
_____	)		

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL R. MCNEEL, CLERK
2012 SEP 24 AM 8:53

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.

15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were or whether or not I understood exactly what the term "criminal" element" actually meant.
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with

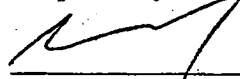
any adversarial litigation.

27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.
29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,



Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

September 11, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMONS PLEAS
 CASE NO: 2012-CP-23-3342

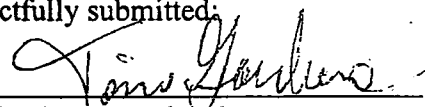
James Babb, SCDC # 339152,)
)
 vs.)
)
 THE STATE OF SOUTH CAROLINA)

AFFIDAVIT OF SERVICE

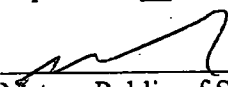
FILED - CLERK OF COURT
 GREENVILLE CO., S.C.
 2012 SEP 24 AM 8:53

I certify that I have served the Amendments to PCR Application on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on September 12 2012, addressed to their attorney of record, Karen Ratigan, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:


 Tina Garduno, paralegal
 Richey and Richey, P.A.
 Post Office Box 10916
 Greenville, South Carolina 29603

Sworn to before me on
 September 12 2012.


 Notary Public of South Carolina
 My Commission Expires: 3-8-14

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-3342
COUNTY OF GREENVILLE	)	
	)	
James Melvin Babb,	)	
S.C.D.C. No. 339152,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed May 17, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the September 2007 term of General Sessions for trafficking methamphetamine (2007-GS-23-7963) and at the November 2007 term for possession with intent to distribute (PWID) a controlled substance (2007-GS-23-7964). Richard H. Warder, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On February 2, 2010, the Honorable Edward W. Miller levied concurrent sentences of fifteen years for trafficking methamphetamine, second offense and five years for PWID a controlled substance, second offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of

Appeals affirmed the Applicant's convictions and sentences. State v. Babb, Op. No. 2012-UP-209 (S.C. Ct. App. filed March 28, 2012).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial transcript.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Allowed deliberate deception of co-defendant's testimony.
 - b. Failed to put the State's case through adversarial testing.
 - c. Failed to challenge chain of custody.
 - d. Failed to challenge co-defendant's pre-arranged plea agreement.
 - e. Failed to request to suppress co-defendant's statement.
 - f. Failed to object to trial judge's prejudicial comments.
 - g. Compelled the Applicant to take the stand.
 - h. Failed to object to pitting of witnesses by solicitor.
 - i. Failed to interview State's main witness.
 - j. Failed to object to prior bad acts.
 - k. Failed to object to prosecutorial misconduct.
 - l. Allowed prosecutorial conduct to take place.
 - m. Failed to request a mistrial.
 - n. Failed to request a severance.
 - o. Failed to properly argue probable cause and traffic stop.
2. Ineffective assistance of appellate counsel.
3. "Wrongful consolidation of Defendants."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington 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, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

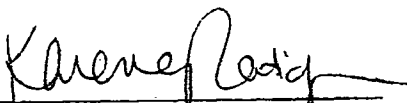
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

August 31, 2012

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JAMES MELVIN BABB, 339152

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

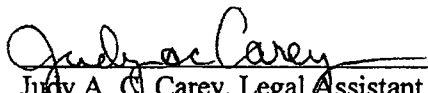
2012-CP-23-3342

AFFIDAVIT OF SERVICE BY MAIL

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 **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Melvin Babb, 339152
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

DATED this 31st day of August, 2012.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JAMES BABB,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2012-CP-23-03342

DECEMBER 19, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

SUSANNAH ROSS, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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Richard H. Warder				
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James Babb -vs- State of South Carolina (2012-CP-23-03342)
Exhibit List

3

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
P-1	Statement of Troy Fallin	8	9
P-2	Check of Roger E. Insley made payable to James Babb dated 2/18/07	8	9

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 **DECEMBER 19, 2013**

2 (WHEREUPON, court convened with all parties
3 present and the following proceedings were had.)

4 THE COURT: Yes, ma'am.

5 MS. RATIGAN: Thank you, Your Honor. May it
6 please the court. This is the case of James Babb
7 versus the State of South Carolina. Docket number is
8 2012-CP-23-3342. Mr. Babb was indicted for trafficking
9 methamphetamine and possession with intent to
10 distribute a controlled substance. He was represented
11 on these charges by Mr. Warder.

12 The case was brought to trial in February of 2010.
13 Mr. Babb was found guilty. On February 2nd of 2010,
14 Judge Miller levied concurrent sentences of fifteen
15 years for trafficking methamphetamine second and five
16 years for PWID controlled substance, second offense.

17 An appeal was filed in the Court of Appeals. The
18 Court confirmed the convictions and sentences on March
19 28th of 2012. An application was timely filed and the
20 state is ready to proceed.

21 THE COURT: Yes, ma'am. You ready?

22 MS. ROSS: Yes. The applicant is ready to
23 proceed at this time.

24 THE COURT: All right. Ms. Ross, you may
25 call your first witness.

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James Babb - Direct Examination by Ms. Ross

5

1 MS. ROSS: All right. First I will just go
2 ahead and call Mr. Babb.

3 THE COURT: Come around, sir, and be sworn,
4 please.

5 THE CLERK: Mr. Babb, please place your left
6 hand on the bible and raise your right hand.

7 You do solemnly swear or affirm that the testimony
8 you're about to give in this case will be the truth,
9 the whole truth and nothing but the truth, so help you
10 God?

11 THE WITNESS: I do.

12 THE CLERK: Thank you. You may be seated.
13 Please state your full name for the record.

14 THE WITNESS: James Babb.

15 JAMES BABB,

16 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. ROSS:

19 Q. All right. Mr. Babb, do you understand why
20 you're here? Or can you just briefly tell us?

21 A. Yeah. I'm here on a PCR to try to get some
22 relief.

23 Q. All right. And do you know what you're facing if
24 you get relief?

25 A. I'm sorry?

1 Q. Do you know what can happen -- what relief means
2 in a PCR?

3 A. Yes, ma'am. I do.

4 Q. Can you explain to me what that is?

5 A. I could get more time than I currently have.

6 Q. All right. Now, I want to go back to your trial.

7 Do you remember what year that was in?

8 A. 2010.

9 Q. All right. And who was your trial attorney?

10 A. Richard Warder.

11 Q. And how many times did you meet -- did you retain
12 him?

13 A. Yes, ma'am.

14 Q. How many times did you meet with him prior to
15 retaining him?

16 A. About two ---

17 Q. Prior to your trial?

18 A. Two or three at the most.

19 Q. Now, at those times, what did you discuss?

20 A. The first time I met with him was when I went to
21 hire him to see if he could represent me. The second
22 time was when he called me into his office to remind me
23 that I had not finished paying him yet, and we were
24 getting ready to go to trial soon. And the third time
25 was when I met him in his office the morning of the

1 case before we came to court.

2 Q. All right. And how much preparation between you
3 and Mr. Warder were you given as far as testifying at
4 trial?

5 A. Basically the only advice he gave me was to
6 appear as clean-cut as possible and try not to mention
7 drug use when I got on the stand. That's it.

8 Q. Did y'all address the facts of the case and the
9 testimony in terms of what had been proven at trial?

10 A. The only thing that I did discuss with him back
11 in his office was his assistant or paralegal Pat had
12 called me a couple of days before to let me know that a
13 part of the evidence containing a check that they were
14 going to use at trial to try to prove that someone had
15 used that check to buy drugs from me.

16 Q. At this point I'm going to show you a picture of
17 the check. Do you recognize this?

18 A. I do.

19 Q. And can you tell us what that is?

20 A. It's a check from my friend Gwen Insley for forty
21 dollars.

22 Q. Now, was that check given to you to buy drugs?

23 A. Absolutely not.

24 Q. Now, were you still in contact -- did you contact
25 Gwen Insley at the time of your trial?

1 A. I hadn't talked to Gwen in a while at that point,
2 so, no, I didn't.

3 Q. Was he an available witness for that trial?

4 A. He probably could have been if we had reached out
5 to him. I'm sure he would have been, actually.

6 Q. Now, I also would like to show you this. Do you
7 recognize this handwriting, or do you recognize this?

8 A. I do.

9 Q. And what is it?

10 A. That's a letter from Troy Fallin.

11 (WHEREUPON, Plaintiff Exhibit Numbers 1 and 2 were
12 marked for identification.)

13 Q. Now in this letter it states that Troy Fallin was
14 promised a sentence of seven years?

15 A. Yes, ma'am.

16 Q. And it states that he was coached as to what his
17 testimony would be?

18 A. Coached and rehearsed on what to say.

19 MS. ROSS: I'd ask to move these into
20 evidence at this time.

21 MS. RATIGAN: I have no objection, Your
22 Honor.

23 THE COURT: All right. Without objection,
24 Exhibits 1 and 2 are admitted into evidence; the check
25 and the letter.

1 (WHEREUPON, Plaintiff Exhibit Numbers 1 and 2 were
2 admitted into evidence.)

3 Q. Now, going back, can you tell the judge what was
4 going on in the hotel room that night?

5 A. Okay. Basically I had -- I was in the hotel room
6 for the weekend to get out of my home environment for a
7 little while. And I was hanging out with Troy Fallin
8 because the basis of my friendship with Troy Fallin was
9 probably for all the wrong reasons. Our friendship was
10 based on the fact that Troy Fallin would often, almost
11 always, share drugs with me. And what I was doing in
12 the hotel room that weekend was getting away from my
13 house and, like any addict does, I was just there
14 thinking that -- I guess any addict thinks if they can
15 get away from their problems and get to a place where
16 they can just do the drugs that they do, that things
17 will be better, even though that the wrong way of
18 thinking.

19 Q. All right. Now, when you say share drugs with
20 you, do you mean -- what do you mean by that?

21 A. Anytime that Troy had drugs he would always
22 share, and he almost always had drugs.

23 Q. All right. And when you say the drugs that were
24 found in his trunk, were they half yours and half his;
25 is that what you mean by share?

1 A. No.

2 Q. What do you mean by share?

3 A. Share like when he would use he would let me use
4 with him, as well.

5 Q. All right. So he would give you drugs?

6 A. Yes, ma'am.

7 Q. All right. But going back to the drugs in that
8 trunk, did you have the ability to just take those
9 drugs?

10 A. No. They were not at my disposal like that.
11 They were his.

12 Q. All right. One second. I've got no further
13 questions.

14 THE COURT: Any cross examination?

15 CROSS EXAMINATION

16 BY MS. RATIGAN:

17 Q. Did you review any of the state's evidence with
18 Mr. Warder?

19 A. No, ma'am.

20 Q. None at all?

21 A. Well, I saw a photo prior to coming into court of
22 the evidence, but that's it.

23 Q. But you didn't look over any police reports or
24 drug analysis, nothing like that?

25 A. No. Never.

1 Q. Did you tell him your version of what had
2 happened in the hotel room that night?

3 A. I told him a slightly different version based on
4 what I had been told to do.

5 Q. No. Did you tell Mr. Warder when you talked to
6 him, did you tell him what happened at the hotel room?

7 A. We never even met to talk about the case, really.
8 So I really didn't get a chance. The only thing that
9 he and I discussed was the photo of the evidence. And
10 basically he asked me if I wanted to take the stand,
11 and I said yes. And there was never really any
12 coaching at all.

13 Q. Now, when you say the photo of the evidence, are
14 you talking about the Xanax and the methamphetamine?

15 A. I'm talking about a group photo of all the stuff
16 together.

17 Q. Okay. So everything that was discovered like the
18 syringes and the pipes, all that stuff together, you
19 just saw a picture of all of it?

20 A. Yes, ma'am.

21 Q. Okay. And you never discussed any possible
22 defenses with Mr. Warder?

23 A. Just -- he just asked me if I wanted to take the
24 stand still. And I said, yes. That's about it.

25 Q. And this started out as a joint trial with Mr.

1 Fallin; isn't that correct?

2 A. Yes, ma'am.

3 Q. And then about halfway through he pled guilty and
4 then he testified against you?

5 A. Yes, ma'am.

6 Q. And your testimony today is you went to that
7 hotel room to kind of get away and do the drugs and you
8 shared them with Mr. Fallin?

9 A. He shared them with me.

10 Q. Okay. But you did not testify to that at trial;
11 did you?

12 A. No. I cleaned up the story as I had been told to
13 do.

14 Q. Who told you to clean up the story?

15 A. Mr. Warder.

16 Q. But I thought you just said the only thing you
17 talked to him about was the fact that you wanted to
18 testify, you said yes, and that he didn't coach you?

19 A. Like I told her a minute ago when I testified
20 that he had told me just to come into the courtroom,
21 look as clean-cut as possible and not talk about drug
22 use. And that was the advice he had given me in his
23 office before we came to court that morning and that
24 was it. He even told me what kind of shirt to wear.
25 And that was about it.

1 Q. Were you -- when you went to court that day with
2 Mr. Warder, were you unhappy with his representation of
3 you at that point?

4 A. Well, at first I was kind of in shock of what had
5 happened, but later, you know, yes, I was.

6 Q. Why didn't you tell the trial judge you were
7 unhappy with Mr. Warder and didn't want him to
8 represent you?

9 A. Because, I mean, in the beginning of it, I
10 thought that he was doing what he was supposed to do.
11 It's not until afterwards, after it was all over, that
12 I realized that he had not done a sufficient job.

13 Q. So you were fine with him at the time, but it was
14 just after the conviction, you thought he didn't do as
15 good of a job as he should have?

16 A. Yes, ma'am. When I realized that he didn't
17 present the -- he didn't argue the check that was five
18 months old at the time. And they had even taken the
19 time to swear what they called a professional witness
20 just to prove that that check was used to buy drugs
21 from me that weekend. And that check was five months
22 old at the time and he never brought the date up on the
23 check. He never called up the person who wrote the
24 check. So ...

25 Q. So you especially did not like the way he handled

1 the check issue; that's the main thrust of your
2 argument?

3 A. That's just one of them. I mean, ...

4 Q. What else didn't he do for you that you wanted
5 him to do?

6 A. I wasn't offered any plea deals. I wasn't told
7 -- I wasn't really -- I didn't like I was informed
8 about what was really -- about to really happen. I
9 mean, ...

10 Q. So you're saying Mr. Warder was ineffective
11 because the state didn't offer you any plea deals?

12 A. I'm just saying that I thought I should have been
13 -- I believe that should have been brought to the
14 table. You know, that's just one reason that he may
15 have been ineffective.

16 Q. Are you saying that if you had gotten a plea
17 offer, you would have pled guilty?

18 A. No.

19 Q. Did you ever ask Mr. Warder to contact the person
20 who wrote that check?

21 A. No, because we were already in trial. I didn't
22 know, you know -- if that was going to be done he
23 should have done that before we came to court that day.

24 Q. Yeah, but you said you discussed with Pat -- you
25 discussed the check issue with Pat. So why didn't you

1 mention something before the trial, since you knew
2 about it before the trial, that you wanted him to look
3 into the check issue?

4 A. Well, I did tell Pat that. I told Pat, I said,
5 that check is months old. I said, that's easily argued
6 against, because that's not true. I said, that check's
7 months old, so there shouldn't be a problem there.

8 Q. But you said you met with him the morning of the
9 trial. You didn't tell him at that point either that
10 you wanted him to look into the check?

11 A. No. I felt like he was probably prepared, since
12 I had retained him and paid him, I felt like he was
13 probably prepared to do what he needed to do. I'd
14 always heard great things about him. I had put my
15 trust in him.

16 Q. So you were content just to have him run the show
17 basically?

18 A. I was trusting him.

19 Q. Okay.

20 MS. RATIGAN: That's all I have, Your Honor.

21 THE COURT: Any redirect?

22 MS. ROSS: No, Your Honor.

23 THE COURT: Thank you, sir. You can step
24 down.

25 MS. ROSS: We now call Michael Few.

1 THE CLERK: What's your name again?

2 THE WITNESS: Michael Few.

3 THE CLERK: Okay. Please place your left
4 hand on the bible, sir, and raise your right hand.

5 You do solemnly swear or affirm that the testimony
6 you're about to give in this case will be the truth,
7 the whole truth and nothing but the truth, so help you
8 God?

9 THE WITNESS: Yes.

10 THE CLERK: Thank you. You may be seated.

11 MICHAEL FEW,

12 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. ROSS:

15 Q. Mr. Few, I've just got a few brief questions. Do
16 you know James Babb and Troy Fallin?

17 A. I do.

18 Q. How do you know them?

19 A. James is just a long-time friend, mutual friend.
20 And I knew Troy as a dealer.

21 Q. Now, did you -- how long did you know James Babb?

22 A. Probably thirty years.

23 Q. Now, did you know James Babb as a dealer, as
24 well?

25 A. No, ma'am.

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17

1 Q. Would you have been willing to testify at trial

2 if James' attorney had contacted you?

3 A. Yes, I would have.

4 Q. Okay. And what would you have testified to?

5 A. That Troy was the source and the dealer.

6 Q. Nothing further.

7 **CROSS EXAMINATION**

8 **BY MS. RATIGAN:**

9 Q. Mr. Few, did you know that Mr. Babb and Mr.

10 Fallin were on trial for these charges at the time?

11 A. I knew that there was a court date, yes.

12 Q. And did you try to contact Mr. Babb's attorney to

13 tell him that you didn't think that James was a dealer?

14 A. No. I didn't know his attorney.

15 Q. Well, did you contact Mr. Babb or anyone in his

16 family and say, I want to help out. I want to help

17 James. Who's his lawyer that I can talk to?

18 A. I did speak to James briefly to tell him that I

19 would help in anyway that I could.

20 Q. Okay. And did he ask you to call his attorney?

21 A. Not at that time.

22 MS. RATIGAN: That's all I have, Your Honor.

23 MS. ROSS: Just one thing.

24 THE COURT: Yes, ma'am.

25 **REDIRECT EXAMINATION**

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Michael Few - Redirect Examination by Ms. Ross
Roger Edwin Insley, Jr. - Direct Examination by Ms. Ross

18

1 BY MS. ROSS:

2 Q. How were you contacted by me?

3 A. You sent me an email first and then several
4 telephone calls.

5 Q. All right. Thank you.

6 THE COURT: Thank you, sir. You can step
7 down.

8 MS. ROSS: All right. The applicant would
9 now call Gwen Insley.

10 THE CLERK: Mr. Insley, please place your
11 left hand on the bible and raise your right hand as
12 best you can.

13 You do solemnly swear or affirm that the testimony
14 you're about to give in this case will be the truth,
15 the whole truth and nothing but the truth, so help you
16 God?

17 THE WITNESS: Yes.

18 THE CLERK: Thank you. You may be seated.
19 Please state your full name for the record.

20 THE WITNESS: Roger Edwin Insley, Jr.

21 ROGER EDWIN INSLEY, JR.,

22 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MS. ROSS:

25 Q. All right. Do you recognize this?

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Roger Edwin Insley, Jr. - Direct Examination by Ms. Ross

19

1 A. Yes, I do.

2 Q. Can you tell us what that is?

3 A. It's a check that I wrote to my friend James
4 while I was looking for houses. I was relocating from
5 Gastonia, North Carolina back to Greenville. I grew up
6 here mostly. And you know, he had always told me I
7 could always, you know, stay at his house. As I was
8 leaving one of the times when I was here meeting my
9 realtor to look for houses, I tried to offer him a
10 forty dollar check just to show my gratitude for his
11 hospitality.

12 Q. Now, it says charitable donation. Why is that?

13 A. Because he wouldn't take my money. He was like,
14 I'm just doing this to help you and Dominique and the
15 kids get moved down here, you know. And he wouldn't,
16 he wouldn't take my money, so I, you know, just wrote a
17 friend a check to say thank you. Like my grandmother
18 used to always say, it's always nice to have a little
19 piece of money in your pocket, so I thought that one
20 day he might, you know, cash the check. I never
21 thought this would have anything to do with this whole
22 sorted mess.

23 Q. All right. What's the date on the check?

24 A. 2/18/07.

25 Q. Was this check written for drugs?

- 1 A. Absolutely not.
- 2 Q. Now, did you know James Babb to be a drug dealer?
- 3 A. No, ma'am.
- 4 Q. How did you know James Babb and how long?
- 5 A. Gosh, actually he was friends with my wife back
- 6 -- you know, we were all mutual friends, so I've known
- 7 him since the late eighties, I guess. I just knew him
- 8 to be an artist and we're like-minded. You know, so we
- 9 always got along well. And he's just been one of my,
- 10 you know, one of my good friends for years.
- 11 Q. All right. Now, if you had been contacted would
- 12 you have testified to this at his trial?
- 13 A. Absolutely. I can't believe that I wasn't,
- 14 seeing as how this check has come back to haunt me and
- 15 everyone else.
- 16 Q. All right. I've got no further questions.

17 **CROSS EXAMINATION**

18 **BY MS. RATIGAN:**

- 19 Q. When did you find out that this check was used
- 20 against Mr. Babb?
- 21 A. Actually this past summer when James wrote me a
- 22 letter telling me -- I had actually heard from someone
- 23 previously, you know, it was maybe a year or so after
- 24 he had already gone to prison. I didn't know anything
- 25 about this case. And I'd say about a year later

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21

1 someone told me something about a check that I had
2 written being pivotal in this conviction. And I
3 dismissed it because I thought, there's no way, you
4 know. And then he, you know, confirmed the fact that
5 that was true via the letter I received sometime around
6 June or July of this year.

7 Q. And your testimony is you did not know Mr. Babb
8 to be a drug dealer?

9 A. Not at all, not at the time, no.

10 Q. Did you know him to be someone who used drugs?

11 A. Well, later, just from seeing his ankle bracelet
12 I knew, you know. He told me a little, you know. And
13 we were in contact from time to time after I moved
14 here. But ---

15 Q. When you say when you saw his bracelet, around
16 what time -- are we talking about before the trial?

17 A. It was before the trial, but after I moved here.
18 Sometime around maybe '09 or something. I'm not sure.
19 I closed on our house on June 18th of 2007, so ...

20 Q. But at sometime before the trial, you knew he had
21 that history?

22 A. Sometime before the trial in 2010?

23 Q. Yes?

24 A. Yes, ma'am.

25 Q. Okay.

1 MS. RATIGAN: That's all I have, Your Honor.

2 THE COURT: Any redirect?

3 MS. ROSS: No, Your Honor.

4 THE COURT: Thank you, Mr. Insley, you may
5 step down.

6 MS. ROSS: We have no further witnesses.

7 THE COURT: Anything from the state?

8 MS. RATIGAN: Yes, Your Honor. We'd call Mr.
9 Warder.

10 THE CLERK: Mr. Warder, please place your --
11 thank you.

12 You do solemnly swear or affirm that the testimony
13 you're about to give in this case will be the truth,
14 the whole truth and nothing but the truth, so help you
15 God?

16 THE WITNESS: Yes, I do.

17 THE CLERK: Thank you. Please state your
18 full name for the record.

19 THE WITNESS: Richard Harold Warder.

20 THE CLERK: Thank you.

21 RICHARD HAROLD WARDER,

22 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MS. RATIGAN:

25 Q. Mr. Warder, do you recall representing Mr. Babb

1 on these charges?

2 A. I mean I recall the events. I don't in detail
3 remember everything about it.

4 Q. Okay. And were you retained in this case?

5 A. Yes.

6 Q. And did you file the usual *Brady* and Rule 5
7 motions?

8 A. Yes.

9 Q. Did you receive those materials from the state?

10 A. Yes.

11 Q. Did you review them just independently, just you
12 sit down and review them?

13 A. Yes.

14 Q. Did you review them with Mr. Babb?

15 A. Yes.

16 Q. How many times would you say you met with Mr.
17 Babb before the trial; do you recall?

18 A. I don't accurately recall. I know we talked
19 several occasions.

20 Q. And was Mr. Babb out on bond, do you recall, or
21 was he at the detention center?

22 A. He was out on bond.

23 Q. Did he tell you his version of what had happened
24 at the hotel room?

25 A. Yes.

1 Q. Did he tell you that he had gone there to use
2 drugs?

3 A. I honestly don't have any recollection of the
4 conversations, the details.

5 Q. So you recall that he told you, you just don't
6 recall the details?

7 A. I recall that we went over the details before
8 then, but I don't recall them.

9 Q. Okay. And you reviewed with him that the whole
10 case got started because of the confidential tip to the
11 police?

12 A. Yes, we discussed that.

13 Q. Did you review with him the idea of accomplice
14 liability or hand of one is hand of all?

15 A. Yes. I think we talked about all the things that
16 could lead to a conviction.

17 Q. Did you also discuss with him the idea of mere
18 presence, that you would ask for that charge from the
19 judge?

20 A. I'm sure we covered that.

21 Q. What was your trial strategy? What defense were
22 you going to argue at the trial?

23 A. We were arguing his version of the facts, the
24 fact that he wasn't involved in drug transactions. I
25 think there were some bags in the trunk that the co-

1 defendant had put in the trunk. And the police had
2 observed the co-defendant do that. He didn't have
3 knowledge -- or claimed not to have knowledge of that
4 bag being in there. I think the rest of the drugs were
5 in the glove box, and there was a, if I remember, a
6 marijuana roach in the car.

7 Q. Do you remember the check being an issue? That
8 forty dollar check; do you recall it?

9 A. No.

10 Q. But if you received that in the discovery, would
11 you have reviewed that ---

12 A. Yes.

13 Q. --- with your client? Did Mr. Babb ever tell you
14 to try and contact the person who wrote him that check?

15 A. No.

16 Q. Did Mr. Babb ever give you any witnesses to
17 contact in terms of investigating the case?

18 A. I honestly don't remember.

19 MS. RATIGAN: May I approach, Your Honor?

20 THE COURT: You may.

21 Q. Mr. Warder, I'm handing you Plaintiff's Exhibit

22 1. Do you recall receiving that from Mr. Fallin?

23 A. I don't recall. I know I did. I have a copy of
24 it in the file.

25 Q. Okay. And do you recall if you took any kind of

1 action once you received that letter?

2 A. We got it on March 17. I know that because I --
3 a copy of the letter was stamped and all. And that's
4 really about all I remember of it. It would have been
5 about two months after trial.

6 Q. Well, do you recall whether or not you questioned
7 Mr. Fallin at trial about whether or not he had been
8 made kind of promises or any kind of deals? Do you
9 recall asking him about that?

10 A. I think I asked him at trial about that.

11 Q. Did you speak with Mr. Babb prior to trial about
12 his testimony at trial?

13 A. Yes. I'm sure we discussed that.

14 Q. Mr. Babb testified today that he told you -- that
15 basically all that you told him was to appeal clean-cut
16 and not mention drugs. Does that sound accurate or
17 what were the discussions?

18 A. No. That certainly wouldn't have been all we
19 talked about. Certainly I know I would have told him
20 to appear as good as he could.

21 Q. So you would have discussed more than just stay
22 away from talking about drugs?

23 A. Yes.

24 Q. Okay. Did any one in Mr. Babb's family or any of
25 his friends ever contact you about wanting to testify

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Richard H. Warder - Cross Examination by Ms. Ross

27

1 on his behalf?

2 A. I don't believe any tried to contact me about
3 wanting to testify.

4 Q. Obviously this is kind of a Monday morning
5 quarterback kind of question, but is there anything
6 else you think you could have done to investigate the
7 case before trial?

8 A. I don't, I don't think there was anything else
9 that I would investigate, looking back. No.

10 MS. RATIGAN: That's all I have, Your Honor.

11 THE COURT: You may cross examine the
12 witness.

13 MS. ROSS: Okay.

14 **CROSS EXAMINATION**

15 **BY MS. ROSS:**

16 Q. Now, in this case it was based on an anonymous
17 tip?

18 A. Yes.

19 Q. Correct? And that tip was not enough for
20 probable cause in the case? They did not get a warrant
21 based on that tip?

22 A. Alone it probably would not be.

23 Q. So alone it was not? And then you would agree
24 the suppression hearing was -- is always pivotal in any
25 drug case and it was in this case, as well?

1 A. There was a suppression hearing, yes.

2 Q. Now, I'd refer you to page 73 and 74, and that's
3 the suppression hearing. Now, at that point you never
4 argued section 56-5-6540(d); did you? And I'm going to
5 hand you that section.

6 MS. ROSS: And Judge, if I may approach, I'll
7 hand you a copy, as well.

8 Q. And I'd refer you -- sorry about the small print.
9 It's on mine too. I'd refer you to section (d). Can
10 you read that?

11 A. Yes.

12 Q. Could you read it for the court, please?

13 A. Sure. Section (d) says: The vehicle driver or
14 occupant of a vehicle must not be searched nor may
15 consent to search be requested by the law enforcement
16 solely because of a violation of this article.

17 Q. All right. Now, did you argue that at trial?

18 A. I honestly don't recall what we argued at trial.

19 Q. If the record reflects that that was ---

20 A. Certainly the record will reflect what was
21 argued.

22 Q. And would you agree that -- I've been looking at
23 this, so it's harder -- but Judge Miller cites a
24 Willard case, stating that once you have consent any
25 search is fine. Wouldn't that specifically rebut the

1 Willard case?

2 A. I think that issue was raised on appeal. And I
3 think that the Supreme Court determined that against
4 him.

5 Q. Well, the issue of the whole suppression hearing.
6 But since this law was never mentioned and put on the
7 record, the appellant record wouldn't reflect this
8 statute and being able to argue it; would they? Since
9 it was not an *Anders* brief, they're basing ---

10 A. I think on appeal we argued that -- if I remember
11 the issue, and it's really -- I'll confess I'm not
12 crisp clear. I think that the issue was whether on
13 appeal they -- whether is all they had was a seatbelt
14 violation. And I think that the court, Supreme Court,
15 found that this was corroborated, the notice-ness of
16 the driver, that the officer testified was overly
17 noticed that his fidgety hands, that he was trembling,
18 and I think there was a marijuana roach in plain view.

19 Q. All right. If the record does not reflect the
20 marijuana roach in plain view, would you agree that
21 there was no marijuana roach?

22 A. Then there was no testimony. I remember that as
23 a fact.

24 Q. Isn't it true that -- I'm just naming one -- *U.S.*
25 *v. Wilson*, which is a Sixth Circuit case, and many

1 other cases, state that extreme nervousness is not
2 probable cause to search? Nervousness is not enough;
3 is it?

4 A. (No verbal response.)

5 Q. Or wouldn't you agree that lots of people get
6 nervous when they're pulled over by a policeman?

7 A. Well, certainly. You know, I think that the
8 cases that say that, unfortunately, a tip corroborated
9 with that, that would be one more thing they can
10 consider. It's the totality of the circumstances test,
11 as I understand it.

12 Q. All right. Now, during the transcript, at one
13 point, you talk about at one point in 2005 a law was
14 made that said, you have to wear your seatbelt, but you
15 can't pull solely based on the seatbelt?

16 A. Yes.

17 Q. You have some recollection of that? Now, in 2005
18 -- did I say that wrong? In '95, you can note ... In
19 2005, this law was created and it stated, now you can
20 pull just for seatbelt, but you cannot request consent
21 to search when a pull is based just for seatbelt. That
22 was the new law. And the intent of that law, wouldn't
23 you agree, is to ensure that people aren't just pulled
24 for seatbelt violation and consent is then requested?
25 If that's what it says in the law, would you agree

James Babb -vs- State of South Carolina (2012-CP-23-03342)
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1 that's probably the intent?

2 A. The law speaks for itself. I certainly wouldn't
3 even attempt to say what they intended.

4 Q. All right. Now, we addressed this letter that
5 you received later; that you have right there. Now, if
6 that letter is, in fact, true, then in closing argument
7 when the solicitor stated, this man wasn't promised
8 anything, that was not the case if this letter is, in
9 fact, true?

10 A. Yes.

11 Q. Okay. Now, and you agree, too, that in this case
12 it was found in the co-defendant's car and found on the
13 co-defendant who was seen carrying all the bags to the
14 car; correct?

15 A. I believe that's the way I remember it.

16 Q. And in your recollection was one bag carrying an
17 ice cream maker and put in the car, and that was some
18 testimony from law enforcement?

19 A. I don't know. As I remember, and it's been some
20 -- the bag that had the drugs in it was specifically
21 identified by a policeman as the bag the other person
22 was carrying.

23 Q. All right.

24 A. I don't recall what they said was found.

25 Q. Okay. And I'm just going to show you this check

1 quickly. Isn't there a name, address and phone number
2 of Mr. Insley on that check?

3 A. There's a phone number certainly and a P.O. Box
4 number some place in New York.

5 Q. North Carolina?

6 A. North Carolina.

7 Q. Now, and you had that in discovery prior to
8 trial? The check; correct?

9 A. (No verbal response.)

10 Q. Or do you recall?

11 A. I don't recall right offhand.

12 Q. Okay. Now, do you recall, by any chance did they
13 have the check at trial or just a photocopy of the
14 front of the check? Could you tell whether it had been
15 endorsed or not?

16 A. I don't have any idea.

17 Q. All right. Now, on page 258 of the transcript,
18 in closing the solicitor suggests that this check was
19 used to buy drugs. You didn't object to that during
20 his closing; did you? If the record reflects ---

21 A. I mean, drug transactions are not usually done by
22 check, you know. I would be suspicious of that.

23 Q. Now, ---

24 MS. ROSS: Beg the court's indulgence.

25 Q. I would ask you, at the end of this, Babb

1 received a fifteen year sentence, while Fallin, the co-
2 defendant, whose car it was and who was seen carrying
3 the drugs, received a seven year sentence; is that
4 correct?

5 A. Yes.

6 MS. ROSS: I've got nothing further.

7 MS. RATIGAN: I have no redirect, Your Honor.

8 THE COURT: All right. Thank you, Mr.

9 Warder. You may step down.

10 MS. RATIGAN: Your Honor, the state would
11 rest at this time and ask that Mr. Warder be excused.

12 THE COURT: Any objection?

13 MS. ROSS: No objection, Judge.

14 THE COURT: You may be excused. Thank you,
15 Mr. Warder.

16 Anything in reply?

17 MS. ROSS: No, Your Honor. I would ask that
18 -- I believe that the indictment is part of the record.

19 THE COURT: It is.

20 MS. ROSS: But also, I don't think you need
21 the statute to be made a part of the record, but I'd
22 ask that Statute 56-5-6540 be made a part of the
23 record, as well.

24 THE COURT: All right. I certainly have a
25 copy of that.

1 MS. ROSS: Okay. And I do have some
2 argument.

3 THE COURT: All right. Be glad to hear from
4 you, Ms. Ross.

5 MS. ROSS: Judge, I always make this motion
6 pursuant to 17-27-70 of the South Carolina Code of Laws
7 that a reply was not filed within thirty days, so we
8 would move for summary judgment. I'd point out, the
9 application was filed May 17, 2012, and the reply was
10 August 31st, 2012.

11 We have alleged ineffective assistance of counsel.
12 We base that on -- the record reflects no motion to
13 quash the indictment based on Rule 3 of the South
14 Carolina Rules of Criminal Procedure when the warrant
15 was taken April 29th, 2007 and the indictment,
16 September 26th, 2007.

17 We would also argue that counsel failed to
18 effectively argue in the suppression hearing. That's
19 pages 71 through 74; that'll give you an idea. Clearly
20 Statute 56-5-6540(d), specifically rebuts the *Willard*
21 case on which the trial judge based his ruling denying
22 the suppression hearing. Under *Florida v. J.L.*, which
23 co-defendant's counsel argued, that tip was not enough
24 to search. Nervous, soda bottles, fast food wrappers
25 don't equal a search, probably cause to search, under

1 State v. Rivera, 682 at S.E.2nd 307. That's a 2009
2 Court of Appeals case. And there are many other cases
3 showing that things that everyone does do not equal
4 probable cause; and that would be nervousness, fast
5 food wrappers and in that case they talked about soda
6 bottles, as well.

7 I think that clearly would have affected the
8 outcome of the case. I think it would have raised a
9 substantial likelihood that suppression would have been
10 granted. The intent of that law -- and I know Todd
11 Rutherford who helped make that law -- was to ensure
12 that consent was not requested pursuant to a stop for a
13 seatbelt violation. And that's exactly what happened
14 in this case. And that was illegal.

15 We would also put on the record that -- we would
16 allege ineffective assistance of appellant counsel for
17 failing to argue 56-5-6540 in its brief. However, my
18 understanding if it's not in the trial transcript
19 they're limited on what argument they can make. The
20 appeal is based on the search being unconstitutional.
21 But the statute was never mentioned, not once.

22 We would also allege Mr. Babb was denied due
23 process. The outcome was unfair. And then you heard
24 testimony about -- we've presented witnesses who were
25 available to rebut the testimony of co-defendant Troy

1 Fallin who said, I'm not the dealer, he is; when, in
2 fact, it was the other way around.

3 I've got nothing further.

4 MS. RATIGAN: Very briefly, Your Honor.

5 We would argue *Strickland* hasn't been met, either
6 prong. We would argue that these folks all knew that
7 Mr. Babb was on trial. If they wanted to contribute to
8 his defense and stick up for him as being kind a pawn
9 of Mr. Fallin's drug dealing, they could have contacted
10 Mr. Warder. They -- Mr. Babb could have told Mr.
11 Warder to contact these people. He did not do any of
12 this.

13 The only other thing I would note, Your Honor, is
14 while Mr. Warder may not have technically argued 56-5-
15 6540(d), it was cited in the Court of Appeal's opinion,
16 so they clearly considered it. They considered that
17 particular section. They also considered *State v.*
18 *Willard*, which was cited by Judge Miller. So while Mr.
19 Warder may not have argued it, you can't prove any kind
20 of prejudice, because the court clearly considered that
21 statute in affirming his convictions and sentences.

22 Again, the only other thing I would argue, the
23 motion to dismiss based on late return. We actually
24 have three months; we have ninety days to file a return
25 from a trial. So in this case, while the return was

1 late, it was only two weeks late. And we would cite
2 Rule 15 and also Rule 55; you can't hold the state in
3 default without showing some kind of prejudice. And
4 there's been no showing that Mr. Babb was prejudiced by
5 the return being filed two weeks late.

6 Again, we would argue neither prong of *Strickland*
7 has been met and the case should be dismissed.

8 MS. ROSS: Just one brief rebut.

9 THE COURT: Yes, ma'am.

10 MS. ROSS: In the appellate opinion, I
11 believe they cited a different section of 56-5-6540.
12 They cited section ---

13 THE COURT: Well, in paragraph two, they have
14 56-5-6540 ---

15 MS. ROSS: I apologize.

16 THE COURT: --- (d). Earlier in paragraph
17 one, they do have 65-20.

18 MS. ROSS: I apologize.

19 THE COURT: And they talk about *Willard* also
20 in that. But I'll still look at the transcript. I'll
21 review it and try to issue a notification of my ruling
22 to you in the next month anyhow. Thank you both very
23 much.

24 MS. ROSS: Thank you, Judge

25 MS. RATIGAN: Thank you, Your Honor.

James Babb -vs- State of South Carolina (2012-CP-23-03342)
Richard H. Warder - Cross Examination by Ms. Ross

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[END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Thirteenth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Greenville County, South Carolina, on the 19th day of
10 February, 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 June 23, 2014

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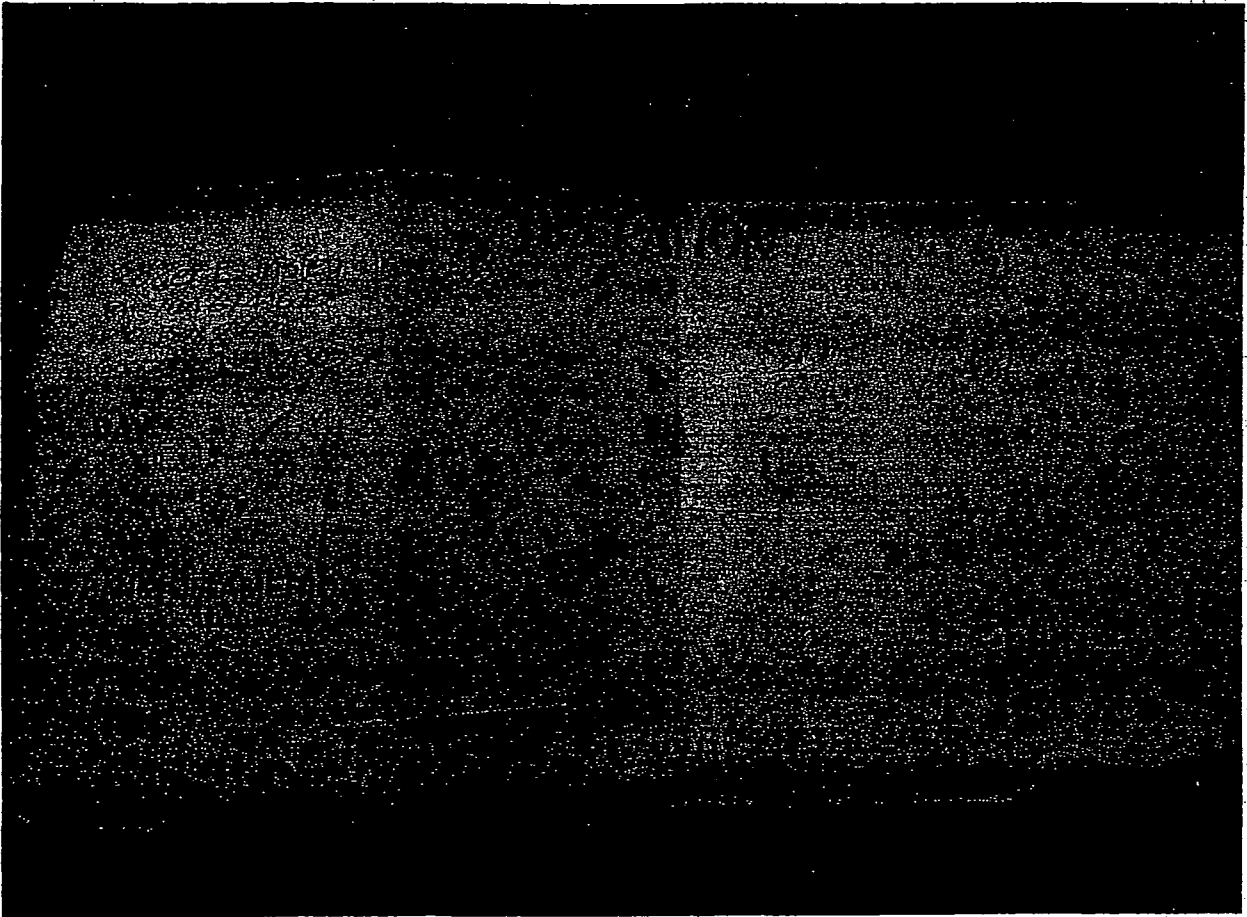
20 Circuit Court Reporter

PLAINTIFF'S
EXHIBIT
1
2024-21
RECEIVED 800-431-4089

2-14-16

I, Troy Fallin, am writing this statement to say that I was "coached" and told what to say and what not to say during my testimony on the stand. I was NEVER told by the arresting officer (C.C. Reider) that he wasn't giving me a ticket or warning for a seatbelt violation. I felt like I had no choice but to let him search my car. When the officer asked me to step out of the car it was to discuss and show me why he couldn't see that I had my seatbelt. They went into asking about certain types of drugs in the car but NEVER mentioned or asked directly about Meth. All the others he did. But during my testimony I was told not to say anything about my 7 year sentence if I pled guilty.

Jerry Fallin
11/11/15



PLAINTIFF'S
EXHIBIT
E
12-22-02

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

James Melvin Babb,
S.C.D.C. No. 339152,

Applicant,

v.

State of South Carolina,

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-3342**ORDER OF DISMISSAL**FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 17 PM 11 30

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 17, 2012. The Respondent made its return on August 31, 2012. An evidentiary hearing into the matter was convened on December 19, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Susannah C. Ross, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Michael Few, Roger Ensley, and the Applicant's trial counsel, Richard H. Warder, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and the Applicant's Exhibits 1-2.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the September 2007 term of the Greenville County Grand Jury for trafficking



methamphetamine (2007-GS-23-7963) and at the November 2007 term for possession with intent to distribute (PWID) a controlled substance (2007-GS-23-7964). He was represented by Richard H. Warder, Esquire.

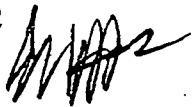
After the State brought the case to trial, the Applicant was found guilty. On February 2, 2010, the Honorable Edward W. Miller levied concurrent sentences of fifteen years for trafficking methamphetamine, second offense and five years for PWID a controlled substance, second offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Babb, Op. No. 2012-UP-209 (S.C. Ct. App. filed March 28, 2012).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Allowed deliberate deception of co-defendant's testimony.
 - b. Failed to put the State's case through adversarial testing.
 - c. Failed to challenge chain of custody.
 - d. Failed to challenge co-defendant's pre-arranged plea agreement.
 - e. Failed to request to suppress co-defendant's statement.
 - f. Failed to object to trial judge's prejudicial comments.
 - g. Compelled the Applicant to take the stand.
 - h. Failed to object to pitting of witnesses by solicitor.
 - i. Failed to interview State's main witness.
 - j. Failed to object to prior bad acts.
 - k. Failed to object to prosecutorial misconduct.
 - l. Allowed prosecutorial conduct to take place.
 - m. Failed to request a mistrial.
 - n. Failed to request a severance.
 - o. Failed to properly argue probable cause and traffic stop.
2. Ineffective assistance of appellate counsel.



3. "Wrongful consolidation of Defendants."

At the evidentiary hearing, the Applicant proceeded solely upon the following issues and allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to argue a violation of Rule 3(c), SCRCrimP.
 - b. Failed to investigate and communicate with the Applicant.
 - c. Failed to argue S.C. Code Ann. § 56-5-6540(D).
 - d. Failed to call witnesses.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the

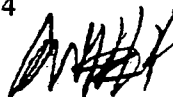
result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he retained trial counsel and they met three times before trial. The Applicant stated they did not review the case or possible defenses. The Applicant stated he told trial counsel’s assistant that the check at issue was not for drugs but that the person he gave that check to could be called as a witness. The Applicant stated his co-defendant (Troy Fallin) would have drugs and share them with him. The Applicant stated Fallin sent a letter to trial counsel after the trial, in which he said he was promised a seven-year sentence and was coached as to how to testify. The Applicant stated that, while trial counsel did not keep him informed about the case, he was content to let trial counsel “run the show.”

Michael Few stated he knows both Fallin and the Applicant. Few stated he would have testified at trial that Fallin was a drug dealer and that he did not know of the Applicant as a dealer. On cross-examination, Few admitted he knew of the Applicant’s court date but did not contact trial counsel.

Roger Ensley stated he has known the Applicant since the late 1980s. Ensley stated he wrote a check to the Applicant (the check used at trial). Ensley stated he learned this check was at issue approximately one year after the Applicant’s conviction. Ensley admitted he knew the Applicant was a drug user.

Trial counsel confirmed he was retained in this case. Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified he spoke with the Applicant “several” times. Trial counsel testified they



reviewed the Applicant's version of events, the tip to the police officers, and the doctrines of mere presence and accomplice liability. Trial counsel testified the defense strategy was to argue the Applicant was not involved in the drug transaction and that the officers saw Fallin put the bag of drugs in the trunk. Trial counsel testified he did not recall the check issue but that if this item were in the discovery materials, he would have reviewed it with the Applicant. Trial counsel testified the Applicant never asked him to contact Ensley. Trial counsel testified he did not recall if he did anything with Fallin's letter. Trial counsel testified he did not argue § 56-5-6540(D) at the suppression hearing.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately communicate with him or investigate his case. Trial counsel testified they had several meetings about the case and reviewed the discovery materials and the Applicant's version of the case. This Court finds trial counsel's testimony is credible. This Court also notes the Applicant failed to voice any dissatisfaction with trial counsel's representation to the trial judge.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have filed a motion pursuant to Rule 3(c), SCRCrimP.¹ This Court notes the lack of an

¹ This Court notes the Applicant moved for summary judgment in this case, arguing the State's return was filed late. As the State's return was dated August 31, 2012, it was filed two weeks late. Rule 12(a), SCRCrimP. The motion is denied, as this Court finds the Applicant failed to articulate or demonstrate any prejudice as a result of this delay.



indictment within 90 days does not automatically nullify a warrant. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) (“[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution.”). Further, this Court finds the Applicant failed to provide evidence of any prejudice that resulted from the delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one’s speedy trial rights were violated).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued S.C. Code Ann. § 56-5-6540(D) when arguing the motion to suppress. This Court notes trial counsel argued the substance of this statute, without actually mentioning the statute number. (Trial transcript, p.75). This Court further notes the Court of Appeals cited § 56-5-6540(D) in addressing the search and affirming the Applicant’s conviction. See State v. Babb, Op. No. 2012-UP-209 (S.C. Ct. App. filed March 28, 2012).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have subpoenaed witnesses Few and Ensley to testify at trial. Few stated he would have testified at trial that Fallin was the source and dealer of the drugs. Ensley stated he would have testified that he wrote the Applicant a check, which was admitted at trial, for gratuitous reasons. While the assistant solicitor briefly mentioned the check in closing argument as a possible drug payment, the thrust of the importance of this evidence was to show the Applicant’s knowledge of the drugs. (Trial transcript, pp.138-39; pp.257-58). While the law requires that defense attorneys conduct a reasonable investigation, the law does not require attorneys interview “every potential witness” when they can articulate reasonable grounds not to do so. See Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64-65 (2011). In this case, trial counsel had no

knowledge of any favorable witnesses because none contacted him and offered to testify – and the Applicant did not instruct him to contact any witnesses. In sum, trial counsel committed no unprofessional error in not calling Few and Ensley at trial. Regardless, the Applicant failed to demonstrate the testimony of either witness would have changed the ultimate outcome of his trial. Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. The State produced overwhelming evidence of guilt: a tip alerted police to the drug activity, the factual basis for the tip was confirmed by police, police found drugs in the trunk of the car in which the Applicant and Fallin were riding, and Fallin implicated the Applicant in the drug transaction. See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt). This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

7 

CONCLUSION

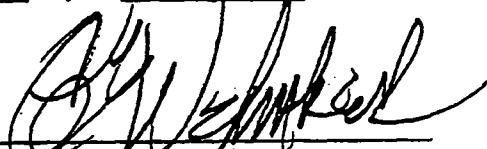
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5 day of Feb, 2014.


G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

Dicks, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
JAMES MELVIN BABB,
APPLICANT,

VS.
STATE OF SOUTH CAROLINA,
RESPONDENT.

) IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-3342

)
MOTION TO ALTER OR AMEND
THE JUDGMENT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2014 FEB 24 PM 3 41

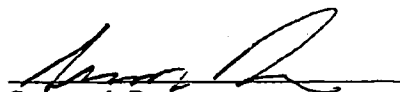
Pursuant to Rule 59(e), SCRCP, Applicant hereby moves to alter or amend the judgment of this Court filed on February 17, 2014.

Page three of the Order of Dismissal states that the Applicant proceeded solely on the issue of ineffective assistance of trial counsel. This is not the case. The Applicant also argued ineffective assistance of appellate counsel in failing to argue § 56-5-6540 (D) in her brief. The argued issue on appeal in Babb's final brief is that an anonymous tip did not justify the investigatory stop and search that led to the discovery of illegal drugs. (Final Brief p. 3) Though the officer who made the stop stated the purpose of the stop was to address a seatbelt violation, the brief does not argue South Carolina Code Annotated § 56-5-6540 (D) of Article 48 on safety belts which states: "A vehicle, driver or occupant in a vehicle must not be searched, nor may consent to search be requested by a law enforcement officer, solely because of a violation of this article." The damage of this omission was increased because this was not an Anders brief, thus the Court of Appeals was under no duty to conduct a full review of the trial record for error. Had

appellate counsel not omitted this issue or filed an Anders brief triggering a full review of the trial record, the outcome of the Applicant's case would likely have been different.

For the foregoing reasons, the Applicant requests this Court to alter or amend its Order of Dismissal.

Respectfully submitted,



Susannah Ross
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Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina

This 2nd day of Feb., 2014.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
James Melvin Babb,)
S.C.D.C. No. 339152,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-3342

**RETURN TO MOTION TO ALTER OR
AMEND THE ORDER OF DISMISSAL**

Respondent, by and through undersigned counsel, making Return to Applicant's Motion to Alter or Amend, would respectfully show unto this Court:

1. The matter is before the Court by way of a post-conviction relief action filed May 17, 2012.
2. An evidentiary hearing was convened on December 19, 2013 at the Greenville County Courthouse.
3. Applicant was present at the hearing and represented by Susannah C. Ross, Esquire. Applicant testified in his own behalf. Also testifying were Michael Few, Roger Ensley, and Applicant's trial counsel, Richard H. Warder, Esquire.
4. After a full review of the evidence presented at the evidentiary hearing, the post-conviction relief court issued an order dated February 5, 2014 and filed February 17, 2014 denying the application for post-conviction relief.
5. Applicant – through counsel – filed a Motion to Alter or Amend Judgment on February 24, 2014 (which was received by Respondent on March 3, 2014). Applicant moves this

Court to alter or amend the final order of dismissal to include the issue of ineffective assistance of appellate counsel.

6. Respondent has reviewed the four pages of notes taken during the evidentiary hearing. Respondent's notes indicate Applicant's counsel cross-examined trial counsel about the facts and underlying law surrounding the S.C. Code Ann. § 56-5-6540(d) issue. Respondent's notes indicate the only mention of ineffective assistance of appellate counsel was Applicant's counsel's closing remarks. Respondent's notes indicate Applicant's counsel stated appellate counsel failed to argue the statute in the brief (but that appellate counsel could not argue such because it had not been properly preserved).

7. Respondent submits the final order should be amended to reflect the issue of ineffective assistance of appellate counsel and the limited argument made at the evidentiary hearing. Respondent submits the remainder of the issues raised at the PCR hearing were addressed in the final order of dismissal.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 6, 2014

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP233342

James Melvin Babb

State of South Carolina

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WILKENS
2014 MAR 2 10 3

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This matter comes before the court on Plaintiff's Motion to Alter or Amend the Order of Dismissal pursuant to SCRPC 59(e). After having fully reviewed Petitioner's motion, Respondent's return, and the file in this case, this court agrees with Respondent that no testimony was presented at the PCR hearing bearing on this issue. Even if testimony had been presented, this court believes the Order of Dismissal encompasses this issue. See also State v. Babb, Op. No. 2012-UP-209 (S.C. Ct. App. filed March 28, 2012).

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge.

may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

Judge Code

3/11/2014

Date

For Clerk of Court Office Use Only

³⁻²⁵⁻¹⁴ This judgment was entered on, and a copy mailed first class or placed in the appropriate attorney's box on, ³⁻²⁵⁻¹⁴ to attorneys of record or to parties (when appearing pro se) as follows:

Susannah Ross, 333 E. Coffee Street, Greenville, SC 29601

Karen Ratigan, PO BOX 11549, Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Court Reporter

Paul B. Wickensimer - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

354
THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

James Babb, Appellant.

Appeal from Greenville County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2012-UP-209
Heard February 14, 2012 – Filed March 28, 2012

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General
John W. McIntosh, Assistant Deputy Attorney General Salley
W. Elliot, Senior Assistant Attorney General Harold M.
Coombs, Jr., all of Columbia; and Solicitor W. Walter Wilkins
III, of Greenville, for Respondent.

PER CURIAM: James Babb appeals his convictions for trafficking in methamphetamines and possession of a controlled substance with intent to distribute. Babb argues police illegally stopped and searched a car in which he was traveling, and therefore the trial court erred in denying his motion to suppress evidence of the drugs found in the car. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the stop was lawful: State v. Provet, 391 S.C. 494, 499, 706 S.E.2d 513, 516 (Ct. App. 2011) (stating a police officer's decision to conduct a traffic stop is reasonable under the Fourth Amendment when the officer has probable cause to believe a traffic violation has occurred), reh'g denied, (Mar. 23, 2011); S.C. Code Ann. § 56-5-6520 (2006) (providing an occupant of a vehicle travelling on a public street must wear a seatbelt); S.C. Code Ann. § 56-5-6540(E) (Supp. 2011) (providing a police officer may stop a vehicle when he has probable cause to believe a seatbelt violation has occurred based on a clear and unobstructed view of someone in the vehicle not wearing a seatbelt).
2. As to whether the search was lawful: Provet, 391 S.C. at 500, 706 S.E.2d at 516 (stating detention beyond an initial stop is permissible when the detention has become a consensual encounter); S.C. Code Ann. § 56-5-6540(D) (providing a police officer may not request consent to search a vehicle solely because of a seatbelt violation); State v. Willard, 374 S.C. 129, 135-36, 647 S.E.2d 252, 255-56 (Ct. App. 2007) (affirming trial court's ruling that defendant voluntarily consented to search when the record contained no evidence of threats, force, coercion, or promises causing the defendant to give consent).

AFFIRMED.

WITNESSES

C. Reider

Cox/ls

Greenville Police Department

4/29/2007

ARREST WARRANT NUMBER

J482032

ACTION OF GRAND JURY

~~TRUE BILL~~

~~FOREMAN GRAND JURY~~
[Signature]

VERDICT

Guilty
John D. [Signature] 3/2/2010
Foreperson of Petit Jury Date:

DOCKET NO. 2007-GS-23-

JLK

The State of South Carolina 7963

County of Greenville

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

2-2-10

THE STATE

VS.

JAMES MELVIN BABB

0389 ✓
-0392

Indictment for

TRAFFICKING METHAMPHETAMINE

VIOLATION § 44-53-0375

173

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE

At a Court of General Sessions, convened on September 26, 2007 the Grand Jurors of Greenville

County present upon their oath:

That JAMES MELVIN BABB did in Greenville County, on or about the 29th day of April 2007, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 28 grams of Methamphetamine (Crank). This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

Jayce Monts
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

357

COUNTY OF Greenville
 STATE VS.
James Melvin Babb

AKA:

Race: W Sex: M Age: 40DOB: ----- SS#: -----

Address:

City, State, Zip: Greenville, SC 29607DL#: 999999999 SID#: -----*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Trafficking In Methamphetamine, More than 28 grams - 2nd Offense

INDICTMENT/CASE#: 2007GS2307963A/W#: J482032Date of Offense: 4/29/2007S.C. Code § : 44-53-0375(C)(2)(CDR Code #: 0349

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0375(C)(2)(of the S.C. Code of Laws, bearing CDR Code # 0389

☐ 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:

Bouton, William72885
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 15 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 ☐ OrderedTotal: \$ 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</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u>25</u>
§ 47.12 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$100	\$ <u>100</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§ 90.7 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

Presiding Judge

Judge Code:

Sentence Date:

 days/hours Public Service EmploymentObtain 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 FundOther:

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

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

C. Reider Floyd / S

Greenville Police Department

4/29/2007

ARREST WARRANT NUMBER

J482034

ACTION OF GRAND JURY
TRUE BILL
[Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilt

[Signature]
Foreperson of Petit Jury Date: 2/2/2010

DOCKET NO. 2007-GS-23-007964

AMENDED INDICTMENT

JLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2007

2-2-10

THE STATE

VS.

JAMES MELVIN BABB

Q187 ✓ Indictment for
~~Q489~~

POSSESSION OF A CONTROLLED
SUBSTANCE WITH INTENT TO DISTRIBUTE

VIOLATION § 44-53-0370

200

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT
TO DISTRIBUTE

At a Court of General Sessions, convened on November 21, 2007 the Grand Jurors of Greenville

County present upon their oath:

That JAMES MELVIN BABB did in Greenville County, on or about the 29th day of April 2007, possess with intent to distribute or aid, abet, conspire to possess with the intent to distribute a quantity of a controlled substance, Alprazolam (Xanax), such possession not having been authorized by law. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

Joey Mott
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
James Melvin Babb

AKA: _____

Race: W Sex: M Age: 40

DOB: _____ #: _____

Address: _____

City, State, Zip: Greenville, SC 29607DL#: 999999999 SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: PWID Controlled Substance - 2nd Offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS2307964A/W#: J482034Date of Offense: 4/29/2007S.C. Code § : 44-53-0370(E)(6)(CDR Code #: 2593

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0370(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0187
☒ 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] 72885

Bouton, William

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 5 ~~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

\$

100

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

§ 47.12 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$100

\$

100

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

§ 90.7 (SCCJA Surcharge)

\$5

\$

5

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Paul B. WickensimerCourt Reporter: H. Jenkins

SCCA/217 (11/2009)

Presiding Judge

Judge Code: 2130Sentence Date: 2-2-10

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 2130Sentence Date: 2-2-10