

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Appeal from Greenville County

DEC 5 2014

G. Edward Welmaker, Circuit Court Judge

S.C. Supreme Court

ERIK MORROW,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000809

APPENDIX

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	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ERIK M. MORROW,	)	
DEFENDANT.	)	ORIGINAL
	)	

January 23, 2008
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE.

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

JOYCE K. MONTS, ESQ.
Assistant Solicitor

JOHN P. ABDALLA, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: I hear we have some motions or something.

MR. ABDALLA: Yes, Judge.

The State is calling Erik Morrow to trial on trafficking, possession with intent to distribute, escape, and habitual traffic offender. And I've been representing Erik Morrow since October when Mr. Henry was relieved on the case.

THE COURT: Mr. who?

MR. ABDALLA: Henry, Steve Henry.

THE COURT: Steve Henry. Okay.

MR. ABDALLA: He -- I don't know what happened. He got relieved from the case in October. The case is three years old. The point is, I've only had it for three months. And during the three months, a lot has happened that has not given me time to adequately prepare. The last three weeks, I was on the trial docket 10 times. And I spent the entire week on one trial. That was not last week, the week before. Last week, I was in court three days and we had a day of ice, I believe.

I met my client in Spartanburg, because he's been in the Spartanburg jail, on Martin Luther King Day, I believe it was that I went over there. And he gave me some information that I was not able to -- he gave me some

1 witnesses that I wasn't able to locate that quickly.

2 I was in plea court yesterday. I met with him,
3 again, yesterday evening when they brought him over from
4 Spartanburg. They didn't get him here until the
5 afternoon. I didn't get to see him until after 6:00.

6 So I went over last night and spent a little less
7 than an hour with him. He has not seen the videotape of
8 the roadside stop that is about 47 minutes long, I
9 believe. It's 40-something minutes long. And I have an
10 audio that I have not -- that he has not heard that I have
11 to have him see.

12 Judge, my request is for a continuance. The case is
13 three years old. I really don't understand why another
14 month is going to matter. In the scheme of things, he's
15 in jail anyway. I don't see where the State is being
16 prejudiced. I have informed them of this. So I know
17 their witnesses are here. But I had told them I was going
18 to do this, because I don't feel comfortable going forward
19 when I'm not prepared. And I want that on the record. I
20 don't like having to say that, but that's the way it is,
21 Judge.

22 THE COURT: Ms. Monts.

23 MS. MONTIS: Your Honor, the State is prepared and
24 ready to go forward.

25 THE COURT: How long has this case been on the trial

1 docket.

2 MS. MONTS: Your Honor, I believe the docket was
3 published 10 days prior to the beginning of this week.

4 THE COURT: Okay.

5 MR. ABDALLA: And, Judge, the first week I was in
6 trial the entire week on that sex case.

7 THE COURT: Well --

8 MR. ABDALLA: My client -- can my client speak, Your
9 Honor?

10 THE COURT: Yes.

11 DEFENDANT MORROW: Your Honor, my name is Erik
12 Morrow.

13 I was first introduced to Mr. Abdalla in October when
14 Mr. Henry relieved me because he had a murder he had to
15 do. And I asked him then would I have time to find my own
16 attorney. And I was appointed Mr. Abdalla. The only way
17 I knew Mr. Abdalla is because he prosecuted me in a case
18 in Spartanburg. And when he come and saw me, that's the
19 only time we really had a meeting. It only lasted
20 about -- no more than 30 minutes in Spartanburg on Monday.

21 And I talked to him and I told him I had witnesses I
22 wanted to present. And I wanted to see all the evidence.
23 And I got motions I wanted him to look over and explain
24 more about the case to me.

25 Because from day one that I got this charge, I asked

1 for a jury trial with Mr. Henry from day one. And when he
2 was assigned to my case, I told him that again. And when
3 he saw me last night at the holding cell, I told him my
4 family was trying to get me another attorney. Because I
5 don't feel comfortable with him, not only that we haven't
6 had time to talk but twice less than an hour -- or no more
7 than an hour both times. And I haven't seen all the
8 evidence, no video, no nothing. I haven't seen anything.
9 I haven't even had a chance to get my own witnesses that I
10 want to bring forward to talk to about the case.

11 And I've asked him several times -- I've told him
12 that I've been arrested in Spartanburg on charges. And
13 when I go to Spartanburg, the Solicitor always wants to
14 put a hold on me. And every time I get relieved from
15 Spartanburg, I have to try to work a deal out with the
16 Solicitor and not even have a lawyer.

17 And, last year, I was held for six months in
18 Spartanburg. And Mr. Henry never was involved in my case.
19 And Ms. Monts and my public defender in Spartanburg was
20 trying to get me to plead guilty to something after I told
21 them I wanted a jury trial for it from day one. And I
22 haven't had enough time to talk to anybody but him twice.
23 And each time, it was no more than 30 minutes of actual
24 conversation. And I told him that I wanted a jury trial.
25 And then when he remembered that he prosecuted me in a

1 case in Spartanburg, that's the only way he really knew
2 me. And I said, Well, you know, I feel like that you're
3 not prepared for me. And I don't want you as my lawyer if
4 you can't defend me no better than this.

5 And I ask the Court to give me more time or give me
6 my own attorney and, at least, hire one that I know has
7 gone over my whole case and can get me a fair trial.

8 MR. ABDALLA: Judge --

9 THE COURT: Why was Steve Henry relieved?

10 MR. ABDALLA: I think he had gotten off the contract
11 and he asked the Court to let him off. And he was
12 involved -- maybe because he had another case coming up.

13 THE COURT: When did you turn over discovery?

14 MR. ABDALLA: I just got his file -- oh, I'm sorry.

15 MS. MONTS: Your Honor, in October, we gave most of
16 it. And then last week, we gave over the CI information.
17 Since it was set for trial, that's when we give over the
18 CI information.

19 THE COURT: All right. And you turned over the
20 video?

21 MS. MONTS: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. ABDALLA: And I got Mr. Henry's file yesterday.
24 And there was information in there that I haven't had --
25 been able to find the people on. Because Mr. Morrow had

1 told me when I met with him Monday that he had given
2 Mr. Henry some names. Because he didn't know the
3 information that -- he had given it to Steve a couple of
4 years ago.

5 Mr. Morrow felt like he has been jerked around by
6 both Solicitor's Office. I have nothing to do with that.
7 As I said, I was a late entry. And once it went on the
8 trial docket, I'm simply telling the Court it was next to
9 impossible for me to find time to get all of this stuff
10 done. And that's when --

11 THE COURT: When you got the case in October, you saw
12 then it was two and a half years old. Why didn't you get
13 ready then?

14 MR. ABDALLA: Generally -- because if you look at the
15 trial docket, I'm, generally, on the trial docket on a
16 regular basis. And I --

17 THE COURT: Well, why is that?

18 MR. ABDALLA: Well, I moved more cases than anyone in
19 2007 in our office, for whatever that's worth. So,
20 obviously, I'm moving cases somewhere besides the trial
21 docket. And I am on the trial docket a lot. As I said, I
22 was on 10 times for this three-week period, which is what
23 caused me to, finally, say that I quit the Public
24 Defender's Office, because I can't do that and private
25 practice. We moved our practice over the month of --

1 during December. And there was a lot going on with all of
2 that.

3 And, Judge, I think there were a lot of extenuating
4 circumstances that -- it's not customary to get prepared
5 for a trial that's coming up at sometime in the future
6 until it's on the docket. Some may do it, but I find it
7 next to impossible, especially when you end up with this
8 many cases on the trial docket on a regular basis. I
9 tried, at least, one case in December. And I tried
10 another case, as I said, a week ago -- two weeks ago.

11 Judge, all I can tell you is how it went down. And I
12 don't believe my client is going to get the trial I
13 believe he's entitled to. And I'd have to go down, at
14 least, and spend another hour and a half with him to go
15 over the tapes. I didn't have any way of doing that. As
16 I said, he was in Spartanburg. That made it a little bit
17 more difficult than a typical client who's, at least, in
18 Greenville that I have easier access to. This case
19 involves a lot of issues. It involves a CI in Spartanburg
20 and a stop in Greenville. There's just a lot that's
21 involved with this. Also, I have -- well, I told you
22 already about the witnesses I couldn't find.

23 THE COURT: Well, what do you mean you couldn't find
24 them?

25 MR. ABDALLA: When I met with him the other day, he

1 told me that he had some witnesses. And I didn't
2 anticipate that because it was a roadside stop. But it
3 turned out that it was involving the earlier incident.
4 And it relates to the stop.

5 So I said, Who are they? He said, I don't know. I
6 gave them to Mr. Henry. I went to Steve's office and got
7 the file from Steve -- well, from his office. And I found
8 a couple of names. And there was one phone number, but
9 it's assigned to somebody different now. And there wasn't
10 a phone number for the other person. So I haven't had any
11 time to really investigate that properly.

12 THE COURT: And what would -- well, let me talk to
13 the lawyers back here.

14 (WHEREUPON, a break was taken.)

15 THE COURT: All right. Based on what I've been told
16 today, I do not want to do it -- the case should not sit
17 out there like this for no good reason. And I really hate
18 to do this. I'm going to grant the continuance until the
19 week of March 3rd.

20 Is that right?

21 MS. MONTS: Yes, Your Honor.

22 THE COURT: Is that right, Mr. Abdalla?

23 MR. ABDALLA: Yes, Your Honor.

24 THE COURT: And I while I don't control the docket, I
25 urge that this case be set first up Monday morning.

1 And to you, Mr. Morrow, this case is three years old.
2 And you're not entitled to the greatest lawyer on the
3 planet. You're entitled to a competent attorney. And
4 I'll tell you this, if you're going to hire an attorney,
5 that's fine. You're entitled to an attorney of your
6 choice. But you tell whoever you hire that this case is
7 going Monday, March 4th.

8 Do you understand?

9 THE CLERK: 3rd.

10 THE COURT: March 3rd. There will be no change. I
11 don't care what the complaints are. You've got all the
12 evidence. There will be no more excuses. And if your
13 lawyer comes in here and he says he's not prepared, then
14 you can try it yourself.

15 DEFENDANT MORROW: Yes, sir.

16 THE COURT: Because this case is going forward. No
17 more continuances.

18 Do you understand?

19 DEFENDANT MORROW: Yes, sir.

20 THE COURT: All right. Thank you.

21 *****END OF TRANSCRIPT OF RECORD*****
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25

CERTIFICATE OF REPORTER

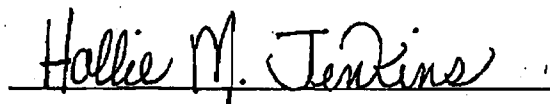
STATE OF SOUTH CAROLINA)

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 captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 23rd day of January, 2008.

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

April 14, 2008



Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

1 STATE OF SOUTH CAROLINA

2 COUNTY OF GREENVILLE

} COURT OF GENERAL SESSIONS

4 STATE OF SOUTH CAROLINA,

5 PLAINTIFF,

6 VS.

7 ERIK MAURICE MORROW,

8 DEFENDANT.

TRANSCRIPT

OF

RECORD

05-GS-23-8185, 8186

05-GS-23-8188, 8189

05-GS-23-8109

10 March 3rd, 2008
11 Greenville, South Carolina

12
13 B E F O R E :

14 THE HONORABLE LARRY R. PATTERSON, Judge, and a jury.

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

16 JOYCE MONTS
17 ASSISTANT SOLICITOR
18 Attorney for the State

19 ELIZABETH WIYGUL and CAROLINE HORLBECK
20 ASSISTANT PUBLIC DEFENDERS
21 Attorneys for the Defendant

22
23 MARY DiGIROLAMO
24 Circuit Court Reporter

25 Transcribed by Pamela E. Green, Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
State's Exhibits			
S-1	Crack Cocaine	40	90
S-2	Audiotape	47	65
S-3	Lab Report	87	89
S-4	DMV Notice	94	97
S-5	DMV Ticket	94	98
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1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		Defendant's Exhibits		
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4	D-1	DMV Notice		100
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1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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P R O C E E D I N G S

THE COURT: Y'all want to draw this jury now or you want to take these motions up and draw it after lunch?

SOLICITOR MONTs: Your Honor, I believe we would be best served to take the motions up prior to drawing the jury.

MRS. WIYGUL: Whatever Your Honor sees fit.

THE COURT: All right. Go ahead.

All right. State of South Carolina versus Erik Morrow. I did have some indictments up here.

All right. We have five indictments. Trafficking in cocaine, trafficking in crack cocaine, possession of cocaine with intent to distribute it, habitual traffic offender, distribution of cocaine, and escape.

Okay. Yes, ma'am.

SOLICITOR MONTs: Your Honor, there was a habitual traffic offender.

Did you mention that one?

THE COURT: Yeah, there's habitual traffic offender.

MRS. WIYGUL: Your Honor, as you can see in our motion to dismiss, there have been numerous procedural violations in this case. They seem to be ongoing. The -- this morning I was provided the chain of custody from SLED, which just adds on. It, it just shows to the Court that the violations

1 are continuing.

2 The -- South Carolina Court Administration has laid out
3 procedures to be followed whenever warrants go missing, or
4 misplaced or destroyed, whatever happens. Those weren't
5 followed in any of these warrants or indictments.

6 Mr. Morrow was, received these charges on
7 March 14th of 2005. The fact that none of these mistakes
8 have been fixed in the period of three years is, is un, is
9 unacceptable, Your Honor.

10 There's a certificate of transmittal that is to be used
11 whenever warrants are sent up to the Clerk's Office. As far
12 as the Clerk's Office in, here in Greenville has been able
13 to determine, they don't have that for any of the original
14 warrants, and none of the, what, what are called replacement
15 warrants, even have a Judge's signature on them.

16 Some of the warrants have different charges than that
17 in the indictment. Some of the replacement warrants have
18 different language than that in the original warrants. And
19 we would ask that these charges be dismissed.

20 THE COURT: I read your motion, Mrs. Wiygul, and I
21 don't -- they're specific remedies for, for violations by
22 the State and whatnot. But I, I didn't -- I couldn't put my
23 hand on what legal basis your motion was, what it was based
24 on, why the charges should be dismissed. I -- he was
25 indicted -- they were indicted by the Grand Jury. And so,

1 he's here on those charges. I, I can't determine what legal
2 basis you want the charges dismissed on. I, I read it.

3 MRS. WIYGUL: Your Honor, merely that there have been
4 so many procedural violations ongoing in the course of the
5 three years that these charges have been pending that they
6 have risen to the level of constitutional violations, Your
7 Honor.

8 We believe---

9 THE COURT: I can't, I can't see that. I deny the
10 motion.

11 MRS. WIYGUL: Yes, sir.

12 THE COURT: What's your next motion?

13 MRS. WIYGUL: Your Honor, Mr. Haney wanted me to make
14 sure that the Court---

15 THE COURT: Well, I denied that motion. I'm sorry.

16 MRS. WIYGUL: Yes, Your Honor.

17 THE COURT: What's your next motion?

18 MRS. WIYGUL: We would, we have filed a motion to
19 prohibit the introduction of evidence and testimony relative
20 to the distribution charge, Your Honor.

21 THE COURT: I didn't see that motion.

22 SOLICITOR MONTES: I haven't seen that, Your Honor.

23 THE COURT: I haven't seen that motion.

24 MRS. WIYGUL: May I approach?

25 THE COURT: Yeah.

1 MRS. WIYGUL: Your Honor, I apologize. Let me---

2 THE COURT: I did, I did see, I did see this motion and
3 I've looked at it and I'll hear your arguments on what you,
4 what you just gave me.

5 MRS. WIYGUL: Your Honor, if I may switch what I just
6 gave you. That, that's a draft.

7 THE COURT: well, do I get the draft or your real
8 thing?

9 MRS. WIYGUL: No, Your Honor. You got, you got a
10 clocked in copy.

11 THE COURT: Okay.

12 MRS. WIYGUL: In this case, there was the issue---

13 THE COURT: why, why, why should the information -- why
14 should the confidential informant not be able to testify?

15 MRS. WIYGUL: Your Honor, the confidential informant's
16 record and identifying information was not provided to me
17 this morning.

18 THE COURT: what's the requirement that he give it to
19 you, that they give it to you?

20 MRS. WIYGUL: Your Honor, they're required to give it
21 to me whenever he's more than a mere tipster so that I can
22 track him down and explore the possibility of him being a
23 witness for the defense---

24 THE COURT: Okay.

25 MRS. WIYGUL: ---of him having information.

1 THE COURT: What you have to say about that?

2 SOLICITOR MONTS: Your Honor, we were here for trial in
3 January. The C.I. was here and the defendant, defense
4 attorney, at that time, had been provided the information.
5 He had been provided the rap sheet and the C.I.'s statement
6 and told who the C.I. was. So, the defense for this time,
7 the defendant has known for at least six weeks.

8 MRS. WIYGUL: And Your Honor, I did, I did -- I was not
9 appointed on this case until fairly recently.

10 THE COURT: That had nothing to do with---

11 MRS. WIYGUL: I was served---

12 THE COURT: ---what, the change in lawyers. The change
13 in lawyers were not to delay the trial.

14 MRS. WIYGUL: No, Your Honor, and that, that is not my
15 purpose.

16 THE COURT: If it was given to Mr. Abdalla, then that's
17 provided to the defense.

18 MRS. WIYGUL: Well, Your Honor, I was concerned that I
19 might not have a complete file. So, I actually went and sat
20 down and met with Mrs. Monts and her investigator, and was
21 told very bluntly that the only things that had been
22 provided for those listed in the discovery letters, which
23 are attached as exhibits to this motion. No where in those
24 discovery letters does it reference the information
25 regarding the confidential informant.

1 THE COURT: Okay.

2 MRS. WIYGUL: So, I didn't find out until Friday.

3 THE COURT: She tells me that the defendant, the
4 defense lawyer was present in January and it was provided.
5 So, I deny that motion.

6 MRS. WIYGUL: Thank you, Your Honor.

7 THE COURT: Next motion.

8 MRS. WIYGUL: We would ask that the defendant's
9 N.C.I.C. sheet, it was provided to me this morning by Mrs.
10 Monts, also an updated copy, and it appears to reflect
11 convictions for all of the charges that we're here for
12 today. We would just ask that it go on record that he has
13 not been convicted of those crimes.

14 THE COURT: He is not been convicted of these charges
15 today.

16 MRS. WIYGUL: Thank you, Your Honor.

17 THE COURT: Anything else?

18 MRS. WIYGUL: Nothing else, Your Honor.

19 THE COURT: All right.

20 SOLICITOR MONTS: Your Honor, the, the State has
21 nothing. We do have some witnesses in case we needed
22 anybody on the, on the, on the warrant issue. But I'm gonna
23 go ahead and release them.

24 THE COURT: All right. We'll draw this jury at two
25 o'clock.

1 Wait just a second.

2 MRS. WIYGUL: Your Honor, I apologize. Just one
3 moment.

4 (Pause.)

5 MRS. WIYGUL: Your Honor, Mr. Morrow has some things
6 that he wants to put on the record prior to the trial
7 starting. We can do that now or we can do it---

8 THE COURT: Well, we'll do it right now.

9 MRS. WIYGUL: Thank you, Your Honor.

10 THE COURT: Release the jury and tell them, tell my
11 panel to be here at two o'clock. I want them brought up in
12 this courtroom. We're going to start this trial exactly at
13 two o'clock.

14 All right. Cheryl, you call, you call the jury
15 coordinator.

16 All right. Mr. Morrow, what do you have to say?

17 DEFENDANT: Well, Your Honor, as of, as of 1/23/08,
18 sir, I was in this courtroom with Mr. Abdalla. At that time
19 I had not seen any of my evidence on this case at all at
20 that time. And he was instructed by the Court, the last
21 judge told him to continue to be on my case. He never come
22 back and saw me again.

23 So, I went and I, I met with Mrs. wiygul and asked her
24 could she get my evidence for my case. And just, on
25 Thursday, on the 21st of February, of February, she showed

1 me my video for the first time in three years for my case.
2 I didn't believe they had a video until she brought it to my
3 attention.

4 I've asked Mr. Abdalla for several things about my
5 witnesses. I got three witnesses I would like to bring to
6 the Court. Plus the motel video that it, it never, it never
7 did involve the evidence, and I asked Mr. Abdalla some
8 things. But on the 23rd of January, it was brought out
9 that he had not represented me properly, and I, and I asked
10 him, say I get somebody else as my attorney.

11 At the time the judge say he gonna continue it no more
12 than what he did and I could find an attorney. But at the
13 time he said Mr. Abdalla, you're instructed to go see Mr.
14 Morrow and pursue my case. He never come and saw me.

15 And so, what I had to do is I had to find some other,
16 some other alternative and Mrs. Wiygul is the one that was
17 presented to me. At that time she only had a week to get my
18 stuff together. She finally showed me the tape when she got
19 it on the 21st of February. And from that point on, it
20 shed new light on my whole situation on my case.

21 And I have not been represented by neither client, I
22 mean by neither, neither lawyer enough time to come in front
23 of you now to say I'm being, I have effective counsel cause
24 of the fact she only been on my case for a very short period
25 of time, and it wasn't her fault that she was put upon this

1 case.

2 But the last judge I went in front, put myself in front
3 of, I told him we probably have Mr. Abdalla. He told me
4 there was no tape. There was no other evidence. There was
5 nothing else he could do. But it was all not true. She
6 brought out to me, showed me all my points of my case just
7 about two weeks ago.

8 And so, now I see all my light. I done had time to go
9 over everything with her. I got the current address Mr.,
10 Mr. Abdalla suppose to obtain from the two witnesses I got.
11 He never come and got them. He never asked my mother.
12 Never did anything.

13 And so, she didn't have time to investigate it with my,
14 with my witnesses, and I said well, now, you understand I
15 have not had enough time to present a case. Within three
16 years though, this has never -- I -- well, in three years I
17 have never been properly represented so I can even try to
18 get this case on myself. But I been ready and able to do
19 this, but my -- every time I get a lawyer, this, this, this
20 happened to me, you know -- Mr. Henry my first lawyer I had.

21 For the first two years and six months, I never got
22 called to court. I never was called. Never was called or
23 anything. And when he got released on my, my, my case---

24 THE COURT: Mr. Henry's a good lawyer.
25 why did he get relieved?

1 DEFENDANT: He had to do a death penalty case, and he
2 got removed. And the day he got removed, Mrs. Monts revoked
3 my bond, and I had no lawyer at all. And two days later she
4 assigned me Mr. Abdalla. Mr. Abdalla come up and said I
5 don't even know you, what's going on right now.

6 When my bond was revoked, I was sent back to
7 Spartanburg. I sat there for a long time till the first
8 week of January. Mr. Abdalla showed up and told me that I
9 was going through a trial. He stayed 30 minutes and we had
10 a conversation. After them 30 minutes, he talked, and I
11 asked him about my evidence, and he said he don't have it.
12 That's all he had.

13 You know, I come back in front of a judge the 23rd
14 explaining the problem I had with Mr. Abdalla and plus the
15 fact that he was an ex-prosecutor of one of my cases that I,
16 I was charged with in Spartanburg. So, he got relieved. He
17 wasn't relieved. He told him to go ahead and I could find
18 me another attorney, but I must continue to be with Abdalla,
19 but he must come and help me with my case.

20 He never, never come to me at all in jail. I was never
21 brought back up to see him. He never come to my, my parents
22 or anything, and my time is running out. I have Mrs.
23 wiygul. She helped me attend, look at my case. When she
24 saw my case, it was stuff that was missing out of my case.
25 I had a lot of problem with it. That's why the last two

1 weeks I would of never knowed I had a video or other, other
2 information if it wasn't for her. But she have not had
3 enough time to give me effective counsel representing me on
4 a jury trial.

5 I, I know more about the case than she possibly ever
6 knew. But I haven't had time to explore my options for this
7 trial. And it's many of them cause I mean this, this, this
8 is all started in Spartanburg County. It's, it's evidence
9 to prove that this stuff, evidence is not even presented
10 that was, that happened in Spartanburg County.

11 THE COURT: All right. Mr. Morrow, I appreciate what
12 you had to say. But there's -- we're not here today to take
13 up the issues about the lawyers representing you. That's,
14 that's for -- that's not in front of me.

15 This happened on March 14th of 2005. That was almost
16 three years ago.

17 DEFENDANT: Yes, sir.

18 THE COURT: And I got no control over when your case
19 comes to trial. And -- but it's come, it's up for trial
20 today, and that's been a long time. You had Mr. Steve
21 Henry, then you had John Abdalla, and now you got Mrs.
22 Wiygul.

23 DEFENDANT: Well, Mr. Henry---

24 THE COURT: You can't, you can't put this case off and
25 continue to put it off.

1 Now, the truth of the matter is I don't know how many
2 witnesses, who, who was, who was present on March 14th of
3 2005. We're gonna hear all that. But apparently you were
4 there, and you can convey to your lawyer everything that
5 happened on that day.

6 So, I don't know if there's any substance to what you
7 have to say or not. But you're gonna have a trial. I'm
8 denying your motions. You're going to have a trial at two
9 o'clock today. You're going to get a fair trial. You're
10 presumed innocent of these charges as of right now. The
11 State's got to prove you guilty beyond a reasonable doubt,
12 and we'll see if they can do that at two o'clock.

13 I'll see y'all at two o'clock.

14 Thank you very much.

15 MRS. WIYGUL: Your Honor, just, just to protect the
16 record, my understanding is that Mr., Mr. Morrow has made a
17 motion to continue or renew the motion and that has been
18 denied?

19 THE COURT: Absolutely it's denied.

20 MRS. WIYGUL: Thank you.

21 THE COURT: I, I have seen, I've seen Mr. -- in your
22 motion that you -- you gave me Mr. Henry's correspondents
23 and a whole bunch of stuff, and this trial is just been put
24 off too long. It's gonna be tried at two o'clock today.
25 He's gonna be here. We're going to do it---

1 MRS. WIYGUL: Yes, Your Honor.

2 THE COURT: ---in an orderly fashion and we're going to
3 see if the State can prove him guilty of these charges
4 beyond a reasonable doubt. If they can't, he walks.

5 Thank you.

6 MRS. WIYGUL: Thank you.

7 (Whereupon, Court was in recess for the lunch break.)

8 THE COURT: You got a witness -- okay. I got the
9 witness list. I think I have it. I have it.

10 All right. We're ready.

11 MRS. WIYGUL: Your Honor, we have not submitted a
12 witness list because if Mr. Morrow testifies he would be our
13 only witness.

14 THE COURT: Okay. All right.

15 MRS. WIYGUL: Your Honor, I'm not sure if you want to
16 go on and just continue on or if you'd like to delay this.
17 Any -- Mrs. Monts is waiting to hear back from Mrs. Strom.

18 THE COURT: I ain't got time to wait. Two o'clock is
19 the trial date.

20 MRS. WIYGUL: Yes, sir.

21 THE COURT: He's going to trial period.

22 Okay. Bobby, bring them in.

23 We may have to ask some people to leave so we can get
24 the entire jury panel in here.

25 (Whereupon, the following takes place within the

1 presence of the jury.)

2 THE COURT: Okay. Ladies and gentlemen of the jury,
3 we're going to select a jury now in a criminal case between
4 the state of South Carolina and Erik Maurice Morrow.

5 Mr. Morrow, if you'd stand up please---

6 DEFENDANT: Yes, sir.

7 THE COURT: ---and face the jury panel.

8 (Defendant complies.)

9 THE COURT: Do any of you ladies and gentlemen know
10 Mr. Morrow?

11 He's standing before you.

12 (No response.)

13 THE COURT: Okay. Nobody knows Mr. Morrow.

14 Have a seat, Mr. Morrow.

15 (Defendant complies.)

16 THE COURT: I need to ask you if you know anything
17 about this case. Now, these are allegations contained in
18 the indictment. They're just allegations at this point.
19 Mr. Morrow pleads not guilty to these charges.

20 The charges are on the 14th day of March of 2005,
21 Mr. Morrow's charged with trafficking in crack cocaine.
22 He's charged with distribution of, of cocaine on March the
23 14th of 2005, with being an habitual traffic offender on
24 March the 14th of 2005, possession of cocaine with intent
25 to distribute on October, March the 14th of 2005, and

1 escape on March 14th of 2005.

2 Have any of you ladies and gentlemen heard anything
3 about this case involving Mr. Morrow on March the 14th of,
4 alleged date is March the 14th of 2005?

5 These are simply allegations. If you know anything
6 about this case involving the State of South Carolina and
7 Mr. Morrow, would you please stand up and tell me about it?

8 (No response.)

9 THE COURT: Okay. Ladies and gentlemen, the lawyers,
10 Mrs. Monts, from the Solicitor's Office, Mrs. Wiygul, for
11 the defendant, and Mrs. Horlbeck, would y'all stand up
12 please?

13 (All parties comply.)

14 THE COURT: Do any of you ladies and gentlemen know the
15 three lawyers or any one of the three?

16 (No response.)

17 THE COURT: Okay. Thank you.

18 (All parties sit down.)

19 THE COURT: All right. Do any of you have any close
20 friends or relatives who work in the Office of the Circuit
21 Solicitor or the Office of the Public Defender, if so, would
22 you please stand?

23 (No response.)

24 THE COURT: Okay. Ladies and gentlemen, I'm going to
25 read out a list of witnesses. If you know anyone on this

1 witness list, I'm going to ask you to stand after I read the
2 entire list, and, and tell us how you know the individual.

3 Let me read the, let me read the entire list. If you
4 recognize any names, please stand up and tell us about how
5 you know this individual.

6 Trooper J.D. Owens.

7 Corporal W.H. McCauley.

8 Trooper A.J. Spence.

9 Trooper D.M. Howard.

10 Agent Shannon Branham.

11 Agent Asbill from SLED.

12 Chemist Nathan R. McCoy.

13 Chemist J.W. Armstrong.

14 Supervisor Kara Bennick of the property and evidence.

15 Randall West.

16 Marie Wearing from the South Carolina Department of
17 Motor Vehicles.

18 Any of you recognize any names on that list of possible
19 witnesses?

20 (No response.)

21 THE COURT: Okay. Ladies and gentlemen, I, I do not
22 know if the case will involve cocaine or crack cocaine or
23 drugs. We'll just have to see. It may or may not.

24 But if the case happened to involve any drugs of this
25 nature, have any of you had any experience with cocaine,

1 crack cocaine, or drugs of that nature and for that reason
2 you could not be a fair and an impartial juror in the trial
3 of this case?

4 You will take an oath to be fair and impartial. If,
5 because of any experience with drugs in anyway, you could
6 not be fair and impartial in this trial, give the State a
7 fair trial, and the defendant a fair trial, please stand up
8 and tell me about it.

9 (No response.)

10 THE COURT: Okay. All right. Ladies and gentlemen, as
11 I told you, you will take an oath to, to try the case. If
12 you've had any experiences with the Court system, and
13 because of your personal experiences or any family members
14 experiences for the Court, if you can not follow your oath
15 and be fair and impartial as one of 12 jurors, would you
16 please stand?

17 (No response.)

18 THE COURT: All right. The jury's qualified.

19 State gets five peremptory challenges and the defense
20 gets five.

21 And ladies and gentlemen, your name was chosen from a
22 computer list. And as the computer has printed out your
23 name, we will now ask you to stand. If you'll just stand in
24 place. You will, you will either be seated in the jury box
25 or excused. The State can exercise five challenges and the

1 defense can exercise five.

2 At this time we'll select the jury in this case.

3 Madam Clerk.

4 (Whereupon, the jury panel was selected at this time
5 with the following taking place when Juror Number 181, Leon
6 Pritchett, was called.)

7 CLERK: Juror Number 181, Leon Pritchett.

8 What says the State?

9 SOLICITOR MONTS: Please present the juror.

10 CLERK: What says the defendant?

11 MRS. WIYGUL: Your Honor, may we please approach?

12 THE COURT: Okay.

13 (Whereupon, a bench conference was held out of the
14 hearing of the jury at this time.)

15 THE COURT: Mr. Pritchett, you'll take an oath to be
16 fair and impartial.

17 Could you do that?

18 JUROR: Yes, sir.

19 THE COURT: Could you be fair to the State and fair to
20 this defendant and, and, and reach a verdict that speaks the
21 truth based on, only on the evidence and testimony you, you
22 hear in Court?

23 JUROR: Yes, sir.

24 THE COURT: Come up and have a seat.

25 CLERK: 170.

1 THE COURT: Wait, wait a minute. I'm sorry.

2 What says---

3 MRS. WIYGUL: Go, go on and let him be seated, Your
4 Honor.

5 (Whereupon, the jury selection was concluded at this
6 time.)

7 THE COURT: Okay. One alternate. Two and one.

8 (Whereupon, an alternate juror was selected at this
9 time.)

10 THE COURT: Any question about the selection of the
11 jury, Mrs. Wiygul?

12 MRS. WIYGUL: No, Your Honor.

13 THE COURT: Mrs. Monts?

14 SOLICITOR MONTS: No, Your Honor.

15 (Pause.)

16 THE COURT: And ladies and gentlemen, you are the jury
17 now in the case of the State and Erik Maurice Morrow. From
18 this point forward you can not talk to anyone about the case
19 or do not let anyone talk to you about the case. I don't
20 think that would happen. But if you did, or if you
21 overheard someone talking about it, just let me know and
22 we'll go over it with you.

23 Now, I'm gonna let you go back and get familiar with
24 the jury room. We got two jury rooms back here. You can
25 use the restrooms in both jury rooms if you want to. But

1 that's where you'll be taking your breaks and where you will
2 deliberate until you reach a verdict in this case. And so,
3 I'm going to let you go back there for about five or ten
4 minutes. Then I'll bring you back out and we'll start the
5 trial.

6 okay. If y'all just step back to the jury room.

7 (whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. We'll be ready to go about
10 2:30.

11 (whereupon, a short recess was taken at this time.)

12 SOLICITOR MONTES: Your Honor, what -- my first witness
13 is an officer. My second witness is a lay person who does
14 have a prior record.

15 Do you want to put on the record now what I believe or
16 see if the defense has any discrepancy on that or do you
17 want to wait till after the first witness?

18 THE COURT: Do it right now.

19 SOLICITOR MONTES: Okay. And the defense's got a
20 problem of the N.C.I.C. I -- Your Honor, what I went over,
21 and this is on Randall West, that the prior offenses that I
22 believe would come in was a 1998 theft, a 2001 shoplifting,
23 and a 2003 fraudulent check.

24 MRS. WIYGUL: Your Honor, the only thing we would have
25 additionally would be a breach of trust from '91 for which

1 he received a ten year sentence. I believe the sentence was
2 suspended, but --.

3 SOLICITOR MONTES: Your Honor, we believe that goes
4 beyond the ten year wording.

5 MRS. WIYGUL: And Your Honor, it's my understanding
6 from the rule that that rule goes ten years back to would
7 the sentence have been completed prior to ten years ago.

8 THE COURT: If that carries a five year sentence, it
9 might be remote.

10 MRS. WIYGUL: Your Honor, he received a ten year
11 sentence.

12 SOLICITOR MONTES: It, it was not suspended. I
13 apologize, Your Honor. He received ten years on December
14 6th of 1991.

15 THE COURT: Okay. All right. I believe she can
16 impeach him with that.

17 SOLICITOR MONTES: And Your Honor, is this based on the
18 ten year rule or another rule?

19 THE COURT: Based on the ten year rule.

20 SOLICITOR MONTES: And the, the ten years, Your Honor,
21 would, from 1991, would of been up in 2001.

22 THE COURT: Okay. This is 2008.

23 SOLICITOR MONTES: But Your Honor, the -- thank you,
24 Your Honor.

25 THE COURT: I believe it's ten years from the date that

1 he would have been, his sentence would be up.

2 SOLICITOR MONTS: Yes, Your Honor, and on a breach of
3 trust he would not have served the full ten years. He would
4 of served approximately a third of that, which is, is---

5 THE COURT: Okay. I don't know when, when he would get
6 released from that, that. I'm gonna let her use it for
7 impeachment purposes because I don't know his release from
8 confinement day.

9 Okay. Bobby.

10 (Whereupon, the following takes place within the
11 presence of the jury.)

12 THE COURT: All right. Ladies and gentlemen, if y'all
13 would stand and raise your right-hand please. The clerk
14 will swear you to try this case and please respond by saying
15 I will when you take the oath.

16 Madam Clerk.

17 (Whereupon, the jury was placed under oath at this
18 time.)

19 THE COURT: All right. Ladies and gentlemen, this is a
20 criminal case. It comes to us on five indictments, which I
21 hold in my hand, and I went over with you that these were
22 allegations and they are simply allegations. The fact that
23 someone has been charged and arrested is not any evidence of
24 their guilt.

25 You, ladies and gentlemen, decide this case from the

1 evidence and testimony you hear in the courtroom. These
2 indictments are just pieces of paper. It brings the case to
3 court, and eventually you will report your verdict on the
4 back of each one of these indictments and we'll file it.
5 That's the way we keep the Court records.

6 But you, ladies and gentlemen -- Mr. Morrow pleads not
7 guilty to these charges. His plea of not guilty places the
8 burden of proof on the State of South Carolina to prove him
9 guilty of any charge beyond a reasonable doubt. A criminal
10 defendant, in South Carolina, is never required to prove
11 themselves innocent of any charge. The burden of proof is
12 always on the State to prove guilt beyond a reasonable
13 doubt.

14 Now, you, ladies and gentlemen, are citizens of
15 Greenville County, and you are the fact finders. You can
16 determine what happened on or about March the 14th of 2005
17 as well as anyone. I was not there. You were not there.
18 The attorneys were not there.

19 You have to determine, from the evidence and testimony,
20 what happened, what the facts the State, what facts can the
21 State prove occurred on that day, and you have to determine
22 that, and you're the sole judges of the facts of the case.
23 You pass upon the credibility and the believability of any
24 testimony that comes from this witness stand regardless of
25 who the witness is. You are the sole judges of the facts

1 using your good judgment and common sense.

2 Now, you apply the facts to the law that I'll go over
3 with you at the conclusion of the case, and then write a
4 verdict on each one of these charges.

5 Now, we'll begin this trial with opening statements if
6 the parties care to make opening statements. After the
7 opening statements, you will hear the evidence and testimony
8 in this case from which you will determine the facts. After
9 the evidence and testimony is in, the lawyers can stand up
10 and make their closing statements or their summations to
11 you. After that, I'll go over the law that applies to this
12 case and then you'll go back and deliberate and find the
13 facts, apply those to the law, and write a verdict in this
14 case.

15 Okay. We'll begin this trial with opening statements.

16 Mrs. Monts.

17 SOLICITOR MONTs: May it please the Court.

18 Ladies and gentlemen of the jury, my name is Joyce
19 Monts. I work for the Thirteenth Circuit Solicitor's
20 Office. It's my job to prove to you, beyond a reasonable
21 doubt, that the defendant is guilty of the charges currently
22 pending against him. Those charges are first, distribution
23 of cocaine, second, trafficking crack cocaine, third,
24 possession with intent to distribute cocaine, fourth,
25 violation of the Habitual Traffic Offender Act, and fifth,

1 attempted escape.

2 You will hear testimony from the witness stand from
3 officers and other people involved in this case. Everything
4 occurred on March 14th of 2005. On that date, the
5 defendant was seen by SLED agents who were operating an
6 undercover drop, drug operation. The officers will tell you
7 about how they attempted and subsequently did, utilizing an
8 informant, purchase cocaine from the defendant, Mr. Erik
9 Morrow.

10 This started out in Spartanburg County. All the drugs
11 were not delivered in Spartanburg County. So, the
12 defendant, the informant in the separate car, and the two
13 SLED agents, unbeknownst to the defendant, in a third car,
14 all came to Greenville County.

15 The transaction ended by another distribution occurring
16 in Greenville County, which it occurred on March 14th of
17 2005, late that morning. The Highway Patrol was on, aware
18 of the situation. Once the defendant got off of White Horse
19 Road and got onto I-85, again in Greenville County, the
20 defendant was stopped for traffic violations. He was a
21 habitual traffic offender and driving under suspension. He
22 was arrested. And subsequent to that, he was found to be in
23 possession of trafficking weight of cocaine and, excuse me,
24 of crack cocaine and possession with intent to distribute
25 weight of cocaine.

1 Now, the evidence is gonna come from the witness stand
2 and from anything you see. You'll see hopefully videos on
3 the screen as to what happened on those days with the
4 Highway Patrol. And we believe that once you have listened
5 to the testimony from the witnesses, once you have looked at
6 any other evidence that is admitted in this case, that you
7 will come back and render your truthful verdict at the end
8 and that your verdicts will be guilty on all counts.

9 Thank you.

10 MRS. WIYGUL: Your Honor.

11 THE COURT: Yes, ma'am.

12 MRS. WIYGUL: Ladies and gentlemen of the jury, this is
13 Erik Morrow. Excuse me. Erik's here and he'll be telling
14 you his side of the story. He's gonna admit to you that
15 he's made mistakes. This is, this is, in large part, a case
16 of mistakes. But all the mistakes weren't Mr. Morrow's.

17 I'm gonna move this because, as you've seen, I'm not
18 quite as coordinated as Mrs. Monts is, and I will trip over
19 it.

20 This is a case of mistake. You're gonna hear from the
21 officers that were involved in the traffic stop, and you're
22 gonna hear from agencies that tested some drugs in this
23 case. You're gonna hear from the SLED agents, and I would
24 urge you, keep an open mind. Remember that Mr. Morrow is
25 innocent.

1 In Law School they thought us that he came into the
2 courtroom cloaked in an invisible cloak of innocence. And I
3 like that. Because what the State has to do is remove that
4 cloak from him thread by thread. And if there's threads
5 left on him at the end of the case, those threads are called
6 reasonable doubt.

7 Now, it's gonna be up to you to decide whether the
8 state has proven their case, whether you believe everything
9 that their witnesses tell you, or whether you believe some
10 of it, or whether you don't believe any of it. That's your
11 decision as the judge told you and will tell you again.

12 So, again, we would just urge you, keep an open mind.
13 Listen to everybody. And keep an eye out for those mistakes
14 throughout today.

15 Thank you.

16 THE COURT: Mrs. Monts, call your first witness.

17 SOLICITOR MONTs: Your Honor, the State calls Agent
18 Shannon Branham.

19 SHANNON BRANHAM, being first duly
20 sworn, testified as follows:

21 CLERK: State your full name for the record please.

22 WITNESS: Shannon Branham.

23 CLERK: Thank you.

24 DIRECT EXAMINATION

25 BY SOLICITOR MONTs:

1 Q Agent Branham, please tell the jury where you're
2 employed.

3 A I'm employed with SLED, which is South Carolina Law
4 Enforcement Division.

5 Q And what are your duties there?

6 A I am a vice agent. We primarily work alcohol and
7 narcotics. But most of the time my main duty is narcotics.

8 Q And how long have you worked with SLED?

9 A It will be eight years, seven and a half years in
10 October---

11 Q And did you---

12 A ---of this year.

13 Q I'm sorry.

14 Did you receive any specialized training in narcotics
15 and your other duties?

16 A I completed the Criminal Justice Academy in 2001 and
17 I've been to several undercover schools that was put on by
18 the South Carolina Criminal Justice Academy in Columbia.

19 Q And do you have a partner or do you work with any other
20 officers?

21 A I do. I probably -- let's see, three to four partners.
22 My main partner in, is in the courtroom today. It's Agent
23 Asbill.

24 Q And were you two working together on March 14th of
25 2005?

1 A Yes, ma'am.

2 Q Approximately what time of day was that?

3 A It was an all day event. We started that morning.

4 Q And, and what county did you start in?

5 A We started in Spartanburg County and we ended our
6 duties in Greenville County.

7 Q And were you using a confidential informant on that
8 day?

9 A Yes, ma'am.

10 Q Who was that?

11 A It's Mr. Randall West.

12 Q And describe, on that day, how you came in contact with
13 Mr. West?

14 Did, did you call him or how did you get in touch with
15 him?

16 A I called him on the, on his cell phone and myself and
17 Agent Asbill and Mr. West, we determined a meeting location,
18 and we met at the meeting location in order to perform the
19 duties of the day.

20 Q And were you and Agent Asbill riding in one car or
21 separate cars?

22 A We were riding together in Agent Asbill's truck.

23 Q And what did you do physically when you met, you and
24 Mr., Agent Asbill met with Mr. West?

25 A We -- like a briefing. A little brief to determine,

1 you know, what the duties of the day entailed, who we're
2 going to be buying the narcotics from. Mr. West was
3 searched by Agent Asbill, and just the duties of the day or
4 setting a line for what we're gonna do.

5 Q And describe what you mean by search and what is, what
6 is the purpose of that.

7 A To make sure that the informant only has on his person
8 what we, as the agents, give to him. Therefore, he doesn't
9 have, you know, ten or fifteen dollars of his own money. He
10 has no other narcotics on his person, anything illegal that,
11 you know, would put him in jeopardy, we make sure he does
12 not, he doesn't have weapons or anything like that. We
13 secure---

14 Q And was he given any money at this time?

15 A Yes, he was given \$300 in state documented funds by
16 Agent Asbill.

17 Q And was this done in your presence?

18 A Yes.

19 Q Was -- and was he given anything else?

20 A He was given an audio recorder in which he put in his
21 lapel pocket here.

22 Q Describe how that works.

23 A Well, this certain day, the informant was concerned
24 that the person that he was going to purchase the narcotics
25 from may search him. Normally -- and I'll just give you an

1 overview, if I go in to do an undercover operation, a lot of
2 times what I wear has wires and it has, they have to be
3 positioned, you know, around your body. However, Mr. West
4 was not, the confidential informant was not happy with that
5 because he was scared that the person he was to purchase
6 drugs from would, you know, maybe raise his shirt or check
7 him. So, at that point we said we could offer him a digital
8 recorder and he just placed it inside his lapel pocket that
9 day.

10 Q And what happened next or what or did, was a phone call
11 placed at this time?

12 A Yes, Mr. West called Mr. Morrow's cell phone, and they
13 scheduled a meeting location, which that was off Highway
14 101. Agent Asbill and myself, we followed the informant to
15 the meeting location, and the deal took place in Spartanburg
16 County, the first deal.

17 Q And when you said state documented funds were given to
18 Mr. West, what, how do you document these funds?

19 A We have a blue form and it's a confidential informant
20 form. And when we give them the money, on the back of it,
21 we write each serial number down for the money that's used.

22 Q And did you write down Mr. Morrow's phone number that
23 you were being, that was being called?

24 A Yes, that was documented as well.

25 Q And please continue.

1 How did you and Agent Asbill and Mr. West get to the
2 next location?

3 A Okay. We met -- the deal was suppose to take place at
4 the Waffle House there off 101. That's what the initial
5 meeting with the informant and Mr. Morrow took place. And
6 then they drove around the---

7 Q Describe, describe---

8 A I'm sorry.

9 Q ---what you observed.

10 When you get, when you got there, was Mr. Morrow
11 already there?

12 A No.

13 Q Do you know what he was driving?

14 A He arrived in a yellow Mustang.

15 Q And what, what, where, where was Mr. West?

16 A He was waiting in the Waffle House parking lot. That's
17 where the initial meeting was suppose to take place.
18 However, it tailed down into the parking lot of the Super 8
19 Motel, which is just around the corner.

20 Q And what did you observe once you observed the yellow
21 Mustang come into the parking lot?

22 A It pulled in. It briefly met with Mr. West, our
23 informant, and then they drove from the Waffle House down to
24 the Super 8 Motel. At that time, Mr. Morrow got out of his
25 yellow Mustang and then got into the vehicle with our

1 informant.

2 Q And did you see this?

3 A Yes.

4 Q Could you identify Mr. Morrow at that time?

5 A Not real well. No, because Agent Asbill and I were
6 having, we were having to keep our distance even though we
7 were in an undercover capacity in a vehicle. However, you
8 know, we did not want to blow our cover of who we were.

9 Q And what happened after the person got in the car with
10 Mr. West?

11 A They, you know, conversated together and then
12 Mr. Morrow exited the undercover vehicle or Mr. West
13 vehicle. He departed the area and then Mr. West met back up
14 with us, and that's when I received the narcotics that was
15 purchased in Spartanburg County.

16 Q And what did you do with them once you obtained custody
17 of them?

18 A I placed them in a SLED B.E.S.T. Kit Bag.

19 SOLICITOR MONTS: Your Honor, may I have this marked
20 for identification.

21 (The Court nods affirmatively.)

22 (Whereupon, the B.E.S.T. Bag was marked as State's
23 Exhibit No. 1 for identification purposes only at this
24 time.)

25 Q Agent, I'm gonna hand you what's been marked for

1 identification State's Exhibit 1.

2 Can you identify this for the jury?

3 A Yes, ma'am, I do identify it as my name and signature
4 is on it.

5 Q And describe, for those of us who, who have never seen
6 a SLED B.E.S.T. Bag, describe what that is.

7 A Okay. It's a packet, a manila folder of about three or
8 four pieces of paperwork, and inside of it the paperwork,
9 you have a bag, a sealed bag. And this, where it says SLED
10 drug analysis security envelope, this is where we actually
11 put the narcotics once they've been seized. We put them in
12 here and it has a tear here that you pull across, fold down,
13 and then the bag is secure. Inside this also is a chain of
14 custody, which maintains the custody from me until I can get
15 it to SLED to turn it in.

16 And like I said, I know that this is our SLED B.E.S.T.
17 kit and that it's my case cause it says agency, SLED,
18 Shannon Branham is printed, and then underneath is my
19 signature and reference to the Erik Morrow case, defendant,
20 Erik Morrow.

21 Q And did you seal this at this time or did you wait
22 until later in the day?

23 A No, it was sealed 3/14/05.

24 Q Late -- was it sealed while you were in Spartanburg
25 County or was it later when you were in Greenville County?

1 A I don't recall because I don't remember if we have a
2 case number, we had a case number on Mr. Morrow at that
3 time. We have to call in and obtain case numbers from
4 headquarters, and the bag can not be sealed until it
5 actually has a hard copy case number that is placed inside
6 the bag. So, I don't recall. It was during the day of
7 3/14/05, yes, ma'am.

8 Q And did you keep that in your custody?

9 A Yes, ma'am.

10 Q And was the amount that was obtained there on 101 in
11 Spartanburg County, was that the entire \$300 worth?

12 A No, ma'am.

13 Q What transpired next?

14 A Initially we were to buy \$300 worth of the narcotics.
15 However, Mr. Morrow advised our informant that he did not
16 have the entire---

17 MRS. WIYGUL: Objection, Your Honor.

18 THE COURT: I would sustain the objection.

19 Q What did you do based upon the information you
20 received?

21 A We went to Greenville County to another meeting
22 location.

23 Q And describe how -- let's see. Did you -- let's see.
24 Going back to when you met up with Mr. West and you
25 retrieved the cocaine from Spartanburg, did you take the

1 recorder or did that stay with him?

2 A No, it stayed with him.

3 Q Okay. And describe how you and -- were you in the same
4 car with Mr. West then or separate vehicles?

5 A Agent Asbill and I were still in his truck. Mr. West
6 was in his vehicle.

7 Q And describe where each of you went.

8 A Okay. We remained stationary. Agent Asbill and I did,
9 on White Horse Road, just the same as Mr. West until a phone
10 call had been placed to Mr. West telling him to meet off of
11 White Horse Road at the Waffle House. And at that time we
12 followed Mr. West to the Waffle House on White Horse Road.
13 Agent Asbill and I remained stationary at the Raceway Gas
14 Station, which is directly across, across the road while
15 Mr. West remained stationary in the Waffle House parking lot
16 until the yellow Mustang arrived, and Mr. Morrow got out of
17 the vehicle and got into Mr. West vehicle.

18 Q And is that location in Greenville County?

19 A Yes, ma'am.

20 Q And describe what you could see from where you were.

21 A Agent Asbill and I were pulled up facing the Waffle
22 House as if we were getting gas to try to maintain our
23 undercover role. As we were sitting there, we saw the same
24 yellow Mustang that pulled in and met initially with
25 Mr. West pull in beside Mr. West, black male, exited the

1 vehicle and entered Mr. West vehicle.

2 Q Was it---

3 A And we could -- we were, we visually -- we were
4 watching this. We were observing of this the whole entire
5 time.

6 Q Describe how, how close you were or how well you could
7 see who the person was.

8 A We were not probably 25 feet away from the target
9 location.

10 Q And, and who was it that you saw?

11 A Mr. West in his vehicle and then the yellow Mustang.
12 Mr. Morrow got out of his vehicle, vehicle and into Mr. West
13 vehicle.

14 Q And is that Mr. Morrow that you saw on April 15th,
15 2005, in the courtroom today?

16 A Yes, and he is the same Mr. Morrow that got out
17 initially in Spartanburg County and got into the vehicle of
18 Mr. West.

19 Q What -- how long was Mr. West, excuse me, Mr. Morrow in
20 Mr. West vehicle at the Waffle House on, on, on White Horse
21 Road?

22 A Anywhere between two, two to seven, two to eight
23 minutes.

24 Q And what happened after that?

25 A During the time of our surveillance on the second

1 transaction in Greenville County we had made contact with
2 Corporal McCauley of the South Carolina Highway Patrol and
3 advised him that we had a vehicle that possibly contained
4 more narcotics and that we were gonna need to obtain arrest
5 warrants for. However, we did not want to burn our
6 informant at the time, and we knew that we had to obtain the
7 narcotics that was purchased during, during the second deal.

8 So, at that time Corporal McCauley called some uniform
9 troopers and they interacted with Mr. Morrow, and then we
10 were able to interact with Mr. West, who then we met back
11 again, obtained those narcotics, and the same information
12 with the B.E.S.T. Kit and everything was filled out again as
13 in the first time.

14 Q Did -- describe how that, where that took place and
15 what happened when you met back with Mr. West.

16 A Right. We went to the two corner end of the Raceway
17 Parking Lot. The narcotics was obtained. It was packaged
18 just as in the first one, in the SLED B.E.S.t. Kit. As a
19 matter of fact, I made two individual bags that you can tell
20 A, and I labeled them A and B. One of which I labeled
21 Greenville County, and one of which is labeled Spartanburg
22 County.

23 Q And which one -- can you tell us which one, A or B, was
24 Greenville County?

25 A B is gonna be Greenville County.

1 Q And when you retrieved this, did you also retrieve the
2 recorder?

3 A Yes.

4 Q Could you have arrested Mr. Morrow at that time?

5 A Yes, sir, but we were trying to main (sic) the
6 confidentiality of our informant. We try not to put our
7 informants in any more danger than we would ask them for our
8 own safety to be placed in. Therefore, if we did a
9 take-down at that time, automatically our informant would,
10 would lose his confidentiality, and that becomes a very very
11 major safety issue.

12 Q And did you provide the Solicitor's Office with a copy
13 of this audiotape?

14 A Yes, I did.

15 Q And did you listen to the copy, the audiotape?

16 A Yes.

17 Q What, what did you notice about the audiotape?

18 A The clarity of the tape is, is definitely not to the
19 level that it should be. However, it was inside the lapel
20 of, of his coat. A lot of movement was going around. I'm
21 sure Mr. West was, was nervous. So, the clarity of the tape
22 is not, is not good.

23 SOLICITOR MONTS: Your Honor, may we have the audio
24 marked for identification?

25 (The Court nods affirmatively.)

1 (Whereupon, the audiotape was marked as State's Exhibit
2 No. 2 for identification purposes only at this time.)

3 Q I'm gonna hand you what's been marked for
4 identification State's Exhibit 2.

5 Can you identify this?

6 A Yes, ma'am.

7 Q What, what is that?

8 A That's the audio recording that was given to you by
9 SLED that we made that day on 3/14/2005.

10 SOLICITOR MONTs: Your Honor, I ask that I be able to
11 publish part of this at this time.

12 MRS. WIYGUL: Objection, Your Honor. Under the best
13 evidence rule, I believe Mr. West is scheduled to testify
14 today. And as the agent just testified as to the poor
15 quality of the tape, we would object to its being admitted.

16 THE COURT: I will wait until -- we'll wait to Mr. West
17 can testify. She can cross-examine Mr. West on what was
18 said.

19 SOLICITOR MONTs: Okay.

20 Q After you retrieved the cocaine from the Greenville
21 incident and the audio recorder from Mr. West, what did you
22 do next and what did Mr. West do next?

23 A He, he had to give a statement that Agent Asbill
24 prescribed for him at that time.

25 Q And---

1 A And we continued to, you know, monitor with, with
2 Highway Patrol their circumstances and their situation at
3 that time.

4 Q And did you recall seeing any troopers near you on, on
5 your way from I-85?

6 Did you know he was gonna be there?

7 A No, I did not know. They just -- Corporal McCauley
8 asked me, you know, what we needed. They would, they would
9 supply us with what we needed, and I, I believe, I'm wanting
10 to say maybe I saw an undercover marked unit. But it was
11 hard to say at that time because there was dark tinted
12 windows. I couldn't see inside the vehicle who pulled up
13 beside us at the Race Track, Raceway Gas Station.

14 Q And what did you do next?

15 where did you go?

16 A Agent Asbill and I went to the jail, Greenville County
17 Detention Center.

18 Q And what did you observe next at the law enforcement
19 center?

20 A Mr. Morrow had already been brought in by the Highway
21 Patrol.

22 Q And did you come into contact with Trooper Dale Owens?

23 A I did.

24 Q What, what did you receive, if anything, from him?

25 A Corporal Owens explained to me what was marked---

1 MRS. WIYGUL: Objection, Your Honor.

2 THE COURT: I would sustain the objection.

3 Q If -- after having, holding the conversation, did you
4 receive anything?

5 A Yes, three cell phones.

6 Q And did you receive anything else?

7 A Not that I can recall, no, ma'am.

8 Q Did you receive any---

9 MRS. WIYGUL: Objection, Your Honor. I believe that's
10 been asked and answered.

11 THE COURT: I sustain the objection.

12 Q Did you ever receive the marked money back?

13 A Yes, we did. It was -- Agent, Agent Asbill is the one
14 who submitted it on our confidential form. We actually have
15 a place who submits the money because we have a buy money
16 account we sign out money in order to purchase drugs with or
17 purchase under, you know, alcohol at clubs, that type thing,
18 and it was actually Agent Asbill's money who provided the,
19 for the buy that day and he did receive his money back.

20 MRS. WIYGUL: Objection, Your Honor.

21 THE COURT: I would sustain the objection.

22 Q Were you present during the transaction?

23 A Yes, I was.

24 Q What did you observe?

25 A I observed Corporal Owens give Agent Asbill two one

1 hundred dollar bills back that was on Mr. Morrow's person.

2 Q And did -- to your knowledge, did you or Agent Asbill
3 ever receive the third one hundred dollar bill?

4 A Not to my knowledge, no, ma'am.

5 Q And once you received the two cell phones, did you
6 that, from Trooper Owens, did you ever determine whose cell
7 phones those were?

8 A They were Erik Morrow---

9 Q And---

10 A ---per Corporal---

11 MRS. WIYGUL: Objection, Your Honor.

12 THE COURT: Okay. The person that did it has got to
13 testify to be cross-examined, Mrs. Monts.

14 I sustain the objection.

15 Q Based on your investigation, did you subsequently
16 determine, from your investigation, whose cell phones those
17 were?

18 MRS. WIYGUL: Objection, Your Honor.

19 THE COURT: Sustained.

20 Q Had you previously called one of those cell phones?

21 A Mr. West had called.

22 Q And did that occur in your presence?

23 MRS. WIYGUL: Objection, Your Honor.

24 THE COURT: I would sustain the objection. She didn't
25 do it.

1 Q And what did you do with the, the B.E.S.T. Bag that you
2 put the cocaine in?

3 where did you keep that?

4 A In the trunk of my car.

5 Q And describe the security and why you kept it there.

6 A I'm sorry.

7 Q What, what's your -- what is -- what do you normally do
8 when, when you get illegal substances?

9 A I keep it in the trunk of the car, and, you know,
10 instead of keeping it in a compartment inside the vehicle
11 that gets, easily be broken into, it's secured in the trunk
12 of my car.

13 Q And where do SLED agents keep their evidence?

14 A The guys who drive trucks, like Agent Asbill, he would
15 keep his in his tool box. However, I have an unmarked two
16 door vehicle. So, I keep mine secure in the trunk.

17 Q And what, what do you do with that?

18 A You can either turn it into the SLED lab log in or you
19 can turn it into a drop box at SLED. And in this situation,
20 I turned it into the drop box.

21 Q And describe where that is and what it is.

22 A It's a blue that -- it's a blue mailbox. It looks just
23 like a, a big blue mailbox that you would drop your mail in
24 everyday, and it's kept inside the vice unit at SLED. Once
25 you drop it, there's no getting it back. You drop your dope

1 and then you put your chain of custody inside the manila
2 folder that I talked to you about earlier, earlier, and you
3 put that on the outside of the box, and then the lab, the
4 lab tech will come over and pick the narcotics up.

5 Q And, and did -- where is this?

6 what city is this?

7 A This is in Columbia at headquarters at SLED.

8 Q And do you request that the drug be in, be analyzed?

9 A Yes, ma'am.

10 Q And did you receive a analysis on, on your case?

11 A Yes, ma'am.

12 Q Do you know what agent did the analysis?

13 A Nathan McCoy.

14 Q Thank you. I have no further questions.

15 THE COURT: All right.

16 CROSS-EXAMINATION

17 BY MRS. WIYGUL:

18 Q Agent Branham, whenever you contacted the Highway
19 Patrol, you called and contacted Trooper Owens and Trooper
20 McCauley or Corporal McCauley, correct?

21 A I initially called Corporal McCauley I believe or
22 either called headquarters and he called me back. I, I
23 don't really remember. I just remember he was the
24 supervisor that day and we were able to make contact by
25 phone.

1 Q Do you recall a statement that you wrote on March 15th,
2 14th of 2005?

3 I know it's a long time ago.

4 A It's my agent's statement if that's what you're
5 referring to.

6 Q Would, would reviewing that material help refresh your
7 memory as to these events, reviewing that agent's statement?

8 A If you need me to.

9 Q And would you agree that your statement by, which
10 written a day after the incident, says that you contacted
11 Trooper Owens and McCauley?

12 A It does say that.

13 Q Okay. Did you drug test Mr. West?

14 A No, I did not.

15 Q Do most confidential informants have some kind of drug
16 tester?

17 SOLICITOR MONTS: Objection, Your Honor.

18 MRS. WIYGUL: Your Honor, she's a SLED agent.

19 THE COURT: Well---

20 SOLICITOR MONTS: But we're talking about this one
21 particular case, Your Honor.

22 THE COURT: If she can answer it I'll let her answer
23 it. Overrule your objection.

24 A Could you repeat your question?

25 I'm sorry.

1 Q In, in order to find confidential informants that can
2 go in and know where to find the drugs, do most of these
3 confidential informants have a history of drug use?

4 A May or may not.

5 Q May or may not?

6 A Yes, ma'am.

7 Q Okay. How long did Mr. West stay at the hotel in
8 Spartanburg?

9 A At the Super 8 Motel?

10 Q At the hotel -- wherever they were in Spartanburg.

11 A Two to five minutes.

12 Q And were some, were some clothes transferred to Mr.
13 Morrow's vehicle down in Greenville?

14 Do you recall that?

15 A I'm sorry. I do not recall that, Mrs. Wiygul. I do
16 not.

17 Q Do, do you recall Mr. West filling his trunk up with
18 grocery bags full of women's clothing?

19 A In the -- you're talking about on the initial in
20 Spartanburg County at the Super 8 Motel, correct?

21 Q No, in Greenville. The Super 8 Motel in the parking
22 lot I guess.

23 A That was in Spartanburg County.

24 Q You recall the clothes?

25 A I don't, I don't really remember the clothes.

- 1 Q That's, that's okay. It's been three years.
- 2 A I, I---
- 3 Q We've all---
- 4 A I don't really remember the clothes.
- 5 Q What did you pay Mr. West with?
- 6 A We didn't pay Mr. West.
- 7 Q He did it out of the goodness of his heart?
- 8 A No, he had been referred to us by Woodruff City Police
- 9 Department.
- 10 Q He had pending charges?
- 11 A Yes, ma'am.
- 12 Q And y'all made them go away?
- 13 A I do not know what Woodruff City did with their
- 14 charges.
- 15 Q Okay.
- 16 A Chief Darryl Dawkins was in control of that.
- 17 Q Okay. But you, you contacted Chief Dawkins and let him
- 18 know he did some work?
- 19 A That he did cooperate, yes, ma'am.
- 20 Q I have no further questions.
- 21 Oh, one moment I'm sorry.
- 22 (Pause.)
- 23 Q Oh. My, my associate was pointing out, you did only
- 24 get \$200 back?
- 25 A Yes, ma'am.

Shannon Branham - Cross-examination
by Mrs. Wiygul

1 Q And you gave Mr. West \$300, right?

2 A Yes, ma'am.

3 Q I have no further questions. Thank you.

4 SOLICITOR MONTS: No further witness, questions of this
5 witness, Your Honor.

6 Your Honor, the State calls Mr. West.

7 CLERK: Mr. West, if you'd step up here please.

8 RANDALL WEST, being first duly
9 sworn, testified as follows:

10 CLERK: State your full name for the record please.

11 WITNESS: I'm Randall West.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY SOLICITOR MONTS:

15 Q Mr. West, please let the jury know what your full name
16 and, and do you live in the Greenville area?

17 A I'm Randall Gordon West and I do live here.

18 Q And do you know Erik Morrow?

19 A Yes, I do.

20 Q How long have you known Erik Morrow?

21 A Well, I've met him through a mutual acquaintance early
22 in 2005.

23 Q And at that time in early 2005 how often would you see
24 him?

25 A I would see him two or three days a week minimum,

1 sometimes more, rarely less.

2 Q Two or three times a week for how long, for how long
3 did this continue?

4 A Occasionally we'd have a cocktail. Other times than
5 that it was just to buy drugs.

6 Q And how, how many weeks or months did this relationship
7 take place?

8 A Three months.

9 Q And on March 14th of 2005 did you work as an
10 informant for Agents Branham and Asbill with SLED?

11 A I did.

12 Q And on that day do you recall meeting with them?

13 A I do.

14 Q Where did you go to meet with them?

15 A I met with them at the Waffle House parking lot located
16 off of Highway 101 in Spartanburg.

17 Q And at that time what did you do?

18 A I had a brief conversation with them. I received three
19 one hundred dollar bills. I was searched and received an
20 audio recorder.

21 Q And did you make any phone calls?

22 A Brief phone call to Erik to confirm a drug buy that we
23 had previously discussed earlier in the week.

24 Q And what type of drug were you gonna buy?

25 A Cocaine.

1 Q And when you called him, was it a -- what type of phone
2 did you call, cell--

3 A A cell, cell phone.

4 Q And was this a number you were familiar with?

5 A It was his regular number.

6 Q And when you called that number, were Agents Asbill and
7 Branham present?

8 A Yes.

9 Q And where did you go or what did you do once this call
10 was made?

11 A We departed and I met, I went to the Waffle House as I
12 mentioned, and waited on Erik to arrive there.

13 Q And where were Agents Branham and Asbill while you were
14 waiting?

15 A Nearby.

16 Q And were they in a separate car from you?

17 A Yes.

18 Q And could you see them?

19 A Yes.

20 Q Did Mr. Morrow arrive?

21 A He did. Got out of his yellow Mustang, got into mine
22 briefly.

23 Q And had you ever seen him in that vehicle before?

24 A Many times.

25 Q And what happened when he got in your vehicle?

1 A I gave him three hundred dollar bills and then he
2 departed and asked me to meet him at the local Super 8
3 Motel, which was just at the other end of a long parking
4 lot.

5 Q And did you follow him or did you go to this location?

6 A Oh, I went straight there and waited for him to return.

7 Q How long was he gone?

8 A Fifteen, twenty minutes, give or take five minutes.

9 Q And what happened when he came back?

10 A Came back, gave me a bag of cocaine, and told me that
11 it was light, and we'd have to go to Greenville to get some
12 more. So, I followed him there.

13 Q And what -- you say the term light, what does that
14 mean?

15 A It didn't weigh what I had requested.

16 Q At this point do the Officers Branham and, and Asbill,
17 can they see where you are?

18 A Yeah.

19 Q Could you see them?

20 A Yes.

21 Q And did you do anything else while you're at the hotel
22 there?

23 A No, just, just waited till Erik came back.

24 Q And when he left, what did you do?

25 A He had to go to Greenville to get it or come to

1 Greenville to get it. So, he asked me to meet him on White
2 Horse Road at the Clock Restaurant.

3 Q And did you follow him immediately or did you meet up
4 with the agents?

5 A Met up with the agents and then I wasn't directly
6 behind Mr. Morrow. But I went to, down 85 to the Clock
7 Restaurant.

8 Q And when you met with Asbill, Agents Asbill and
9 Branham, did you give them anything?

10 A Oh, I gave them the powder cocaine I got from
11 Mr. Morrow.

12 Q And did you still have the recorder on you?

13 A Yes.

14 Q And continue.

15 where did -- where were Agents Asbill and Branham while
16 you went up I-85 towards Greenville?

17 A Behind me.

18 Q Could you see them?

19 A Yes.

20 Q And describe where you went in Greenville County.

21 A Eighty-five south to White Horse Road to the Clock
22 Drive-in about a half mile on the left.

23 Q And where did the agents go?

24 A Nearby.

25 Q could you see them?

1 A Yes.

2 Q And how long did you wait at the Clock Restaurant?

3 A Only very briefly, five, ten minutes max. I got a call
4 from Mr. Morrow to meet him at the Waffle House, which is at
5 the corner of White Horse Road and 85.

6 Q And did you go to that location?

7 A To meet him there.

8 Q Did Agents Branham and Asbill go there as well?

9 A They followed me, parked literally a few feet away so
10 they could observe.

11 Q Could you tell where they were parked?

12 A Oh yeah.

13 Q Where were they parked?

14 A Literally 25, 50 feet away, give or take. Very close.

15 Q And did Mr. Morrow arrive?

16 A He did.

17 Q What, what happened?

18 What was he driving?

19 A Yellow Mustang.

20 Q Was this the same vehicle he was in in Spartanburg?

21 A It was.

22 Q And approximately how long had he been gone before he
23 met back up with you there at, at the waffle House in
24 Greenville?

25 A Not very long, fifteen, twenty minutes.

1 Q And what had he told you he was going to do?

2 A Get some more powder---

3 MRS. WIYGUL: Objection, Your Honor.

4 THE COURT: I overrule the objection.

5 Q Please continue.

6 A He told me he had to go get some more cocaine.

7 Q And had you already given him \$300?

8 A Oh yes. Yes, I gave them to him in Spartanburg.

9 Q And when he came back and met with you at the waffle,
10 at the waffle House, what took place?

11 A He got out of his car, got into mine. I received the
12 drugs, we chatted for a moment, he left. Three, four, five
13 minutes, give or take.

14 Q And after this took place, where did you go?

15 A Met with the agents for a moment. They got the drugs
16 from me. I was searched. They got their recorder. I went
17 home.

18 Q And Mr. West, I believe you have a prior conviction in
19 1991 for breach of trust?

20 A That is correct.

21 Q In 1998 for a theft?

22 A That is also correct.

23 Q In '01 for a shoplifting?

24 A That is correct.

25 Q And '03 for a fraudulent check?

1 A That is also correct.

2 Q And were you made any promises regarding testifying
3 today?

4 A None whatsoever.

5 Q And do you -- I believe -- what type of charge did you
6 have in Woodruff City?

7 A It was several charges for contraband. I have a small
8 amount of marijuana, small amount of cocaine powder, and a
9 few pills.

10 Q And do you know, as of today, what is happened with
11 that?

12 A They're still pending.

13 Q And when did you give the officers back their recording
14 device?

15 A After Mr. Morrow got out of my car at the Waffle House
16 and I went a few feet to the agent's car.

17 Q And have you had a chance to listen to that recording
18 since that day?

19 A I have.

20 Q And what did you notice about the recording?

21 A Audio quality was poor.

22 Q Were you able to determine what's being said on that?

23 A No.

24 Q Could you determine whose voices were on there?

25 A Yes.

1 Q Whose voices are on there?

2 A Mine and Mr. Morrow's.

3 Q And while you were driving from Spartanburg to
4 Greenville, was the recorder still recording?

5 A You know I don't recall.

6 Q Is it, is it possible?

7 A Yes.

8 Q Did you ever make any cell phone calls to Agents
9 Branham and Asbill while this whole thing was taking place
10 or did they call you?

11 A We chatted several times, yes.

12 Q And would your, your -- would those be on the
13 recording?

14 A Probably, yes.

15 SOLICITOR MONTs: Your Honor, I ask that I be able to
16 publish the audio recording at this time.

17 MRS. WIYGUL: Your Honor, we would object under the
18 best evidence rule as Mr. West is here.

19 THE COURT: I overrule the objection. You may publish.

20 SOLICITOR MONTs: And, and Your Honor, I would propose
21 to play a little bit of it since the quality is, is, is bad.
22 But we will enter the whole thing into evidence if anybody
23 else wants to play it longer.

24 MRS. WIYGUL: And, Your Honor, as, as nothing has been
25 indicated to me as to exactly which portion of this

1 audiotape they would choose to play for the jury, we would
2 request that if they're gonna enter in part of it, they need
3 to enter in all of it.

4 THE COURT: I'll let her play a portion.

5 SOLICITOR MONTS: I apologize, Your Honor.

6 (Whereupon, a portion of State's Exhibit No. 2 was
7 played for the jury at this time.)

8 SOLICITOR MONTS: Your Honor, I mean it's -- I would
9 just propose admitting that much just to show the quality of
10 the tape. But we are introducing the whole tape in case the
11 defense wants to play the whole thing. It does include the
12 part from Spartanburg and the, the part in Greenville. It's
13 just one continuous tape.

14 MRS. WIYGUL: Your Honor, we would renew our objections
15 especially after hearing the quality of the tape of which
16 nothing seems to be actually audible except for static.

17 THE COURT: I'm gonna just let it in. The, the quality
18 is not really good. I'll let the jury give whatever weight
19 they want to to it.

20 All right. I'll, I'll let it, it, admit it into
21 evidence.

22 (Whereupon, State's Exhibit No. 2 was received into
23 evidence at this time.)

24 SOLICITOR MONTS: Your Honor, we, we just go ahead and
25 admit it into evidence at this time.

1 Thank you.

2 Q And Mr. West, I believe you previously listened to this
3 and, and does it contain both the Spartanburg and the
4 Greenville---

5 A It does.

6 Q And describe some of the conversations that takes
7 place.

8 A Well, the conversation---

9 MRS. WIYGUL: Objection, Your Honor. If, if she's
10 gonna enter it into evidence, then they can listen to the
11 conversations on audiotape as opposed to Mr. West's
12 interpretation of what the audiotape says.

13 THE COURT: Okay. Was the tape provided to the
14 defense?

15 SOLICITOR MONTS: Yes, Your Honor.

16 THE COURT: Okay. I'm going to let the tape come into
17 evidence and you have to rephrase your question. I'm gonna
18 sustain the objection as to let him comment about what the
19 tape said or didn't say.

20 Q At this point in your relationship with Mr. Morrow,
21 were you friends?

22 A Yes.

23 Q Would you hold conversations with him?

24 A Yes.

25 Q Would you discuss things other than buying drugs?

1 A Sure.

2 Q Okay. Mr. West, I'm gonna hand you what's been marked
3 for identification State's Exhibit 1.

4 Can you please describe this?

5 A That appears to be some of the cocaine that I got from
6 Mr. Morrow.

7 Q And what did you do with it when you, when you got it
8 from Mr. Morrow?

9 A Well, once he exited the vehicle, I immediately met up
10 with the SLED agents and gave it to them.

11 Q And this occurred how many times?

12 A Once in Spartanburg and one time in Greenville.

13 Q And is Mr. Morrow in the courtroom today?

14 A He is, the defendant.

15 Q And is -- where is he seated?

16 He's---

17 A At the defense table.

18 Q Did you ever have any dealings with Agents Branham and
19 Asbill after March 14th, 2005?

20 A No.

21 Q Thank you. No further questions.

22 CROSS-EXAMINATION

23 BY MRS. WIYGUL:

24 Q Mr. West, how many times have you gone undercover prior
25 to this?

1 A None.

2 Q Would it surprise you to know that your N.C.I.C.
3 sheet---

4 SOLICITOR MONTS: Objection, Your Honor.

5 THE COURT: I'd sustain the objection to the form of
6 the question. You can't ask that question.

7 Q Mr. West, your charges from woodruff, what year were
8 they from?

9 A 2005.

10 Q 2005.

11 what month?

12 A March 2005.

13 Q So, that -- it was just a week prior to this?

14 A I guess so, yeah. Give or -- a few days.

15 Q Only a few days?

16 A Well, don't hold me to the exact date, but I would not
17 argue with you if you had the exact date.

18 Q Is, is your memory faulty for that time period?

19 A No.

20 Q It's not?

21 Were you, were you doing drugs at that time period?

22 A On that day or during that period?

23 Q Were you doing drugs in March of 2005?

24 A Yeah.

25 Q Were you doing pills in March of 2005?

1 A Yes.

2 Q Were you doing marijuana in March of 2005?

3 A No.

4 Q No.

5 Now, you told us that the charges from Woodruff were
6 for possession of marijuana?

7 A That's correct.

8 Q Was that somebody else's?

9 A I was buying it for somebody else, that's correct. I
10 don't smoke.

11 Q Oh, okay. And you were doing crack in March of 2005,
12 right?

13 A No.

14 Q No.

15 Why would Mr. Morrow think that you wanted to buy crack
16 if you weren't doing it?

17 A We had a mutual friend that does and she lived with me
18 at the time.

19 Q So, you were, you were purchasing the marijuana for a
20 friend and you were purchasing the crack for a friend?

21 A That's correct.

22 Q Would that friend be Sandy?

23 A That's correct.

24 Q Now, you had a bunch of Sandy's clothes, didn't you?

25 A That's also correct.

1 Q And she wanted them back, didn't she?

2 A You're correct.

3 Q Because y'all were no longer having a relationship,
4 correct?

5 SOLICITOR MONTS: Objection, Your Honor. Relevance.

6 THE COURT: I overrule the objection at this time.

7 Go ahead.

8 A That is also correct.

9 Q And in fact, somewhere on that audiotape there's some
10 discussion where Erik's telling you Sandy wants her clothes
11 back and she wants her money, isn't it?

12 Isn't it?

13 A Possibly. But no money talk at all.

14 Q Possibly.

15 But you owed Sandy some money, didn't you?

16 A No.

17 Q No.

18 You didn't owe her money?

19 A No.

20 Q And the relationship was over?

21 A That's correct.

22 Q But you were buying her crack?

23 A The, the relationship was not over at that time.

24 Q Okay.

25 A It was over a few days later.

1 Q Okay.

2 A Or in that time period or time frame.

3 Q Okay. Now, who was with you when you were arrested in
4 Woodruff?

5 A When I was actually arrested I was alone.

6 Q You were alone?

7 A That's correct.

8 Q Okay. Now, you gave these drugs that you told SLED
9 that you bought from Mr. Morrow, you, you say that you gave
10 them to the SLED agents immediately, right?

11 A That's correct.

12 Q Right after you got them?

13 A Well, four or five minutes.

14 Q Four or five minutes?

15 A That's correct.

16 Q No longer?

17 A Four to six minutes.

18 Q And the audiotape will reflect that, correct?

19 A Yes, it will.

20 Q Okay. Now, why were you returning all of Sandy's
21 clothes to Mr. Morrow if the relationship was not over?

22 A I don't recall returning clothes to Mr. Morrow.

23 Q Okay. Mr. West, where do you work?

24 A I'm retired.

25 Q From where?

1 A I broke both of my legs in August of '05 and I receive
2 my disability.

3 Q Okay. where, where did you work before that?

4 A I was in the construction business. I worked for a
5 company in Dallas, Texas.

6 Q But you lived here?

7 A We moved around the country to remodel retail stores,
8 Lowe's, Home Depots, and the like.

9 Q But up until August of 2005 you filed taxes?

10 A I have not filed in a couple of years, but --.

11 Q Okay. You were charged with, as Mrs. Monts said, you
12 have a conviction for shoplifting, fraudulent check, theft,
13 breach of trust, correct?

14 A That is correct.

15 Q So, you know how to make people trust you, don't you?

16 A Yes.

17 Q No further questions.

18 SOLICITOR MONTs: No further questions of this witness,
19 Your Honor.

20 THE COURT: Okay. Excuse him.

21 SOLICITOR MONTs: Yes, sir.

22 Your Honor, the State calls Agent Asbill.

23 BRUNSON ASBILL, being first duly
24 sworn, testified as follows:

25 CLERK: State your full name for the record please.

1 WITNESS: It's Brunson, B-R-U-N-S-O-N, Ashley,
2 A-S-H-L-E-Y, Asbill, A-S-B-I-L-L.

3 DIRECT EXAMINATION

4 BY SOLICITOR MONTS:

5 Q Agent, please tell the jury your full name and where
6 you're employed?

7 A It's Brunson Ashley Asbill and I work for the State Law
8 Enforcement Division, which is commonly known as SLED.

9 Q And how long have you worked there and what are your
10 duties?

11 A I've worked for SLED since 1993 and I'm assigned to the
12 special operations group which includes vice and narcotics.

13 Q And do you work with partners in this?

14 A I do.

15 Q And who are some of the people you work with?

16 A Terry Casey, Chester Bragg, and Shannon Branham.

17 Q And on March 14th of 2005, what were your duties on
18 that day?

19 A We were going to conduct a narcotics investigation on
20 an individual.

21 Q And who did you meet with?

22 A We met with an informant who was found to be Randall
23 West, and we met with him and took some information from him
24 and set up for a undercover narcotics purchase.

25 Q And where did you meet Mr. West?

1 A At the Waffle House at I-85 and 101 in Spartanburg
2 County.

3 Q And were you and Agent Branham in the same vehicle?

4 A Yes, we were.

5 Q And do you recall what Mr. West was driving or was he
6 in another vehicle?

7 A He was in another vehicle. I believe it was a, a BMW
8 or Mercedes.

9 Q And at that time, describe what your normal procedure
10 is in an undercover operation and what you did in this
11 instance.

12 A Well, Mr. West had already made previous contact with
13 the individual who we were gonna buy the cocaine from, which
14 would of been Erik Morrow. He already made arrangements
15 with him to make a purchase. What we did was I issued him
16 \$300 from state money, documented it, and documented the
17 money, issued it to him, and then also searched him, his
18 person and his vehicle to make sure there wasn't any
19 contraband in the vehicle or money.

20 Q And is this your normal procedure?

21 A It is.

22 Q You do this in every case?

23 A Yes, ma'am.

24 Q And at this time, how was contact made with Mr. Morrow?

25 A Mr. Morrow was called by Mr. West off Mr. West's cell

1 phone.

2 Q Was this done in your presence?

3 A It was.

4 Q And was Agent Branham present when that phone call was
5 made---

6 A She---

7 Q ---in your presence?

8 A She was.

9 Q And please continue.

10 what, what were you to do once this phone call was
11 made?

12 A Once the phone call was made, Mr. Morrow had indicated
13 that he would convene---

14 MRS. WIYGUL: Objection, Your Honor.

15 THE COURT: I would sustain the objection.

16 Q Where were you to go once this conversation took place?

17 A The waffle House there at 101 and 85.

18 Q And describe -- you said that the, that -- regarding
19 the money that you gave Mr. West---

20 A Yes, ma'am.

21 Q ---describe how that's documented.

22 A We write the serial numbers on each individual bill on
23 the back of a confidential fund expenditure voucher.

24 Q And did you go to this location on 101?

25 A Mr. West went to the location and Agent Branham and I

1 sat up at, on the Spinx Station I believe it is right there
2 across the road from it.

3 Q And could you see the location---

4 A We---

5 Q ---where Mr. West was?

6 A Yes, ma'am, we could see the parking lot and see what
7 was going on in the parking lot.

8 Q And what did you observe happen in that parking lot?

9 A Within a, within a time, short time frame, a yellow
10 Mustang pulled up and pulled up next to Mr. West vehicle.

11 Q And could you see who was in that vehicle?

12 A I could not.

13 Q What did you observe?

14 A I observed the black male get out, get in the passenger
15 seat with Mr. West, and they evidently had a conversation.

16 He got out of the vehicle, got back into his vehicle.

17 Their -- both vehicles pulled down to the Super 8 parking
18 lot, which is a motel. The Waffle House is sitting here.

19 Super 8 was kind of catercornered in the back of it.

20 Q Did you and Agent Branham move then?

21 A We, we, we did. We waited -- they moved and then we
22 kind of eased into the parking lot ourselves. But we were
23 on the other side of the motel. They went to one side and
24 we kind of went around the other side.

25 Q And how long did you stay there?

1 A It wasn't very long. I want to say less than ten
2 minutes. Less than, less than ten. Probably more than two.
3 Something like that.

4 Q And when did you meet or did you meet up again with
5 Mr. West?

6 A After Mr. West came out, we observed Mr. West coming
7 out, he pulled over and---

8 Q When you say coming out, what do you mean?

9 A Coming away from the Super 8. Mr. Morrow and the
10 yellow Mustang had done left, and then Mr. West came out,
11 and he met us over there at the Spinx I believe it was.

12 Q And what took place at the Spinx?

13 A At, at the Spinx, Mr. West gave me a quantity or
14 plastic bag with what I believed to be cocaine in it.

15 Q And was Agent Branham with you?

16 A She was.

17 Q And what did you do with it?

18 A I transferred it to her and she started filling out the
19 paperwork on it.

20 Q And what did you observe her do?

21 A I observed her put it into, into a B.E.S.T. Kit. We've
22 got chain of custody forms that we fill out where it went
23 from my hands to her hands and where it goes from, where it
24 leaves her to the evidence thing in Columbia.

25 Q And I'm gonna show you what's been marked for

1 identification State's Exhibit 1.

2 Can you describe this please?

3 A Yes, ma'am, this is -- this outer bag belongs to the
4 lab. But the other bag is a blue plastic bag. It's a SLED
5 drug analysis security envelope. The evidence is placed
6 into this bag. It's sealed, in this case, by Agent Branham
7 along with a drug analysis request form. And it goes into
8 the drop box at SLED where it's retrieved by whatever
9 chemist is gonna test it.

10 Q And were these the drugs that you retrieved on, on
11 March 14th of 2005, you and Agent Branham?

12 A Yes, ma'am, they appear to be.

13 Q And did you take custody or Agent Branham take custody
14 of them at that time?

15 A At the initial time from Mr. West I took custody, but I
16 turned around and gave it to Mrs. Branham, Agent Branham who
17 filled out the kit.

18 Q And was the entire \$300 worth of cocaine present in
19 Spartanburg?

20 A No.

21 Q What---

22 A The, the -- what, what Mr. West relayed to us was that
23 when he gave, when he got this pack, that Mr. Morrow had
24 indicated to that, him that it all wasn't there, that we
25 would have to go to Greenville to pick up the remainder of

1 it. Mr. West had covered it by saying I'm going or heading
2 up that anyway. I'll meet you somewhere up around white
3 Horse Road and I'll get the rest of it.

4 Q And did you get the recorder off of Mr. West as well as
5 the cocaine at this point?

6 A I believe the recorder was left on Mr. West and we just
7 took the narcotics evidence.

8 Q And where did you go and where did Mr. West go?

9 A We followed him. Mr. West got on the interstate and
10 85. We followed him through behind him, and we went to 85
11 and White Horse Road, exited on White Horse Road, and went
12 probably about a half a mile to a mile. There's a Clock
13 Restaurant which is located on the left. He pulled into the
14 Clock, and there was a bar, I believe it was called Teen
15 Bob's or Teen Rod's, something like that, and we pulled in
16 the parking lot of that bar.

17 Q And how long did you stay there?

18 A I would say we stayed there approximately 15 minutes,
19 15 to 20 minutes.

20 Q And could you see Mr. West during this time?

21 A Yes.

22 Q What was he doing during that time?

23 A Mr. West remained seated in his vehicle.

24 Q And what did you do after the approximate time that,
25 that you were sitting there?

1 A Mr., Mr. West got a phone call from Mr. Morrow who told
2 him to meet him at the---

3 MRS. WIYGUL: Objection, Your Honor.

4 THE COURT: He can't say what Mr. West said.

5 Q What, what did you do after you sat there for a little
6 while?

7 Did you receive a phone call from Mr. West?

8 A Right, we received a phone call from Mr. West.

9 Q And, and after you got a phone call, what---

10 MRS. WIYGUL: Objection, Your Honor. Leading.

11 THE COURT: Sustain the objection.

12 What did you do after that?

13 A After that we proceeded to the Waffle House at White
14 Horse Road and I-85.

15 Q And what did you observe at that location?

16 A Agent Branham and I, who we were together in the same
17 vehicle, so we pulled across the road at a Race Track Gas
18 station across the road. So, we pulled in there and pulled
19 up to one of the pumps. And from that vantage point we
20 could see the waffle House in the parking lot.

21 Q And what vehicles, if, of any did you see in that
22 parking lot?

23 A After sitting there a short time we observed the same
24 yellow Mustang pull in, and it pulled up next to Mr. West's
25 vehicle. Black male got out, got in the passenger seat of

1 Mr. West vehicle, stayed a very short time, and got out of
2 that vehicle, got back into his, and he proceeded to leave.

3 Q Could you see who that person was who got out of Mr.
4 West's car?

5 A No, I couldn't. It was a black male, but I couldn't---

6 Q And---

7 A ---see him.

8 Q Is that location in Greenville County?

9 A To the best of my knowledge it is, yes.

10 Q And this is on White Horse Road, is that correct?

11 A That's correct.

12 Q And what did you do once the yellow Mustang pulled out
13 of the parking lot?

14 A Well, while we were waiting there at the Clock a good
15 bit of time, and when he indicated that he had to go to
16 Greenville to pick up the rest of Mr. West's narcotics---

17 MRS. WIYGUL: Objection, Your Honor.

18 THE COURT: Sustain the objection.

19 Q What did, what did you do once the yellow Mustang left
20 the Waffle House?

21 Where, where did you go or what phone calls did you
22 make?

23 A We remained there at the Race Track and instructed, and
24 called Mr. West and instructed him to come straight across
25 the street to the Raceway and that was to pick up the

1 evidence

2 Q And what happened at that time?

3 A Mr. West pulled up. I got out. I took a baggy
4 containing a white powdery substance in it, took it from
5 him, searched his person, also searched his vehicle, and
6 also took a statement from him as, as to what happened.

7 Q And at this time, what did you do with the cocaine and
8 where was Agent Branham?

9 A Agent Branham was in the truck with me and I handed the
10 cocaine to her and she proceeded to fill out the rest of
11 this evidence kit.

12 Q And is that yours -- is that an Exhibit 1 for
13 identification?

14 A It is. It's two separate bags in here.

15 Q And once you retrieved this white powder substance,
16 where did you and Agent Branham go?

17 A We went to the -- after we got through with all the
18 paperwork and was taking this statement and everything, we
19 went to the Greenville Detention Center.

20 Q And what happened at the detention center?

21 A We met with Trooper, Corporal Owens with the Highway
22 Patrol, and Corporal McCauley, Highway Patrol.

23 Q And did you receive anything from either of these
24 troopers?

25 A Corporal Owens handed me two one hundred dollar bills

1 and the serial numbers on the two one hundred dollar bills
2 corresponded with the, two of the hundred bills that were
3 given to Mr. West to purchase the narcotics with.

4 Q Did you receive anything else, if you recall, from one
5 of the troopers besides the two one hundred bills?

6 A I don't recall, I don't, I don't recall receiving
7 anything else from them.

8 Q Did you ever meet, prior to going to the law
9 enforcement center, with any of the troopers?

10 A No, there was a trooper that pulled up at the Raceway,
11 but it was very briefly, while we were waiting on Mr. Morrow
12 to return to the Waffle House. But to be honest with you, I
13 don't remember which one it was. I think it might of been
14 Corporal Owens. If it wasn't Corporal Owens, then Corporal
15 McCauley. One of the two.

16 Q Thank you. I have no further questions.

17 CROSS-EXAMINATION

18 BY MRS. WIYGUL:

19 Q Agent, earlier Agent Branham testified that the normal
20 procedure is to put a wire on someone to make these audio
21 recordings, is that correct?

22 A We've done it. Yes, ma'am, we've done it both ways, a
23 recording device or a, what's commonly known as a listening
24 wire.

25 Q Okay. And the listening or wire devices, the newer

Brunson Asbill - Cross-examination
By Mrs. Wiygul

1 ones, they have better sound than this, don't they?

2 A Absolutely. They are microwave and they are a whole
3 lot better quality.

4 Q I have no further questions.

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

6 We'll take a short break afternoon break, about ten or
7 fifteen minutes. Then we'll come back and take some more
8 testimony today. Y'all step out. Do, do not discuss the
9 case at this time.

10 (Whereupon, a short recess was taken at this time.)

11 SOLICITOR MONTs: Your Honor, Your Honor, I just wanted
12 to ask if Mr. West, who testified previously, can be
13 excused?

14 MRS. WIYGUL: No objection, Your Honor.

15 THE COURT: All right.

16 SOLICITOR MONTs: And Your Honor, as, as far as time
17 constraints, I have two witnesses here from Columbia, and
18 they would be my next two witnesses. I just hope that we
19 could so we wouldn't have to have them back tomorrow.

20 THE COURT: We'll see how far we can go.

21 (Whereupon, the following takes place within the
22 presence of the jury.)

23 THE COURT: Okay. Mrs. Monts, next witness.

24 SOLICITOR MONTs: Your Honor, the State calls Nathan
25 McCoy.

1 NATHAN MCCOY, being first duly
2 sworn, testified as follows:

3 CLERK: State your full name for the, for the record
4 please.

5 WITNESS: Nathan McCoy.

6 DIRECT EXAMINATION

7 BY SOLICITOR MONTS:

8 Q Mr. McCoy, please let the jury know where you're
9 employed.

10 A I work for the South Carolina Law Enforcement Division
11 known as SLED.

12 Q And please give us the background of your education.

13 A I have, I have a Bachelor of Science Degree in
14 biochemistry and a Bachelor of Arts Degree in Chemistry.
15 Both of which came from the College of Charleston and
16 achieved in 2002.

17 Q And have you testified previously in, in State Courts
18 in South Carolina as an expert?

19 A Yes, I have.

20 Q Please describe what areas those have been in.

21 A I have testified in the areas of drug chemistry.

22 Q And would this include drug analysis?

23 A Yes, it does.

24 Q Do you know how many times you've been qualified as an
25 expert in the State Courts of South Carolina?

Nathan McCoy - Direct examination
by Solicitor Monts

1 A Seventeen times.

2 SOLICITOR MONTs: Your Honor, we'd offer Mr. McCoy as
3 an expert in the field of chemical drug analysis.

4 MRS. WIYGUL: Without objection, Your Honor.

5 THE COURT: All right.

6 Q Mr. McCoy, I'm gonna hand you what's been marked for
7 identification State's Exhibit 1.

8 Can you please identify this for the jury?

9 A This is a, a kit pack pouch which contains inside it a,
10 a B.E.S.T. Kit, B.E.S.T. Kit envelope or package. Also it's
11 evidence in the packaging material.

12 Q And is this something you do on a daily basis?

13 A Yes, it is.

14 Q And describe -- where did you get this substance from?

15 A On this particular case, I received this evidence from,
16 in the vice office in Columbia. They have a, a mailbox type
17 container, which is only, once you drop the evidence into,
18 you can't get it out. There's a door -- there's a locked
19 door. At that time of this case, I was the only analyst
20 throughout SLED that had access to that, that, that, that
21 location. No one else had access to that location.

22 Q And what condition was this item in?

23 what, what does the bagging look like when you
24 retrieved it from that location?

25 A This B.E.S.T. Bag, which is blue, it was sealed. It

1 had the seal on top here and also there's no evidence of any
2 tampering with the bag.

3 Q And what type of bag -- what is the terminology for the
4 type of bag it was enclosed in?

5 A We call it a, a tamper evident bag or B.E.S.T. Bag.

6 But it is a tamper evident bag.

7 Q And when you retrieve it, what do you do with that?

8 A With evidence I receive from vice, we take it up and
9 log it into our computer system that we have, have, log in
10 all the cases that I pick up, and then at that time I will
11 place the evidence into a drug vault in my, in my lab.

12 Q And what do you do after you, after that?

13 A Once they're placed in the vault, they're in there
14 secured and at a later date I would pull out evidence on any
15 particular date to analyze, and, you know, I would analyze
16 the evidence for any presence of controlled substances.

17 Q And did you subsequently analyze the substances in this
18 bag?

19 A Yes, I did.

20 Q And did you produce a report?

21 A Yes, I did.

22 SOLICITOR MONTs: Your Honor, may I have this marked
23 for identification?

24 (Whereupon, the drug report was marked as States
25 Exhibit No. 3 for identification purposes only at this

1 time.)

2 Q Mr. McCoy, I'm gonna hand you what's been marked for
3 identification as State's Exhibit 3.

4 Can you identify this for the jury?

5 A This, this is a copy of a report I produced for this
6 particular case.

7 Q And did you sign this report?

8 A Yes, I did.

9 Q And what do you do with the report once you made it?

10 A After the evidence has been analyzed and we generate a
11 report, we would have -- first, we would send it to another
12 analyst in our, another department to review our
13 documentation. Basically a scientific review of our case
14 work. Once they approve that the case has been done
15 properly, after the review process, then I send copies of
16 the report to the solicitor who requested it and also to
17 the, to the agent that placed the evidence into evidence.

18 SOLICITOR MONTs: Your Honor, we move the lab into
19 evidence at this time.

20 MRS. WIYGUL: Objection, Your Honor. Under best
21 evidence, the chemist has testified. He can testify as to
22 the results of the testing. There's no need to have the
23 report.

24 THE COURT: Let him testify first.

25 Q Would you please publish the results on the, of your

1 analysis?

2 A what do you mean by publish?

3 Q Tell what your results were.

4 I'm sorry.

5 A The results, I had two, two pieces of evidence, two,
6 two baggies. And one baggy I found to be containing the
7 powder substances, which found to be cocaine found of a
8 weight of 1.46 grams. And also had a second piece of
9 evidence. That also contained a powder substance which
10 contained cocaine found at a weight of 1.23 grams.

11 Q Okay. And when you -- Your Honor, we move it into
12 evidence at this time.

13 MRS. WIYGUL: Objection, Your Honor.

14 THE COURT: I'm going to let the document come in. I
15 overrule the objection.

16 (Whereupon, States Exhibit No. 3 was received into
17 evidence at this time.)

18 Q Mr. McCoy, going back to State's Exhibit 1 for
19 identification, did you bring this to Court with you today?

20 A This evidence, yes, I did.

21 Q Where did you get it to bring it to Court today?

22 A I retrieved this evidence from our log in department.
23 They secured in their, their log in department.

24 Q And what did you have to do to retrieve it, to bring it
25 to Court today?

1 A I would just go down to log in and ask for a piece of
2 evidence I need to take to Court. And they will go, in
3 turn, retrieve the evidence from their, their area, and then
4 they'll turn it over to me.

5 SOLICITOR MONTS: Your Honor, we move State's Exhibit 1
6 for identification into evidence at this time.

7 MRS. WIYGUL: Without objection.

8 THE COURT: Okay.

9 (Whereupon, State's Exhibit No. 1 was received into
10 evidence at this time.)

11 Q Okay. Mr. McCoy, Mr. McCoy, looking at State's Exhibit
12 1, can you describe how many packages are in there?

13 A There are two packages that contain powder substances.
14 Those are three packs that every single case I do go into
15 evidence that comes in they come in the original packaging
16 wherever the agent/officer seizes it from. I always repack
17 it. There's two packages in there, what we call repacks.
18 There's also two other plastic Ziploc bags, which these
19 particulars ones are, coincide with the label and that also
20 contains plastic, plastic baggies of some sort that the
21 evidence came into, into the lab into.

22 Q And how did you correlate the numbers that's, are on
23 your report, one and two, with the baggies that the officer
24 wrote on inside?

25 A On every -- on the report, we have item one and item

1 two. Every piece of evidence is labeled with the lab
2 number, .1 and .2, and that .1 or .2 will correlate to item
3 one or item two.

4 Q And in this instance, if you would, take a look at the,
5 at the bags inside there.

6 How did you correlate these?

7 A There's two, two plastic Ziploc bags that came into
8 this B.E.S.T. Bag. The agent had, had a bunch of writing on
9 there or whatever, they seized it from, their notes. They
10 also put the labels on there. On this particular instance,
11 the agent put Label A and Label B on the bag correlating --
12 I put my lab number, my initials, and the item number on
13 every single piece of evidence that came out of the bag.

14 So, Label A was item one. So, that had a lab number .1
15 on every single piece of evidence inside this bag. Label B
16 was item two. So, that piece of baggy, evidence, repack at
17 that point two. And that, that way anybody can look and see
18 that evidence, repack number two came from this bag or
19 repack number one came from this bag.

20 Q Thank you. I have no further questions.

21 CROSS-EXAMINATION

22 BY MRS. WIYGUL:

23 Q Mr. McCoy, do you still have a copy of your report up
24 there with you?

25 A Copy of the report?

1 Q Uh-huh. (Affirmative).

2 A My original report or the copy that the solicitor gave
3 me?

4 Q Either one. I hope they're the same.

5 A Yeah, they're the same.

6 Q Right here, how, how have you notated which baggy is
7 which way?

8 A On this report it's not. It's just a general
9 description of what came into that bag. But I have case
10 notes and my notes and also on the baggies itself they're
11 always that label number. So, anything that says the lab
12 number .1, it's gonna correlate to item one in the report.

13 Q So, item one equals .1?

14 A Yeah, this label, it's got a lab number---

15 Q Okay. Okay. I was trying to figure and y'all will be
16 able to see this whenever we're done.

17 Now, you not only broke it down by weight, but you
18 actually broke it down by grains, is that correct?

19 A That's correct.

20 Q Do you actually -- would you have had these drugs side
21 by side in front of you?

22 A I don't know what you mean by that. We just normally
23 just---

24 Q Well, as, as an expert in the field of chemical drug
25 analysis---

1 A Uh-huh. (Affirmative).

2 Q ---can you tell if this cocaine was once all together?

3 Did it all come from the same place?

4 Can you tell such a thing?

5 A No, I can't.

6 Q You can't.

7 Okay. I have no further questions. Thank you.

8 SOLICITOR MONTS: No further questions of this witness.

9 THE COURT: Thank you, sir.

10 SOLICITOR MONTS: Your Honor, we ask that he be

11 excused.

12 THE COURT: Without objection.

13 MRS. WIYGUL: Without objection.

14 SOLICITOR MONTS: Your Honor, the State calls Marie

15 Wearing.

16 MARIE WEARING, being first duly

17 sworn, testified as follows:

18 CLERK: State your full name for the record please.

19 WITNESS: Marie Wearing.

20 THE COURT: Thank you.

21 DIRECT EXAMINATION

22 BY SOLICITOR MONTS:

23 Q Mrs. Wearing, please tell the jury where you're

24 employed.

25 A I'm employed South Carolina Department of Motor

1 Vehicles. I'm a custodian of driver's records.

2 Q And what are your duties as custodian of, of records?

3 A I oversee the driver's records department and the
4 licensing.

5 Q And are you familiar -- have you looked into the
6 records of Mr. Erik Morrow?

7 A Yes.

8 Q I'm gonna hand you some documents.

9 Your Honor, may I have them marked for identification?

10 (Whereupon, a DMV notice was marked as State's Exhibit
11 No. 4. A DMV ticket was marked as State's Exhibit No. 5.
12 Two more DMV notices were marked as State's Exhibit Nos. 6
13 and 7. All of the above exhibits were for identification
14 purposes only at this time.)

15 Q Mrs. Weating, I'm gonna hand you what's been marked for
16 identification State's Exhibit, for identification, 4, 5, 6,
17 and 7.

18 Can you please tell the jury if these are documents
19 from your department?

20 A Yes.

21 Q And which driver do these pertain to?

22 A Erik Maurice Morrow, Morrow.

23 Q And did you bring these records with you to Court
24 today?

25 A Yes.

1 Q And starting with No., State's Exhibit No. 4, what is
2 this document?

3 A It's a reckless driving ticket.

4 Q And what, what does that mean?

5 A It's a speeding ticket. That -- it's a published
6 offender letter telling that he have committed three major
7 violations, suspensions.

8 Q And when was this sent to Mr. Morrow?

9 A 9/20 of 2004.

10 Q And was this sent to his address of record with the
11 Department of Motor Vehicles?

12 A Yes.

13 Q And what are the dates that the, Mr. Morrow was
14 declared a habitual traffic offender between?

15 A 12/27/2003, February the 14th, 2004, and 7/30/2003.

16 Q And I, I believe that -- explain what those three dates
17 are.

18 A One is for the reckless driving. The second 2000 --
19 February 14th, 2004, is driving under suspension, and
20 7/30/2003, driving under suspension.

21 Q And are those three causes what led to the status of
22 habitual traffic offender?

23 A Yes.

24 Q And what year was the habitual traffic offender
25 between?

1 A 7/30/2003 till February 14th, 2004.

2 Q Okay. I'm gonna, I'm gonna ask you to look at the
3 beginning and ending dates of habitual traffic offender
4 status.

5 A Okay.

6 Q What, what are those dates?

7 A October 28th, 2004, until 10/28/2009.

8 Q And how many years is that?

9 A Five.

10 Q And what is Mr. Morrow's address of record with the
11 South Carolina Department of Motor Vehicles?

12 MRS. WIYGUL: Objection, Your Honor. That's
13 unnecessary, cumulative, not relevant.

14 THE COURT: I didn't hear the question. I'm sorry.
15 What was your question?

16 SOLICITOR MONTS: Your Honor, I'm asking what address
17 that Mr. Morrow had. We have to prove that the address,
18 that the letters were sent to his address of record with the
19 Department of Motor Vehicles.

20 THE COURT: Okay. I overrule the objection.

21 What address did you send your letter to?

22 A [REDACTED], Woodruff, South Carolina,
23 29388.

24 Q And was this letter notifying him of a status of
25 habitual traffic offender sent to that address?

1 A Yes.

2 SOLICITOR MONTS: Your Honor, we move this into
3 evidence at this time.

4 MRS. WIYGUL: Your Honor, I'm sorry. I'm unclear which
5 piece of evidence she's entering.

6 Only State's 4?

7 SOLICITOR MONTS: Yes, ma'am.

8 MRS. WIYGUL: No objection.

9 THE COURT: All right. Without objection.

10 (Whereupon, State's Exhibit No. 4 was received into
11 evidence at this time.)

12 Q And what is State's Exhibit No. 5 for identification?

13 A It's a copy of a speeding ticket, a reckless driving
14 ticket.

15 Q And was that one of the causes that led to the habitual
16 traffic offender status?

17 A Yes.

18 Q And how about State's Exhibit No. 6 for identification,
19 what is that?

20 A It's a copy of a suspension notice, driving under
21 suspension.

22 Q And did that -- was that one of the causes that led to
23 Mr. Morrow's habitual traffic offender status?

24 A Yes.

25 Q And how about -- what is No. 7 for identification?

1 A It's driving under suspension, which led to his H.T.O.
2 case.

3 Q And was it the total of these three offenses that led
4 to the defendant's status as habitual traffic offender?

5 A Yes.

6 SOLICITOR MONTS: Your Honor, we move State's Exhibits
7 5, 6, and 7 for identification into evidence.

8 MRS. WIYGUL: Without objection.

9 THE COURT: Without objection.

10 (Whereupon, State's Exhibit Nos. 5, 6, and 7 were
11 received into evidence at this time.)

12 Q Mrs. Wearing, looking at the dates of the habitual
13 traffic offender status between October 28th of 2004 and
14 October 28th of 2009, was the date March 14th of 2005
15 during that time?

16 A Yes.

17 Q Thank you. No further questions.

18 CROSS-EXAMINATION

19 BY MRS. WIYGUL:

20 Q Mrs. Wearing, do you have your -- did you bring all of
21 Mr. Morrow's file with you?

22 A Yes.

23 Q Can you tell me, on October 28th of '04, was
24 Mr. Morrow also sus -- did, did he also receive a points
25 suspension on that date?

1 A What date again, October 28th, '04?

2 Q Early, early in or in October of '04.

3 A That's when his suspension began for habitual offender.

4 Q Correct. Correct. And that's what you testified to.

5 A Yes, ma'am.

6 Q Did -- but did he also receive -- did y'all also send
7 out a notice of October 5th, '04 that he had a points
8 violation suspension?

9 A I don't have all his records up here with me.

10 Q If I may?

11 A Yes.

12 Q Yes.

13 SOLICITOR MONTS: Excuse me, Your Honor. I'd like to
14 see what the document is.

15 A We also sent that out.

16 Q Okay. So, could you tell us what period this
17 suspension covers?

18 A This is a hit and run property damage ticket from
19 12/27/03. Just a normal ticket. Not a suspension. These
20 are tickets that he's received.

21 Q Okay. This doesn't say points violations with a
22 suspension beginning date October 25th, end date,
23 January 25th of '05?

24 A Okay. Right. This is a point suspension notice, but
25 these are the tickets.

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Marie Wearing - Cross-examination
by Mrs. Wiygul

1 Q Right.

2 A Okay.

3 Q But would you tell us what dates that point suspension
4 ran?

5 A The point suspension ran from October 25th, '04 till
6 January 25th, '05.

7 Q Okay. And this is a letter that was sent out by the
8 DMV?

9 A That's correct.

10 MRS. WIYGUL: We'd like to move this into evidence as
11 Defense Exhibit.

12 SOLICITOR MONTs: Your Honor, I don't have a copy of
13 this. I would like a copy of this.

14 THE COURT: Okay. Give her a copy.

15 MRS. WIYGUL: Your Honor, I received it from Mrs.
16 Monts.

17 THE COURT: It's in evidence.

18 (Whereupon, the DMV notice was marked as Defendant's
19 Exhibit No. 1 and received into evidence at this time.)

20 THE COURT: Go ahead.

21 MRS. WIYGUL: I have no further questions. Thank you,
22 Mrs. Wearing.

23 REDIRECT EXAMINATION

24 BY SOLICITOR MONTs:

25 Q One, one further question, Mrs. Wearing.

1 What, what is the pop, the Highway Department, the
2 Department of Motor Vehicles, what is the policy on sending
3 letters and notifications to drivers that need to have
4 things sent to them?

5 What, what is your procedure?

6 A For the DUS suspension, we send them certified.

7 Q And then---

8 A And then the certified receipt comes back to us letting
9 us know that he received it or didn't receive it by signing
10 it.

11 Q And is it your duty to do anything besides sending it
12 to the address of record with the Department of Motor
13 vehicles?

14 A Once we mail it to the, the customer, it comes back to
15 the department. We check for a better address. We research
16 for a better address. If not -- if we find a better
17 address, we send it back.

18 Q Thank you. No further questions.

19 THE COURT: Thank you.

20 SOLICITOR MONTS: Your Honor, we ask this witness be
21 excused.

22 THE COURT: You're excused without objection.

23 MRS. WIYGUL: Without objection.

24 SOLICITOR MONTS: Your Honor, may we approach?

25 (Whereupon, a bench conference was held out of the

Bill McCauley - Direct examination
by Solicitor Monts

1 hearing of the jury at this time.)

2 SOLICITOR MONTs: Your Honor, the State calls Trooper
3 Bill McCauley.

4 BILL MCCAULEY, being first duly
5 sworn, testified as follows:

6 CLERK: State your full name for the record please.

7 WITNESS: William H. McCauley, Junior.

8 CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY SOLICITOR MONTs:

11 Q Trooper, please tell the jury where you're currently
12 employed and how long you've worked there.

13 A I'm employed with the South Carolina Highway Patrol and
14 I've been there about 22 and a half years.

15 Q Can you describe some of your training and experience
16 in that, in that, with the Highway Patrol?

17 A I completed basic training at the South Carolina
18 Criminal Justice Academy, which also included radar and DUI,
19 and been through advanced DUI, several interdiction classes
20 and truck enforcement classes during my career.

21 Q In, in March of 2005, were you working in Greenville
22 County?

23 A Yes, I was.

24 Q And on March 14th of 2005, early afternoon, where
25 were you, what were your duties?

1 A That particular day I was a shift supervisor for
2 Greenville County, which I'm presently assigned to, and I
3 was in the office checking paperwork.

4 Q And did you receive a call regarding this case on
5 Mr. Erik Morrow?

6 A Yes, I did.

7 Q Who did you receive a call from?

8 A Agent Branham.

9 Q And what did you do based upon receiving this phone
10 call?

11 A Once I received the call from Agent Branham -- excuse
12 me for my voice. I'm fighting a cold. She advised that she
13 had a situation at hand that she needed some assistance on.
14 And being the duty shift supervisor at that time, knowing
15 the shortage of manpower that we had, of the troopers we had
16 on the road, I contacted Corporal Dale Owens to see if he
17 could assist them. At that particular time I learned that
18 he was also short of manpower. He was only one on shift.
19 So, I left the office and met with him over on White Horse
20 Road.

21 Q And when you arrived, what were you driving?

22 A At that present time I was driving a, what we call a
23 slick top. It's a Crown Victoria. It has markings on the
24 side. Looks like just a regular police car but without the
25 lights on the top.

1 Q And what was Trooper Owens driving at that time?

2 A Corporal Owens was driving an unmarked, unmarked
3 Camaro.

4 Q And what location at, say it again, did you meet him up
5 at?

6 A It's actually called Cannon Supply Company. It's over
7 on White Horse Road and they primarily do roofing material
8 and so forth. I met him in the parking lot there.

9 Q Is that location in Greenville County?

10 A Yes, ma'am. Yes, ma'am, it is.

11 Q And where did you go after you met up with him or what
12 did you observe?

13 Did you ever meet up with Sergeant, Officer, Agent
14 Branham?

15 A Never met with them personally. Just by way of
16 telephone.

17 Q Did you ever see them at this time, Agent Branham and
18 Agent Asbill?

19 A No, ma'am.

20 Q And what did you do once you met up with Trooper Owens?

21 A We sat there and chewed the fat a little bit. We were
22 just waiting for time to pass by. Just waiting on the call
23 to find out whether or not the defendant, if they were gonna
24 need our assistance further.

25 Q And did you subsequently get another phone call?

1 A Yes, ma'am, we did.

2 Q And what did you do based upon receiving that phone
3 call?

4 A We were advised that the defendant was traveling on
5 85---

6 MRS. WIYGUL: Objection, Your Honor.

7 THE COURT: I would sustain the objection.

8 Q What were you looking for at this time?

9 A Yellow Ford Mustang.

10 Q And what direction were you looking for this vehicle?

11 A I-85 northbound.

12 Q Did you see this car?

13 A Corporal Owens came upon this vehicle via radio
14 traffic.

15 Q And what did you do based upon what you've heard?

16 Did you go to a location?

17 A I just stood down just traveling the interstate just in
18 case I was there as a backup capacity in case he needed me.

19 Q And based on the radio acknowledgment, where was the
20 car, where did the car stop occur?

21 MRS. WIYGUL: Objection, Your Honor.

22 THE COURT: I would sustain the objection.

23 Q Is one of your duties to back up other officers?

24 A When requested, yes, ma'am.

25 Q Were you listening to the radio traffic to determine if

1 you were called for backup?

2 A Yes, ma'am, he did request.

3 Q And in addition to just backing up requests, do you
4 ever go to other car stops to assist?

5 A Sure.

6 Q Based on the radio traffic, what, what did you do?

7 A Listening to the radio traffic, he did make a request
8 for backup and I proceeded in that direction.

9 MRS. WIYGUL: Objection, Your Honor. Your Honor, I'm
10 not even sure who---

11 THE COURT: I'm gonna let him state -- he proceeded --
12 he can tell where he was, Mrs. Monts. Just ask him that.

13 Q What did you -- where did you go and what did you
14 observe once you got there?

15 A I proceeded to I-85 northbound to the Mauldin Road area
16 just under the bridge.

17 Q And what did you observe when you got there?

18 A I observed Corporal Owens in his unmarked Camaro and a
19 yellow Ford Mustang, and they were -- Corporal Owens and the
20 defendant was outside the vehicle having a conversation it
21 appeared.

22 Q Is, is the person that you saw on the side of the road
23 with Mr., Trooper Owens on that day in the courtroom?

24 A Yes, ma'am.

25 Q Who is it?

1 A The defendant, Mr. Morrow.

2 Q And what did you observe taking place when you arrived
3 at the scene?

4 A Just conversation. I couldn't tell you what they were
5 saying.

6 Q And did you have a video on your car at that time?

7 A Yes, ma'am, my car is equipped with an active video.

8 Q And when you arrived, did you get out of your car?

9 A Not at the, immediately. I positioned my vehicle
10 offset such in this matter here behind Corporal Owens car,
11 to the right of his car where they were speaking so the
12 video camera could capture whatever was to transpire.

13 Q And---

14 A And---

15 Q I'm sorry. Go ahead.

16 A Our video systems only work with the video wireless mic
17 which I had on my body. If he was equipped with the system,
18 it would not record in my car.

19 Q I'm sorry. Repeat that last sentence.

20 A My system only works with my body mic. If he had a
21 system with a body mic, it would not work on my particular
22 vehicle.

23 Q If Trooper Owens did?

24 A Yes, ma'am.

25 Q Okay. Is any audio recording on your video coming from

1 where you are standing?

2 A I was sitting in the car. It's only coming from what
3 you hear inside my vehicle at that time because it was on
4 me.

5 Q Okay. And did you subsequently -- when did you get out
6 of the car if ever?

7 A When -- normally when I see a trooper start to do what
8 we would commonly do call a pat down, and this is to make
9 sure that the subject is not carrying any type of firearm or
10 weapons that could hurt either one of us. That's when I
11 will exit my car and proceed there as a standby officer for
12 security reasons.

13 Q And after observing what took place, at what point did
14 you do anything else?

15 A When he started to pat down, that's when I exited my
16 vehicle and proceeded to them.

17 Q And when you exited your vehicle, what did you observe
18 taking place?

19 A He was just patting him down just making sure he didn't
20 have any weapons so that he could give him consent to
21 search.

22 Q And at this point do you know, if you do, do you know
23 why the car was stopped?

24 A No, I don't have the reason for the violation, no,
25 ma'am.

1 Q Okay. And what did you observe after the, after that
2 took place?

3 A Corporal Owens, what I observed was him in the vehicle
4 making a, a search of the vehicle looking for any kind of
5 contraband or at, whatever. And as he came from the
6 interior of the car, I was instructed to---

7 MRS. WIYGUL: Objection.

8 A May I re -- back up just a minute. That's a little
9 different. We had gotten information by radio through our
10 dispatch that Mr. Morrow was under suspension at that time.
11 So, therefore, he was placed in cuffs.

12 Q Did you know what his correct name was at that time?

13 A There was several different names that were being
14 thrown around.

15 Q Do you know what name was first given to you?

16 A No, ma'am, I wasn't, did not conduct that initial
17 investigation. I remember it had something to do with---

18 MRS. WIYGUL: Objection, Your Honor.

19 THE COURT: I'm gonna sustain the objection.

20 Q Do you recall if Mr. Morrow's correct name was the
21 first name given?

22 A No, ma'am, it wasn't.

23 MRS. WIYGUL: Objection, Your Honor.

24 THE COURT: I'll sustain the objection. If he didn't
25 take it he can't testify about it.

1 Q Were you standing there at this time?

2 A Yes, ma'am.

3 Q Did you look at the ID?

4 A It was shown to me, yes, ma'am.

5 Q And when you looked at the ID, what did you observe?

6 A I can't recall what name was on the ID. I remember it
7 being from Kentucky.

8 Q Do you recall if the photo and the date of birth on
9 that ID matched the defendants?

10 MRS. WIYGUL: Objection, Your Honor.

11 THE COURT: I'll sustain the objection. It's leading.
12 You can ask him what was on the ID.

13 MRS. WIYGUL: He's twice stated he doesn't remember.

14 Q Do you recall what was on the ID?

15 A The only thing I do recall is that the photograph did
16 not look like Mr. Morrow.

17 Q Did you ask the defendant how old he was?

18 A No, ma'am, I do not recall that.

19 Q Do you recall who placed or -- excuse me.

20 were handcuffs placed on the defendant for the driving
21 under suspension?

22 A Yes, ma'am.

23 Q Do you recall who placed them on the defendant, if, if
24 you recall?

25 A I'm not quite sure on that. I -- for some reason I'm

1 thinking I did. It's been quite a while since I have seen
2 this tape.

3 Q Did you assist at all in the search of Mr. Morrow or
4 any of his personal belongings?

5 A When he was handcuffed I did search Mr. Morrow and
6 observed or felt a foreign like substance in the groin area
7 of his pants that should not normally be there.

8 Q Do you know if his wallet had already been removed?

9 A No, ma'am, I don't recall that.

10 Q And what did you do based upon what you felt in this --
11 pat down after the defendant was handcuffed?

12 A When I felt this foreign substance, whatever it was, I
13 immediately notified Corporal Owens and that, at that time
14 is when the defendant started to scream, struggle a little
15 bit. It was very obvious whatever he had he did not want us
16 to find.

17 MRS. WIYGUL: Objection, Your Honor.

18 THE COURT: I overrule the objection.

19 Go ahead.

20 Q What did you and Officer, Corporal Owens do at this
21 point?

22 A At that point, to gain control, we did place him on the
23 ground, and at that point there was a lot of screaming. You
24 know, don't beat me, quit beating me, all this other stuff,
25 and we haven't laid a hand on him. The subject was, was

1 handcuffed. We were able to retrieve a small portion of
2 what appeared to be a rock like substance and a powdery like
3 substance.

4 Q Where did you retrieve it from?

5 A Well, with all the scuffling going on, with his hands,
6 somehow he had gotten this contraband to the rear of his
7 upper---

8 MRS. WIYGUL: Objection, Your Honor. Calls for
9 speculation.

10 THE COURT: All right. Strike the contraband and let
11 the substance or whatever it was. He doesn't know it's
12 contraband at the time if it was.

13 Go ahead.

14 A Whatever the substance was, somehow it made its way to
15 the back side of the defendant, and he had this in his hand
16 trying to rip the bag open and dispose of the substance.

17 MRS. WIYGUL: Objection, Your Honor.

18 THE COURT: I'd overrule the objection.

19 Q What, what did you observe happening to this substance
20 and what did it look like?

21 A It was a white powdery substance. It was a rock like
22 substance. The rock like substance looked like little
23 chunks of, like a, the color of a safe, Safeguard soap.
24 It---

25 Q And---

1 A ---was being spilled out onto the ground and, and
2 throughout his clothing.

3 Q And what -- how much did you observe on the ground?

4 A I would say -- it was a good bit. It would be hard to
5 put a weight to it. I mean we're not talking like it was a
6 bucket full. But we're talking it was, it was a large
7 quantity.

8 Q Did you try to get this off the ground?

9 A We tried to retrieve everything that we could. But it
10 was kind of difficult.

11 Q What -- where was Mr. Morrow placed after this
12 substance was retrieved?

13 A Once things settled down a little bit, and we got all
14 the substance together, we placed Mr. Morrow into the front
15 seat of the unmarked Camaro and he was seat belted in the
16 front seat of this vehicle.

17 Q Is this the normal procedure?

18 A Yes, ma'am, we do not have cages in our cars. So,
19 everyone that we transport will be transported in the front
20 right.

21 Q Is this the passenger side?

22 A Yes, ma'am.

23 Q And who put the seat belt on if you recall?

24 A No, ma'am, I don't recall.

25 Q And what did you and Officer, Corporal Owens do at that

1 time?

2 A Corporal Owens went back to the vehicle of the yellow
3 Mustang. I retrieved what I, we call a tow, my tow book
4 because we have to fill out an inventory of the vehicle on a
5 tow slip. I was standing at the right front apex of the
6 Camaro filling out the tow slip information for the towing
7 company after we had summoned for a tow truck.

8 Q And where was Corporal Owens?

9 A He was back at the yellow Mustang at that time.

10 Q Did you have any gloves on you during this search?

11 A No, ma'am, I did not.

12 Q Did you observe any, the defendant's hands after this
13 substance was crushed?

14 A They were very white in color.

15 Q Did you observe anything going on inside Corporal Owens
16 unmarked---

17 MRS. WIYGUL: Objection, Your Honor. Leading.

18 THE COURT: I'm gonna let her ask that question. Did
19 you observe anything.

20 Q Did you observe anything inside Corporal Owens vehicle?

21 A Yes, ma'am.

22 Q What did you observe?

23 A This happened extremely fast and I, to, this day, I
24 don't know how it happened as quickly as it did. As I
25 stated before I was standing on the outside of the right

1 apex of the door filling the paperwork out, all of a sudden
2 how he did it, I don't know, but he came out of the seat
3 belt, still handcuffed behind his back, maneuvered over the
4 console into the driver's seat of the vehicle.

5 Q Describe the console.

6 A The console in a Camaro would be, your seats are real
7 low and your console's up here and you have another seat
8 that would be pretty low. He -- it would be hard for me to
9 maneuver handcuffed over that console.

10 Q Please continue what you observed.

11 A Came over the console into the driver's seat. Prior to
12 that somehow he had locked the doors to the car.

13 Q Do you know how the car doors lock in the Camaro?

14 A Yes, ma'am.

15 Q How?

16 A Electric.

17 Q Please continue.

18 A I proceeded to the front of the vehicle. I had -- as I
19 was proceeding, I observed him turning in this manner here
20 trying to grab the gearshifter and push---

21 MRS. WIYGUL: Objection, Your Honor. Speculation.

22 THE COURT: He saw him turn.

23 Go ahead.

24 Q What, what direction was he turning and what was he
25 doing?

1 A He turned towards the driver's door so he could get his
2 hand to the shifter.

3 MRS. WIYGUL: Objection, Your Honor.

4 WITNESS: That's what I saw.

5 THE COURT: He turned toward the driver's door when he
6 was handcuffed.

7 Okay.

8 Q Did you observe what his hands did?

9 A They grabbed the shifter as if to try to maneuver it
10 into drive.

11 Q What was Trooper, Corporal Owens doing at this time?

12 A At this time I had yelled for him. I was standing in
13 front of the vehicle when I threw my service weapon out and
14 pointed it at the defendant.

15 Q Can you describe what the traffic was on I-85 at this
16 time?

17 A Anytime on 85 it's thick.

18 Q And continue with what you did.

19 A I drew down on this individual and Corporal Owens ran
20 to the vehicle, pulled his baton out, began striking the
21 driver's side window of this vehicle, and broke the window
22 and was able to extract him from the vehicle.

23 Q And why did you pull your gun out?

24 A If he'd of got that car in drive, my intentions were to
25 shoot him.

1 Q What, what -- is there a danger?

2 A Because of the, the heaviness of the traffic and
3 hurting someone else. He could not of maneuvered that car
4 in my opinion.

5 Q Where was the defendant taken when he was, got, taken
6 out of the car?

7 A Came out of the driver's side. We moved him between
8 Corporal Owens car and my car in front of the camera. We're
9 off to, just off to the right side of the camera, and we
10 stayed there until other help arrived.

11 Q Was the defendant still handcuffed?

12 A Yes, ma'am.

13 Q Please describe what you remember from Trooper Owens
14 hitting the window.

15 A This particular car had some window tint on it. So,
16 when the window broke, it did not shatter like it would,
17 normally would without the tint. And he had to strike his
18 window several times. And in doing so, it caused damage not
19 only to that particular window, but the front apex of the
20 frame of the windshield, it comes down, as well as it broke
21 the windshield and it caused injury, injury to his hand.

22 Q What, what injury did you observe?

23 A Cuts.

24 Q Did, did you see any blood?

25 A Oh, yes, ma'am.

1 Q Was EMS called?

2 A Yes, ma'am.

3 Q Was the defendant hurt in this breaking of the window?

4 A I did not see any injuries to him.

5 Q Did you see any other objects taken off of the
6 defendant at the scene?

7 A There was a couple cell phones if I'm not mistaken.

8 Q Do you recall if there was anything else?

9 A I believe he had a couple, some money in his pocket.

10 Q Who took custody of the cell phones and the money?

11 A Trooper, Corporal Owens did.

12 Q Who took custody of the, of the two white substances
13 that were retrieved from the defendant?

14 A It was placed in an evidence bag by Corporal Owens and
15 kept in the custody of him.

16 SOLICITOR MONTS: Your Honor, may we mark these for
17 identification?

18 (Whereupon, two packages were marked as State's Exhibit
19 Nos. 8 and 9 for identification purposes only at this time.)

20 THE COURT: Mrs. Monts, are you going to show a video
21 with this witness?

22 SOLICITOR MONTS: Yes, sir.

23 THE COURT: Okay. We'll, we'll break now and I'm going
24 to ask y'all to come back. Be back at 9:30 in the morning.
25 And I have to meet with the Grand Jury at nine o'clock. So,

1 I'll be through by then. So, we'll start at 9:30 and we'll
2 finish this case.

3 Okay. Do not discuss the case tonight. Whoever you
4 see, just tell them you're serving on jury duty. You can't
5 talk to anybody outside of the courtroom that hadn't seen
6 the evidence, heard the testimony and all that stuff. So,
7 after the case is over you can talk to anybody you want to
8 about it or you don't have to. That's up to you. But don't
9 discuss it with anyone until the case is over.

10 And I'll see y'all in the morning at 9:30. Now, this
11 lady will show you how to get out and get back in. Be here
12 at 9:30 and we'll get started.

13 Okay. We're going to have to see a video here anyway.

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right. We'll come back at 9:30 in the
17 morning.

18 All right. Thank you.

19 SOLICITOR MONTS: Thank you, Your Honor.

20

21 (Whereupon, Court was in recess for the evening.)

22

23

24

25

1 Tuesday, March 4th, 2008

2
3 THE COURT: okay. Bring the jury in.

4 wait, wait. The officer that was on the stand.

5 (Witness returns to the stand.)

6 (Whereupon, the following takes place within the
7 presence of the jury.)

8 THE COURT: All right. Ladies and gentlemen, we're
9 ready to continue.

10 Mrs. Monts.

11 CONTINUED DIRECT EXAMINATION

12 BY SOLICITOR MONTs:

13 Q Trooper McCauley, I'm going to hand you what's been
14 marked for identification State's Exhibit 8 and 9.

15 Can you please identify those, if possible?

16 A Yes, ma'am, under State Exhibit 9, these are marked
17 suspect of Erik Morrow that were recovered by Corporal J.E.
18 Owens, and this appears to be a rock like substance.

19 And the second exhibit, No. 8---

20 MRS. WIYGUL: Objection, Your Honor. If, if these were
21 entered by Trooper Owens, I believe he's testifying shortly.

22 SOLICITOR MONTs: Your Honor, this trooper and Trooper
23 Owens were together when this was retrieved and this
24 trooper---

25 THE COURT: Well, act -- just establish that.

1 SOLICITOR MONTs: Okay.

2 Q On April 15th of 2005, regarding Mr. Morrow and this,
3 on the side of the road and I-85, did you recover, with the
4 assistance of Trooper Owens, did each of you recover
5 substances from the defendant?

6 A This appears to be the substance that we recovered from
7 him that was placed in our evidence bags.

8 Q And who took custody of this at the scene?

9 A Trooper Owens.

10 Q And did you have an operable, we discussed this
11 yesterday, but just to refresh our memories, did you have an
12 operable video camera in your car?

13 A Yes, ma'am.

14 Q And what was the, your vehicle and Trooper Owens
15 vehicle, describe, when you go to a scene, and particularly
16 on this incident date, are the cars left running or the
17 doors left unlocked, what, what, how, how does that work?

18 A Normally when we stop a violator, a violator pulls
19 over. The trooper stopping the violator will stop just
20 behind them. If assistance is needed, the trooper will pull
21 off to the other side, the secondary trooper, so that he can
22 videotape as well. So, our vehicles were lined up, suspect
23 vehicle, Corporal Owens vehicle, my vehicle offset to the
24 right.

25 Q And once the defendant was placed in Trooper Owens

1 Camaro, what was, was the ignition running on that car?

2 A Yes, ma'am, our vehicles, we have to keep them, remain
3 running to keep the lighting system from killing the
4 batteries as well as our radio system and video systems.

5 Q And did you provide a copy of your video to the
6 Solicitor's Office?

7 A Yes, ma'am.

8 SOLICITOR MONTs: Your Honor, may I have this marked
9 for identification?

10 Marked for identification.

11 (The Court nods affirmatively.)

12 (Whereupon, the videotape was marked as State's Exhibit
13 No. 10 for identification purposes only at this time.)

14 Q Trooper, I'm gonna hand you what's been marked for
15 identification as State's Exhibit 10.

16 Can you identify this please?

17 A Yes, ma'am, this is a CD/DVD copy of the incident of
18 the video stop that Corporal Owens and myself---

19 Q And whose---

20 A From my camera.

21 SOLICITOR MONTs: Your Honor, I'd move this into
22 evidence at this time.

23 MRS. WIYGUL: Your Honor, we would object. The -- it
24 hasn't even been established that Trooper Owens had probable
25 cause to pull Mr. Morrow over. If, if Mrs. Monts would like

1 to put Trooper Owens on the stand, and then Trooper
2 McCauley, I believe that a foundation could be established
3 that way.

4 THE COURT: Was it his video?

5 SOLICITOR MONTs: This is his video, Your Honor.

6 THE COURT: Okay. I overrule the objection on that
7 ground.

8 All right. Now, I don't know what -- there might be
9 something on there that's objectionable. I'm not ruling on
10 the parts of it. But he's testifying that's a video that he
11 took that -- I don't know what -- it's been provided to the
12 defense.

13 SOLICITOR MONTs: Yes, Your Honor.

14 THE COURT: Okay. You know, I, I -- generally the
15 video is made of the scene. I can't rule on the specific,
16 all the specific parts of it. If you got any objection to
17 any specific parts of it, we might have to take that up when
18 we reach those parts, parts.

19 SOLICITOR MONTs: And Your Honor, I did intend to play
20 this for the jury.

21 THE COURT: Okay.

22 SOLICITOR MONTs: So, if there's something we need to
23 take up now, I don't know.

24 THE COURT: Have you seen it?

25 MRS. WIYGUL: Your Honor---

1 SOLICITOR MONTs: We, we may need to take this outside
2 the presence of the jury.

3 MRS. WIYGUL: That would---

4 THE COURT: Okay. I'll let -- y'all step out across
5 the hall just for a minute. Let me go through this video
6 briefly.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: Okay. Generally the video -- if it's a
10 true and accurate depiction of what happened, then it can
11 come in. But now I, I don't know -- I have not, I have not
12 seen the video. So, I don't -- I just hesitate to make a
13 blanket ruling.

14 But you've seen it I hope.

15 MRS. WIYGUL: Your Honor, portions of this video show
16 Mr. Morrow in his pants. There's also some portions of the
17 video where there is a lot of yelling going that are not
18 relative to these charges. We would, we would like those
19 portions redacted.

20 THE COURT: Based on that general objection, I'm gonna
21 overrule it. I -- anything else?

22 SOLICITOR MONTs: Your Honor, there is one portion that
23 we tried to, get with the computer people to mute out.
24 There's one question where the officer asked the defendant
25 do you have, have you ever been in trouble with the law and

1 the defendant says bad checks, which is about a five second
2 time frame. We couldn't mute it out on the video with our
3 computer people. So, I was just gonna have our office just
4 turn the volume down for those five seconds so that question
5 does not come in.

6 THE COURT: Okay. That's fine.

7 MRS. WIYGUL: Your Honor, there's, there's also some
8 portions of the video where I mean it just doesn't have
9 anything to do with the charges that we're here for today
10 regarding false identifications, some discussion between the
11 officers regarding that, or a false ID, and just regarding
12 some other matters that are not before the Court today.

13 THE COURT: Well, they've already testified to that.
14 It's already in. Somebody, somebody testified yesterday
15 that he gave him a card that was, didn't, it did not look
16 like him.

17 MRS. WIYGUL: Yes, sir.

18 THE COURT: So that's not -- I'd overrule that.

19 (Whereupon, State's Exhibit No. 10 was received into
20 evidence at this time.)

21 THE COURT: Okay. You ready?

22 SOLICITOR MONTS: Yes, Your Honor.

23 THE COURT: If they're ready. If they're going to the
24 restroom, then let them come back in a minute.

25 Have, have you practiced it to make sure that it works?

1 SOLICITOR MONTS: Yes, sir.

2 THE COURT: All right.

3 (Whereupon, the following takes place within the
4 presence of the jury.)

5 THE COURT: Okay.

6 CONTINUED DIRECT EXAMINATION

7 BY SOLICITOR MONTS:

8 Q Trooper, on the -- who are the people that will be
9 shown on the video?

10 A The defendant, Mr. Morrow, Corporal Owens, and myself.

11 Q And at anytime during this car stop was any unnecessary
12 excessive force used?

13 A In my opinion, no.

14 Q When was any force utilized?

15 A When he tried to attempt escape by jumping in the
16 driver's seat.

17 MRS. WIYGUL: Objection, Your Honor.

18 THE COURT: Sustain the objection. It's, it's up to
19 the jury whether it was an, an escape or not. So, I'm gonna
20 sustain the objection as to that statement. Strike it from
21 the record. Disregard that.

22 Q At -- physically at what point was any force used?

23 A When he attempted to flee.

24 MRS. WIYGUL: Objection, Your Honor.

25 THE COURT: I'm going to sustain the objection. When

1 he did whatever he did in the car, it's up to the jury to
2 determine what he was attempting to do because he was
3 handcuffed.

4 Q Going back to when the drugs or the drugs were found on
5 the defendant's person, was any force used at that point?

6 A Yes, ma'am.

7 Q Describe what was taking place at this point.

8 A Due to him struggling and, and screaming and trying to,
9 what appeared to us, dispose of whatever evidence he had, we
10 did take him to the ground to retrieve that, that substance.

11 Q And was this substance -- where did the substance end
12 up being?

13 A Got some of it out of the front of the suspect and some
14 of it out of the back of the buttock area. When he was
15 handcuffed, he had it in his hand.

16 Q Did any fall on the ground?

17 A Yes, ma'am.

18 SOLICITOR MONTs: Your Honor, we ask to publish the
19 video at this time. As a, as, for time sake, it's
20 approximately 47 minutes.

21 THE COURT: Okay.

22 WITNESS: Your Honor, may I step down?

23 THE COURT: Yeah, you can step down.

24 (Witness comes down from the stand.)

25 (Whereupon, State's Exhibit No. 10 was published for

1 the jury at this time with the following occurring during
2 the playing of the videotape.)

3 MRS. WIYGUL: We, we would move that the portions just
4 involved the officers discussing the stop be fast forwarded
5 through.

6 SOLICITOR MONTs: Your Honor, I believe that this is
7 evidence on the case in which---

8 THE COURT: I would overrule the objection.

9 (Whereupon, the remaining portion of the video was
10 played at this time.)

11 SOLICITOR MONTs: Your Honor, that's all the questions
12 we have of this witness.

13 CROSS-EXAMINATION

14 BY MRS. WIYGUL:

15 Q Trooper McCauley, when Agent Branham called you and
16 spoke with you before this traffic stop, do you recall that?

17 A Yes, ma'am.

18 Q And she told you that Erik Morrow was driving a yellow
19 Mustang and they'd like you to pull him over, correct?

20 A They would like some assistance in doing a traffic
21 stop, yes, ma'am.

22 Q Okay. Now, during this video, Mr. Morrow told y'all
23 that he had chronic asthma, correct?

24 A I'm sorry?

25 Q He suffered from chronic asthma?

- 1 A Okay.
- 2 Q Do you recall that?
- 3 A No, ma'am, I do not. I don't recall that. I---
- 4 Q Do you recall giving him his inhaler?
- 5 A I don't, I don't remember that, no, ma'am.
- 6 Q Okay. These cars, whenever they were parked, about how
7 much distance would you say was between the Camaro and the
8 Mustang?
- 9 A Eight foot. Length of the car is usually standard
10 procedure.
- 11 Q Length of the car?
- 12 A It's partially behind each other, yes, ma'am.
- 13 Q Why were you called to join Trooper Owens?
- 14 A He needed assistance and, and as a backup capacity.
- 15 Q Okay. Whenever, when you arrived, he was in the
16 process of writing a warning ticket.
- 17 So, is it standard practice for backup to come for
18 warning tickets?
- 19 A Ma'am, I didn't know what he was writing at that time.
20 I was not standing with him.
- 21 Q But, but he had called you---
- 22 A Yes, ma'am.
- 23 Q ---to come.
- 24 Okay. Trooper -- and I keep calling you trooper.
- 25 Is it---

- 1 A That's---
- 2 Q ---corporal?
- 3 A That's fine.
- 4 Q Okay. Well, is, is it corporal?
- 5 A Yes, ma'am, I've been called a lot of things.
- 6 Q And you've been, you've been a highway patrolman for 22
- 7 years?
- 8 A Twenty-two and a half, yes, ma'am.
- 9 Q Twenty-two and a half.
- 10 So, at the time of this stop, you'd been at it at least
- 11 19 years?
- 12 A Somewhere in there, yes, ma'am.
- 13 Q Okay. Do you know how long Trooper Owens had been at
- 14 it at this time?
- 15 A No, ma'am.
- 16 Q Okay. Is it, is it standard for senior officers to
- 17 come to remind the younger officers watch what you do, we're
- 18 on video, my video's on?
- 19 A No, ma'am.
- 20 Q That's not standard?
- 21 A No, ma'am.
- 22 Q Okay. Whenever Mr. Morrow was placed in the Camaro,
- 23 his hands were cuffed behind his back, correct?
- 24 A Yes, ma'am.
- 25 Q And he was placed in the passenger seat?

1 A Correct.

2 Q And we saw, during the video, that y'all were opening
3 up the doors on and off a lot during this stop, correct?

4 A That's correct.

5 Q Allowing one of the other of you to speak with
6 Mr. Morrow?

7 A That's correct.

8 Q Okay. Do you know why it would be that when you lean
9 in to speak with Mr. Morrow you can be heard and when
10 Trooper Owens leans in he can not be heard?

11 Would that be because of the --?

12 A Yes, ma'am, it's because of my microphone. My
13 microphone is a little, very similar to my cell phone. In
14 that particular system, it had a wire that I would run up
15 and clip to the inside of my shirt. It only records me or
16 who is in my perimeter there. When I walked away from the
17 camera to, to use the phone, it was still regarding me,
18 but -- could not pickup his voice.

19 Q Okay. And yours is linked to your car and his would of
20 been linked to the Camaro, correct?

21 A Correct.

22 Q And this wasn't Troopers Owens Camaro?
23 It's not the normal car that he drove?

24 A Not to my knowledge, no, ma'am.

25 Q Okay. It belonged to or it was issued to another

1 trooper?

2 A My understanding, yes.

3 Q Okay. Who -- did you place the items of evidence into
4 the Camaro or did Trooper Owens?

5 A If I recall, after he had bagged those substances up,
6 he handed the bags to me and I placed them into the back
7 floorboard of the vehicle.

8 Q Okay. And do you recall a phone being in that bag?

9 A No, ma'am, I do not.

10 Q Okay. Did you look in the bag?

11 A All I recall is seeing -- those bags are quite small.
12 So, I don't see how a phone can fit in. All I recall seeing
13 from memory were the two plastic baggies of the substance
14 that we received, retrieved.

15 Q Okay. Now, when the trunk on the Camaro, I mean on the
16 Mustang was opened, did you, were you able to observe inside
17 of it?

18 A Looked like a bunch of junk in there, yes, ma'am.

19 Q Was it full of bags of clothes?

20 A I recall seeing some clothes. Whether they're male or
21 female or the bags I could not recall.

22 Q Okay. Okay. How high is this console?

23 A I couldn't give you an accurate accounting on that
24 without a tape measure.

25 Q Okay. Is there a space between the seats where the

1 console runs?

2 A Yes, ma'am.

3 Q And between that space you can get to the back of the
4 car?

5 A It's your standard type sports car, these Camaros are.
6 It has a gear shifter with your right hand, it comes down,
7 it has a lift up console, and then you can reach into the
8 back seat.

9 Q Okay. And the car was running?

10 A Yes, ma'am, because of the equipment.

11 Q And keys, keys were in the ignition?

12 A Has to be for it to run.

13 Q And it's standard practice for y'all to put cuffed
14 prisoners into the front of a running police vehicle?

15 A That is our standard procedure by patrol policy because
16 we are not issued cages, so to speak, to put prisoners in
17 the back. Through my entire career, we've always handcuffed
18 and placed in the front seat of your vehicles.

19 Q I have no further questions. Thank you.

20 SOLICITOR MONTG: Nothing further of this witness, Your
21 Honor.

22 WITNESS: Thank you.

23 THE COURT: I'll let y'all take a short break.

24 Okay. Step across the hall. Do not discuss the case
25 with anyone.

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: We'll take a break in this case till
4 about -- I'm going to, I'm going to let them order lunch.
5 It will be about ten after. About 20 minutes.

6 (Pause.)

7 THE COURT: All right. We'll be in recess for a few
8 minutes.

9 (Whereupon, a short recess was taken at this time.)

10 THE COURT: All right. I'm sorry. I had to take the
11 Grand Jury report. It's just one of those things.

12 (Whereupon, the following takes place within the
13 presence of the jury.)

14 THE COURT: All right. Mrs. Monts.

15 SOLICITOR MONTs: Your Honor, the State calls Corporal
16 Owens.

17 J.D. OWENS, being first duly sworn,
18 testified as follows:

19 CLERK: State your full name for the record please.

20 WITNESS: John Dale Owens.

21 CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY SOLICITOR MONTs:

24 Q Corporal Owens, please tell the jury where you're
25 employed.

1 A I'm currently employed with the South Carolina
2 Department of Public Safety under the direction of the
3 Highway Patrol.

4 Q And how long have you worked for the Highway Patrol?

5 A A little, going on 15 years with two years previous law
6 enforcement in Columbia, South Carolina.

7 Q And can you describe some of your training and
8 experience in the field of law enforcement?

9 A Right now I'm currently assigned to the Aggressive
10 Criminal Enforcement Unit, which is called the Ace Team. I
11 do -- I'm the actual, I'm actually the Upstate supervisor
12 for Region Two. I have four subordinates or three
13 subordinates at this time.

14 And I control all the -- as the first line supervisor
15 for the Aggressive Criminal Enforcement Unit up here, which
16 handles felony arrests, trafficking narcotics, weapons,
17 major criminals, we're in the field of detecting those type
18 of people on our interstate highways and that's our main
19 function while also protecting the, the safety of the other
20 motorist, traveled motorist.

21 Q And were you on-duty in this capacity on March 14th
22 of 2005?

23 A Yes, ma'am, I was.

24 Q What approximate time were you working that day?

25 A I believe I was working day shift, which would of

1 consisted of between 7:00 a.m. and 5:00 p.m.

2 Q And where were you early afternoon on that day?

3 What were your duties at that time?

4 A On that day I was actually doing administrative work
5 because I was the only one with my unit that was working
6 that day due to, I don't even know, remember the reasons
7 where my men were at. They may of been in in-service or
8 whatever. But I know I was the only one working that day.

9 I was contacted by Trooper McCauley or Corporal
10 McCauley with the district troopers. He called me and asked
11 if I could assist him with, with a traffic stop that he and,
12 had some manpower issues as well in the troop. I told him
13 that I'd be glad to assist with him. He asked if I would
14 meet him at a specified location that he specified on White
15 Horse Road, which was Cannon District, Distribution Center
16 or something like that.

17 I met him there in my patrol car. He stated that the
18 vehicle -- actually I met him in a different vehicle because
19 of our previous conversation. He stated that the deal that
20 was gonna be potentially happening was gonna be using a
21 Mustang. He asked if I had a performance vehicle---

22 MRS. WIYGUL: Objection, Your Honor. I was trying---

23 THE COURT: I would sustain the objection.

24 MRS. WIYGUL: ---to hold off. But hearsay.

25 THE COURT: I would sustain the objection. That's not

1 relevant.

2 Q what type of vehicle did you arrive in?

3 A I arrived in an unmarked Camaro.

4 Q And---

5 A Highway Patrol vehicle.

6 Q And where did you go in this vehicle?

7 where did you meet Trooper McCauley?

8 A I met with Trooper McCauley, Corporal McCauley at the
9 Cannon Supply Distribution Center.

10 Q And did you, at this time, see any other vehicles?

11 A At that time, no, I did not.

12 Q After speaking with Trooper McCauley, where did you go?

13 A After speaking with Trooper McCauley, I went in a
14 stationary post at the Race Track on White Horse Road just
15 down from the waffle House that was at the corner of White
16 Horse Road and I-85.

17 Q Could you see the waffle House from where you were?

18 A Yes, ma'am I could.

19 Q Could you see any vehicles in the parking lot of the
20 waffle House?

21 A Yes, I could.

22 Q Please describe any vehicles you could see.

23 A I saw one Mercedes. There were several other vehicles,
24 but the vehicle, the target vehicle that I was clued into
25 was a yellow Mustang.

1 Q Could you---

2 A I had---

3 Q Oh, I'm sorry.

4 A I observed the vehicle pull into the parking lot. I
5 observed a black male occupant exit the vehicle from the
6 driver's side. Then went and got in the passenger side of
7 the Mercedes, I believe it was a Mercedes. After a brief
8 stay in the Mercedes, he exited the Mercedes, and then
9 returned to the yellow Mustang. He got back in the yellow
10 Mustang and proceeded to leave. It was at that point that I
11 continued down onto White Horse Road, got in behind him on
12 I-85. While he was on I-85, I observed him speeding and
13 following another vehicle too closely.

14 Q Are these normal traffic violations?

15 A Yes, ma'am.

16 Q Do you normally stop people for those violations?

17 A Yes, ma'am, I do.

18 Q Could you tell how many people were in the yellow
19 Mustang at this point?

20 A At that point, no, I couldn't. It, it appeared to have
21 one. But I couldn't tell you if somebody was laying down at
22 that time.

23 Q And, and please continue.

24 Did you stop the vehicle?

25 A Yes, I did. I initiated my emergency equipment, which

1 consists of my blue lights. At that time I noted that the
2 vehicle slowly pulled over to the right shoulder, and this
3 happened on I-85 near Mauldin Road or underneath the Mauldin
4 Road bridge. This is when the vehicle finally came to a
5 resting point on the right emergency shoulder.

6 Q Is this location in Greenville County?

7 A Yes, ma'am, it is.

8 Q And please describe -- did you exit your vehicle?

9 A At the point when I was exiting my vehicle, I observed
10 that the driver's door on the Mustang was opening as if the
11 occupant was gonna exit the vehicle. I shouted for him to
12 stop, stay in the vehicle, and then approach the vehicle and
13 asked him to roll the window down.

14 Q And who, if anyone, was in the vehicle?

15 A Mr. Morrow was in the vehicle. At that time I didn't
16 know his name or any information on him. But he was the
17 sole occupant inside the yellow Mustang.

18 Q And please continue.

19 Did you -- what else did you do at this time?

20 A At that point, that's when I -- as I approached him and
21 I normally approach on the passenger side. But after I saw
22 that the driver door had opened, I went ahead and approached
23 on the driver's side. When I got to the driver's door,
24 asked the driver to roll the window down. I introduced
25 myself. Identified myself as who I was. I asked,

1 identified for the reasons for the traffic stop and it was
2 at that point that trooper, I'm sorry, Mr. Morrow stated
3 that---

4 MRS. WIYGUL: Objection, Your Honor.

5 THE COURT: Sustain the objection.

6 What was the question?

7 SOLICITOR MONTS: He was, he was saying what the
8 defendant said to him, Your Honor.

9 THE COURT: In what context?

10 SOLICITOR MONTS: At the beginning of the traffic stop.

11 THE COURT: Let me hear what he, if he, what he asked
12 him first. I don't, I don't know what, what he's gonna say.

13 Q Did you ask the defendant any questions when you first
14 stopped him?

15 A No, I told him the reason for the traffic stop and then
16 he uttered, he was explaining why he had done what he had
17 done and he explained that he---

18 MRS. WIYGUL: Objection, Your Honor.

19 THE COURT: I don't know what the testimony is gonna
20 be. I hate to make the jury walk out. But let me, let me
21 let y'all step across the hall. Let me hear what they got
22 to say, what he said.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: What the defendant said may be admissible.

1 It may not. I have no idea what he's gonna say. Let me
2 hear what he's got to say.

3 WITNESS: He stated that he was following too close
4 because the vehicle in front of him had slowed.

5 MRS. WIYGUL: Your Honor, in, in order to avoid having
6 to send the jury out again, I believe he, after that, he's
7 gonna continue to state that Mr. Morrow gave him a false ID,
8 and he's not on trial for false ID except for some reason
9 Mrs. Monts seems to keep wanting to put it up there every
10 chance.

11 THE COURT: If he gave him a false ID he gave him a
12 false ID. There's nothing we can do about that. That's
13 just the facts surrounding this case.

14 But anything -- I need to know anything that the
15 defendant is gonna say. Now, what the defendant said could
16 be admissible as long as it's not subject to Miranda or
17 whatever. But I just don't want to be surprised by
18 something that might not be admissible.

19 SOLICITOR MONTs: Yes, Your Honor. The defendant was,
20 was placed under arrest because of the false ID and then the
21 drugs came out because so. So, that's why it's a continuous
22 chain.

23 THE COURT: Okay. All right. I'm going to overrule
24 the objection. If he was placed under arrest because of the
25 false ID, I'll let that come in.

1 SOLICITOR MONTs: And---

2 THE COURT: Are you going to present that?

3 SOLICITOR MONTs: Yes, Your Honor.

4 THE COURT: Okay.

5 SOLICITOR MONTs: I mean after -- some more questioning
6 first. But the question that he, that the trooper just
7 answered was about the following too closely, which was the
8 probable cause for the stop, the speeding and the following
9 too closely.

10 THE COURT: Okay. Anything else that the defendant may
11 have said that you may try to get in?

12 SOLICITOR MONTs: Your Honor, the -- regarding the
13 defendant stating the false name and the false date of
14 birth, and that he was given a ticket under the false name
15 until they found out, you know. So---

16 THE COURT: All right. He didn't, he didn't ask him
17 anything about the drug transaction that had been observed
18 earlier?

19 SOLICITOR MONTs: No, sir. No, sir.

20 THE COURT: Okay. All right.

21 (Whereupon, the following takes place within the
22 presence of the jury.)

23 THE COURT: All right. Mrs. Monts.

24 CONTINUED DIRECT EXAMINATION

25 BY SOLICITOR MONTs:

1 Q Corporal Owens, when you approached the car, what did
2 you do?

3 A Like I stated, he, I identified myself and I stated the
4 reason for the traffic stop. It was at that point---

5 Q And what was your reasons for the traffic stop?

6 A For speeding and following too closely.

7 Q And, and then what took place?

8 A Mr. Morrow stated, at that time, the reason he was
9 following too close was that the vehicle in front of him had
10 slowed to a speed and caused him to lose, to gain that speed
11 or lose that distance between his vehicle and the other
12 vehicle.

13 Q And please continue.

14 what did you do next in regards to the traffic stop?

15 A I asked him for his driver's license and vehicle
16 information and vehicle registration. It was at that point
17 that Mr. Morrow passed me or handed me, produced a Kentucky
18 driver's license with another gentleman's name other than
19 Mr. Morrow's and also gave me a South Carolina
20 identification card with Mr. Sims, with a gentleman's name
21 of Sims.

22 Q Do you recall if the Kentucky driver's license and the
23 South Carolina ID card had the same name on them?

24 A It did have the same name and the same date of birth I
25 believe.

1 Q Do you -- if you do, do you recall what that date of
2 birth was at that time?

3 A I remember it was in 19, 1962. Eleven something 1962.

4 Q And what did -- what's your normal procedure and what
5 did you do based upon receiving this driver's license and ID
6 card?

7 A It was at that point that I asked Mr. Morrow to exit
8 the vehicle. Once he exited the vehicle, I asked him to
9 stand at the right front passenger side of my patrol vehicle
10 or the vehicle that I was driving at that time. I stated
11 that I was gonna issue him a warning citation for the
12 speeding and the following too close during the traffic
13 stop.

14 We -- I opened my passenger door on the patrol car. I
15 stood on the rear side of the passenger door, on the inside
16 of the passenger door. Mr. Morrow stood on the outside. I
17 believe that before that point I asked him if I could pat
18 him down to make sure that he didn't have any weapons or any
19 instruments that would hurt me. He consented to the pat
20 down. I patted him down.

21 The purpose of the pat down was just for weapons. It's
22 not to reveal any type of contraband or anything like that.
23 It's just for merely safety.

24 Q And what do you do as far as investigation as far as
25 the driver's license you were handed?

1 A At that point, it's customary that, in many cases, we
2 call our dispatch and relay the information that's given to
3 us by means of the driver's license or the identification
4 card. It was at that point that I called dispatch, gave
5 them the name and date of birth, and asked also if they
6 would run a warrants check to make sure that the occupant or
7 the violator at that point had, was not wanted for any other
8 type of offenses.

9 Q And was this check based on the name of Joey Sims?

10 A At that time, yes, it was.

11 Q And please continue.

12 what did you do in this case?

13 A I, at that time, while dispatch is checking into the
14 information that I relayed to them, I'm just having casual
15 conversation and writing the warning citation for the
16 speeding and the following too closely to Mr. Morrow, which
17 at that time who I thought was Mr. Sims.

18 Q And did you ever call for backup?

19 A Yes, I did.

20 Q why did you do that?

21 A It's just -- whenever we feel that something's not
22 right, it's like a, it's like another sense, you just, you
23 call. It's for safety and we just do it. I mean it's, it's
24 customary in my practice to call for that especially if I
25 perceive there may be other criminal activity afoot.

1 Q And did you have video in this Camaro that you were
2 driving?

3 A Yes, ma'am, I did.

4 Q Did any backup officers arrive?

5 A Yes, Corporal McCauley.

6 Q And describe how the defendant's car was pulled up,
7 your car, and Trooper McCauley's car.

8 A The defendant's car was approximately ten, fifteen feet
9 in front of my car with my car slightly offset to the right
10 of it's rear of the yellow Mustang, and then Corporal
11 McCauley's vehicle had pulled up to the rear of my patrol
12 vehicle slightly offset to the right as well probably ten to
13 fifteen or so feet behind it as well.

14 Q And what did you do and what did Trooper McCauley do
15 once he arrived?

16 A Once he arrived on the scene, he sat in his vehicle for
17 a brief time while I was conducting the business, the
18 business of the traffic stop. At one point he exits the
19 vehicle, approaches on the passenger side while I'm
20 conversing with Mr. Morrow.

21 Q And describe where, if there's a microphone on you or
22 where the recording comes from.

23 A It comes from a little wireless box that's on, on my
24 belt, my utility belt. As far as this actual device, I
25 don't know if it had a wire attached to it or not. Some

1 require wire. Some of them do not. And I can't recall if
2 that one required a wire or not.

3 Q And what did you do and did you ever receive
4 information back from dispatch?

5 A Yes, during, during the traffic stop, I, I had received
6 information that the information that Mr. Morrow had given
7 me and that I had relayed to dispatch, it came back that
8 Mr. Sims or the information that Mr. Morrow gave me about
9 Mr. Sims was his license, privilege to drive in the State of
10 South Carolina was suspended.

11 Q what did you do based upon this information?

12 A I placed him under arrest.

13 Q Is this normal procedure?

14 A Yes, ma'am, it is.

15 Q Please continue with what transpired after you started
16 to put him under arrest as Joey Sims.

17 A After I placed him under arrest, I placed him in
18 handcuffs. I then went to search the vehicle based on the
19 arrest and basically it was an inventory of the vehicle.
20 When I went up to the driver's side, I noticed that there
21 was a white powder substance in the driver's front seat. I
22 then went back to Corporal McCauley, who was standing with
23 the individual that we had arrested, which was Mr. Morrow,
24 and I advised, I didn't actually go up to him, I advised him
25 to search Mr. Morrow, that I had only patted him down, and

1 the reason for telling him that was cause that I saw the
2 white powder substance that was consistent with cocaine.

3 Q And prior to this, did the defendant give his age?

4 A I think we walked, I walked up on the, over there to
5 Mr. or Corporal McCauley and the defendant. And while I was
6 standing there, I think actually Corporal McCauley asked him
7 how old he was, and the defendant stated 30---

8 MRS. WIYGUL: Your Honor, I'd renew my objection.

9 THE COURT: Overrule the objection.

10 A The defendant stated 35 years of age, which didn't
11 match the 1962, and it was at that point that we were
12 confident that the subject, the information that he had
13 given us was false.

14 Q And what did you do to investigate further?

15 A Corporal McCauley called dispatch with the information.
16 I then went ahead and continued searching the vehicle.
17 Corporal McCauley then, after he relayed the information,
18 when I began to search the vehicle, he, he searched the
19 defendant. During my time that I was searching the vehicle,
20 corporal McCauley called me back to him. When I went back
21 to him, information was relayed to me that the defendant had
22 something in his, a foreign substance in his, in his
23 britches in the groin area, and it was at that time we then
24 did a search of Mr. Morrow. And during that search, I
25 visually observed two packages in his groin area.

1 Q what -- describe what they looked like, what type of
2 packages.

3 A Two plastic clear packages. One with a tan rock like
4 substance that was consistent with crack cocaine, and the
5 other with a white slightly compressed powder that was
6 consistent with cocaine.

7 Q Did you retrieve these items at that time?

8 A well, during that time I didn't have my gloves on me.
9 I asked Trooper McCauley if he had his. I wasn't in my
10 patrol vehicle. Trooper McCauley had to go retrieve his
11 gloves. It was at that point, during that time Mr. Morrow
12 expressed that he needed his inhaler. I then proceeded to
13 give him aid with his inhaler.

14 During that time, he somehow got the substance from out
15 of his britches and into his hand. when Trooper McCauley
16 gets back to the, to where me and Mr. Morrow are at, Mr.
17 Morrow's laying on his back with the substance in his hand
18 out of our view because he's laying flat on his back with
19 his hands behind his back and the substance in his hand.

20 We go into a struggle to remove the substance.
21 Mr. Morrow hollers several times propanticaly (phonetic).
22 I can't remember exactly what he was saying. I think it was
23 just hollering.

24 MRS. WIYGUL: Objection, Your Honor. He just testified
25 he can't remember what he was saying.

1 THE COURT: Okay. I agree with you.

2 MRS. WIYGUL: It's not relevant.

3 THE COURT: Sustain the objection.

4 Q Please, please---

5 A I'm not sure everything he was saying. But we were
6 just using the force necessary to remove the substance from
7 his hands.

8 Q What, what, what type of physical contact with the
9 defendant was made by you and Trooper McCauley?

10 A It's basically just soft empty hand control using some
11 pressure point tactics to make his hands release what
12 substance was in his hands.

13 Q And why did you need to do this?

14 A Because he wouldn't, he wouldn't listen and he wouldn't
15 obey the commands that we were telling him to do, to release
16 the substance.

17 Q And why did you need to retrieve this substance from
18 him?

19 A Because it's illegal.

20 Q And what happened to what was in his hands?

21 A A portion of it was disbursed on to the interstate or
22 to the emergency shoulder of the interstate, and then the
23 other portion was retrieved by us, me and Trooper or
24 Corporal McCauley, and then placed into an evidence bag.

25 Q And was it prior to this event or after this event

1 that, did you continue to determine his true identity?

2 A Well, dispatch was continuing to check on the
3 information that we had received because he actually had a,
4 an identification card from South Carolina with Erik Morrow
5 on it.

6 Q Was that in addition to the one for Joey Sims?

7 A That was in addition to the two for Joey Sims.

8 Q At that point did you charge the defendant with
9 anything?

10 A Yes, he was charged with false information. He was
11 also charged with trafficking crack. I believe it's either
12 PWID or trafficking cocaine. And at that point that was it.

13 Q And is the person that you arrested that day in the
14 courtroom now?

15 A Yes, he's sitting to my left in the black suit, Mr.
16 Morrow, seated at the defense counsel table.

17 Q Once you retrieved the two items in the, in the bags,
18 what did you do with them?

19 A Placed them in a evidence bag and placed them in the
20 rear of my vehicle.

21 Q I'm gonna hand you what's been marked for
22 identification State's Exhibit 8 and 9.

23 Can you please identify these?

24 A These are sealed bags, two clear sealed bags with,
25 inside the bag is a South Carolina Department of Public

1 safety evidence bag with my writing on it. One containing a
2 white, slightly compressed white powder substance with some
3 other blue writing. Somebody else's I don't know.

4 Q And which, which exhibit is that?

5 A That is State's Exhibit No. 8.

6 Q And what, what other handwriting is on there that you
7 recognize?

8 A Well, it's got my handwriting on the front of the
9 package, and it's got SCHP. It's got a case number. It's
10 got trafficking cocaine. It's got Erik Morrow's name on it,
11 the date, and time of recovery, my name, and a brief
12 description of what's inside the package.

13 Q And whose -- and who wrote that?

14 A I did.

15 Q When---

16 A That is my handwriting.

17 Q When did you write that?

18 A That date.

19 Q And please continue with the Exhibit No., the other
20 exhibit please.

21 A And then State's Exhibit No. 9 is another clear white
22 package with some blue writing, which is not mine. Inside
23 the clear white package is another South Carolina Department
24 of Public safety evidence bag with my writing in black with
25 the substance inside, which is a tan rock like substance

1 consistent with crack cocaine. On the front of the package
2 is my writing in black stating the agency I'm with, which is
3 the Highway Patrol, the case number, trafficking crack is
4 the offense, the suspect's name, Erik M. Morrow, the date
5 and time of recovery, my name as the recovering officer, and
6 then a brief description of what's inside the bag.

7 Q And describe how you could, kept control of these
8 items.

9 A Once you put the, once I put the substance in the bag,
10 I seal the bag. It's a tamper proof bag. That way if any
11 tamperings were done with it, the evidence technician can
12 note it, but these are tamper proof bags. The only thing
13 that goes in these bags are the drug evidence. Once it's
14 sealed, there's no going into it without some type of
15 marking or destruction of the tamper proof seal.

16 At that point, after it's sealed, it's, a chain of
17 custody is filled out with the drugs and it's placed into
18 evidence where, in this particular case, we have a drug
19 secured, a proof facility or drug drop box in the, in the
20 Upstate Ace Office, and it was later that day that I dropped
21 this evidence in that, in that safe.

22 Q And, and prior to that, where did you keep it?

23 A In the, in the rear of my patrol vehicle.

24 Q And when you left the scene, where was the, where were
25 the drugs?

1 A In my patrol vehicle in my custody.

2 Q Pardon?

3 A In my custody in my patrol vehicle.

4 Q And---

5 A Well, in that, in that actual incident, my, my patrol
6 vehicle was towed and I was transported in a different
7 patrol vehicle. But these stayed in my custody.

8 Q And describe the -- when you took it to the lock box,
9 describe the security of that.

10 A It's, it's basically like SLED's drop box. It's a
11 mailbox that, once you drop it in, there's no retrieving it
12 until a evidence technician takes it or removes it or the
13 person that is controlling that box, which I am the
14 controlling person, cause I am the supervisor in the Upstate
15 that controls that box other than it, a CEF personnel and
16 there's one CEF personnel that has access to that because
17 they come generally monthly and empty that box.

18 Q And what was the next thing that you did with these
19 substances after they were taken to this box at your office?

20 A They were dropped in this box, in, in that particular
21 box, that safe, evidence safe on 3/14 that, the same day of
22 the incident. The next day or it may of been two days
23 later, I'm not sure, I believe it was on 3/16, I took the
24 evidence from -- yes, it's on 3/16. I took the evidence
25 from the Ace drug safe and transported it to the Greenville

1 Law Enforcement Center Lab or dropped it in the P&E, which
2 is property and evidence, and also filled out the proper
3 paperwork for them to analyze it.

4 Q And describe where that office is and what their
5 security is.

6 A Their office is in the basement of the law enforcement
7 center. Their security, I, I'm not sure what all their
8 security levels are. I give it to the property and evidence
9 technician there. It stays in that sealed bag. They may
10 put it in another bag. I'm not sure what all their process
11 is. I fill out the paperwork and then they put it in a, in
12 a---

13 MRS. WIYGUL: Object. Objection, Your Honor.

14 A ---secured facility.

15 MRS. WIYGUL: I'm sure Mrs. Monts is gonna call someone
16 that can tell us what they do with it. This troopers
17 already said he doesn't know.

18 THE COURT: All right. I sustain the objection.
19 All right.

20 Q Going back to your investigation on Mr. Morrow's true
21 identity, please continue.

22 what, what did you discover, if anything, about his
23 true identity?

24 A That he, in fact, was trooper, I mean, I'm sorry, was
25 Mr. Erik Maurice Morrow with a date of birth of [REDACTED].

168 J.D. Owens - Direct examination
by Solicitor Monts

1 Q And did you investigate his driver's status?

2 A Yes, I did.

3 Q What did you determine?

4 A His status in South Carolina under that name as well
5 was also suspended and was a habitual offender.

6 Q What is, what is a habitual traffic offender?

7 A It's an offender that has -- they're several different
8 ways you can be considered a habitual offender. But one
9 is -- and the reason that Mr. Morrow was a habitual offender
10 was he had three major violations in a specific time period
11 which considered him a habitual offender.

12 Q And on March 14th of 2005, was he driving on the
13 states roads of South Carolina?

14 MRS. WIYGUL: Objection, Your, Your Honor. This is
15 been asked and answered.

16 THE COURT: Okay. That's in evidence. I sustain the
17 objection. Let's move on.

18 Q Back at the scene, on March 14th, did you take
19 custody of the defendant's wallet?

20 A Yes, I did.

21 Q What did you do with that?

22 A Placed it in the rear of my patrol vehicle.

23 Q Did you take custody of any other items from the
24 defendant?

25 A Two cell phones and then some money as well.

1 Q And describe what you did with these items.

2 A Placed them in the rear seat of my patrol vehicle as
3 well.

4 Q And what did you eventually do with those items?

5 A Later, once we got to the law enforcement center, I
6 actually removed them after, after the attempt escape after
7 the, my vehicle---

8 MRS. WIYGUL: Objection, Your Honor. Improper
9 characterization. That's up to the jury.

10 THE COURT: All right. The jury's gonna have to
11 determine if he attempted to escape. I sustain the
12 objection. It's a question for them.

13 A After I broke the windshield or the, the window out of
14 the car and removed Mr. Morrow and had my vehicle towed, I
15 took all the evidence, along with me, in another patrol
16 vehicle to the law enforcement center where I met with again
17 Mr. Morrow to file charges with him, on him. And it was at
18 that point that I also met with Agent Branham and Agent, and
19 the other agent as well and turned that evidence over to
20 them.

21 Q What -- specifically what evidence did you turn over to
22 them?

23 A I turned over two cell phones and two one hundred
24 dollar bills.

25 Q Going back to the, the side of the road on

1 March 14th, once the defendant was searched and going back
2 to the two items that were recovered, what took place after
3 those item were recovered from the defendant?

4 A After those items were recovered, meaning these two
5 items, and---

6 Q Would that be Exhibit 8 and 9?

7 A Yes, after they were recovered, we then began doing the
8 other processes and waiting, and Corporal McCauley had
9 notified dispatch to contact a wrecker service for us to tow
10 the vehicle. While waiting for that, we were processing the
11 scene. It was at that point, during that time, we'd gone
12 back to the vehicle several times to get different things
13 and to talk with Mr. Morrow. He was Mirandized after he was
14 arrested. And during that time, we noticed that the -- I
15 had gone back to the vehicle for something. I don't
16 remember what it was. I noticed that the door, doors were
17 locked on my vehicle.

18 Q Describe how the defendant was placed into the vehicle.

19 A Into my patrol vehicle, it's our policy that when we
20 place somebody in the front seat of our patrol vehicle,
21 after they've been arrested and Mirandized, place them in
22 the right front seat and then seat belt them in.

23 Q And did you do that?

24 A Yes, I did.

25 Q Was the car running?

1 A Yes, it was.

2 Q And describe how the car, how the car can be locked.

3 A Well, you can lock it, one, by a key and the exterior
4 of the door. Two, by the electric door locks. And on this
5 particular model you also have a slide on the door that you
6 can manually slide into lock. So, it's actually three,
7 three ways you can lock that. The electric door locks have
8 access on both the driver's and the passenger side.

9 Q Will the lock on the passenger side lock also the
10 driver's side?

11 A The electric will, yes. The electric shift or door
12 lock will. It will lock both doors.

13 Q And when you put the defendant in the vehicle, did you
14 lock the car?

15 A No, ma'am, I did not.

16 Q What happened after the defendant was put in there, in
17 the car and you continued to do paperwork?

18 A We continued the paperwork and I believe I went up
19 there to continue searching the vehicle.

20 Q Which vehicle?

21 A The yellow Mustang. At one point I returned back to
22 the vehicle, to my patrol car, I'm sorry, to the Camaro, and
23 noticed that the door was locked. Gave a verbal command to
24 Corporal McCauley. It was at that point he proceeded to the
25 front of the vehicle. I proceeded to attempt to gain access

1 into the driver's window.

2 Q Where was the defendant at this time?

3 A In the driver's seat.

4 Q Describe the interior front of the Camaro.

5 A You got two bucket seats. You have a center console,
6 with the center console, you have the emergency break, the
7 gearshift lever, and then also a compartment area, arm,
8 which also serves as an armrest.

9 Q Describe, describe the amount of room in there to get
10 from one seat to another.

11 A Well, it's a Camaro. It's a two seat coupe vehicle.
12 It's fairly tight. You have to actually climb up -- with
13 the seats, the bucket seats, they're lower than the center
14 console and approximate, probably eight, eight inches lower
15 than the bottom of the seat is approximately about eight
16 inches lower than the top of the armrest and then the top of
17 the gearshift lever. So, you then -- he had to climb over
18 that while the handcuffs were in, behind his back and then
19 drop down into the driver's seat.

20 Q Did you observe the defendant do this?

21 A Yes, I did.

22 Q Did -- describe what you saw and how you reacted.

23 A Sat and climbed over into the driver's seat. Saw him
24 reaching for or towards the gearshift lever. You know, it
25 was at that point I gained access into the, to the vehicle

1 via breaking the driver's front windshield or front window.

2 Q Is, is there any reason the car would not have shifted?

3 A Yes, I -- many of the patrol vehicles have a safety
4 mechanism that prevents people that are, are unaware of the
5 device from taking the vehicle and you have to actually --
6 it's a two step process that you have to do to put the
7 vehicle into drive.

8 Q So, please continue.

9 what did you do?

10 A Broke the window out. While breaking the window out, I
11 received cuts to my, to my hand, left-hand. Removed the
12 keys from the ignition and then removed Mr. Morrow from the
13 driver's front seat.

14 Q And where was Trooper McCauley at this time?

15 A During that time he was -- I know he was at the front
16 of my patrol car at one time, and then he proceeded over to
17 the driver's side at another time. And once Mr. Morrow was
18 removed, I believe we both went to the rear of the Camaro
19 and then front of the other or semi-marked patrol car,
20 Mr., Corporal McCauley's patrol car.

21 Q On this day, did you take any photographs?

22 A I did.

23 Q And please describe what you took photos of and where
24 they are now.

25 A I took several photos. As to all that they were, I

1 can't recall. I had a problem -- what I, what I normally do
2 is I make a packet of photos to send to the Solicitor's
3 Office. And for whatever reason, I can't explain, but the
4 hard drive on my computer that I had all this information on
5 was lost. I had problems with it. I don't know if I got a
6 virus or what. I had to replace the whole computer.

7 Q And I believe you saw the earlier video.

8 Does the video show what, what you took photos of?

9 A Yes, it does.

10 Q And back to when you and Trooper McCauley were trying
11 to retrieve the packages from the defendant, describe what
12 happened, what happened to some of the powder.

13 A Some of it was disbursed on to the roadside. There was
14 amounts there. We could of policed it up, but it would of
15 got dirt, rock, everything else with it.

16 Q So, did you collect any of that?

17 A No, I did not.

18 Q And did you have a chance to look at the defendant's
19 hands after this?

20 A Yes, I did.

21 Q What did you observe?

22 A They were white chalky in color with a powder substance
23 grinded into his hand.

24 Q And was, was EMS called?

25 A Yes, they were.

1 Q For whose benefit?

2 A For me.

3 Q What was the condition of the defendant at this time?

4 A At that time he was basically -- I mean he was
5 controlled to a degree. There were several times that he
6 wanted to keep getting up. But I think we had him into a
7 control where we could--

8 MRS. WIYGUL: Your Honor, I'd object. This, this
9 doesn't have anything to do -- it's not relevant.

10 THE COURT: What's the relevance?

11 Q Could you touch the defendant with your hands at this
12 point?

13 A Not at that point. Not really because I had one hand
14 at the---

15 MRS. WIYGUL: Objection, Your Honor. Again, this is
16 just not relevant.

17 THE COURT: Mrs. Monts, we've seen the tape.

18 Q Prior to today, have you seen the drugs since you
19 dropped them off at the property and evidence room at the
20 Greenville lab or the Greenville property and evidence room?

21 A I've seen them while they've been in possession of
22 Trooper Howard, Corporal Howard, yes. And when he's removed
23 them from the, a safe since I'm the only one with a key
24 other than CEF because of previous reasons. One, coming to
25 Court or something else.

1 Q And did you provide a copy of your video to our office?

2 A Yes, I did.

3 SOLICITOR MONTs: Your Honor, marked for
4 identification.

5 (Whereupon, the videotape was marked as State's Exhibit
6 No. 11 for identification purposes only at this time.)

7 Q Corporal, I'm handing you State's Exhibit 11 for
8 identification.

9 Can you please tell us what this is?

10 A This is a copy of the video of the traffic stop
11 involving myself, Corporal McCauley, and Mr. Morrow.

12 SOLICITOR MONTs: Your Honor, I'd move into evidence at
13 this time.

14 MRS. WIYGUL: Your Honor, I would renew the same
15 objections I had to the prior videotape. But other than
16 that.

17 THE COURT: How long?

18 SOLICITOR MONTs: This is 60.

19 THE COURT: 60?

20 SOLICITOR MONTs: Your Honor, is this, is this a---

21 THE COURT: No, I just want to know what's in this
22 sixty minutes that the jury and I, I are gonna watch.

23 (Whereupon, a bench conference was held out of the
24 hearing of the jury at this time.)

25 THE COURT: All right. We're going to mark it as

1 evidence. And if anything comes up that the jury needs to
2 see here, and this is without objection from the defense
3 lawyer, instead of just repeating what we've already seen
4 and heard, if there's anything on there that the State maybe
5 wants to present at a later date, then you can do that if
6 it's, if it's relevant to the case. But if this is just
7 gonna be repetitive, we won't go, make the jury and the
8 Court watch it again.

9 And Mrs. Wiygul has no objections to that.

10 MRS. WIYGUL: That's correct, Your Honor.

11 THE COURT: Okay.

12 (Whereupon, State's Exhibit No. 11 was received into
13 evidence at this time.)

14 MRS. WIYGUL: And just, just for the record, that,
15 that's correct on the assumption that this video shows
16 nothing different than the one I've previously been
17 provided.

18 THE COURT: Okay.

19 SOLICITOR MONTS: And Your Honor, that's correct. Mrs.
20 Wiygul has seen both videos, been provided both videos.

21 THE COURT: I don't want to eliminate anything that
22 needs to come in. But rather than everything being
23 repetitive, we'll just keep it down to that.

24 SOLICITOR MONTS: And, and, Your Honor, my
25 understanding is this, this is in evidence at this time?

1 THE COURT: If, if, if there's anything on there you
2 want to point out at some later time or something we don't
3 know about, it may come up, you, you can present that to the
4 jury. This is the video of his car now.

5 SOLICITOR MONTS: Yes, Your Honor, and the audio is
6 coming from this troopers mic rather than Trooper McCauley's
7 microphone.

8 THE COURT: I'm going to leave it up to you. If you
9 want to put it in, if it's something different than what we
10 know, then you can do that.

11 Okay.

12 SOLICITOR MONTS: Yes, Your Honor.

13 (Pause.)

14 SOLICITOR MONTS: Your Honor, I believe that's all the
15 questions I have of this witness at this time.

16 CROSS-EXAMINATION

17 BY MRS. WIYGUL:

18 Q Trooper, Corporal, you said that your hard drive
19 crashed?

20 A Yes, ma'am.

21 Q when did that happen?

22 A It was in the year of '05. I'm not sure of the exact
23 date.

24 Q You lost everything on your computer hard drive?

25 A Everything.

- 1 Q All the evidence---
- 2 A All the pictures.
- 3 Q All the evidence as on there?
- 4 A All the pictures.
- 5 Q All the pictures.
- 6 Were there videos on there?
- 7 A Videos of?
- 8 Q Anything. Videos from other cases.
- 9 A Not pertinent to this case, no.
- 10 Q Were there, were there videos from other cases?
- 11 A No, ma'am.
- 12 Q Were you--
- 13 A I don't, I don't, I didn't have---
- 14 Q Were there pictures from other cases?
- 15 A Yes, ma'am.
- 16 Q There were?
- 17 A Yes, ma'am.
- 18 Q Okay. So, when did this happen in '05?
- 19 A As to the exact date, I don't know, ma'am.
- 20 Q What month?
- 21 A I don't, I don't recall, ma'am.
- 22 Q Was it cold outside?
- 23 SOLICITOR MONTS: Objection, Your Honor.
- 24 THE COURT: Approximately when.
- 25 Do you know?

1 WITNESS: I guess it would of been the first six months
2 of the, of the year. I don't, I really don't recall really.

3 Q Okay. But, but somewhere there's documentation that
4 your computer had to be replaced and lost all evidence that
5 was on it---

6 A Yes, ma'am.

7 Q ---sometime within the first six months of '05?

8 A Yes, ma'am.

9 Q Okay.

10 A That is correct.

11 Q Now, as the leader of this Ace team, you're aware of
12 how important evidence is especially in cases like these,
13 correct?

14 A Yes, ma'am.

15 Q Is it, is there any kind of policy or procedure to back
16 up your computer?

17 A Ma'am, this is my personal computer.

18 Q So, you have these pictures on your personal computer
19 with no backup anywhere?

20 A That's correct.

21 Q You didn't, you didn't turn them into the Highway
22 Patrol or Public Safety or SLED?

23 A No, ma'am, I did not.

24 Q You just lost them?

25 A No, the computer lost them. I didn't lose them.

1 Q But you put them on your personal computer?

2 A Yes, ma'am, what I do is I, I generate them -- it's on
3 my personal camera. I generate them on my personal camera
4 and then I download them onto my computer. And then when
5 the Solicitor's Office request for the information, I
6 download them on to a disk and then I forward them the disk.
7 My computer at the office doesn't have that software for my
8 camera.

9 Q Is it your normal practice to intermingle personal and
10 professional items as to how you're using them or how you're
11 preparing for a case?

12 A Well, ma'am, when the -- at that time, the Highway
13 Patrolman didn't provide me with a digital camera. So, I
14 was going on my own to provide, to collect evidence. It
15 wasn't a policy for the Highway Patrol to take pictures of
16 evidence.

17 Q But having taken---

18 A It was up to me.

19 Q ---it upon yourself to take these pictures, would you
20 agree that you were under some obligation to try and make
21 sure they stayed around?

22 A Well, ma'am, and I tried that. I can't help the
23 computer crashed. It wasn't my control. I lost a lot of
24 personal pictures as well.

25 Q Has the Highway Patrol, such this time, issued you a

1 digital camera?

2 A Yes, they have.

3 Q And what procedure do you use now?

4 Do you still just save these pictures to your personal
5 computer?

6 A No, ma'am, I do not.

7 Q You don't?

8 A No, I don't not.

9 Q why?

10 A Because we have issued a camera now and our computers
11 now allow you to download that information.

12 Q You're saying that in March of 2005 the Highway
13 Patrol's computers would not save pictures?

14 A They would not -- I didn't have the software from my
15 camera on there. No, ma'am, I did not.

16 Q You---

17 A The little---

18 Q But that was your choice not to put that software on
19 it?

20 A I can't go and put software on a D.B.S. computer. We
21 have rights and regulations to add anything. I, I don't,
22 don't even have the ability to add software to your
23 computers, ma'am.

24 Q Does the Highway Patrol backup their computers?

25 A I would assume they do.

- 1 Q why?
- 2 A Are you asking me to speculate?
- 3 Q No, I'm asking. You're the head of this Ace team.
- 4 Do you, does the Ace team---
- 5 A Ma'am?
- 6 Q ---back up their computers?
- 7 A The Ace team does a function of the Department of
- 8 Public Safety. As to what the Department of Public Safety
- 9 does with the computers, I do not know.
- 10 Q You don't know.
- 11 Okay.
- 12 A No, ma'am, I do not.
- 13 Q Is it standard practice in this, and I've gotten the,
- 14 the phrase you used, one moment, in soft empty hand control,
- 15 you said that that involves pressure points?
- 16 A That is correct.
- 17 Q Is that like where you put your knee on somebody's back
- 18 and drive them into the ground?
- 19 A No, actually a soft empty hand---
- 20 Q Is that a pressure point.
- 21 A Excuse me?
- 22 Q Go ahead.
- 23 A No, the knee on the back is to control the subject to
- 24 keep him on the ground.
- 25 Q Okay. So, your knee being on a suspect's back is not

- 1 part of your, let's see, soft empty hand control?
- 2 A Yes, it is.
- 3 Q It is?
- 4 A Yes, it is.
- 5 Q Okay.
- 6 A It's control, isn't it?
- 7 Q Oh, I, I agree.
- 8 A Okay.
- 9 Q So, but, but prior you would, you had said something
- 10 about it involved pressure points and---
- 11 A That is correct.
- 12 Q Can you explain that to us again?
- 13 A Well, every human body has pressure points.
- 14 Q Uh-huh. (Affirmative).
- 15 A And when you apply pressure to a point, generally you
- 16 get a reaction from applying that pressure point, and
- 17 it's -- all it is is a soft use of your thumb or a finger---
- 18 Q Uh-huh. (Affirmative).
- 19 A ---and applying pressure. Just like you apply it to
- 20 the neck, it's what, it's what we're trained, ma'am.
- 21 Q Okay. And where do you receive this training?
- 22 A At the academy.
- 23 Q Okay.
- 24 A South Carolina Criminal Justice Academy.
- 25 Q Okay. So, you know where on someone's body to press to

1 cause them a lot of pain if you want to?

2 A Well, it's, it's to get a compliance is what it's to
3 do, ma'am. It's pain compliance, yes.

4 Q Pain compliance?

5 A That's correct.

6 Q Okay. Now, after the whole incident with the car where
7 the window was busted out, did you ever check the passenger
8 door to see if that was unlocked?

9 A No, but Trooper McCauley tried it.

10 Q That's, that's no problem.

11 A Trooper McCauley tried it. Trooper McCauley tried it.

12 Q That's no problem.

13 A And I have it on video.

14 Q That's okay.

15 well, you stated that it was standard procedure to
16 leave the car on with the keys in the ignition, is that
17 right?

18 A That is correct.

19 Q And that is because why?

20 A Trooper McCauley testified to that, but---

21 Q I'm, I'm sure he did. But I'm asking you.

22 A why?

23 Q why?

24 A So, the lights and the camera, all that function and
25 continue functioning, and that's the way we're trained to do

1 it.

2 Q So, your camera will not function, your video inside
3 that car will not function if the keys are, if the
4 ignition's off?

5 A Well, it will for a short period of time.

6 Q Oh, it will function without the keys.

7 A For a short period of time. But sometimes it will
8 intermit if you don't have the proper---

9 Q well, how short a period of time?

10 A Depends on how well the charge to the battery is,
11 ma'am.

12 Q Okay. So, if there's a good charge to it there, it, it
13 can run without the keys in it?

14 A Depending on the charge of the battery, yes.

15 Q Okay. Now, you said this wasn't your Camaro that you
16 were driving, correct?

17 A That is correct.

18 Q Whose was it?

19 A Trooper Shannon Webber's.

20 Q Okay. Was he upset about his car?

21 A Well, yes, ma'am, he was and I would of been upset if
22 it was mine.

23 Q Okay. And you have a temper, don't you?

24 SOLICITOR MONTS: Objection, Your Honor.

25 MRS. WIYGUL: I'll withdraw the question.

1 THE COURT: All right.

2 Q Now, you called -- well, you stated that you were in
3 the process of writing warning tickets for false information
4 or no, for following too closely and speeding, correct?

5 A That's correct.

6 Q And you said that is the reason you pulled the yellow
7 Mustang over, correct?

8 A That is one of the reasons, yes, it is.

9 Q And is that reflected on the video from your car?
10 Does it show the yellow Mustang speeding and following
11 another car too closely?

12 A I believe it does.

13 Q Okay. Now, you called -- you, you had testified
14 previously that you were working alone that day and that
15 y'all were very short staffed, correct?

16 A That is correct.

17 Q And McCauley was working alone and he was very short
18 staffed, correct?

19 A That was the -- yes.

20 Q But you called him as backup while you were writing
21 these warning tickets because you had a sense, is that
22 correct?

23 A Yes, ma'am.

24 Q Okay. And it wasn't because SLED had contacted you and
25 said pull over Erik Morrow in the yellow Mustang, right?

1 A I didn't know Mr. Morrow's name before then.

2 Q And you hadn't gone up and parked beside the SLED
3 agents, correct?

4 That's your testimony?

5 A I parked in the same parking lot. But I did not
6 converse with them. I wasn't even sure that was them.

7 Q You didn't pull up right beside them?

8 A No, ma'am, I did not.

9 Q Now, you said that there's a two step procedure to
10 start the car?

11 A No, ma'am, there's a two step procedure to put it in
12 gear.

13 Q To put it in gear.

14 And it has to be in gear to start?

15 I'm not mechanically inclined. I apologize.

16 A You mean to start the engine or start it in drive?

17 Q To make it move.

18 A Oh, yes, ma'am.

19 Q Okay.

20 A You got to place it in drive -- every vehicle you have
21 to place in drive before it will move.

22 Q Okay. But you said something about a two step
23 procedure.

24 A That is correct.

25 Q And what is that?

1 A It's a safety process. It's a switch, which I'd prefer
2 not to tell you about, but there's a switch in many control
3 vehicles that you have to mash before you can put it into
4 drive.

5 Q So, you knew that, regardless of what you thought might
6 be going on---

7 A No, ma'am, I don't.

8 Q ---Mr. Morrow couldn't get that switch?

9 A No, I don't know that for sure. You're asking me to
10 speculate.

11 Q So, are you saying that the switch was somewhere where
12 he could reach it?

13 SOLICITOR MONTS: Objection, Your Honor.

14 A Yes, ma'am, he could reach it. I can reach it.

15 Q Could you reach it with your hands cuffed behind your
16 back?

17 A Yes, ma'am, you could.

18 Q Okay. And is it common knowledge where this switch is?

19 A It depends on what you consider your common knowledge
20 and I consider my common knowledge, ma'am.

21 Q Is it?

22 A There's many people that do know where it is cause when
23 I go to a car wash they know how to put it in gear.

24 Q Okay. So, I'm trying to understand. You seem
25 reluctant to explain this switch to us. But now you're

1 telling us it's common---

2 A Well, ma'am---

3 Q ---it's common knowledge.

4 A Well, ma'am, it's a safety feature and I, I prefer not
5 everybody to know about it.

6 Q I understand that. But if you're trying to convince
7 this jury, and I'm not gonna go back and forth with you,
8 please tell us about this switch, where it's located, and
9 what it's---

10 SOLICITOR MONTS: Objection, Your Honor. This is---

11 THE COURT: It's relevant to this case on the escape.
12 I overrule your objection.

13 Tell us about, about the switch.

14 A You press it with your foot and you place it in drive,
15 ma'am. It's located to the left of the brake peddle.

16 Q Okay. So, if that was going on, if Mr. Morrow was
17 trying to take this car, and if he knew where that switch
18 was, he'd already had the switch flipped, couldn't he?

19 A You're asking me to speculate what he had to know and
20 what he had done.

21 Q Okay. Let's just ask you, was the switch flipped?

22 A Ma'am, all you have to do is press it with your foot.

23 Q When you opened the car door---

24 THE COURT: The question is was the switched flipped by
25 hand.

1 A I don't know. I couldn't see his feet.

2 Q Okay. So, you don't know whether the switch was
3 flipped?

4 A It's, it's not a point of flipping it, ma'am. It's a
5 point of depression on it. All you got to do is press it.
6 It's a pressure switch.

7 Q I understand that.

8 Can you tell whether the pressure switch had been
9 pressed?

10 A No, ma'am, I couldn't. I couldn't see his feet.

11 Q Was the car in gear?

12 A He was not able to get it in gear.

13 Q Was the car in gear?

14 THE COURT: No. He said no, ma'am.

15 Q Did the car move?

16 A No, it did not move.

17 Q Approximately how many cases were affected by the crash
18 of your computer?

19 SOLICITOR MONTS: Objection, Your Honor. Relevancy.

20 MRS. WIYGUL: Your Honor, considering these pictures
21 have not never been provided to the defense, but they're
22 mentioned several times on the video, that he says he's got
23 pictures of all this stuff that we've never seen, I think it
24 is relevant.

25 THE COURT: What's your question again?

1 MRS. WIYGUL: How many cases were affected by the crash
2 of his hard drive.

3 THE COURT: Do you know?

4 WITNESS: No, sir, I don't.

5 Q Was it less than a hundred?

6 A I don't know, ma'am.

7 Q Okay. I have no further questions then.

8 SOLICITOR MONTES: Nothing further of this witness, Your
9 Honor.

10 Your Honor, the trooper calls trooper -- the State
11 calls Trooper Spence.

12 THE COURT: We're going to break for lunch. Their
13 lunch is here.

14 SOLICITOR MONTES: Okay.

15 THE COURT: All right. We'll start back at 1:30.

16 All right. We'll finish up after lunch. Do not
17 discuss it during lunch.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. We'll see y'all at 1:30.

21 (Whereupon, Court was in recess for the lunch break.)

22 SOLICITOR MONTES: Your Honor, I believe Mrs. Wiygul has
23 another issue to take up before the jury comes in.

24 THE COURT: Yes.

25 MRS. WIYGUL: Your Honor, Mr. Morrow has indicated that

1 he does wish to testify. So, if you like, if you want to go
2 through the criminal record now, we can go ahead and do
3 that.

4 THE COURT: Mrs. Monts.

5 SOLICITOR MONTs: Your Honor, the State would -- and
6 there's only two that I believe Mrs. wiygul and I have not
7 agreed upon. Those are like the oldest ones. He has two
8 possession of crack charges which he pled to on March 11th
9 of 1993. He received a five year sentence suspended to six
10 months and two years probation.

11 MRS. WIYGUL: And Your Honor, Mr., Mr. Morrow tells me
12 that he completed that probation successfully, finished it
13 up early.

14 THE COURT: Okay. I would sustain the objection to
15 their use.

16 SOLICITOR MONTs: Your Honor, for the record, the
17 others are a criminal conspiracy from May of '96, a
18 possession of cocaine from April of 2000, a habitual traffic
19 offender from April of 2000, a failure to stop for a blue
20 light from 2006. Your Honor, a false information to police,
21 which occurred at this same incident date, and a
22 counterfeiting which he pled to in Federal Court in January
23 of '08.

24 MRS. WIYGUL: That's correct, Your Honor.

25 THE COURT: Okay. She has no objection to that.

1 All right.

2 SOLICITOR MONTES: And Your Honor, I, I would just put
3 on the record that there are prior arrests by the defendant
4 that had various similar circumstances. Depending,
5 depending on the question, I probably -- if the door is
6 opened, I would expect that I would ask questions about
7 those.

8 THE COURT: I don't believe you can get into arrests
9 unless they were convictions.

10 SOLICITOR MONTES: Yes, sir, Your Honor. And I, and I
11 ask that we be allowed to approach if that, if the time
12 arises. But it may have to do with his knowledge of certain
13 things.

14 THE COURT: Well, now---

15 MRS. WIYGUL: I really don't know what she's talking
16 about.

17 SOLICITOR MONTES: well---

18 THE COURT: All right.

19 Okay. Mr. Morrow, we can just, we can go ahead and do
20 this so we don't have to be sending the jury out.

21 All right. Mr. Morrow, you have a Constitutional right
22 to either testify or not testify, and I'm not indicating one
23 way or the other what you should do. That is as, a decision
24 that you have to make and many people say that it is the
25 most important decision a criminal defendant has to make in

1 a criminal trial, whether to take this witness stand under
2 oath and testify to this jury or to exercise your
3 Constitutional right to remain silent.

4 And if you testify, and this prior convictions would
5 come in only for a limited purpose and one purpose only, and
6 I will instruct the jury that, that, that prior convictions
7 would only come in for the purpose of evaluating your
8 credibility or believability and not as to whether you were
9 guilty or innocence of these crimes for which you've been
10 tried today. They can't consider that but for, as, as to
11 the guilt or innocence on these crimes. Only as it may bear
12 on your credibility or believability.

13 And if you chose not to testify, I would instruct the
14 jury that that does not create any presumption against you,
15 that they can not let that fact enter into their decisions
16 in the jury room. They can't even discuss it or they, it
17 can not weigh against you in the slightest degree if you
18 don't testify because that's your Constitutional right. And
19 the burden of proof is always on the State to prove you
20 guilty of any crime beyond a reasonable doubt.

21 So, if you did not testify, I'd tell them they couldn't
22 even discuss that in the jury room. The State's got the
23 burden of proof.

24 Do you understand your Constitutional rights to testify
25 or not to testify?

1 DEFENDANT: Yes, sir.

2 THE COURT: Okay. And have you discussed that with
3 Mrs. Wiygul and have you made a decision?

4 Do you -- you have to make the decision, but you need
5 to listen to your lawyers.

6 DEFENDANT: Can I confer with her one more time?

7 THE COURT: Yes, sir.

8 (Pause.)

9 MRS. WIYGUL: Your Honor, Mr. Morrow has indicated that
10 he does not wish to testify.

11 THE COURT: Okay. Mr. Morrow, you fully understand
12 that what I told you, that your prior record would only come
13 in for a limited purpose and what I would tell the jury,
14 they could only consider that as weighing on your
15 credibility or believability. If you chose not to testify,
16 I'm going to tell them they can not consider that in the
17 slightest degree against you.

18 Do you understand that, sir?

19 DEFENDANT: Yes, sir.

20 THE COURT: And you have made a decision not to
21 testify, is that correct?

22 DEFENDANT: Yes, sir.

23 THE COURT: All right. Okay. And does that mean that,
24 that we'll go into closing arguments after she finishes or
25 not?

1 MRS. WIYGUL: Yes, Your Honor.

2 THE COURT: All right.

3 SOLICITOR MONTs: Your Honor, after the, after -- Your
4 Honor, after we rest, can we take just like a five minute
5 break?

6 I don't need long.

7 THE COURT: Yeah.

8 I assume you have no objection to that?

9 MRS. WIYGUL: No objections, Your Honor. I'd give her
10 ten.

11 (Whereupon, the following takes place within the
12 presence of the jury.)

13 SOLICITOR MONTs: Your Honor, the State calls Kara
14 Bennick.

15 KARA BENNICK, being first duly
16 sworn, testified as follows:

17 CLERK: State your full name for the record please.

18 WITNESS: Kara Bennick.

19 CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY SOLICITOR MONTs:

22 Q Mrs. Bennick, please tell the jury where you're
23 employed.

24 A The Greenville County Department of Public Safety, the
25 evidence room.

1 Q And what is your title and what are your duties?

2 A I'm a supervisor over the evidence room of well as
3 considered a member of the staff. I do all the same job
4 duties they would.

5 Q And describe where your office is located and the
6 security there.

7 A We're in the basement of the law enforcement center.

8 Q And---

9 A And our security, we're very secure. All doors are
10 locked with keys. We have swipe cards as well as only four
11 technicians are allowed in and out of the evidence room.
12 It's a secured area.

13 Q And is one of the, is one of your duties regard logging
14 in evidence?

15 A It does.

16 Q And describe the procedure in logging in evidence.

17 A Typically, during business hours, the officer will
18 bring stuff to the counter and we'll check it in. He'll
19 have a report that accompanies the evidence that comes in.
20 We'll inventory it with the officer, we'll sign for it, and
21 we will then secure it based on what it is that's coming in.

22 Q And regarding this case against Mr. Morrow, did you log
23 in evidence brought to you by Trooper Owens?

24 A I did.

25 Q Describe the procedure you used to handle that

1 evidence.

2 A Trooper Owens brought it in during business hours. He
3 brought it to the counter. We inventoried it. We logged it
4 in and we signed for it for him.

5 Q Can you tell the jury what evidence Trooper Owens
6 brought to you on that day?

7 A Based on his report, he brought the clear bag
8 containing white powder substance and a clear bag containing
9 tan rock like substance.

10 Q And what did you do once you obtained those two items?

11 A I verified the descriptions on them to make sure what I
12 had was the description and we then secured them.

13 Q And when you secured them, is that for a certain amount
14 of time or for an unlimited amount of time?

15 A They're placed in the staging area in the vault area.
16 That awaits transport to the lab.

17 Q And who was the lab, the lab to come and check out the
18 drugs?

19 A It has to be one of the technicians in the lab.

20 Q Is Dave Armstrong one of these?

21 A He is.

22 Q And what is the procedure when you, when drugs are
23 checked out to one of the technicians including
24 Mr. Armstrong?

25 A He'll come to the counter and he'll request the staging

1 box from us. We will take his box out to him, and he will
2 take the cases and sign for them.

3 Q And what is the procedure when he returns drugs to you?

4 A The same will happen. He'll return the drugs to us.
5 We'll re-inventory to make sure they're sealed and that's
6 what's in the envelope. We'll sign for them and we'll
7 return them to the vault area.

8 Q And are you aware if that happened in this case?

9 A It did.

10 Q And once these drugs were logged back in, are they
11 placed in the same place that they were prior to being
12 analyzed?

13 A No, each agency that we received all four has their own
14 staging section. And once it comes back, it stages in their
15 box waiting for that agency to pick up.

16 Q And after the drugs in this case were returned from
17 James Armstrong, what was the next transfer of, of those
18 drugs?

19 A Based on the chain of custody they were then
20 transferred from himself to A.J. Spence, the State Trooper's
21 office.

22 Q I'm sorry.

23 With who?

24 A With A.J. Spence from the State Trooper's Office.

25 Q And, and what, what day did that occur on?

1 A That occurred on May 11th, 2005.

2 Q And how many people have access to this property and
3 evidence room that you have control over?

4 A The actual vault area, only four people and those are
5 the approved people being technicians.

6 Q Thank you. I have no further questions.

7 CROSS-EXAMINATION

8 BY MRS. WIYGUL:

9 Q Mrs. Bennick, what is the purpose of these procedures
10 that y'all have all the security and only four people have
11 an access?

12 A The care, custody, and control of anything coming in at
13 anytime.

14 Q And why, why is that important?

15 A For security reasons. We, at all times, everything is
16 kept under lock and key. It's only accessible by seeing, by
17 us to bring it to the person and them sign for it so we know
18 where the items are going at all times.

19 Q Does it also show that nobody messed with the evidence?

20 A Yes, everything comes in and we make sure it is sealed
21 at the counter.

22 Q Does it keep the evidence safe so that it can't be
23 destroyed?

24 A Yes, if there's any tampering of anything, you can tell
25 by the packing the way it is.

1 Q Okay.

2 A Everything is initialed and sealed.

3 Q What about electronic evidence, do you handle that
4 also?

5 A Electronic evidence, I don't understand.

6 Q Pictures.

7 Do you have pictures?

8 A Do we handle photographs?

9 Q Do you handle photographs?

10 A Yes.

11 Q Okay. So, you do have the capability to handle
12 photographs in your property and evidence room?

13 A Uh-huh. (Affirmative).

14 Q I have no further questions. Thank you.

15 REDIRECT EXAMINATION

16 BY SOLICITOR MONTS:

17 Q Now, going back to the procedure with the different
18 agencies, is there a specific procedure with the Highway
19 Patrol?

20 A The Highway Patrol can only bring items in during
21 business hours to be accepted by a property and evidence
22 technician. That is the only time they're allowed to bring
23 them in. So, one of us would handle it directly for them.

24 Q And do they have a, an assigned person that comes
25 periodically to pick up evidence from your vault?

1 A They do based on what you have.

2 Q Thank you.

3 Nothing further.

4 THE COURT: Thank you.

5 SOLICITOR MONTs: Your Honor, we ask that Mrs. Bennick
6 be excused.

7 THE COURT: Okay. Without objection?

8 MRS. WIYGUL: Without objection.

9 SOLICITOR MONTs: Your Honor, state calls Trooper
10 Spence.

11 A.J. SPENCE, being first duly
12 sworn, testified as follows:

13 CLERK: State your full name for the record please.

14 WITNESS: Allen Spence.

15 CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY SOLICITOR MONTs:

18 Q Trooper, please tell the jury where you're employed and
19 how long you've worked there.

20 A I'm employed by the South Carolina Department of Public
21 Safety. I've been working there for 14 years.

22 Q And what are your duties with the Department of Public
23 Safety?

24 A For the past five years I've worked at the central
25 evidence facilities, evidence technician.

1 Q And what are your duties in that position?

2 A To collect and preserve evidence collected by the
3 Highway Patrol state wide.

4 Q And is -- do you come to Greenville periodically?

5 A Yes, ma'am, in 2005, when this case took place, I was
6 assigned the Greenville area.

7 Q And when you come to Greenville, where do you go and
8 what do you, what is your procedure?

9 A Procedures, I would normally visit the Greenville
10 Highway Patrol office to pick up the, the evidence that they
11 have there. We visit the Ace Team office, and go by the
12 Greenville Law Enforcement Office to pick up drugs that they
13 have there for delivery.

14 Q And did you have occasion to come to the Greenville
15 property and evidence room at the law enforcement center on
16 May 11th, '05?

17 A Yes, ma'am, I did.

18 Q And did you pick up any evidence -- tell me what
19 evidence you picked up at that time.

20 A I, I don't recall every item that I picked up on that
21 particular day. I do have a chain of custody here that I'm
22 on. Excuse me. We picked up a, an item from the Greenville
23 P&E, Corporal Owens. Erik Maurice Morrow is the subject.
24 Picked up that item from Greenville P&E.

25 Q And how many items were there on that day on this case?

1 A On, on that particular case, there were two items.

2 Q And what did you do once you took those, custody of
3 those two items?

4 A I returned to our office in Columbia. I logged the
5 information on the computer and put the evidence in our
6 safe.

7 Q And describe your safe in Columbia.

8 A We actually have five, five levels of security. You
9 can't even get in the building without it being accessed in
10 with a card or buzzed in. We have cameras that watch the,
11 surveil the area 24/7. We have a phone print reader and a,
12 the technicians -- there's only five of us in the entire
13 state. Thumb print access to get into the drug area.
14 There's a cage inside with a key and another card reader.
15 And within that cage, there's a, a room and that's where we
16 house the drugs in a safe. All of this is under electronic
17 surveillance.

18 Q And did you check the drugs out from this sealed
19 location in Columbia to anyone?

20 A Yes, ma'am, I did.

21 Q Who was that and when?

22 A On January the 14th, 2008, to B.M. Howard, Corporal
23 B.M. Howard, Highway Patrol.

24 Q And what procedures did he have to do to go through to
25 get this from you?

A.J. Spence - Direct examination
by Solicitor Monts

1 A Corporal Howard was in Columbia. He's by the office.
2 He had, had requested a transfer of drugs for trial up here
3 in Greenville. He had signed the chain of custody when in
4 logging out on the computer. Transferring the evidence, I
5 placed the evidence, again, in his custody and he brought
6 them up here.

7 Q Thank you. No further questions.

8 MRS. WIYGUL: I no, have no questions.

9 Thank you, Trooper Spence.

10 WITNESS: Thank you.

11 SOLICITOR MONTs: Your Honor, the State calls Trooper
12 Howard.

13 D.M. HOWARD, being first duly
14 sworn, testified as follows:

15 CLERK: State your full name for the record please.

16 WITNESS: Mark Howard.

17 CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY SOLICITOR MONTs:

20 Q Corporal Howard, please tell the jury where you're
21 employed and how long you've worked there.

22 A I'm employed with the South Carolina Department of
23 Public Safety. It's a division of South Carolina Highway
24 Patrol. Actually assigned to the basic criminal enforcement
25 unit as the K-9 supervisor.

1 Q And are part of your duties dealing with transferring
2 evidence?

3 A Some, sometimes, yes.

4 Q And is -- in this case, did you do that?

5 A I did.

6 Q Okay. Please describe -- did you go to the vault in
7 Columbia and pick up anything on this case?

8 A I did. I was in Columbia on January the 14th, and I
9 had been advised, I don't remember if it was a phone call,
10 by email, by Corporal Owens that he had a trial coming up,
11 and that Allen Spence was gonna be unable to attend the, the
12 Court date because he had a doctor's appointment or
13 something. And I was asked if I would retrieve the, the
14 items and transport them up here for trial.

15 Q And describe what you had to go through to check them
16 out.

17 A Allen Spence, he had all the paperwork ready. I
18 basically just signed my name saying that I had received the
19 drugs. I did inspect them to make sure that's what I had.
20 Didn't want to sign for something that I didn't have. I did
21 look at it. And once I received it, had it in my
22 possession, I put it in, actually put it in my drug safe
23 that I have in my vehicle where I store all my K-9 training
24 aids. I'm the only one that, that has a key to it. I kept
25 it in there until I believe I got to -- it was the very next

1 day I came to the Greenville office and deposited these
2 items into the Ace drug safe or drop box in the Ace office
3 in Greenville.

4 Q And describe the security there.

5 A It's, it's like -- it's a mailbox, like a big mailbox
6 where you put up and dump it in there. Once you, once you
7 let the letter go in there, you can't get it out. The same
8 way with the drugs. You drop it in there, you can't get it
9 out.

10 Q And did you bring these items, State's Exhibit 8 and 9,
11 with you to Court today?

12 A I did, yes.

13 Q And describe how you brought them to Court with you.
14 Actually I believe it was yesterday. But --.

15 A Yes, I, I got them out of the drug safe yesterday.
16 Corporal Owens had the key. Got them out, I got them, and
17 logged them back into my possession from the drug safe to
18 me. Put them back in my K-9 training box for transportation
19 over here and got them out of that box and brought them here
20 for that trial.

21 SOLICITOR MONTs: Your Honor, we move State's Exhibit 8
22 and 9 into evidence at this time.

23 MRS. WIYGUL: Your Honor, may we approach?

24 (Whereupon, a bench conference was held out of the
25 hearing of the jury at this time.)

1 SOLICITOR MONTs: Yes, Your Honor. We move Exhibits 8
2 and 9 into evidence at this time.

3 THE COURT: All right.

4 MRS. WIYGUL: Without objection, Your Honor.

5 (Whereupon, State's Exhibit No. 8 and 9 were received
6 into evidence at this time.)

7 SOLICITOR MONTs: No further questions of this witness,
8 Your Honor.

9 MRS. WIYGUL: I have no questions.

10 Trooper, thank you for coming up.

11 WITNESS: Thank you.

12 SOLICITOR MONTs: Your Honor, the State calls James
13 Armstrong.

14 JAMES ARMSTRONG, being first duly
15 sworn, testified as follows:

16 CLERK: State your full name for the record please.

17 WITNESS: James William Armstrong.

18 CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY SOLICITOR MONTs:

21 Q Mr. Armstrong, please tell the jury where you're
22 employed and what your duties are there.

23 A Yes, ma'am, I'm employed with the Greenville County
24 Department of Public Safety forensics division and crime
25 laboratory. I have a dual function as a firearms examiner

1 and a drug chemist.

2 Q Can you please give us the extent of your education?

3 A Yes, ma'am, I have a Bachelors of Science Degree in
4 Chemistry from Erskin College. I have training in the area
5 of drug identification. Approximately one year under the
6 direction of our lab supervisor. I've attended the forensic
7 chemist center sponsored by the Drug Enforcement
8 Administration in Washington D.C. I've attended numerous
9 instrumental analysis schools concerning the instruments I
10 use in my analysis.

11 I have to go through continuing education courses
12 periodically when we can locate them close to the area, and
13 I've testified as an expert in the area of drug
14 identification no fewer than 105 times in federal, state,
15 and local courts.

16 SOLICITOR MONTs: Your Honor, we'd move Officer, excuse
17 me, Mr. Armstrong as an expert in the field of chemical drug
18 analysis.

19 MRS. WIYGUL: No objection, Your Honor.

20 THE COURT: Okay.

21 Q Mr. Armstrong, I'm gonna hand you what's been entered
22 into evidence State's Exhibits 8 and 9.

23 Can you please identify these for the jury?

24 A Yes, ma'am, I can. State's Exhibit No. 9 is a heat
25 sealed bag which has my initials and date which I sealed it

1 in the outside bag. The inside bag has my initials with an
2 item number and weight where I sealed the evidence. And on
3 the bag, they contain the powder substance. Also has my
4 initials and the date and a check mark signifying that it
5 was sealed when I opened it.

6 State's Exhibit No. 9 has my initials and a date on the
7 outside sealed. Once again, has my item number, initials on
8 the bag which contains the rock substance, and has my
9 initials and the date where I had to cut, in the office, the
10 bag open.

11 Q And where did you get these substances from to analyze
12 them?

13 A I received them from the property and evidence room
14 located in the basement law enforcement center.

15 Q And after you analyzed them, did you produce a report?

16 A Yes, ma'am, I did.

17 SOLICITOR MONTS: Your Honor, marked for identification
18 please.

19 (Whereupon, the drug report was marked as State's
20 Exhibit No. 12 for identification purposes only at this
21 time.

22 Q Mr. Armstrong, I'm handing you what's been marked for
23 identification State's Exhibit 12.

24 Can you please identify this for the jury?

25 A Yes, ma'am, this is a copy of my laboratory report

1 generated for this case here.

2 Q And do you have results for how many items are on
3 there?

4 A I have two items.

5 Q And have you signed this report?

6 A Yes, ma'am, I did.

7 SOLICITOR MONTS: Your Honor, we move this into
8 evidence at this time, State's Exhibit 12 for
9 identification.

10 MRS. WIYGUL: Your Honor, we would, we would make the
11 same objection as to the prior report. Just under the best
12 evidence rule, that he's here, he's testified to the
13 contents of the report.

14 THE COURT: He can, he can testify that was in his
15 report. I'll let it in.

16 SOLICITOR MONTS: I'm sorry, Your Honor.

17 THE COURT: I'll, I'll let the report in. I overrule
18 the objection.

19 (Whereupon, State's Exhibit No. 12 was received into
20 evidence at this time.)

21 Q And Mr. Armstrong, please publish your or tell us what
22 your results were.

23 A Case number 11-2005 at 73 had Item A, which is a bag
24 containing powder substance, which I found it to be cocaine
25 with a weight of 8.66 grams. My Item B of the bag

1 containing rock substance, found it to be crack cocaine,
2 which is also known as a cocaine base, with a weight of
3 10.27 grams.

4 Q And on the cocaine, what -- please tell us what the
5 amount of grains would be on this.

6 A With 8.66 grams, there are gonna be 15.43 grains per,
7 per gram, and that comes out, that comes out to 133.64
8 grains.

9 Q And how much is one -- how many grams is one grain?

10 A One gram is 15.43 grams.

11 Q Grams?

12 A One gram is 15.43 grains.

13 Q So, how many would, how many grams would ten grains be?

14 A Ten grains is 0.65 grams.

15 Q And, and I believe you, you may of misstated the
16 previous one, grams to grains.

17 A One, one gram equals to 15.43 grains.

18 Q Okay. Thank you very much. Thank you. No further
19 questions.

20 CROSS-EXAMINATION

21 BY MRS. WIYGUL:

22 Q Mr. Armstrong, when you test these drugs, how do you
23 separate any foreign substances that are mixed in with them?

24 A If I have a substance that, such as these here, I
25 thought I had a foreign substance come up and indicate on

1 my, my personal, instrumental test, then I would run it on a
2 the gascromatograph massspectrometer. Gascromatograph is a
3 separation tool. It basically is an oven that separates.
4 Then I would identify the contents there.

5 However, on this case I did not have to go that step.
6 I identified them on, based on the Interior Transform
7 Infrared Spectrometer or F.T.I.R., which gave me a, a match
8 to our standards which we have run and compared against
9 cocaine and crack on these.

10 Q And I'm, I'm sorry, Mr. Armstrong, I'm gonna have to
11 ask you to bring this down to layman's terms---

12 A No problem.

13 Q ---for me, for me to be able to understand it.

14 My understanding, from what you're saying, is that
15 these drugs were a hundred percent drug?

16 A I---

17 Q There was no foreign substance in them?

18 A I did not detect a foreign substance. I found the
19 presence of cocaine and crack.

20 Q Okay. were you given any indication that it was
21 possible that some foreign substances would be in these
22 drugs?

23 A No, ma'am, I'm checking for the presence or absence of
24 a controlled substance and not going any further.

25 Q what information are you given whenever you're, you

1 give, you get these drugs to test?

2 Who tells you I need drugs tested?

3 A The officer must fill out a lab request form. The lab
4 request form just has his name, the suspect name if he wants
5 to provide it, with the information such as a case number,
6 incident date, type of case, and items to be tested.
7 They'll state what, item one or two, test for the, cocaine
8 or crack or just test for drugs, and we test for the
9 presence of those.

10 Q Okay. And is it common practice for officers to kind
11 of give you a heads-up or let you know if there's a
12 possibility of foreign substances being in there?

13 A No, ma'am.

14 Q No.

15 So, you, you check thoroughly and make sure on
16 everything?

17 A We check to see what we have and make sure that it is
18 or is not a controlled substance.

19 Q Okay.

20 A If we find a controlled substance, we report our
21 findings.

22 Q Okay. And you have a very specific procedure that you
23 follow, right?

24 A Yes, ma'am.

25 Q And you -- what, what happens to the drugs whenever

1 you're done testing them?

2 A Once I complete testing them, I seal them in a, with my
3 initials on the date in a double heat sealed pouch, and
4 they're transported back to the property and evidence room
5 for storage.

6 Q Okay. So, you don't have any information about where
7 these drugs came from or anything else except for the
8 officer, the defendant name, and the date that the drugs
9 were taken?

10 A That's correct.

11 Q Okay. would, would you ever take drugs home with you?

12 A No, ma'am.

13 Q Never?

14 A Never.

15 Q And why?

16 A We have a locker in my office which is there to secure
17 the evidence. Another reason I do not want foreign
18 substances such as controlled substance in my house with my
19 kids in there.

20 Q That's, that's probably for the best.

21 Is there any other reason?

22 Is it to prevent any kind of question coming up,
23 question coming up in Court?

24 A Well, it does, I believe, go against the integrity of
25 the evidence if you take it out of the secured environment

1 and take it to your house.

2 Q No further questions. Thank you.

3 SOLICITOR MONTS: Your Honor, may we ask that this
4 witness be excused?

5 THE COURT: Without objection?

6 MRS. WIYGUL: Without objection.

7 SOLICITOR MONTS: Your Honor, that would be the State's
8 showing.

9 THE COURT: Mrs. Wiygul.

10 MRS. WIYGUL: Your Honor, the defense would rest at
11 this time. We, we do have, we do have a motion that we'd
12 like to make outside the presence of the jury.

13 THE COURT: All right. Ladies and gentlemen, we're
14 ready for the arguments and charge. Do not discuss the
15 case. Wait until you've heard the statements by the
16 attorneys and I'll go over the law with you. I'll bring you
17 back in just a few minutes and we'll finish the case with
18 the closing arguments and the jury charge.

19 Thank you.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Okay.

23 MRS. WIYGUL: Your Honor, we would move for a directed
24 verdict on the escape charge. There's been no competent
25 evidence that Mr. Morrow was actually attempting to flee,

1 that he did anything except change locations within the car.
2 The car wasn't even put in gear. Apparently it couldn't
3 have been put in gear.

4 SOLICITOR MONTS: And, and, Your Honor, I'm looking for
5 the, the statute at this moment. But the attempt to
6 escape---

7 MRS. WIYGUL: And Your Honor, the indictment, while it
8 has the attempt language within the indictment, the
9 indictment is for escape on the front.

10 SOLICITOR MONTS: Your Honor, just one moment please.
11 (Pause.)

12 MRS. WIYGUL: Your Honor, while Mrs. Monts is looking,
13 we would just bring it to the Court's attention once again
14 the car did not move. Mr. Morrow is not the one that
15 started the car. The trooper left it running. He, he, in
16 no way, changed the car's capability of moving.

17 SOLICITOR MONTS: And Your Honor, under Statute
18 24-13-420, escaping or attempting to escape includes, while
19 a person is in custody, that he attempts to escape, to
20 attempt to escape, or to have in his possession tools or
21 weapons which may be used to facilitate an escape.

22 There's, there's enough evidence for the jury to
23 consider whether the fact that he locked the police out of
24 their own vehicle, took his own seat belt off, slid over
25 behind the driver's door, and as one of the officers

1 testified, tried to push the car into gear, that there was,
2 that this was an attempt for him to escape the scene.

3 He definitely locked the police away from him. He had
4 the means to escape if he had been able to get the car into
5 gear and he may have been able to get it into a gear. And
6 he absolutely was making an attempt to escape the, the
7 custody of the police officer.

8 MRS. WIYGUL: And, Your Honor, this is---

9 THE COURT: well, now, 24-13-410 applies to a person
10 lawfully confined in prison or upon public works for escape.
11 He was neither, neither of those. I'll grant it.

12 SOLICITOR MONTs: Your Honor---

13 MRS. WIYGUL: Thank you, Your Honor.

14 SOLICITOR MONTs: ---or while in the custody of a
15 superintendent, guard, or officer.

16 THE COURT: of, of a prison facility is what it's
17 saying. Escaping or attempting to escape from prison.

18 MRS. WIYGUL: And Your Honor, Mrs. Monts made me think
19 of the older case---

20 THE COURT: It's the title of the statute.

21 MRS. WIYGUL: ---where, where it was charged under
22 common law.

23 THE COURT: There's, there's a case right on point that
24 says if it's charge under statute, it's not, it's got to be
25 in prison. If it's charged under common law, it could, it

1 could go forward.

2 MRS. WIYGUL: Yes, sir.

3 THE COURT: It's charged under the statute. So, I'll
4 grant the motion.

5 MRS. WIYGUL: Thank you, Your Honor.

6 THE COURT: It's more than---

7 MRS. WIYGUL: And also bring---

8 THE COURT: It's more in the nature of resisting arrest
9 anyway. But it does not fit the statute.

10 MRS. WIYGUL: we would also bring a motion for a
11 directed verdict motion on the habitual traffic offender
12 charge. Section 56-1-470 states that violations considered
13 in suspensions shall be disregarded in subsequent
14 suspensions. Specifically, as to reckless driving, in
15 evidence is evidence that Mr. Morrow had been suspended on a
16 points violation in October I believe of '04 for, with the
17 reckless driving. That reckless driving was used in a
18 subsequent habitual traffic offender, which would be in
19 violation of---

20 SOLICITOR MONTG: Which, which, which statute are you
21 quoting?

22 MRS. WIYGUL: 56-1-760.

23 THE COURT: What is the form that's documenting this
24 statute or what?

25 MRS. WIYGUL: Your Honor, the reckless driving

1 conviction that Mrs. Monts claims is one of the basis for
2 the habitual offender had been previously used for a points
3 suspension on Mr. Morrow's license, and both of those
4 letters of suspension are in evidence if Your Honor would
5 like me to hand them up.

6 SOLICITOR MONTs: And Your Honor, this sounds like an
7 issue, if it is one, to be taken up with the Department of
8 Motor Vehicles. He was sent a letter stating that he was a
9 habitual traffic offender.

10 MRS. WIYGUL: And Your Honor, that may be the DMV's
11 rules. But this is a statute. This, this isn't the DMV's
12 rules for the privilege of having a driver's license. This
13 is a criminal statute.

14 SOLICITOR MONTs: Your Honor, the habitual traffic
15 offender is under statute as well.

16 MRS. WIYGUL: And Your Honor, I do have a case cite
17 that discusses the statute if you'd like it. That would be
18 Jones versus South Carolina State Highway Department from
19 the Supreme, South Carolina Supreme Court in 1966. It's 247
20 S.E. 132.

21 SOLICITOR MONTs: And Your Honor, I'd like the
22 opportunity to go look this case up.

23 (Pause.)

24 SOLICITOR MONTs: Your Honor, may I take five minutes
25 to go look this up?

1 THE COURT: So, you're saying if his license had been
2 suspended under the points systems or whatever that it can't
3 be used subsequent to that?

4 MRS. WIYGUL: Well, they can't use the same reckless
5 driving for the points suspension and for habitual traffic
6 offender, Your Honor.

7 THE COURT: I'm going to deny the motion. I'm going to
8 send the habitual traffic offender.

9 MRS. WIYGUL: And we would---

10 THE COURT: I'll, I'll note that case. You put it, you
11 put it in the record.

12 MRS. WIYGUL: Yes, Your Honor.

13 THE COURT: I think that just goes to using it for a
14 suspension under the points suspension. It doesn't go to
15 the habitual traffic offender statute.

16 MRS. WIYGUL: And, and, Your Honor, the -- well, I
17 won't, I won't argue anymore.

18 THE COURT: Okay.

19 MRS. WIYGUL: We would also make a motion for a Rule 5
20 Brady violation as the mechanism, the, the two part safety
21 feature that apparently exist in the Camaro's. That is
22 never been brought to defense's, defense counsel's
23 attention.

24 THE COURT: Ain't got anything to do with the case now.
25 I threw the escape out.

1 MRS. WIYGUL: Yes, Your Honor.

2 THE COURT: All right.

3 MRS. WIYGUL: And we, we would make a motion for
4 directed verdict on all charges, Your Honor.

5 THE COURT: Okay. There's sufficient evidence to
6 submit, submit the drug cases, cases to the jury and the
7 habitual traffic offender.

8 Okay. All right. I'm gonna give y'all ten minutes.

9 MRS. WIYGUL: Thank you, Your Honor.

10 SOLICITOR MONTs: Thank you.

11 (Whereupon, a short recess was taken at this time.)

12 THE COURT: Mrs. Monts, you open in full?

13 SOLICITOR MONTs: Yes, Your Honor.

14 THE COURT: And she gets the last argument.

15 SOLICITOR MONTs: Yes, Your Honor.

16 Okay. Everybody ready?

17 SOLICITOR MONTs: Will you tell us which charges you're
18 sending back?

19 THE COURT: I'm sending back trafficking, distribution,
20 cocaine, trafficking in crack, habitual traffic offender,
21 and I don't know. I don't know about possession with
22 cocaine with intent to distribute. I thought you had him
23 charged with distribution of---

24 SOLICITOR MONTs: Your Honor, he's charged with both.

25 THE COURT: All right. Well, on the possession of

1 cocaine with intent to distribute, he could be in simple
2 possession of that. But now on the distribution of cocaine,
3 I'm not sure how that could be simple possession because
4 their testimony was he delivered it from himself to West.

5 MRS. WIYGUL: That's, that's my understanding, Your
6 Honor, and I believe I had only requested that charge be
7 read in relation to the possession with intent to distribute
8 charge.

9 THE COURT: Okay.

10 SOLICITOR MONTs: And Your Honor, we, we would object
11 to the possession going back. It is 11 times the inference
12 weight, and he had just sold cocaine to the government
13 witness.

14 MRS. WIYGUL: And Your Honor, we would, we would cling
15 to the hopes that he is innocent until he's proven guilty if
16 found so by the jury.

17 THE COURT: Okay. I'll, I'll -- well, the cocaine
18 statute, I'm going to charge them just simple possession
19 and---

20 SOLICITOR MONTs: In, in addition to possession with
21 intent to distribute?

22 THE COURT: Charge them trafficking. Now, on the
23 distribution, it's, it's got to be either distribution or
24 guilty or the not guilty. Can not be---

25 SOLICITOR MONTs: Right.

1 THE COURT: ---lesser included offense on the
2 distribution charge.

3 SOLICITOR MONTES: Correct.

4 THE COURT: Okay.

5 SOLICITOR MONTES: And so, on the possession with intent
6 to distribute, you're charging the lesser included of
7 possession?

8 THE COURT: Yeah, if they, if they chose to find that,
9 I'm going to charge them that. So, you got trafficking --
10 it can be either trafficking or nothing, zero, no lesser
11 included offenses.

12 Okay. Got it?

13 Y'all understand that?

14 SOLICITOR MONTES: Yes, Your Honor.

15 MRS. WIYGUL: Yes, Your Honor.

16 And may we inquire about the spoliation charge?

17 THE COURT: I'll charge it.

18 MRS. WIYGUL: Thank you, Your Honor.

19 SOLICITOR MONTES: Your Honor, what, what is the
20 spoliation charge?

21 THE COURT: Spoliation charge is -- I've got it. The
22 state must prove beyond a reasonable doubt -- well, I just
23 printed it out. And, and the, the state has the burden of
24 producing evidence which could establish the innocence of
25 the defendant. If evidence is lost or destroyed, there's an

1 inference that the evidence would be inverse to that party.
2 And if you find that, first, that the evidence was spoiled
3 or destroyed, and if you further find that the evidence
4 could help establish the innocence of the defendant, you may
5 consider those facts in deciding whether the State has met
6 it's burden of proof.

7 SOLICITOR MONTES: And, and, Your Honor, I didn't know
8 this was gonna be an issue. But there is case law which
9 says the destruction of evidence must be shown to have been
10 in bad faith in order for it, for it---

11 MRS. WIYGUL: Would you like for me to respond, Your
12 Honor?

13 THE COURT: I'm sorry?

14 MRS. WIYGUL: Would you like for me to respond?

15 THE COURT: Yeah.

16 MRS. WIYGUL: Well, considering that the pictures have
17 never been mentioned prior to this date, I mean I believe
18 that would go for a bad faith showing right there. There's
19 been no affidavits, no letters of explanation, nothing as a
20 result of that. I'm unaware, I'm unaware of any case law
21 that, that requires bad faith. But if it's, if Your Honor
22 feels it's required---

23 THE COURT: Well.

24 SOLICITOR MONTES: And, and, Your Honor, I have it. I
25 just don't have it here with me. But the bad faith would

1 be, have to be that the officer or whoever it was, in bad
2 faith, destroyed the evidence and the officer clearly
3 testified it was an accident, that evidence on other cases
4 or photos of, on other cases as well as this were harmed and
5 destroyed when his computer crashed.

6 THE COURT: I'm not saying that he did it in bad faith
7 or anything of that nature. But it is pictures of the scene
8 and, and pictures that are evidence in this case. And the
9 jury's got to find that it was spoiled or destroyed and that
10 it would help establish his innocence, and they may consider
11 it as to whether or not you met your burden of proof. I'm
12 going to charge that.

13 Okay.

14 MRS. WIYGUL: Thank you, Your Honor.

15 (Whereupon, the following takes place within the
16 presence of the jury.)

17 THE COURT: Which one is Mr. Sullivan?

18 JUROR: I am.

19 THE COURT: Okay. Would you be the foreperson, Mr.
20 Sullivan?

21 JUROR: Yes, sir.

22 THE COURT: Okay. He can just sit right there. You
23 can sit there.

24 All right.

25 SOLICITOR MONTES: Mr. Foreman, ladies and gentlemen of

1 the jury, this is the last time you're gonna hear from me.
2 I'm going give you my summation. I'm gonna tell you
3 everything I think you should put your focus on when you're
4 back deliberating in the, the jury room. And if anything
5 that I say is different from how the 12 of you back there
6 collectively remember, remember it how you remember it. If
7 there's any evidence you want to see that's in evidence, and
8 you have any questions about it, you can ask.

9 Now, especially the one video that was not shown to
10 you. That is in evidence. If you want to see, it's on a
11 DVD. If you want to see it, you are allowed to see that.
12 Just ask the judge.

13 So, we want you to be happy with your resolution. We
14 want you to have all the evidence that has been presented,
15 and we want you to come to the unanimous verdict that this
16 case deserves.

17 Now, what do you use to decide what happened on
18 April 15th of, excuse me, March 14th of 2005, which was
19 the incident date?

20 You use your backgrounds, your experiences, your common
21 sense. In this case, ladies and gentlemen, can clearly be
22 shown by those three things, your backgrounds, your
23 experiences, and your common sense.

24 Now, you've got testimony from the witness stand, and
25 you got physical evidence to take back with you.

1 what don't you know?

2 Right now, you don't know an explanation of the
3 charges. I'm gonna go over that. There are four charges
4 that are gonna be going back for you. If anything I say
5 differs from what His Honor tells you in a few minutes when
6 he starts instructing you on the law, remember it how he
7 tells you. Because, again, I'm just here telling you my
8 point of view and, and what I think you should focus on.

9 Now, first, we're gonna, I'm gonna start in
10 chronological order. You heard about the SLED case, South
11 Carolina Law Enforcement Division, undercover case. That
12 was, and I'm gonna abbreviate, a distribution of cocaine.
13 You're gonna have that charge back with you to consider.

14 You had testimony from witnesses. You had two SLED
15 agents, Agent Branham, Agent Asbill, and undercover
16 government witness, Mr. West.

17 Now, what did they tell you?

18 They gave you the incident date of March 14th of '05.
19 officers with many years of experience operating undercover
20 drug buys got together with the government witness. They
21 wired him with the, with the recorder. They made the phone
22 call to the defendant on the defendant's cell phone. They
23 gave the defendant, the government witness three one hundred
24 dollar bills that they had marked, that they had written
25 down, and they searched him and his car as the agents

1 testified. Searched the witness.

2 what else did they do?

3 They followed him in a separate vehicle. The first
4 incident was in Spartanburg County. He's not on trial for
5 that one. It was just a consecutive amount of things that
6 were going on. The first incident took place in Spartanburg
7 County.

8 At that time, they met off of I believe it was Highway
9 101 and saw the defendant drive up in the yellow Mustang,
10 get in the witness' car, get back out. The witness
11 immediately went back and met up with Agents Asbill and
12 Branham, gave them the cocaine that he bought. He was
13 searched. He didn't have the money on him anymore, and they
14 retrieved the cocaine. The officers kept custody of the
15 cocaine at that time.

16 what is a distribution?

17 A distribution, in simplest terms, is a delivery. All
18 you have to do is hand something to someone and it is a
19 distribution. You don't have to pay for it, but that's,
20 that's fine too. It's very very simple. Distribution means
21 delivery, handing something.

22 So, the question is did, on this date, the defendant,
23 Mr. Morrow, distribute cocaine?

24 How do you know whether it's cocaine or not?

25 Because you've got the lab back with you from SLED and

1 Nathan McCoy was the agent at SLED who did the analysis and
2 he has items one and items two. Item one was the
3 Spartanburg. Item two was the Greenville one. So, item one
4 was 1.23 grams of cocaine, and it doesn't matter. The
5 amount of the cocaine doesn't matter in a distribution. All
6 you have to have is the delivery, that it was cocaine, which
7 your lab report tells you from your expert, and that it
8 occurred on the date in question.

9 Ladies and gentlemen, the burden on the State is beyond
10 a reasonable doubt, beyond a reasonable doubt. You will not
11 hear His Honor say beyond all doubt, beyond every doubt,
12 beyond most doubt. None of those things. Because very few
13 things in this world can be proven to a hundred percent
14 certainty. Beyond a reasonable doubt. And the State has
15 met its burden on the SLED distribution of cocaine case.

16 Continuing on with that case. They went from the
17 one -- I believe it was Highway 101 in Spartanburg County
18 over to Greenville to White Horse Road where the two
19 officers, Agents Branham and Asbill, were in another
20 parking. They again saw the government witness, Mr. West,
21 parked in the parking lot of, I believe, it, it eventually
22 became the Waffle House. I think they started at the Clock
23 Restaurant, waited for a call from the defendant.

24 What else do you know, what the defendant did?

25 He handed the witnesses \$300.

1 why was he going to Greenville?

2 why didn't he gave the entire \$300 worth of cocaine to
3 the government witness in Spartanburg?

4 Because he didn't have it.

5 He had to go to Greenville and reup or get some more.
6 So, he took some money that he now had, and he went and
7 reupped and then went back, the defendant went back to meet
8 with the witness.

9 officers observed the yellow Mustang come back and meet
10 with the witness at I believe it was the waffle House. They
11 saw the witness, the defendant get out of the yellow
12 Mustang, get into the government witness' car for a few
13 minutes, whatever you remember, but I believe a few minutes,
14 get back out, and then again, the government witness went
15 back and met with the SLED's agents, gave him the second bag
16 of cocaine which -- and you will have both bags, the bag
17 from Spartanburg and the bag from Greenville because they
18 were both analyzed at the same time, and they're separate
19 respective bags. One being item one or A and one being item
20 two or B. And it's the item two or B that was the
21 Greenville cocaine. And again that was 1.23 grams. But the
22 most important thing is that it was analyzed, tested as
23 cocaine.

24 what do we know also that happened at that waffle
25 House?

1 Trooper Owens had received a call and was in the
2 vicinity. He went to that same parking lot and he testified
3 he didn't know who he was looking for at this time or what
4 was going on. But he did see the yellow Mustang. He did
5 see the government witness in his car. And the person in
6 the yellow Mustang got out and getting into the government
7 witness' car. So, not only do you have testimony from two
8 SLED agents, you have testimony from a highway patrolman who
9 saw the same thing happen.

10 So, we'll go on now to the Highway Patrol cases. The
11 Highway Patrol had several cases. And again, if you want to
12 see that other video that was from Trooper Owens' car, that
13 is in evidence, State's Exhibit 11.

14 You'll see the, the defendant's yellow Mustang going
15 down I-85 in Greenville County. The trooper pull ing him
16 over.

17 Now, remember there were three cars. The, the
18 defendant's car is front, Trooper Owens car is second, and
19 McCauley's car is third. The video that you saw earlier is
20 from the third car, McCauley's car. You could see forward.
21 when you're watching Trooper Owens car, the video is going
22 forward. You're not gonna see much of the people. But you
23 will hear the audio. The people are on the side of, of the
24 car. But anyway just to distinguish the two.

25 Now, what did the defendant do when he was pulled over?

1 Did he say hi, I'm Erik Morrow?

2 No, he did not. He said I'm Joey Sims. Here's my
3 Kentucky driver's license, and here's a South Carolina
4 identification card showing you that I am Joey Sims.

5 What else does he do?

6 He let's the officer write him a ticket or a warning
7 for driving under suspension. I believe it was a ticket.
8 But whatever you remember.

9 It's not until that point that Mr. Morrow decides you
10 know what, at some point he comes to realize I better figure
11 out who I really am and let them know because he had other
12 ID's on him. There were several that the officers asked him
13 about. You can hear it on the tape.

14 One of those was a ID or a driver's license for -- I
15 believe it was a South Carolina ID for Erik Morrow, and you
16 hear him on the tape saying who's Morrow. He says I'm
17 Morrow. That's who I am.

18 Well, what do we know about Mr. Morrow?

19 When they eventually ran his name and driver's license
20 under Morrow, he was driving under suspension and he was a
21 habitual traffic offender meaning he had three serious
22 convictions for driving. I believe it's within a, a certain
23 amount of years. You will have the letter that the, State's
24 Exhibit 4 that the Highway Department sent Mr. Morrow to his
25 address of record telling him you are a habitual traffic

1 offender. You are on notice.

2 They do not have to prove that he ever received it.

3 All they have to do is prove that they sent it.

4 what do we know about habitual traffic offender?

5 Two things.

6 They need to be sent notice from the Department of
7 Motor Vehicles. They need notice sent.

8 And then what do they do to violate habitual traffic
9 offender?

10 They need to drive on the roads of South Carolina.

11 what did Mr. Morrow do?

12 He had notice sent to him and he drove on the roads of
13 South Carolina during the time frame, the five years where
14 he was not suppose to. Those five years being, and it's on
15 the, the letter which you'll have back with you, the five
16 years being October 28th, 2004, to April 28th, 2009.

17 The defendant is guilty of habitual traffic offender
18 violator.

19 what else do we know besides the fact that he
20 originally gave a fake name?

21 When they get him out and are waiting for dispatch to
22 call back and explain, you know, who this is and whether
23 their driver's license is valid and whether he's authorized
24 to drive on the roads of South Carolina, the officers pat
25 him down. Officer McCauley, after he's arrested for the

1 driving under suspension, is searching him thoroughly.

2 As Mr., excuse me, Trooper Owens first told you, the
3 original pat down was just for weapons, just a quick pat
4 down, get you out of the car, write you out a warning till
5 they find out that's not who he really is. Then once he's
6 under arrest, because whatever is on him is gonna be going
7 into the law enforcement center, they then have to search
8 for weapons or contraband that may be hidden. He feels, in
9 his, in his pants somewhere, a object. They've already
10 gotten his cell phones. They've already gotten his wallet.
11 You can hear that on the tape. So, there's something else
12 in his hands that is not suppose to be there.

13 They don't have gloves. You can -- remember how you
14 remember it. But they don't have gloves at the moment. One
15 of them goes to get the gloves. The other one is standing
16 there, but not watching real closely. Somehow he jiggles
17 around, gets the two plastic bags out of his pants and into
18 his hands, and he's crushing it. Crushing the evidence.

19 The officers told you they didn't try to pick up what
20 was on the ground, the part that was on the ground, because
21 that would of been mixed up with dirt and rocks. They left
22 that there. They just took what was left in the plastic bag
23 that was still whole.

24 They found two bags. One of crack cocaine and one of
25 cocaine that are partially the same. Their base is the

1 same. But eventually, through a cooking process, they
2 become two separate things. You will have both, as State's
3 Exhibit 8 and 9, back there. And can you -- the crack is
4 more of a cookie or a hard, harder solid rock although it
5 does get some crumbs coming off it, and the cocaine to be
6 more of a powdery type substance. He had both of those in
7 his pants.

8 The charges that he is charged with were these two
9 substances. On the crack cocaine, which I based on the drug
10 analysis. You heard from James Armstrong, the chemist here
11 in Greenville. The crack cocaine came back 10.27 grams.
12 The cocaine came back 8.66 grams. His Honor is gonna talk
13 to you about trafficking, trafficking crack cocaine. I'm
14 gonna abbreviate, T-R-F-K. Trafficking crack cocaine means
15 that simple. This is simple. You are in possession, it's
16 in his pants, he's in possession of it, of more than
17 ten grams. Possession of more than ten grams. The
18 defendant is in possession of more than ten grams of what
19 has been proven to you to be crack cocaine through a
20 chemist.

21 what's the charge on the cocaine?

22 possession, and I'm gonna abbreviate, possession with
23 intent to distribute cocaine because it's under the
24 ten grams.

25 what do you have?

1 8.66.

2 If this had been ten grams, the charge would of been
3 trafficking.

4 What do we know?

5 We know some of the drugs were crunched in his hands,
6 dropped on the floor. We also heard testimony from the
7 officer that there was white powder substance on the seat of
8 his car.

9 Ladies and gentlemen, the defendant knew what he was
10 doing when he was crunching up these drugs, dropping it on
11 the ground because he was trying to get rid of evidence, get
12 rid of evidence.

13 The defendant is guilty of possession with intent to
14 distribute cocaine and trafficking crack cocaine.

15 And what is their inference amount of possession with
16 intent to distribute?

17 Yes.

18 That inference is why I asked James Armstrong about the
19 grains. The grains is a smaller amount. And in cocaine, to
20 be possession with intent to distribute, all you need is
21 .65 grams. That is all you need for an inference amount to
22 be possession with intent to distribute.

23 And I -- the reason I say, talking about grains, is
24 because ten grains is what the statute says. And ten grains
25 equals .65 grams. And he also told you the total amount of

1 the 8.66 grams equals 133.64 grains.

2 Ladies and gentlemen, the difference between ten and
3 133, and if my math is wrong, please do it yourself, but I
4 believe that's a good 11 times the amount needed for the
5 inference. We're not talking barely over the amount. We're
6 not talking twice the amount to be, to give the ID. We're
7 not talking three, four, five, six, seven, eight, nine, ten.
8 We're talking eleven times the amount needed for the
9 inference weight of possession with intent to distribute
10 cocaine.

11 what else do we need to know?

12 We know that the defendant just distributed cocaine to
13 a SLED government witness. You can use all the factors that
14 you heard in this case to consider what the defendant
15 intended to do with that. Eleven times the inference
16 amount. Plus he had previously, just sold some to a
17 government witness.

18 Ladies and gentlemen, this 8.66 grams equals possession
19 with intent to distribute cocaine.

20 As I said at the beginning, you're gonna have all this
21 evidence back there to look at. You're gonna have the two
22 lab reports. One from SLED and one from our lab in the
23 Greenville crime lab. You're gonna have the letters, the
24 three letters that just tell him he was, that the three
25 violations that made him a habitual traffic offender, and

1 the letter telling him hey, this is it, you are now a
2 habitual traffic offender.

3 You're gonna have the video that you saw. If you want
4 to see that one, just ask the bailiff to talk to the judge.
5 You can see that one again or part of it. If you want to
6 see the video you didn't see, that's in evidence. You're
7 allowed to see that as well.

8 You got the audio from the distribution, which you're
9 welcome to, to listen to that. It didn't turn out very
10 well. Wish it had. But it didn't. But we do have two eye
11 witnesses to the two distributions. That would be the two
12 SLED agents. And at the second scene, the trooper was also
13 there to see what happened in the parking lot at the waffle
14 House on White Horse Road.

15 Now, talking about the marked money. The evidence from
16 the first distribution, remember that was found on the
17 defendant when he was stopped by the Highway Patrol. The
18 marked money from the first buy. There were only two one
19 hundred dollar bills as I said earlier. One of them had an
20 explanation you can choose to accept or not was part of the
21 money that the defendant used to reup or to get some more to
22 go and give and sell to the defendant.

23 He got three one hundred dollar bills. He goes to
24 reup. He comes back. He has two of the one hundred dollar
25 bills. They were taken off him by the Highway Patrol when

1 he was arrested for the DUS and the HTO.

2 what else do we know?

3 Three hundred dollars worth of cocaine.

4 Ladies and gentlemen, that's not a user on trial. That
5 is a dealer and a trafficker on trial. He can provide \$300
6 worth of cocaine to a government witness. That's a large
7 amount.

8 what do you know about his credibility?

9 He doesn't want anyone to know who he is. He gives a
10 fake name. Not only does he give a fake name, he's got the
11 ID card. You can hear on the tape, but I believe Trooper
12 McCauley says that doesn't look like you. And he was off on
13 his date of birth I think by seven years. I think, I think
14 he's 35 and the DOB said, the date of birth said 42. But he
15 was off by a good amount of time. He didn't even know how
16 old he was suppose to be if we were Joey Sims.

17 what else do we know?

18 When the highway patrolman stopped the defendant, he
19 had the same phone on his person that the SLED agents
20 testified that they called. Agent Branham testified about
21 that. It's not only the phone they called. He's got the
22 marked money they called and the SLED agents were present
23 when the call was made to order up \$300 worth of drugs.

24 As far as the photos -- I'm gonna mention a few things
25 that I believe that the defense is gonna try to base their

1 case on. Because, ladies and gentlemen, this, in the
2 State's opinion, is a very solid case.

3 So, I believe they're gonna try to veer off on a rabbit
4 trail. Remember the State's burden is beyond a reasonable
5 doubt. It's not all doubt.

6 What about the photos?

7 You see the trooper taking photos on the video. He
8 doesn't have them. He explained his computer crashing.
9 Nothing intentional, he testified about it. Photos from
10 other cases were lost in that accident as well.

11 But you do have the videos. You do have the videos to
12 watch.

13 What about him, the force that was required to get this
14 coke and this crack off of the defendant?

15 Ladies and gentlemen, if they hadn't used any force,
16 it's possible they would of gotten no evidence because it
17 would of all been crushed and dropped on the floor on the
18 ground out by the highway. They used the amount of force
19 necessary to get the drugs out of the defendant's hand.
20 Once he did that, he was released.

21 Of course he struggled and didn't, didn't do what they
22 said because he didn't want them to get this much dope and
23 he did a very fine job because they got less than ten grams
24 on the cocaine.

25 Listen to the officer's breathing and what they're

1 saying because you can tell on the video they are not out of
2 breath. They are not yelling. And as soon as the defendant
3 gives up the drugs, he is fine. And he doesn't say anything
4 else.

5 Four charges, ladies and gentlemen, distribution of
6 cocaine from the South Carolina Law Enforcement Division.
7 Highway Patrol has three charges, habitual traffic offender,
8 trafficking crack cocaine, and possession with intent to
9 distribute cocaine. Defendant having the drugs in his
10 pants. He had them in his pants.

11 He was in possession of them. He intended to
12 distribute them. And on the trafficking crack cocaine, all
13 he had to do was be in possession of more than ten grams.

14 Your background, your common sense, and your experience
15 will show you and lead the 12 of you to render a truthful
16 verdict, a truthful verdict that you swore to uphold at the
17 beginning of this trial. And we believe once you
18 deliberated, once you looked at the evidence that you wanted
19 to look at, and once you discussed the issues you need to
20 discuss, that you will come back with a verdict of guilty on
21 all four of these charges.

22 Thank you.

23 MRS. WIYGUL: Ladies and gentlemen of the jury, Mrs.
24 Monts is right. I think those missing photos are a huge
25 deal. They're awful.

1 I mean what, what kind of country do we live in if
2 that's the way you make a case?

3 Mrs. Monts, speaking on behalf of the State, told you
4 that she wants you to be happy with the resolution of this
5 case. I don't feel that way. I don't necessarily want you
6 to leave happy with the resolution. But I want you to leave
7 feeling like you have voted your conscience, that you have
8 done what you thought was the right thing to do, whether it
9 makes you happy or not, because that's your job. It's not
10 an easy one. She is right that you need to rely on your
11 background, on your experience, and on your common sense.

12 Now, going through the witnesses, we heard from Agent
13 Branham and she told you they gave the confidential
14 informant, Mr. West, they gave him \$300. The reason he was
15 doing all of this is because he had some charges up in
16 Woodruff and he wanted them to go away and they did. They
17 went away. We heard what his record was and we heard that
18 there were no convictions from Woodruff. I am very curious
19 about what his record would of looked that, looked like if
20 it showed everything that had disappeared for any work he'd
21 done for agencies.

22 Now, Agent Branham told you that West drove his own car
23 to Greenville, and she didn't mention searching his vehicle.
24 Agent Asbill did. He said they searched his vehicle. But
25 they both told you they trusted West.

1 How carefully do you think that vehicle was searched?

2 Now, keep in mind, when you're thinking about Mr. West,
3 that he knew, if he didn't give them somebody to arrest,
4 that he was gonna have to face the charges that he had
5 pending. The only way to make those charges go away is to
6 hand up somebody else and hand them up nice and tight, drugs
7 in hand.

8 Now, Agent Branham told you that she made contact with
9 Trooper McCauley and Trooper Owens. Agent Branham told you
10 that a dark green undercover car pulled right up beside them
11 and that she didn't remember the officer's name, which
12 officer it was, but we know that Trooper Owens was the only
13 one working. So, unless some Camaro that just happened to
14 strongly resemble an undercover police vehicle pulled up
15 beside the agents, those, that just doesn't mesh. One of
16 them is wrong.

17 Agent Branham told you that Owens gave him the car
18 phones or the, the cell phones and the \$200. Owens handled
19 all the evidence from the traffic stop. McCauley was
20 basically there in some type of capacity as a supervisor or
21 backup.

22 Now, Randall West. Randall West told you he's good at
23 getting people to trust him. Agent Asbill told you he saw
24 it was either a BMW or Mercedes. Trooper Owens said he saw
25 a Mercedes. So, we'll go with Mercedes.

1 Mr. West is driving his Mercedes. He didn't want those
2 charges in Woodruff. You got to ask yourself how carefully
3 did the agents search that Mercedes cause you know they let
4 him drive it to Greenville.

5 Now, Randall West said that Mr. Morrow told him where
6 to meet. Both Agent Branham and Agent Asbill told you that
7 Mr. West is the one that set the meeting spot and told
8 Mr. Morrow where to go. Mr. West said that he was doing
9 drugs around that time. He wasn't doing marijuana and he
10 was buying that for somebody else, and he wasn't doing
11 crack. He was buying that for somebody else.

12 This is not a trustworthy man. You have to ask
13 yourselves is this the kind of person that we want our SLED
14 agents trusting when they're trying to make these cases.

15 When they're trying to get bad people off the street,
16 do you want them trusting Mr. West to do the job?

17 He couldn't even be honest about where he worked
18 because when he was asked oh, yeah, yeah, yeah, I work for
19 this construction company out of Dallas. But when I asked
20 him about whether he filed taxes, he was a little bit
21 sketchy on that point.

22 Now, Mr. West said that the agents were very close the
23 whole time. All this was going on, during both these
24 meetings, they were very close. Twenty-five, fifty feet
25 tops.

1 Now, both the agents told you they were across the
2 street in a parking lot. But at one point, Mr. West drove
3 around behind a hotel, disappeared out of their sight
4 altogether. The agents told you this is what happened and
5 they didn't try to pretty it up because they know the jobs.

6 But in this case, they put their trust in the wrong
7 man. Because as much as Mr. West might be good at getting
8 people to trust him, I don't trust him. I don't believe
9 that he gave us any reason on that stand to trust him.

10 Now, Agent Asbill told you that the wire, which was
11 available, Agent Branham told you it was available, had much
12 clearer sound. He could of heard everything. We could of
13 heard what really happened between Mr. West and Mr. Morrow
14 because they had that little wire and it's high tech and we
15 live in a technological age. And that wire would of let you
16 hear everything that happened.

17 Mr. West didn't want to carry a wire. He'd rather just
18 have a little recorder. And you heard the results of the
19 recorder. And I would urge you, if your ears can take it,
20 listen to this audiotape because there's one point on it
21 where you can hear him talking about clothes, the clothes
22 that Mr. West needed to give Mr. Morrow that belonged to
23 Sandy. And Mr. West admitted he had had those clothes. He
24 admitted he owed her money. And that's where the money
25 transfer came from because she wasn't talking to him. He

1 had to go through Mr. Morrow.

2 Think he was mad about it?

3 Think he was mad enough about it to say---

4 SOLICITOR MONTS: Objection, Your Honor. She's
5 testifying to things that are not in evidence.

6 THE COURT: Okay. You can only argue reasonable
7 inferences from things that are in evidence.

8 MRS. WIYGUL: Yes, Your Honor.

9 You have to take these things into consideration.

10 Trooper McCauley took the stand. Now, I submit to you
11 that Trooper McCauley is probably the most trustworthy
12 person that was submitting evidence that we have up there
13 today. He told you he didn't know why Trooper Owens pulled
14 the guy over. He told you that Agent Branham told him Erik
15 Morrow is in the yellow Mustang.

16 They knew who he was. He told you that he and Trooper
17 Owens, and I quote, "tried to retrieve everything they
18 could." They tried to get those drugs up to them. But the
19 chemist came in and told you that the drugs he received to
20 test were absolutely pure. I mean nothing. No dirt. No
21 gravel. No rocks. No lint from the car. Nothing. Cause
22 you know, they're absolutely pure.

23 You have to ask yourself, is it reasonable, in your
24 experience and common sense, that two plastic bags get
25 ripped open, drugs fly, and yet by the time it gets to the

1 chemist, there's nothing else in those bag?

2 Just one bag of absolute nothing but pure cocaine in
3 it, and one bag with nothing but rocks and crack.

4 You look at these bags. You see if they look like
5 they've been through what you can see on these videos. You
6 ask yourself what was the amount to start with.

7 Now, Trooper McCauley told you, and if you look at this
8 video you can see it, 13:29, the defendant told these
9 officers he had really bad asthma. Now, Trooper Owens told
10 you that he went and got the inhaler. Watch the video
11 because Trooper McCauley told you he didn't remember. He's
12 a very honest man. But if you watch the video, we saw
13 Trooper McCauley go and get that inhaler. We saw him tell
14 Owens I mean to let him have it. We saw him warn Trooper
15 Owens hey, man, don't forget my video's on because he knew
16 that one day somebody was gonna be watching that video.

17 Now, Trooper McCauley also says that the narc agents
18 would meet them at the LEC. On the video, at 13:47, you can
19 see and you can probably see better than Trooper, Trooper
20 Owens video cause it's right behind the Mustang, when the
21 trunk is opened, it is completely full of grocery bags of
22 women's clothing. You can see this on the video. We would
23 submit that those are sandy's clothes.

24 Now, we saw how upset Trooper Owens got during this
25 stop. And troopers are human. Nobody expects them to be

1 automated out there. Things are gonna happen. They're
2 gonna get upset. But they're held to a higher standard than
3 the rest, than the rest of us cause they have more power.
4 They have a lot of power.

5 I want you to watch the video and see what Trooper
6 Owens considers soft empty hand control. Now, that morphed
7 during his explanation to control through pain management.
8 I would submit to you that the control through pain
9 management gives a much better description of what you see
10 on this video.

11 Now, I think one thing that shows a lot in this case is
12 a slip up that was made. Just, just one of those Freudian
13 slips. Everybody makes them. And they do. They show us
14 what underlies things that are on the surface.

15 And right before lunch, the state said, the trooper
16 calls, trooper, and she said I made a mistake. And she did
17 made a mistake. If you see where Trooper Owens is sitting.
18 He's the driving force behind this case. He is mad. He
19 wants revenge. He is the only one with the key to the Ace
20 drug box. He's in charge of it. He is the head of the
21 aggressive criminal enforcement team, and the aggressive I
22 believe is the right word.

23 Now, Trooper Owens told us that when he pulled into the
24 parking lot on White Horse Road he was not near, did not see
25 any other vehicles. But Agent Branham told us dark

1 undercover patrol vehicle pulled up beside us. He says that
2 he pulled Mr. Morrow over for following too closely and
3 speeding.

4 Ask yourself. Use your common sense. You've been
5 contacted, this aggressive trooper had been contacted by
6 SLED, asked to assist with Erik Morrow in the yellow
7 Mustang, and he's pulling him over for following too
8 closely. Use your experience and common sense. Ask you or
9 ask yourself if historically you're aware of anyone that has
10 been asked to step out of the vehicle and stand there while
11 a trooper writes a warning ticket. Ask yourself if that's
12 the procedure that's followed.

13 He says that he called for backup, and I'll quote this,
14 "just because he had a sense." It wasn't because he had a
15 sense. It was because SLED had called him and Trooper
16 McCauley and said would you assist us. There's the sense.

17 He says that he visually observed two plastic baggies
18 in the groin area of Mr. Morrow. You saw that video.
19 McCauley told you he felt the lump that shouldn't have been
20 there. He wanted to know what it was. There was no visual
21 observation. They pulled Mr. Morrow's pants off. You can
22 see it in the video on the side of the street. Owens
23 knocked him down with a knee to the back. Soft empty hand
24 control.

25 Now, Kara Bennick is in charge of the evidence room,

1 the property and evidence over at the law enforcement
2 center. And she outlined her procedures to y'all. And she
3 told y'all everything they do to keep evidence safe. And I
4 believe that the Chemist McCoy and the Chemist Armstrong
5 also testified as to all these measures that they go through
6 to make sure that evidence is protected for trial, that
7 evidence is kept so that nobody can question its accuracy or
8 what it shows.

9 Trooper Owens says oh, I just took those pictures home
10 and put them on my personal computer, accidentally erased
11 them all. You have to ask yourself, you have to use your
12 common sense and experience.

13 You have to ask yourself does Trooper Owens strike you
14 as the type of man that does things like just randomly takes
15 stuff home and put it on his personal computer?

16 James Armstrong told you he would never take evidence
17 home cause it wouldn't be right. Trooper Howard outlined
18 more security measures. Trooper Spence outlined more
19 security measures. All these security measures are done to
20 protect the rights of Mr. Morrow, to protect the rights of
21 anyone who's arrested. That's what the procedures are there
22 for is to make sure that the right people get charged with
23 the right crimes. It's to make sure that they're not
24 convicted on just someone else's say so. It's because
25 there's evidence.

1 Now, as to the distribution of cocaine, just briefly,
2 ask yourself who arranged to meet who where. Mr. West told
3 you that Mr. Morrow contacted him and told him where to
4 meet. Both of the SLED agents told you that Mr. West is the
5 one that contacted Mr. Morrow and told him where to meet.

6 The audio recordings. Both of the SLED agents
7 testified that a wire was available. Agent Asbill testified
8 that the sound on those things is clear. You could actually
9 heard everything that was going on, everything that was
10 being said.

11 As far as how well West was searched, we talked about
12 that. You just have to ask yourselves did they really trust
13 this guy. And if they trusted him, how well did they search
14 that Mercedes or did they just kind of look in and say, oh,
15 yeah, no drugs, yeah. Because Mr. West is sneaky. He is
16 not somebody you want to trust. He's not somebody who's
17 worthy of your trust.

18 Now, those pictures that are missing, they are
19 important. They're important because we don't know what
20 they show. We know what Troopers Owens said they showed.
21 But if they were here we could see them. I urge you to
22 listen to what the judge tells you about inference because
23 the inference in regards to evidence that is destroyed by
24 the State is important.

25 Now, we spoke about Trooper Owens is the lead of the

1 aggressive criminal enforcement. But I would submit to you
2 that what would be more appropriate is an appropriate
3 criminal enforcement. Not aggressive. Just appropriate.
4 Just arrest the people that need to be arrested and charge
5 them with what they actually have done.

6 You need to ask yourself is this the way the public in
7 Greenville wants cases to be made.

8 Is it appropriate?

9 Is it appropriate to let someone avoid charges that
10 they have by setting somebody else up?

11 Is it appropriate for SLED agents to trust someone with
12 the character of Mr. West?

13 Is it appropriate for evidence just to disappear and
14 that's to be okay because it was just an accident?

15 Even though it was totally outside of the procedure, is
16 it appropriate?

17 Ask yourself is it appropriate for officers to take
18 evidence home with them and intermingle it with their
19 personal property. I submit to you that it is not at all.

20 Not only is it not appropriate, it's not acceptable.

21 Appropriate criminal enforcement is the message that needs
22 to be sent.

23 I would ask you to look at the witnesses that we've had
24 over the past two days. I would ask you to take the time to
25 look at those videos, to listen to what you can make out of

1 that audio recording.

2 we would ask you to send a clear message to the law
3 enforcement of what you believe is appropriate and what is
4 not.

5 Thank you.

6 THE COURT: Okay. Ladies and gentlemen of the jury,
7 you've heard the evidence and testimony. Now I'll go over
8 the law with you that applies to these cases or this case,
9 and then you will deliberate till you reach a verdict.

10 This case comes to us on four indictments, which I hold
11 in my hand, or charges alleging distribution of cocaine,
12 possession with intent to distribute cocaine, trafficking in
13 crack cocaine, and habitual traffic offender.

14 Now, these indictments are just pieces of paper. As I
15 told you at the very beginning, they're not evidence in the
16 case. The fact that someone has been charged and arrested
17 is not any evidence of their guilt. These are just pieces
18 of paper that brings the case to Court, and you will
19 eventually record your verdict on the back of these pieces
20 of paper.

21 To these charges the defendant pleads not guilty. This
22 plea of not guilty places the burden of proof upon the State
23 of South Carolina to prove him guilty of any charge beyond a
24 reasonable doubt. No matter what the seriousness of the
25 charges are, a criminal defendant is never required to prove

1 himself innocent of any charge.

2 Now, ladies and gentlemen, that's a cardinal and an
3 important rule of the law of evidence in a criminal case.
4 No matter what the seriousness of the charges are, a
5 defendant is always presumed innocent of the crime for which
6 he's charged until you, the jury, hears evidence that
7 satisfies you of his guilt beyond a reasonable doubt.

8 Now, that's not a mere legal theory or a legal phrase,
9 but a substantial right which all of us are entitled to.
10 That is the presumption of innocence until the jury is
11 satisfied of guilt beyond a reasonable doubt.

12 Now, ladies and gentlemen, in this case all of us have
13 different functions and responsibilities. The attorneys ask
14 the questions and give the answers to their questions, and
15 the court reporter takes down all the testimony. And we
16 don't have a copy of the transcript right now. But she's
17 taking it down if she has to type it up in the normal
18 shorthand that the court reporters use. The clerk keeps the
19 records. I make rulings on the law.

20 You, ladies and gentlemen, are the sole judges of the
21 facts of this case. It's your responsibility and yours
22 alone to pass upon the evidence and the testimony the,
23 credibility and the believability of the witnesses. You
24 determine the facts.

25 In that regard, I am, I am prohibited from discussing

1 the facts with you under the Constitution, and I would not
2 do that. I appreciate you being there more than any person
3 in this courtroom.

4 If I have done anything to lead you to believe that I
5 have a feeling about the facts of this case, you disregard
6 that. If I did anything, I did not mean to.

7 Now, in passing upon the credibility and the
8 believability of the evidence and the testimony, and I know
9 you wouldn't do this lightly, but you have the right to
10 believe everything a witness testifies to or disbelieve
11 everything a witness testifies to. You can believe part of
12 what a witness testifies to or disbelieve part of what a
13 witness testifies to. You can believe one witness as
14 against several or several witnesses as against one.

15 You can ask yourself how did the witness come to know
16 the facts about which they testified, was there other, other
17 evidence and testimony to make the testimony of that witness
18 stronger or weaker.

19 I just mentioned these things to you to emphasize,
20 ladies and gentlemen, you and -- it's your responsibility to
21 determine the facts, and you give whatever weight you think
22 the testimony of any witness deserves in finding the facts
23 of this case.

24 Now, in most cases they're two types of evidence.
25 There's direct evidence and circumstantial evidence. Direct

1 evidence is testimony of a person who asserts or claims to
2 have actual knowledge of the facts. Something gained
3 through their five senses.

4 Circumstantial evidence is evidence, proof of a chain
5 of facts and circumstances that indicates the existence of
6 the fact. And the law makes absolutely no distinction
7 between the weight or value to be given to direct evidence
8 or circumstantial evidence. Nor is a greater degree of
9 certainty required of circumstantial evidence than of direct
10 evidence.

11 You ladies and gentlemen should weigh all the evidence
12 in this case. After weighing all the evidence in the case,
13 if you're not convinced of the guilt of the defendant beyond
14 a reasonable doubt, you must find the defendant not guilty
15 of any crime charged.

16 The State has the burden of proving each and every
17 element of these crimes beyond a reasonable doubt, and I'll
18 go over the elements with you in just a minute. If you have
19 a reasonable doubt as to the guilt of the defendant, he is
20 entitled to that doubt and you would find a verdict in favor
21 of the defendant. A reasonable doubt may exist because of
22 the evidence and testimony you've heard or the lack of
23 evidence and testimony in the case. If you have a
24 reasonable doubt as to the guilt of the defendant, he is
25 entitled to that doubt and would be entitled to an acquittal

1 or a verdict of not guilty.

2 what is a reasonable doubt?

3 A reasonable doubt is the kind of doubt that would
4 cause a reasonable person to hesitate to act. Now, if you
5 served on, in, in civil court this week, and we have two
6 judges doing civil court, you would be told that the burden
7 of proof in civil cases is by the greater weight or the
8 preponderance of the evidence. In a criminal case, the
9 state's proof is more powerful than that. It's beyond a
10 reasonable doubt.

11 Proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of the defendant's guilt. Now, they're
13 very few things in this world that we can know with absolute
14 certainty and the law does not require proof that overcomes
15 every possible doubt. If, based on your consideration of
16 the evidence, you are firmly convinced that the defendant is
17 guilty of the crime charged, you must find him guilty. If,
18 on the other hand, you think there is a real possibility
19 that he is not guilty, you must give him the benefit of the
20 doubt and find him not guilty.

21 Now, ladies and gentlemen, the fact that a defendant
22 does not testify in his own behalf can not and must not be
23 considered against him under any circumstances or in any
24 manner whatsoever. The fact that a defendant does not take
25 the witness stand in his own behalf does not create any

1 presumption against him and I will charge you that you must
2 not permit that fact to weigh in the slightest degree
3 against the defendant nor should this fact enter into your
4 discussions or deliberations in the jury room in any way.

5 Under the Constitution of South Carolina, and under the
6 Constitution of the United States, it is the prerogative of
7 a defendant to testify or to remain silent. And the burden
8 of proof is always upon the State of South Carolina to
9 establish his guilt by competent testimony beyond a
10 reasonable doubt.

11 Now, ladies and gentlemen, in a case they're, they're
12 allegations of spoliation or destruction of evidence. The
13 State not only has a burden to prove guilt beyond a
14 reasonable doubt, but has a burden of producing evidence
15 which could establish the innocence of a defendant. When
16 evidence is lost or destroyed by a party, you may infer that
17 the evidence which was lost or destroyed by that party would
18 have been adverse to that party. If you find first that
19 evidence was spoiled or destroyed, and if you further find
20 that the evidence could help establish the innocence of a
21 defendant, you may then consider those facts in deciding
22 whether or not the State has met this burden of proof beyond
23 a reasonable doubt.

24 Ladies and gentlemen, the defendant is charged with
25 distribution of cocaine. In regard to this charge on this

1 indictment, the State must prove all those elements beyond a
2 reasonable doubt. The law in South Carolina, 44-53-370,
3 makes it unlawful for any person to distribute cocaine.

4 Now, they're three elements that the State must prove
5 beyond a reasonable doubt. That the substance involved was
6 in fact, cocaine, that the defendant had possession of the
7 cocaine, either in actual possession, his actual physical
8 custody or constructive possession, he had dominion and
9 control over the cocaine or the premises of, or place where
10 the cocaine was found, and the State must prove that it was
11 distributed to another person. Distribute means to convey
12 from one person to another whether it be done for free or
13 for profit.

14 On distribution of cocaine, the State must prove,
15 beyond a reasonable doubt, that the defendant, Erik Morrow,
16 in Greenville County, on the or about the 14th of March of
17 2005, distribute cocaine. The State must prove beyond a
18 reasonable doubt that the substance distributed was cocaine
19 and that it was distributed to another person. In this
20 case, the allegations are to an undercover operative in
21 Greenville County. That's a violation of the law.

22 If the State is proven each of those elements beyond a
23 reasonable doubt, your verdict would be guilty of
24 distribution of cocaine. If they have failed to prove any
25 element of that crime beyond a reasonable doubt, your

1 verdict would be not guilty of distribution of cocaine.

2 Now, I'd ask you to consider each one of these charges
3 and, separately and write your verdict. Whatever verdict
4 you reach on any charge must be a unanimous verdict. All 12
5 of you have to agree.

6 Now, the defendant is charged with possession of
7 cocaine with intent to distribute the cocaine. In regard to
8 that charge, the State must prove that Erik Morrow, Erik
9 Maurice Morrow, did, in Greenville County, on or about the
10 14th day of March 2005, possess with intent to distribute
11 a quantity of cocaine.

12 Now, the State must prove beyond a reasonable doubt
13 that he possessed the cocaine with the intent to distribute
14 it. Possession must be proven beyond a reasonable doubt
15 that he had both the power and the intent to control the
16 disposition or the use of the cocaine.

17 Now, again, possession may be the actual possession or
18 constructive possession. As I told you, actual possession
19 means the cocaine was in his actual physical custody.
20 Constructive possession means that he has dominion and
21 control or the right to exercise dominion and control over
22 either the cocaine itself or the property on which the
23 cocaine was found.

24 Mere presence at the scene where drugs are found are
25 not enough to prove possession in any case. Now, in proving

1 possession with intent to distribute, I will charge you that
2 possession of more than ten grains of cocaine creates an
3 inference that the defendant possessed the cocaine with
4 intent to distribute it. This inference does not relieve
5 the State from proving, beyond a reasonable doubt, that the
6 defendant had the intent to distribute it. It's simply an
7 evidentiary fact to be taken into consideration by you along
8 with any other evidence in the case.

9 You may consider the amount of the substance possessed,
10 the manner in which it was possessed, the place where it was
11 allegedly possessed, and any other factors which you
12 consider to be important. But you must find that the
13 defendant possessed the cocaine not through its own use.
14 But with the intent to distribute that cocaine.

15 Now, on this verdict, ladies and gentlemen, you can
16 find the defendant, if all the elements are proven beyond a
17 reasonable doubt, the defendant guilty of possession with
18 intent to distribute cocaine or you may consider a lesser
19 included offense. If you should find that he possessed the
20 cocaine, simple possession, and the State has not proven
21 intent to distribute beyond a reasonable doubt, you may find
22 the defendant guilty of a lesser included offense of
23 possession of cocaine.

24 If you have a reasonable doubt as to whether he's
25 guilty of the greater offense or the lesser offense, you

1 have to give him the benefit of the doubt and find him
2 guilty of the lesser included offense. If you find that,
3 that the State is not proven, beyond a reasonable doubt,
4 that he possessed cocaine, then your verdict would be not
5 guilty. They're three possible verdicts in this indictment.
6 Possession of cocaine with intent to distribute, possession
7 of cocaine, or not guilty. And again, your verdict would
8 have to be unanimous.

9 Now, the State has charged the defendant with
10 trafficking in crack cocaine. 44-53-375 of the Code of Laws
11 of South Carolina makes it unlawful, makes trafficking in
12 crack cocaine unlawful. The State must prove, beyond a
13 reasonable doubt, that the defendant knowingly, that means
14 with knowledge, not accidentally, it means intentionally,
15 they must prove that he knowingly possessed or had in his
16 possession, his actual possession or constructive possession
17 over the drug, had dominion and control over the drug, they
18 must prove to you that he had possession of crack cocaine.
19 They must prove to you, beyond a reasonable doubt, that it
20 was, that it was crack cocaine in his actual physical
21 custody, and that the crack cocaine was ten grams or more.

22 Now, again, the trafficking in crack cocaine, they must
23 prove that Erik Maurice Morrow did, in Greenville County, on
24 or about the 14th of March, 2005, knowingly have in his
25 possession, actual or constructive possession, more than

1 ten grams of crack cocaine. If the State has proven that to
2 you beyond a reasonable doubt, your verdict would be guilty
3 of trafficking in crack cocaine. If the State has failed to
4 prove any element of that crime beyond a reasonable doubt,
5 your verdict would be not guilty. Again, whatever verdict
6 you reach on these charges must be unanimous.

7 Now, the defendant has been charged with being a
8 habitual traffic offender. The State must prove that the
9 defendant, Mr. Morrow, on the 14th day of March of 2005, was
10 operating a motor vehicle in the State of South Carolina
11 while his drive, driver's license was suspended and after he
12 has been declared a habitual traffic offender by the state
13 Department of Transportation.

14 If the State has proven each of those elements beyond a
15 reasonable doubt, your verdict would be guilty of being a
16 habitual traffic offender. If they fail to prove any of
17 those elements beyond a reasonable doubt, your verdict would
18 be not guilty.

19 Now, each person has an equal voice, an equal vote, and
20 equal input into your verdicts in this case. And all 12 of
21 you have to agree and reach a verdict unanimously. But
22 someone has to preside. And I picked your name out, I
23 believe, Mr. Sullivan. Okay.

24 Now, I'm gonna let you step back to the jury room just
25 for a minute. If the attorneys want me to say anything else

1 about the law, I'll bring you back out here. If not, I'll
2 let you begin your deliberations on this case.

3 Okay. Y'all can step back to the jury room.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 MRS. WIYGUL: Your Honor, we would ask that the jury be
7 informed something about the escape charge just to avoid
8 confusion.

9 THE COURT: Okay. Well, they knew it was out there.
10 If they ask me about it, I'll tell them.

11 MRS. WIYGUL: Okay.

12 THE COURT: But I don't want to confuse them anymore in
13 talking about it.

14 MRS. WIYGUL: Okay.

15 THE COURT: Okay.

16 SOLICITOR MONTs: Nothing from the State, Your Honor.

17 THE COURT: All right. We will -- is, is all the
18 evidence -- y'all make sure all the evidence is there and
19 we'll send it back.

20 Ask Mrs. Irby to -- just, just have her stand and wait
21 out in the hall.

22 MRS. WIYGUL: Your Honor, we may have an issue?

23 SOLICITOR MONTs: Yeah, well, the video that we took
24 out the five seconds, we should just not send it back. If
25 they need to see that one, we can show it in the courtroom,

1 Your Honor.

2 THE COURT: Okay.

3 (Whereupon, the jury began deliberations at 4:16 and
4 sent out a question at 5:10.)

5 THE COURT: They wanted to know where to sign the
6 verdict, the indictment. It's on the back where it says
7 verdict. I thought I showed that to them.

8 MRS. WIYGUL: You, you did, Your Honor.

9 (Whereupon, the note from the jury was marked as
10 Court's Exhibit No. 1 for identification purposes only at
11 this time.)

12 (Whereupon, the jury began deliberations again and
13 returned with a verdict at 5:37.)

14 THE COURT: All right.

15 (Whereupon, the following takes place within the
16 presence of the jury.)

17 THE COURT: Mr. Foreman, you reached a verdict?

18 FOREMAN: Yes, sir.

19 THE COURT: Okay. Would you give it to the bailiff
20 please?

21 (Foreman complies.)

22 CLERK: Your Honor, this is Case Number 2005-GS-81-86,
23 The State versus Erik Morrow. He's indicted for trafficking
24 in crack cocaine. The verdict is guilty.

25 2005-GS-8185, he's indicted with possession of cocaine

1 with intent to distribute. The verdict is guilty.

2 2005-GS-8189, he's indicted with habitual traffic
3 offender. The verdict -- a verdict is guilty.

4 2005-GS-8109, he's indicted with distribution of
5 cocaine. The verdict is guilty.

6 If this is your verdict so say you-all?

7 (Whereupon, all jurors respond in the affirmative at
8 this time.)

9 CLERK: Thank you.

10 THE COURT: Any questions according to the verdict,
11 Mrs. Wiygul?

12 MRS. WIYGUL: No, Your Honor.

13 THE COURT: Mrs. Monts?

14 SOLICITOR MONTs: No, Your Honor.

15 (Whereupon, the jury was dismissed at this time.)

16 THE COURT: All right. All right. Mrs. Monts, you say
17 it's a third drug offense?

18 SOLICITOR MONTs: Yes, Your Honor. I'd like, I'd like
19 and I'll be happy to put his prior drug record, prior record
20 on the record.

21 MRS. WIYGUL: And Your Honor, we believe that the
22 indictments do not specify, the CDR codes on the indictments
23 are for first offense. And during the course of the jury
24 trial, if Mrs. Monts was wanting to convict him of third
25 offense, then that is something she should of proven to the

1 jury or else it should of been, been indicted as third
2 offense.

3 SOLICITOR MONTES: And Your Honor, CDR Code, and I have
4 case law, is just for administrative purposes of the, of the
5 Clerk of Court's Office. It is, it is not allowable for the
6 State to prove at all what offense it is for the jury, and
7 the CD, and sentencing is in the, for the judge and that the
8 priors are to be for the judge, Your Honor. Not for the
9 jury to hear.

10 MRS. WIYGUL: And Your Honor, the CDR codes may be
11 procedural or administrative. But the indictment is not.

12 THE COURT: Yeah, but she can't---

13 SOLICITOR MONTES: Your Honor, I, I can get the case law
14 and it says that, that, what offense it is is for sentencing
15 purposes only and the CDR code does not determine that.

16 MRS. WIYGUL: And, and again, again, Your Honor, the
17 CDR code might not. But the indictment should.

18 THE COURT: All right. She could not prove how many
19 offenses it was. That wouldn't be admissible. So, I'm
20 gonna deny the motion and sentence him.

21 You, you need to put the offenses in the record.

22 SOLICITOR MONTES: Yes, Your Honor. And if I need to, I
23 have certified copies of the priors to put into the record
24 if you, if you would like that. And I, I can just hand up
25 the drug ones or I can hand up all of them.

1 THE COURT: Just the drug cases.

2 But what, what is the case about the number of
3 offenses?

4 SOLICITOR MONTES: I, I---

5 THE COURT: I know you do allege it on DUI. So, I
6 don't know---

7 SOLICITOR MONTES: Yeah, on---

8 THE COURT: We'll look at it right now.

9 SOLICITOR MONTES: Your Honor, it's State v. Bennett.

10 THE COURT: Okay.

11 MRS. WIYGUL: Can I get a cite from that, Mrs. Montes?

12 THE COURT: It is August 14th of 2007. Opinion
13 Number 4,287.

14 MRS. WIYGUL: Thank you, Your Honor.

15 SOLICITOR MONTES: And Your Honor, I would put on the
16 record that it would be improper for the Grand Jury or the
17 trial jury to know what offense it was that the defendant
18 was on trial for.

19 MRS. WIYGUL: And Your Honor, we would submit that the
20 Grand Jury, that it most definitely would not be
21 inappropriate whenever there's this much disparity in the
22 sentencing ranges.

23 SOLICITOR MONTES: Your Honor, if I may?

24 THE COURT: Yes.

25 SOLICITOR MONTES: The Grand Jury is just---

1 THE COURT: This, this is the -- I don't know. This,
2 this is something about a community supervision program.
3 They said that he waived any challenge to whatever happened.

4 SOLICITOR MONTES: But, but I, I do believe it talks
5 about how the CDR does not control---

6 THE COURT: The CDR---

7 SOLICITOR MONTES: ---over the statute.

8 THE COURT: I'm not really concerned that much about
9 the CDR Code cause Mr. Morrow wouldn't know what the CDR
10 code is. I doubt that. I don't know. I hadn't did, had
11 this come up that I can remember. But I, I know that we
12 indict them for DUI's on -- it always says more than the
13 first offense.

14 SOLICITOR MONTES: The, the -- Your Honor, if I may.
15 Because that's part of the elements of a DUI in order to get
16 jurisdiction up here. But on drug charges, it would be
17 against -- we can not let the Grand Jury know what offense
18 it is. It is not part of the elements of the, of the charge
19 for the Grand Jury to hear. The -- what offense it is only
20 goes to sentencing on drug charges, and they are very very
21 different from other offenses in that it would, it, it would
22 be improper and we could not let the Grand Jury hear what
23 offense it was. The, the Grand Jury is just for the
24 elements of the offense and what offense it is is not part
25 of the elements.

1 THE COURT: Okay. I, I agree it's not part of the
2 elements. I think you're right.

3 (Pause.)

4 THE COURT: Okay. On the State versus Scribner says
5 that they may not have to -- it was a question -- all right.
6 So, so, I would say he, he can be sentenced as a third
7 offender.

8 All right. And what's the punishment for that?

9 SOLICITOR MONTES: Your Honor, the third offense on the
10 Indictment 05-8186, trafficking in crack cocaine, it's
11 mandatory 25 to 30 years.

12 THE COURT: Okay.

13 SOLICITOR MONTES: The distribution and PWID cocaine
14 both carry 15 to 30.

15 THE COURT: On distribution?

16 SOLICITOR MONTES: Yes, Your Honor.

17 THE COURT: And PWID, the same sentence?

18 SOLICITOR MONTES: Yes, Your Honor.

19 THE COURT: And five years on the---

20 SOLICITOR MONTES: On the HTO, yes, Your Honor. And I
21 would like to put the prior record, prior drug, at least
22 drug convictions on the record.

23 THE COURT: Okay. You got them or do you want them
24 back?

25 SOLICITOR MONTES: I can read them, Your Honor. One

1 vehicle, one Indictment 91-42-385, possession of crack
2 cocaine, March of '93.

3 Second drug conviction was Indictment 92-42-630,
4 possession of crack cocaine from March 11th of 1993.

5 Next drug conviction was Indictment 98-42-1226,
6 possession of cocaine second in 2000.

7 And the, another drug conviction, Indictment
8 06-42-3137, Count One, possession of Xanax, Count Two
9 possession of Valium, from September of 2007.

10 THE COURT: Okay. The 92-6360 was a, was a possession
11 with intent to distribute.

12 SOLICITOR MONTES: I apologize, Your Honor. I
13 apologize, Your Honor.

14 THE COURT: That's all right and that's what I say
15 happened. Now, he, he -- it was pled down to possession of
16 crack cocaine, right.

17 okay. All right. Mrs. -- anything else, Mrs. Montes?

18 SOLICITOR MONTES: Your Honor, he does have other
19 record.

20 Do you care to hear the rest of his record?

21 THE COURT: Yeah, I think I heard it. But you can go
22 back over it.

23 SOLICITOR MONTES: Besides the drug cases we just went
24 over, he has two fraudulent checks from 1990 and 1991.

25 Two more fraud checks in 1992.

1 A criminal conspiracy in 1996.

2 A DUS third, uninsured vehicle in 2006.

3 An HTO in 2000.

4 Hit and run with property damage and failed to stop for
5 a blue light in 2006.

6 DUS in 2004. CDV in 2004.

7 Use of vehicle without owner's consent in 2006.

8 Resisting arrest in 2006. Use of vehicle without owner's
9 consent again in 2006.

10 The charges related to this stop.

11 And then in addition, he has a counterfeiting in
12 Federal court which he pled to in January of 2008.

13 THE COURT: Okay.

14 MRS. WIYGUL: Your Honor, Mr. Morrow's telling me that
15 one of, one of those charges was dismissed. I'm trying to
16 figure out which one.

17 Just, just, just tell the judge.

18 DEFENDANT: In 2006, Your Honor, I pled to driving
19 without owner's consent and that was it. The charge was
20 reduced. And I pled to possession. That's all I pled to in
21 2006 at that time.

22 THE COURT: All right. Mrs. Wiygul.

23 MRS. WIYGUL: Your Honor, Mr. Morrow's 35. He's got
24 three years of college. He's got two children. He has a
25 very supportive family. His mother and sister have been

1 here for the trial. I believe his mother would like to
2 address the Court, and I believe Mr. Morrow would like to
3 address the Court.

4 THE COURT: All right. Ma'am.

5 MRS. MORROW: My name is Lilly Morrow. Thank you for
6 letting me talk.

7 My son, Erik, is very sick. He has a bullet hole in
8 his head, a piece of lead near his brain. He have paralysis
9 in his arm. And he's trying to work at different places.
10 And when they, he find out that he has a bullet in his head,
11 they won't let him work. They'll fire him. But I would ask
12 the Court to have mercy on my son and thank you.

13 SISTER OF THE DEFENDANT: I would like to add also. I'm
14 his sister. My name is Bonita and I also can attest to the
15 fact that I think, you know, since that incident occurred in
16 1996, it put him in a downward spiral. But being around
17 here the last two years, I can see, you know, improvement
18 and he tries to do what's right. And he does by any way
19 possible to do well by his kids.

20 And I do want to thank the Court for the trial that was
21 given to him. And I just ask again for mercy on him in your
22 sentence.

23 Thank you, sir.

24 MRS. WIYGUL: Your Honor, I think it's important for
25 the Court to take into consideration that there was never a

1 plea offer in this case other than plea to everything with
2 no recommendation.

3 SOLICITOR MONTS: And, and, Your Honor, that's not
4 true.

5 MRS. WIYGUL: I'm sorry, Your Honor. According to the
6 information I have in the files I've been provided, the only
7 plea offer I see in the file offers to let him plead to
8 everything with no recommendation. And I believe Mr. Morrow
9 would like to address the Court.

10 DEFENDANT: Your Honor, my name is Erik Morrow. Back
11 in 2005 when this situation occurred, from day one, I didn't
12 never knew that I was facing this, these third offense
13 charges. It was never mentioned to me I was gonna be tried
14⁴ for no third offense charges. It was first -- I first got
15 convicted -- when I was arrested for these charges, I never
16 had been offered for the record at all any kind of offer
17 whatsoever. I have only been trying to go back and forth
18 from this Court trying to get this matter resolved with no
19 resolution till this month hearing.

20 And sir, I have, I have serious medical problems and I
21 am, I am, I am, I am a father first. But I've always knew
22 that I had problems to my, to my brain injury. But sir, I
23 ask you for mercy and I ask you to understand that from, day
24 one back in '05, I have never ever had an offer or anything,
25 any kind of plea or anything, even trial or nothing. To

1 come to this Court now and for her to say that, you know,
2 I'm facing all this time, and I never knew I was even gonna,
3 I was facing it.

4 I knew I was -- I knew I had to go through due process.
5 I thought due process means the whole process. Because of
6 what happened, what's come forth, here I am in front of you
7 now being for mercy, sir, and I ask you to consider that.

8 Thank you.

9 MRS. WIYGUL: And, and Your Honor, just to clarify for
10 the record, Mrs. Monts had offered yesterday morning, we
11 had, she had told me that he could plead to third offense on
12 these charges and she would let him plead to those on the
13 drug charges. If, if there was another plea, Mrs. Monts can
14 clarify that for the Court.

15 SOLICITOR MONTs: Your Honor, I don't think I need to,
16 to go into that.

17 THE COURT: I, I -- Mr. Morrow, you were represented by
18 Steve Henry, and he's a good lawyer, a real good lawyer and
19 then Mr. Abdalla and then Mrs. wiygul. These things, these
20 things happened in 2005. That -- based on all the evidence
21 and testimony as presented, and the case, State versus
22 Scribner, doesn't have to state the offense. But everyone
23 would of been charged with knowing how many drug offenses
24 you had, and I was informed that your prior record had been
25 given to your attorney and that was not disputed.

1 So, with that, it was your third drug offense, and, you
2 know, based on everything that was submitted to the Court,
3 you were selling drugs and the jury believed that and you
4 had a good jury. You had a good well mixed jury of the
5 community. Cross-section of the community of men, women,
6 blacks, and whites. And so, I think it was a fair trial.

7 Okay. For the trafficking in crack cocaine, it's
8 twenty-five years, State Department of Corrections,
9 twenty-five years for distribution of cocaine, twenty-five
10 years for possession with intent to distribute, and five
11 years for habitual traffic offender.

12 MRS. WIYGUL: And Your Honor, may we ask that these run
13 concurrent?

14 THE COURT: Yes.

15 MRS. WIYGUL: Thank you, Your Honor.

16 THE COURT: They, they would if I sentenced him.

17 MRS. WIYGUL: Mr. Morrow would like to ask the Court to
18 permit him to receive credit for the time he has been in on
19 this offense, on these offenses.

20 THE COURT: He'll be entitled to any credit that, under
21 the statute, he's entitled to.

22 MRS. WIYGUL: Thank you, Your Honor.

23 SOLICITOR MONTS: Thank you, Your Honor.

24 Your Honor, do you want the prior convictions in the
25 record?

1 THE COURT: Yeah, it was put in there verbally, but
2 they should be marked.

3 SOLICITOR MONTS: Thank you.

4 (Whereupon, the prior convictions were marked as
5 Court's Exhibit No. 2 for identification purposes only at
6 this time.)

7

8 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh 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 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 3rd and 4th day of March, 2008, as reported by Mary DiGirolamo and transcribed by myself.

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

October 3rd, 2008



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Erik M. Morrow, 266037,)

Full name and prison number (if any) of Applicant.)

2012-CP-23- 03756

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - 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 Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Greenville County Court of General Sessions, 305 E. North Street, Greenville, SC 29601
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2005-GS-23-8185:PWID Cocaine
 - (b) 2005-GS-23-8185: Trafficking Crack Cocaine
 - (c) 2005-GS-23-8189: Habitual Traffic Offender
 - (e) 2005-GS-23-8109: Distribution Cocaine

Revised 3/2003

282 The date upon which sentence was imposed and the terms of the sentence:

- (a) March 4, 2008: 25 years
- (b) March 4, 2008: 25 years
- (c) March 4, 2008: 5 years
- (d) March 4, 2008: 25 years

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (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 "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Conviction Affirmed.
- ii. _____
- iii. _____

(c) the date of each such result:

- i. _____
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. 2011-UP-117
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel.
- (b) Ineffective assistance of appellate counsel.
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to prepare and investigate prior to trial.
- (b) Failure to advise Applicant properly on enhancement due to prior convictions.
- (c) Failure to raise all meritorious issues on appeal.
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 "yes" 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. _____

284 (c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each
such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court,
State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

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) PCR is the proper forum.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes.

(b) your trial, if any? Yes.

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. John P. Abdalla, 522 N. Church Street, Greenville, SC 29601

ii. Stephen J. Henry, 406 Pettigru Street, Greenville, SC 29601

iii. Elizabeth P. Wiygul, 101 Whitsett Street, Greenville, SC 29601

iv. Elizabeth A. Franklin-Best, Office of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201

(b) the proceedings at which each such attorney represented you:

i. Prior to trial.

ii. Prior to trial.

iii. Trial.

iv. Appeal.

19. State clearly the relief you seek in filing this application:

New trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

RECEIVED

286

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

MAY 30 2012

BRC
MAILROOM

I, Erik Morrow, 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.

Erik Morrow 5-30-12

SWORN to and subscribed before me this 30
day of May, 2012

Eugene Keefe (L.S.)
Notary Public

My Commission Expires: April 4, 2016

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

RECEIVED

MAY 30 2012

I, Erik Morrow, 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.

Erik Morrow 5-30-12
Applicant

SWORN or affirmed to and subscribed before me this

50 day of May, 2012

Eugene Keith
Notary Public

My Commission Expires: April 4, 2016

Paul B. WICKENSIMMER
CLERK OF COURT
305 E. North St. Ste. 232
Greenville, S.C. 29601

RE: Please Return a clock-stamped copy.

Dear Court:

This is my original copy of my P.C.R.
application. Could you please Return me A
Clock-stamped copy.

Thank You,
Mr. [Signature]
5-30-12

THE FIRST VIRGINIA
B.R.I. Cong. 122
4460 Broad River Rd.
Columbia, S.C. 29210



RECEIVED

MAY 30 2012

BRCA
MAILROOM

PAUL B. WICKELSIMER
CLERK OF COURT

289
305 E. NORTH ST. STE. 232
GREENVILLE, SC 29601

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-3756
COUNTY OF GREENVILLE	)	
	)	
Erik M. Morrow,	)	
S.C.D.C. No. 266037,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed June 7, 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 October 2005 term of General Sessions for distribution of cocaine (2005-GS-23-8109), possession with intent to distribute (PWID) cocaine (2005-GS-23-8185), trafficking crack cocaine (2005-GS-23-8186), escape (2005-GS-23-8188), and habitual traffic offender (2005-GS-23-8189). Elizabeth P. Wiygul, Esquire, represented the Applicant.

The State took the case to trial, and the Applicant was convicted on four charges – the escape charge was dismissed as a result of trial counsel's motion for directed verdict. On March 4, 2008, the Honorable Larry R. Patterson sentenced the Applicant to concurrent terms of twenty-five years for distribution of cocaine, third offense, twenty-five years for PWID cocaine, third, offense, twenty-five years for trafficking crack cocaine, third offense, and five years for

habitual traffic offender.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, 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. Morrow, Op. No. 2011-UP-117 (S.C. Ct. App. filed March 23, 2011).

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. Failure to investigate and prepare for trial.
 - b. Failure to advise Applicant on sentencing enhancements.
2. Ineffective assistance of appellate counsel.
 - a. Failure to raise all meritorious issues on appeal.

III.

The Respondent submits this application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on March 4, 2008 and the Court of Appeals affirmed on March 23, 2011. The Applicant was therefore required to file his application before March 23, 2012. This application was filed on June 7, 2012, which was more than two months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

Respectfully submitted,

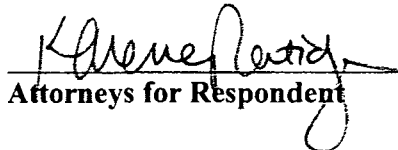
ALAN WILSON
Attorney General

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~~ ^{Sept.} 11, 2012

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

ERIK M. MORROW, 266037

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-23-3756

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 and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Erik M. Morrow, 266037
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29210**

DATED this 11th day of September, 2012.


Judy A. C. Carey, Legal Assistant
For Respondent

IN THE COURT OF COMMON PLEAS

ERIK M. MORROW,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2012-CP-23-03756

FEBRUARY 19, 2014

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

MILLS ARIAIL
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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PLAINTIFF'S/ EXHIBITS

NO	DESCRIPTION	ID	E
P-1	Drug weights	20	20
P-2	Drug weights	20	20

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1

FEBRUARY 19, 2014

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(WHEREUPON, court convened with all parties

3

present and the following proceedings were had.)

4

THE COURT: All right. Ms. Ratigan.

5

MS. RATIGAN: Thank you, Your Honor. May it

6

please the court. This is the case of Erik Morrow

7

versus the State of South Carolina. The docket number

8

is 2012-CP-23-3756. Mr. Morrow was indicted for

9

distribution of cocaine, possession with intent to

10

distribute cocaine, trafficking crack cocaine and

11

escape and habitual traffic offender. He was

12

represented on these charges by Ms. Wiygul. The case

13

was brought to trial in March of 2008. Mr. Morrow was

14

convicted on the distribution, PWID, trafficking and

15

habitual traffic offender charges. And the escape

16

charge was dismissed as a result of the motion for a

17

directed verdict.

18

On March 4th of 2008, Judge Patterson sentenced

19

Mr. Morrow to concurrent terms of twenty-five years for

20

distribution of cocaine third; twenty-five years for

21

PWID cocaine third; twenty-five years for trafficking

22

crack cocaine third; five years for habitual traffic

23

offender. The case was appealed. The Court of Appeals

24

affirmed the convictions and sentences in March of

25

2011.

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PCR Hearing

1 Your Honor, I would note that I originally, in
2 this matter, submitted a return and motion to dismiss.
3 That would have been back in September of 2012, because
4 I inadvertently miscalculated the one year statute of
5 limitations. I calculated it from the date of the
6 direct appeal instead of the date of the remittitur.
7 This matter was, in fact, dismissed. Once I realized
8 my error, I filed a Rule 60(b) motion. Your Honor
9 actually granted my motion about a year ago. I believe
10 it was January of 2013, you granted my motion to vacate
11 the prior order. Once the prior order to dismiss was
12 vacated, I submitted an amended return. That should be
13 in your packet dated February 13th of 2013. So if you
14 see both the return and motion to dismiss and amended
15 return, the amended return is the pleading that
16 controls, since the return and motion to dismiss was
17 erroneously filed.

18 State's ready to proceed.

19 THE COURT: All right. Mr. Ariail.

20 MR. ARIAIL: Your Honor, I've talked with Mr.
21 Morrow in regards to this and he wants me -- as far as
22 this -- let me give a little bit of background. This
23 was a -- kind of two cases into one. This was a
24 distribution case that he had that involved SLED. It
25 began in Spartanburg County and moved over to

1 Greenville County. After he did the distribution, he
2 left in his car and was stopped by the highway patrol,
3 the ACE team, and basically was arrested for a DUS and
4 I think some other items in there.

5 The issue that he has, and the one he's kind of
6 come to me and talked about, at the trial, SLED
7 introduced information about the distribution charge
8 and the weight of the drugs there. He also says that
9 there was information introduced on the drugs that were
10 found in his possession by Corporal Owens of the ACE
11 team and that he put in the record the weights of those
12 drugs; I think there were thirteen grams and twelve
13 grams, which was inconsistent with what the report was
14 from the chemist, Mr. Armstrong, in regards to the
15 weights of those drugs. He's saying that there was
16 some issue in regards to weights, so he has requested
17 that I file a motion, you know, to basically ask you
18 for a continuance to have the drugs weighed.

19 In addition, he is concerned and has asked me to
20 have this matter either continued or placed in front of
21 a different judge because you were the one that
22 reconsidered -- I guess, actually dealt with the motion
23 in regards to the success or the statute of limitations
24 issues. I have told him I didn't think that was an
25 issue, but he wanted me to raise that motion for you to

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1 consider because of your granting that order and then
2 it being rescinded.

3 Those are my two motions.

4 THE COURT: Did I sign both orders?

5 MS. RATIGAN: I can tell you I filed the
6 60(b), and on the front of it, you wrote, motion
7 granted. You dated it and you signed it. So you did
8 grant my 60(b). And let me see. Yes, you signed both
9 the conditional and final orders of dismissal.

10 THE COURT: Right. I had to if I did the
11 reconsideration.

12 MS. RATIGAN: Yes, sir. Oh, and in regard to
13 counsel's motions, we would object and oppose any
14 motion to continue the matter in order to have these
15 drugs weighed because it's irrelevant. Evidence and
16 testimony can be introduced through the court hearing
17 today. And again, we would also object and oppose any
18 motion to continue the matter based on Your Honor's
19 having dealt with the COD, the final order and the
20 60(b).

21 THE COURT: Okay. The basis of my order was
22 that the statute had run. That was wrong because the
23 information I had was erroneous ---

24 MS. RATIGAN: Yes.

25 THE COURT: --- because the remittitur wasn't

1 considered.

2 MS. RATIGAN: Yes, Your Honor. When I did
3 the original return, the actual -- the court affirmed
4 the convictions and sentences in March of 2011.
5 Usually the remittitur is issued one month later. So
6 when I filed the return motion to dismiss, I
7 erroneously stated that it was untimely.

8 However, upon subsequently going back and getting
9 some additional documents, I learned that for some
10 reason the remittitur was not issued until four months
11 later in July, which would have made Mr. Morrow's
12 application timely. So at that point the final order
13 had already been signed and filed, so I filed a Rule
14 60(b) motion to set aside the judgment based on a
15 mistake, which Your Honor granted. And then we did an
16 amended return and got counsel appointed and put it on
17 the roster.

18 THE COURT: Well, there's certainly no issue
19 before the court today related to the statute of
20 limitations.

21 I respectfully deny your motion for the
22 continuance, Mr. Ariail.

23 MR. ARIAIL: All right. Thank you, Your
24 Honor.

25 THE COURT: You may proceed.

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Eric Morrow - Direct Examination by Mr. Ariail

1 MR. ARIAIL: I call Mr. Morrow to the stand,
2 Your Honor.

3 THE CLERK: Mr. Morrow, please place your
4 left hand on the bible 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, ma'am.

10 THE CLERK: Thank you. Please state your
11 full name for the record.

12 THE WITNESS: Erik Morrow.

13 THE CLERK: Thank you. You may be seated.

14 **ERIK MORROW,**

15 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

16 **DIRECT EXAMINATION**

17 **BY MR. ARIAIL:**

18 Q. Mr. Morrow, you were represented by Ms. Wiygul;
19 is that correct?

20 A. Yes.

21 Q. Okay. And you were represented by her, I think
22 it was on five different charges. Is that correct?

23 A. Yes, sir.

24 Q. Distribution of cocaine, PWID cocaine,
25 trafficking cocaine, crack cocaine, and then escape and

1 habitual offender. Is that right?

2 A. Yes, sir.

3 Q. Okay. And you went to trial on these cases, I
4 guess it was in October of 2005; is that right?

5 A. Yes, sir.

6 Q. Okay. Now, how long had she represented you
7 before you went to trial?

8 A. I'd say about probably two and a half weeks after
9 she was appointed to my case.

10 Q. Okay. This was ---

11 A. I met her through a federal charge that I had.
12 That's how I met Ms. Wiygul.

13 Q. Okay. And then she picked the charges up, I
14 guess, two and a half weeks before you were place on
15 the -- went to trial; is that right?

16 A. Uh-huh (affirmative).

17 Q. Okay. So tell me, who represented you before
18 that?

19 A. Okay. When I first got arrested, Mr. Steven
20 Henry had my case. And for three years, going on three
21 years, right at three years, I was represented by two
22 different public defenders because of certain issues.
23 Mr. Henry stepped down to do a death penalty case. And
24 that left me without an attorney. And then they
25 appointed Mr. John Abdalla. And Mr. Abdalla was a

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1 prosecutor on a case I had in Spartanburg. He
2 prosecuted me in the case, which I spoke about that at
3 my -- the beginning of my trial. And he got relieved
4 after the fact that Ms. Wiygul put in the motion to
5 accept my case, because Mr. Abdalla told me that he
6 didn't have -- well, he put it in the record also in a
7 hearing that he did not have time to pursue this case
8 or to try this case because it was a roadside stop and
9 it's going to take a lot of time to get the witnesses
10 together and to do two kind of different -- two kind of
11 investigations that we had going on in my case, because
12 he said there's more to my case. And if you look at my
13 transcript, at the beginning of my transcript, this is
14 brought up because of the fact that it was a
15 complicated case. And he wanted -- he did not have
16 time to even pursue it. But Mr. Miller denied the --
17 denied me getting more time due to the fact that he
18 said that I have to try this case on my own if I remove
19 Mr. Abdalla, even though we should have had an in-
20 camera hearing about the fact that this guy prosecuted
21 me in a case in Spartanburg that they eventually used
22 against me.

23 Q. Okay. I'm going to get back to that. I just
24 wanted to get a little bit of background. We're
25 talking about Ms. Wiygul today; okay?

1 A. Okay. I got you.

2 Q. Now, in regards to that, she took your case. She
3 went forward. Prior to the trial I know there was an
4 issue. You wanted a continuance because you didn't
5 feel like you had enough time to talk with her; is that
6 correct?

7 A. Yeah. Not only just that. Ms. Wiygul, when she
8 accepted my case, she didn't have my discovery. And
9 never did receive full discovery on my case. And so
10 because of that we never had a chance to go through my
11 whole case together. So, and at the time, though,
12 there was a lot of discussions about what was going to
13 happen with my charges. And because of that, she
14 didn't find out what happened to my charges till after
15 the trial started. It was too late, according to Mr.
16 Patterson. Judge Patterson on my case said it was too
17 late; the case was too old.

18 Q. She filed a motion to continue; correct?

19 A. Yes.

20 Q. Did she file the motion that you asked her to
21 file?

22 A. She filed that, but she didn't get the motion for
23 the evidence to be tested because the evidence was in
24 discretion of two grams of the substance. And two
25 grams is so minuscule that I asked for her to get it

1 tested. Because Mr. Owens have already done presented

2 or offered evidence to the court. So I asked Ms.

3 Wiygul if she would please get this stuff tested.

4 Q. Okay. Well, let's concentrate on that because

5 that's one of your issues. You're saying that you told

6 Ms. Wiygul that there was some issue with the weight of

7 the drugs?

8 A. Uh-huh (affirmative).

9 Q. So you at some point in time got a lab report

10 from Greenville County; is that correct?

11 A. I received that during my -- the start of my

12 trial.

13 Q. Okay. And so that was part of your discovery.

14 And that showed you what the weight of the drugs was;

15 right?

16 A. Yeah.

17 Q. Why -- I mean, I'm trying to figure out why you

18 wanted the drugs tested if they had already been

19 tested?

20 A. No. The morning of my trial -- I never seen any

21 of my discovery till when the trial started. Because

22 she didn't have my discovery. The things she did have,

23 she gave me -- showed me what the weight was. And I

24 immediately told her that that cannot be correct. And

25 by it being just a minuscule over what was said to be

1 trafficking, that -- I questioned the fact, I said -- I
2 told the previous attorneys and I also mentioned to her
3 that I would like to get my evidence tested. So when
4 she asked for the motion to have more time, that's when
5 the other motion came in about it being
6 unconstitutional to try me seeing that I didn't have no
7 full discovery. Nor did I have a chance to have my own
8 analyzation of the chemicals according to Rule 6.

9 Q. This is what I'm trying to figure out. I mean,
10 you've told me -- I know there was a report by Officer
11 or Corporal Owens in regards to his view of what the
12 drugs weighed; okay? He said there's thirteen grams of
13 cocaine and twelve grams of crack.

14 A. Yes.

15 Q. Now, I've read the transcript. This report,
16 which is labeled South Carolina Highway Patrol
17 Aggressive Criminal Enforcement Team, lists this
18 information signed by Mr. -- Corporal Owens. I don't
19 see that this was introduced as evidence at your trial.

20 A. Let me show you where it was. State Exhibit
21 Number 8, right here in my hand, he entered that into
22 evidence as thirteen grams of white substance. And
23 also he entered another document that was incorrect on
24 my case -- give me one second and I'll get it -- saying
25 that it weighed -- another item weighed twelve grams.

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1 Give me one second. Exhibit 9 also stated that I had
2 twelve grams of cocaine that the jury saw.

3 Q. Okay. So these two exhibits, and what I'm
4 understanding these to be, and I'll submit them into
5 evidence, is the outside of the drugs -- I mean, it's
6 the labels that were placed on the drugs by Corporal
7 Owens; correct?

8 A. Yes, sir.

9 Q. Okay. Now, it says on Exhibit 9, twelve grams
10 of, it says, clear bag containing tan rock-like
11 substance; right?

12 A. Yes, sir.

13 Q. And the other one is thirteen grams, clear bag,
14 containing white powder substance?

15 A. Yes, sir.

16 Q. Okay. So what your argument is, is that that was
17 not the correct weight of the drugs; right?

18 A. Yes, sir.

19 Q. Now, did he testify at trial or at any time
20 during the case that there were twelve grams and
21 thirteen grams?

22 A. Yes. Well, during the trial, on the record, he
23 presented the evidence as the weight of the trial. But
24 after Ms. Wiygul questioned the fact that he -- how he
25 come about that weight, he didn't really go into

1 detail. But he did put that in the record. And they
2 submitted those two documents to the jury to show them
3 that that was premonition for my charge.

4 Q. Did she make any motion to strike that or any
5 issue to get that twelve grams, thirteen grams, off?

6 A. No. Those two things never was objected to,
7 except for the fact that she objected that she didn't
8 have time to prepare for my case. She kept reiterating
9 that to the judge. On every motion that she objected
10 to, she kept saying, I don't have time -- didn't have
11 time to -- this is in my transcript -- she said, I
12 don't have time, Your Honor, I didn't have time to
13 pursue all these different evidence. So I object to
14 anything that comes in. But directly, those two things
15 she did object to them, and the jury saw those two.
16 And I was not charged with two counts of trafficking.
17 That's something I want to tell you about when you get
18 there.

19 Q. You were charged with PWID and then trafficking;
20 right?

21 A. Yeah. Now, here's the thing. When my trial
22 started even the judge, before we started, told us that
23 I was charged with two counts of trafficking. It came
24 out after the trial started that I didn't -- they
25 changed my charges.

1 Q. Okay. So did she object to that during the
2 trial, too?

3 A. That they changed my charges?

4 Q. Yeah, that they were starting to talk about two
5 counts of trafficking instead of just one count of
6 trafficking?

7 A. Uh-huh (affirmative). She object that they
8 changed my charges. But then she put in a motion that
9 none of my warrants had been signed. And that was it.
10 But I wanted a suppression hearing. Because this stuff
11 that's coming in right now, after she found out at a
12 later time that she wasn't prepared, she finally saw
13 later, if we had a suppression hearing and other steps
14 that I'm entitled to, this would have came up during
15 the suppression hearing and I would have been able to
16 testify myself and the officer that's involved and any
17 other ones that we would have had to come up with the
18 correct information about the charges.

19 Q. So when you're saying -- what type of
20 suppression? To keep all the drugs out or just ---

21 A. The drugs and the issuance of the charges that I
22 was currently facing at my trial. Because my charges,
23 if you look at my transcript and my record that I was
24 charged with, they hand-changed, hand-altered, and then
25 they also just reissued warrants and changed charges

1 and unsigned stuff that was totally in violation of the
2 constitution. So I was asking her, how can they
3 possibly continue this trial after you've done went in
4 front of the judge and told him you're not prepared and
5 I asked him for pretty much mercy, because I asked the
6 judge to -- look in the transcript on the first page --
7 I pretty much asked him, you know, what I'm supposed to
8 do in order to protect my rights.

9 Q. Right. But I'm asking -- she filed a motion to
10 continue; correct?

11 A. Uh-huh (affirmative).

12 Q. She filed a motion to dismiss the charges based
13 upon jurisdiction issues, too; correct?

14 A. No.

15 Q. She didn't do that?

16 A. No. Talking about the different counties?

17 Q. Right?

18 A. No. See, that's another problem. They entered
19 evidence in my case saying this happened -- and my
20 indictments are incorrect. It says that I was -- I
21 distributed a drug in Greenville County. This took
22 place in a whole different county, Spartanburg. And
23 it's on the record they done that. And because of
24 that, that should have been objected to and I should
25 have been able to at least have a hearing on whether

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1 any evidence that came in from Spartanburg County was
2 entered in that trial. And I wasn't able to.

3 Q. So at one point, and I know the judge can read
4 the transcript in regards to this, there was an initial
5 distribution that happened in Spartanburg County;
6 correct?

7 A. That's what they allege. And on the indictment
8 ---

9 Q. Allege, okay. And then what they said is, we
10 then came over to Greenville and they're alleging that
11 more drugs were distributed in Greenville County;
12 correct?

13 A. Yeah. But in Spartanburg is what they used to
14 tell the jury to tell them that I met this person and I
15 committed this crime in Spartanburg County where we
16 exchanged -- you know, was the elements of the -- we
17 exchanged items. So Greenville was my traffic stop
18 where they pulled me over. But they was in a different
19 county when they did this. That evidence was entered
20 in as Greenville evidence. And Spartanburg, I never
21 got -- I never had a change in Spartanburg. And my
22 indictments say it happened in Greenville, which is not
23 right. And nothing was objected to to the point to
24 where -- at a suppression hearing this would have come
25 out.

1 Q. Okay.

2 A. And I would have been able to challenge all this
3 stuff.

4 Q. So you wanted a motion to suppress, you wanted to
5 be able to deal with that to be able to ---

6 A. And testify on my behalf of the whole two-county
7 stop, because this happened in two different counties
8 and by an officer, which I will show you later on, that
9 would have other things that we could have brought up
10 in my hearing.

11 Q. Okay.

12 MR. ARIAIL: Your Honor, if I could move
13 these two exhibits in.

14 THE COURT: Any objection?

15 MS. RATIGAN: No objection, Your Honor.

16 THE COURT: Without objection.

17 (WHEREUPON, Plaintiff Exhibit Numbers 1 and 2 were
18 marked and entered into evidence.)

19 Q. Now, we talked about a lot of different issues.
20 And it boils down to the drugs, no motion to suppress.
21 Are there any other motions that you wanted her to file
22 or asked her to file or anything you asked her to do
23 that she didn't do?

24 A. Okay. The first thing is that I had a witness
25 list that should have been -- had my witnesses that

1 should have been brought to court.

2 Q. Okay. Let's go through this. How were those
3 witnesses going to help you -- first of all, how were
4 they going to help you in this trial? What were they
5 going to testify to?

6 A. All right. Two things that I wanted to be
7 brought forth before my trial even started. Ms. Sandy
8 Smith that Ms. Wiygul talked about during my trial.
9 Ms. Sandra Smith was available to come to testify on
10 the events of that morning of what happened. But some
11 of these are in Spartanburg County. Okay. Now, she
12 never got a chance, she claims, because she didn't have
13 time. But the problem with it is this, is that even
14 though I had these people to have as witnesses, a
15 witness list, I had four people that I knew that wanted
16 to come; Sandy Smith, J.D. Owens, Tammy Bridges and
17 Robert McMillan. These four people that I gave those
18 names and numbers to my previous attorney that was in
19 my file and was forwarded to Ms. Wiygul. And also we
20 stated to them the addresses and phone numbers. Due to
21 the fact that my case was on the docket for over three
22 years with no action at all, and also that from the
23 time my case was started in 2005, I was denied a
24 preliminary hearing, I was denied everything else that
25 I requested for. And I told her the same thing, that

1 Ms. Wiygul, I've been asking for a preliminary hearing
2 from day one and other things in my case about the
3 witnesses and everything. Nobody ever done this. She
4 said she was going to do it. But she had to get Mr.
5 Patterson to accept a continuance. But because she
6 didn't do it, she still had -- she had like thirteen,
7 fourteen days till my trial started. But because of
8 that I was denied my confidential clause when it come
9 to Mr. Rodney West, an informant, because I knew that
10 this guy -- I knew this guy had a history of all this
11 what he was doing.

12 Q. So my question is, this boils down to a
13 distribution charge and Mr. West testified that you --
14 he set up for a drug buy with you and you provided
15 drugs. How was Ms. Smith going to help you in your
16 case?

17 A. Okay. In my trial, Ms. Wiygul brought Ms.
18 Smith's name up when she questioned Mr. West. If she
19 would have interviewed not only Mr. West before the
20 trial, if she had interviewed Ms. Sandy Smith and had
21 her there, she would realize that Mr. West and Ms.
22 Smith was together that morning before they met me.
23 And the money and the clothes was a part of the issue I
24 had with Mr. West. He was there on the pretext to give
25 Ms. Smith her clothes back and the money. And in my

1 transcript he referred to that; yes, I did have her
2 clothes; yes, I was involved with Ms. Smith. That was
3 a pretext to get me to come out to meet him. And
4 because of that pretext, this is why SLED decided to
5 say, well, you know, we're not going to prosecute Mr.
6 Morrow in Spartanburg. We're going to take him to
7 Greenville and prosecute him. The pretext was he was
8 going to meet that girl and to get those clothes and
9 that money that he owed her. And in my trial, Ms.
10 Wiygul brought it up, but she couldn't substantiate the
11 claim because she didn't have Ms. Smith present. Which
12 she could have, because I gave the address and phone
13 number and everything to my previous attorney and it
14 was in my file, the partial discovery she did get at
15 the end of my -- when my trial started, it was in
16 there. And I should have been able to have her there
17 and the other three witnesses also that could have
18 helped. Because those people, also, and I want
19 everybody to understand this, this happened in a whole
20 day period. And that morning Mr. West was in contact
21 with these people. And they could have testified to
22 what was going on that morning and that Mr. West was
23 also under the influence, which Ms. Wiygul asked. And
24 all this would have come out in my trial, you know, if
25 it had been, you know, had been brought out earlier.

1 Because she asked him when he was on the stand.

2 Q. Was there any issue -- and I don't think you --
3 you did not have an open plea or any plea offer at the
4 time you went -- you had Ms. Wiygul as your attorney;
5 is that right?

6 A. I never was told of any kind of plea at all.

7 Q. But you had a plea offer and it basically was to
8 plead straight up; correct?

9 A. At my sentencing, they said I had a plea. But
10 Ms. Monts said that I had a plea and Ms. Wiygul said I
11 didn't. Ms. Monts, every time there was a plea day,
12 just plea with no recommendation. And because of that
13 I had a charge that only carried ten years. The
14 trafficking first offense carried ten years. And
15 because of that, when Ms. Wiygul said that she wasn't
16 prepared, I said, Ms. Wiygul, and I'm going to state
17 what I said exactly to her on the record, I said, Ms.
18 Wiygul, if you're not prepared and they won't stop my
19 trial, I'm going to speak to him one more time and ask
20 him could he please understand I'm really on my own and
21 could he please give me time to let you defend me.
22 When he denied that, I said, is there any plea on the
23 table? She said, Ms. Monts didn't offer no plea. And
24 so after I went forth through my trial and then when
25 the sentencing started, the first thing I asked was

1 there a plea and Ms. Monts said there is a plea. And
2 when I got sentenced, the judge gave me twice as much
3 time than the charge actually carried due to the fact
4 that there was no investigation done in my sentencing,
5 nor for my priors or was there any knowledge of me
6 having a plea that said that she wasn't going to
7 recommend nothing if I took a plea. Because if you
8 look at my charges, none of my charges carry no hundred
9 percent sentence what I'm currently doing right now.
10 I'm doing twenty-five years day for day for something
11 that's two grams over the legal limit that they said I
12 did and they could have tested this stuff at my trial.
13 Because there was no way I would go to trial with an
14 attorney who's already on the record done admitted and
15 put the motion in she was not prepared and asked for
16 protection from the court and then come and tell me and
17 my family that there's no way he's going to try me.
18 And because she did -- they did try me, I was denied
19 due process of all these issues, which I still have a
20 few moments on the record before we even close the
21 record that I would like the court to see for the
22 reason why this case was not fair and my trial was not
23 fair and my sentencing was not fair. And I'm asking
24 this court to look at my whole case as a whole. And
25 not only the fact that Ms. Wiygul was unable to totally

1 be effective toward my case is that the whole due
2 process of my charges was in violation of the
3 constitution. And so I would like for you to let me
4 continue to put forth everything on the record about my
5 case.

6 Q. Well, you put it on your application; correct?

7 A. No, we did not.

8 Q. Well, these are the issues that I wanted to raise
9 that I thought were relevant to it. I don't know of
10 any other issues we've discussed. If you want to
11 summarize them real quick for the court.

12 A. Okay. Well, the first thing I want to do is that
13 before you was appointed to my case, I did put my
14 application in. And at the time I put in two motions.
15 And they was clock stamped and dated December 12th.
16 And those two motions was the fact that I wanted full
17 and complete discovery from the state.

18 Q. Okay.

19 A. And I asked for my grand jury minutes and other
20 items like my jury verdict card. Because on my -- at
21 my sentencing, I had a thing called -- I had an issue
22 called spoliation put in my case. And that was saying,
23 you know, it's supposed to be adverse to the party that
24 there was some destruction of evidence in my case. And
25 because of that, I wanted to get all this discovery

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1 material to show the court that I had so many due
2 process violations in my case that this would have been
3 an issue to look at on appeal. And I never did get a
4 response from the court. But I was placed on the court
5 motion docket and never did get a response on that.
6 Then when you got -- when you received my case, I asked
7 you that I still want to make sure the record that I
8 put in the motion to get this stuff heard. And I also
9 wanted to put in a motion about my sentence. I was
10 charged as a third offender. And Ms. Monts and my
11 attorney, when I got sentenced, had a colloquy about my
12 being enhanced. Ms. Wiygul, on the record, said she
13 never did inform me that I was going to be enhanced to
14 know that I was facing a third offense charge. Okay.
15 In 2006 Ms. Monts spoke directly to the attorney that I
16 had in Spartanburg named Mr. Michael Surratt, and they
17 had a conversation on the phone about this prior
18 conviction that I had on my record. And when I pled to
19 this misdemeanor in 2006, I pled to the misdemeanor on
20 the advice that after Mr. Michael Surratt and Ms. Monts
21 talked, that they would not use this misdemeanor to
22 enhance my sentence. This was placed in my discovery
23 file on my record that I had this on me. But the plea
24 agreement was that it would not be used against me.
25 That's the only reason why I pled to that, because I

1 had that pending case in Greenville. After I pled to
2 that misdemeanor that carried six months, the first
3 charge Ms. Monts used on my case was that charge. And
4 when Ms. Wiygul objected to me being enhanced, she
5 never did object to the fact of these illegal prior
6 violations being used to enhance my sentence, which
7 should have been preserved for the record, because this
8 illegal sentence that they used against me was the
9 breach of a plea agreement that I had with the state or
10 the county of Spartanburg, that I had originally with
11 Ms. Monts. And if Ms. Wiygul would have talked to Ms.
12 Monts about that, she would have been informed of that
13 I cannot use this offense against Mr. Morrow due to the
14 fact that it was a plea agreement that was made in
15 Spartanburg during -- according to these proceedings.

16 Q. Right. Now, these issues are all summarized in
17 those motions you filed; correct?

18 A. The first one is, yes. This issue right here is
19 what I'm trying to talk about my sentence that I want
20 to put on the record. This is an issue that I want to
21 put forth that I have been illegally sentenced due to
22 the fact that I'm doing this hundred percent sentence
23 for a charge that is not a hundred percent. I'm
24 supposed to be doing eighty-five percent. I'm doing a
25 hundred percent. And also I got an enhanced, twice as

1 much of my time is due to the fact that I was -- they
2 used an illegal conviction against me, which Ms. Wiygul
3 had my sheet and she could have preserved it for the
4 appeal.

5 Q. And you've put that on the record. The judge
6 understands that.

7 A. Okay. And I had a -- the plea that I was --
8 would have known about was ---

9 Q. The offer?

10 A. The plea offer that Ms. Monts was talking about
11 ---

12 Q. Well, you got that; right?

13 A. --- was that -- yes, sir.

14 Q. You got a copy. You showed it to me right here.

15 A. Yeah, but they were going to offer me. Okay.
16 That never came out till after I -- here it is 2011
17 when I found this out. But if I would have ever know
18 of any kind of plea, seeing that the beginning of my
19 trial my lawyer pretty much begged the court not to try
20 me because she was not prepared. And then I have to go
21 on my own and try to say, well, what can I possibly do
22 to stop this trial? I asked the judge, you know, what
23 are my options? There wasn't no options. But if I
24 have a plea on the table, I should have been able to
25 look at this plea and seeing that I had no suppression

1 hearing, seeing that I had a two-county stop, that I
2 should be able to look at that plea and then make an
3 informed decision whether to take it or deny it.
4 Because, if not, I went to trial knowing that I have an
5 attorney who have not had a full discovery, nor she was
6 prepared, nor at my sentencing it was defective,
7 because no one researched my prior convictions.

8 Q. Okay. And you had a plea offer; correct?

9 A. Uh-huh (affirmative).

10 Q. And it basically was a straight-up plea; right?

11 A. Yeah, with no recommendation.

12 Q. Okay. And you know that when you got on the
13 trial dockets, you could plead straight up; correct?

14 A. No, I did not know that.

15 Q. She didn't discuss that with you?

16 A. Never did talk about a plea, because she said my
17 trial wasn't going to happen.

18 Q. Okay.

19 A. See, when I first came -- my trial first started,
20 she never had her voir dire together or anything. She
21 never planned for me to go to trial, because she said,
22 there's no way he's going to try you. She was pretty
23 much saying there's no way Mr. Patterson is going to
24 deny this, due to the fact that I only have fourteen
25 days with your case. Okay. So when the trial started,

1 that's when I said, well, listen, you mean to tell me
2 they're going to actually try me and you not being
3 prepared and you don't have full discovery. I never
4 received -- we never received the confidential
5 informant rap sheet or anything toward my case. She
6 had a lot of issues that she told Mr. Patterson that it
7 wasn't going to happen, that she wasn't ready.

8 Q. She filed motions on this; right? She filed a
9 motion on the confidential informant; right?

10 A. Uh-huh (affirmative).

11 Q. Okay. And I'm going to ask her all these
12 questions. I think you've addressed ---

13 A. Okay.

14 Q. --- all your issues, so I'm going to go ahead and
15 just add, no further questions for you.

16 A. Okay. I have one more thing to say before you
17 let me step down if you don't mind.

18 Q. Okay.

19 A. If all -- on the record I would like to just say
20 this. I strongly feel that in order for me to have a
21 plea and a fair trial that I was entitled to put forth
22 every issue that would grant me some relief, and that
23 evidence not being retested was a big issue. And that
24 right there is what considered as me being a
25 trafficker. And I would like to let the court know

1 that those two grams that they said I had over this
2 limit is something that's in question because the guy
3 did lose the evidence.
4 Q. Okay. We'll get into that. Answer any questions
5 that Ms. Ratigan has for you.

6 **CROSS EXAMINATION**

7 **BY MS. RATIGAN:**

8 Q. So when you met with Ms. Wiygul before the trial,
9 did you review any of the state's evidence?

10 A. She didn't have any of the state's evidence. She
11 didn't have no complete discovery. I got an email that
12 she showed me that she asked Ms. Monts for discovery
13 and Ms. Monts said she had to pick up her child from
14 daycare or something; that she wasn't able to get
15 complete discovery from her. So she kept telling me,
16 because she don't have complete discovery, she's going
17 to let Mr. Patterson know that we cannot go forth with
18 this trial.

19 Q. And Ms. Wiygul never gave you a copy of her
20 discovery?

21 A. No. She didn't have, she didn't have discovery
22 till after my -- I got sentenced, I was at Kirkland, I
23 was in prison, she came and saw me and she brought me
24 what they gave her at the end. But before my trial
25 started, I was never handed any paperwork for me,

1 because she didn't have it.

2 Q. Okay. And when you talked to Ms. Wiygul, you
3 told her what had happened that day?

4 A. About my case?

5 Q. Yeah, up in Spartanburg and down in Greenville
6 and then when you got arrested by highway patrol; did
7 y'all talk about that?

8 A. Oh, what we did was this. I told her that my
9 case happened in Spartanburg and we had a jurisdiction
10 problem. She said because, she said because of the
11 fact that this is a lot to consume, that there's no way
12 she would be able to get this thing researched
13 thoroughly. So I said, well, listen, I'm just putting
14 it on the table, though, that this is two counties that
15 we've got to talk about. And then when my ---

16 Q. Let me stop you. You're not answering my
17 question. My question is, did you tell her your
18 version of what had happened that day?

19 A. Yes, ma'am. I told her my version.

20 Q. That's all I need to know.

21 A. Okay. I'm sorry.

22 Q. Did you talk with her about the charges, these
23 five different charges?

24 A. No, ma'am. Because my charges was all changed.
25 She didn't even know when my trial started. When my

1 trial started, the judge told her that I had two counts
2 of trafficking and then we had to go back and find out
3 why my charges had been changed. And nobody knew that
4 I had new warrants, unsigned warrants by the judge,
5 wasn't even signed, and I was indicted on a charge I
6 originally wasn't charged for.

7 Q. And you're saying that Ms. Wiygul didn't find
8 this out until the day of trial?

9 A. Yeah. She -- when she got the -- she put the
10 motion in and told me this is all constitutional
11 violation of due process after she found it out. But
12 she didn't even know that I was charged with two counts
13 of trafficking because the evidence got readjusted --
14 missing, and they changed my charges.

15 Q. Okay. And did you talk with Ms. Wiygul about the
16 fact that these were going to be third offenses?

17 A. No. She never did mention that. If you look at
18 my transcript on prior to my sentencing, her and Ms.
19 Monts got into a colloquy about that.

20 Q. Okay. But that's not what I'm asking you. Did
21 you ever talk with Ms. Wiygul about the fact that there
22 was going to be a third offense?

23 A. No, ma'am.

24 Q. Okay. Did you have two prior drug convictions?

25 A. No, ma'am.

1 Q. You didn't?

2 A. This is what I had. I had one prior that I had
3 in 2006 that Ms. Monts and Mr. Michael Surratt talked
4 about. And I pled to a misdemeanor. Okay. Everything
5 else was over fifteen years old. And if we would have
6 had a suppression hearing before I even do that, the
7 priors would have been brought up.

8 Q. So you don't have -- you only have one prior drug
9 conviction of any type?

10 A. No, ma'am. I said I had two priors. One was a
11 misdemeanor and the other one were criminal conspiracy.
12 But the fact, I have a plea agreement with Spartanburg
13 County, they breached it when they used it against me
14 in Greenville when they knew that I already talked
15 about this with Ms. Monts. And Ms. Wiygul had the
16 information ahead of time -- it should have been in my
17 file -- that I made a plea agreement with them in 2006.
18 Because why would I plead to something after the fact
19 that knowing it could be used against me if she was not
20 going to be aware of the fact that they were going to
21 use it against me to enhance my sentence.

22 Q. Did anyone testify at your trial about this
23 twelve grams or thirteen grams weight?

24 A. J.D. Owens testified to it.

25 Q. Owens testified, he used the words twelve grams

1 and thirteen grams?

2 A. No. He asked was that true and correct of the
3 weight that he submitted to the, to the department.

4 And he testified that that's what he turned in. But
5 that's not what the weight was.

6 Q. All right. But again, that's not what I'm asking
7 you. Did anyone testify, did anyone at trial say the
8 words, twelve grams or thirteen grams?

9 A. Yes.

10 Q. Who?

11 A. I just told you, J.D. Owens said ---

12 Q. He said -- no. He said twelve grams or did he
13 just say, that's correct?

14 A. Well, Ms. Monts said it first.

15 Q. Again, you need to listen to what I'm asking you.
16 Did he say twelve grams or thirteen grams? That's a
17 yes or no question.

18 A. No. He just said yes, that's correct, after they
19 said it.

20 Q. And did you tell Ms. Wiygul you wanted a
21 suppression hearing?

22 A. Not only did I want a suppression hearing, I
23 wanted to -- her to question Mr. Randall West, the so-
24 called informant, and the other state's witnesses,
25 because they were never interviewed to know what they

1 were going to say or anything.

2 Q. When you asked her to have a suppression hearing,
3 what did she say?

4 A. She will not have -- they will not have time. If
5 this continuance don't go through, everything is out
6 the windows, because Patterson was stuck on this, my
7 case was too old. And it wasn't my fault. If you look
8 at the history on my case, there was nothing nowhere in
9 my case where this -- it's really my fault this
10 happened. I've been a victim of ---

11 Q. How did you end up with Ms. Wiygul?

12 A. Ms. Wiygul did a case for me in the federal
13 court. And I told her what was going on with my case
14 with Mr. Abdalla being a prosecutor on the same charge
15 that they used against me in Spartanburg. And she said
16 that -- I said, I need some help, because they're
17 getting ready to get me somebody who's getting ready --
18 don't even care about my case, going to throw me under
19 the bus. And the first thing she said, let me look
20 into it. And Mr. Patterson was well aware that she
21 only had thirteen days.

22 Q. Well, did you ask Ms. Wiygul to represent you?

23 A. Yes. I was looking through my case and she
24 helped me. She said, I can get you a continuance due
25 to the fact that there's no way they're going to try

1 you seeing that you never had anybody to get discovery
2 to you.

3 Q. And you testified you wanted witnesses brought to
4 court. Aside from Smith, who else did you want there?

5 A. Joey D. Simms, Mr. McMillan, Robert, Tammy -- her
6 main name is Green. She done got married since then.

7 But these women and men were, at the morning of my
8 trial, was with the informant that morning when all
9 this took place. And that would have gave enough
10 background to Ms. Wiygul to let her know what was going
11 on with my case.

12 Q. Did you give Ms. Wiygul all these witnesses'
13 names and information?

14 A. Mr. Abdalla gave them to her. I reiterated with
15 her again and gave them to her again. But I didn't --
16 I told her that since it'd been so long -- it had been
17 over three years -- that they might have changed
18 addresses and phone numbers. But we talked about --
19 that's why she brought Sandy up in my trial, because we
20 talked about Sandy also. But Mr. J.D. Owens was the
21 owner of that vehicle. And all the people could have
22 got interviewed and would have been there to support me
23 back in 2005 or '06 or '07 when my trial was still
24 pending. But nobody ever allowed me to process to get
25 these guys -- people in position to confront the

1 evidence at my trial. And I was violated all the way
2 through the process. I never had a preliminary
3 hearing.

4 Q. You didn't have a preliminary hearing at all?

5 A. Well, I've got two papers what I'm in prison for.
6 I've got two papers there from -- for a preliminary
7 hearing for all my charges.

8 Q. Mr. Henry never handled a preliminary hearing for
9 you?

10 A. No. I've got it right here where we filed it,
11 but we never did get it.

12 Q. Okay.

13 A. I want to submit as evidence, too, to y'all if I
14 can, on the record.

15 Q. I'm not going to submit any evidence for you.
16 That would be something for your lawyer.

17 A. Okay.

18 Q. So there was a drug transaction in Spartanburg
19 and Greenville allegedly?

20 A. They allegedly say it happened in Spartanburg
21 County in a place where they have twenty-four hour
22 surveillance. That camera could have been secured
23 also.

24 Q. All right. I'm going to go back to what I've
25 said before. You need to answer the question I'm

1 asking you.

2 A. Yes, ma'am.

3 Q. You had your time to testify with Mr. Ariail.

4 You need to answer my questions. They said there was a
5 drug transaction in Spartanburg and Greenville;
6 correct?

7 A. They allegedly said there was, yes, ma'am.

8 Q. And then you were eventually arrested by high
9 patrol; is that correct?

10 A. I was pulled over, yes, ma'am.

11 Q. Yes. Now, when they pulled you over and they
12 searched you, you had drugs on your person; did you
13 not?

14 A. No, ma'am. This is what happened, when they
15 pulled me ---

16 Q. That's all I need to know. You said they had --
17 you had no drugs on your person; that's your testimony?

18 A. Ma'am, this is what -- they pulled me over and I
19 was illegally searched.

20 Q. Okay.

21 MS. RATIGAN: That's all I have, Your Honor.

22 MR. ARIAIL: Nothing further, Your Honor.

23 THE COURT: All right. Thank you. You may
24 step down, sir.

25 MR. ARIAIL: Your Honor, we call Ms. Wiygul

1 as our next witness.

2 THE CLERK: Ms. Wiygul, please place your
3 left hand on the bible and raise your right hand.

4 You do solemnly swear or affirm that the testimony
5 you're about to give in this case will be the truth,
6 the whole truth and nothing but the truth, so help you
7 God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Please state your
10 full name for the record.

11 THE WITNESS: Elizabeth Patterson Wiygul.

12 THE CLERK: Thank you.

13 **ELIZABETH PATTERSON WIYGUL,**

14 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

15 **DIRECT EXAMINATION**

16 **BY MR. ARIAIL:**

17 Q. Ms. Wiygul, thank you for being here today. In
18 regards to Mr. -- in regards to his testimony, I wanted
19 to go through a little bit about the motions, I guess
20 -- let me start off, first of all, you were appointed
21 about two and a half weeks before the trial on this; is
22 that right?

23 A. That's correct.

24 Q. And he has indicated that you did not have a
25 complete copy of the file; is that correct? Do you

1 remember having a copy of all the discovery?

2 A. The best of my recollection, the only information
3 we did not have was the information about the
4 confidential informant.

5 Q. Okay. And that -- you got that at some point
6 before the trial?

7 A. Immediate -- minutes before the trial began.

8 Q. Okay. And I think you filed a motion saying that
9 they had withheld it and it was more than a tipster, so
10 they needed to give it to you; is that correct?

11 A. That's correct. And the judge actually
12 entertained that argument before picking the jury.

13 Q. And it was denied; correct?

14 A. That's correct.

15 Q. Okay. Your motion to continue was denied?

16 A. That's correct.

17 Q. He has indicated that y'all discussed a motion to
18 suppress. Do you remember any discussions about that
19 or ---

20 A. That was in regards to the confidential
21 informant. We also filed -- or I also filed a motion
22 to dismiss.

23 Q. Okay. A motion to dismiss on the -- what was the
24 motion to dismiss about?

25 A. Warrant procedural issues.

1 Q. Okay. Was there any motion to suppress in regard
2 to the drugs or anything that you thought you could
3 file in regards to that?

4 A. No. Only in regards to the fact the confidential
5 informant, so I believe that was just tied in to that
6 motion.

7 Q. I know there was a, there was a stop at some
8 point in time. Did you file any motions in regards to
9 probable cause for the stop or any -- have any
10 discussions about that? Do you remember anything?

11 A. I don't recall there being an issue as to the
12 stop except for the fact that it was -- the stop was
13 performed by an officer that had been contacted by SLED
14 who said pull over this yellow Mustang.

15 Q. All right. And in regards to the discovery, so
16 you had a complete copy. Did you discuss all this with
17 Mr. Morrow?

18 A. I did.

19 Q. Okay. How many conversations do you recollect
20 having with him about it?

21 A. I don't even recall. I know that we met many
22 times or communicated many times. He just told me he
23 was very unsatisfied and felt like he had a conflict
24 with the attorney that was representing him.

25 Q. Okay.

1 A. He knew that I worked part-time with the public
2 defender's office and so he asked me if I would please
3 represent him.

4 Q. Okay. Now, he's also gone through and said that
5 he wanted the drugs tested. Are they ---

6 A. I have no recollection of that.

7 Q. Do you remember any of this issue with Corporal
8 Owens bringing in, as you've seen from these, putting
9 in, I guess, the bags the drugs were in, saying the
10 thirteen grams and twelve grams on it?

11 A. I don't remember the, I don't remember the
12 specific weight. I just don't recall.

13 Q. Okay. Did you -- do you remember filing any type
14 of motion to redact this information on drug -- I guess
15 the drug identification labels?

16 A. I do not. I know that the SLED actual lab
17 reports were entered.

18 Q. Okay. So they were entered. And I'll defer to
19 the transcript. Do you remember Corporal Owens
20 testifying about the drugs being that weight or giving
21 any ---

22 A. I remember him saying that there seemed to be a
23 lot, but I don't recall.

24 Q. Okay. And they put in the lab report in regards
25 to the exact weight of those drugs, from your

1 recollection?

2 A. That's correct.

3 Q. Okay.

4 A. From the drugs that were sold to the C.I. and
5 from the drugs that were taken from Mr. Morrow at the
6 traffic stop.

7 Q. Right. Two different -- I guess three different
8 sets of drugs?

9 A. Correct.

10 Q. Okay. Now, what issue -- did you see any issues
11 in regards to the multi-jurisdictional, or starting in
12 Spartanburg and moving over to Greenville?

13 A. I know we talked about it, but my -- and I could
14 be wrong about this. But my recollection was that he
15 had pending drug charges in Spartanburg and he had
16 these in Greenville.

17 Q. Okay.

18 A. And at some point there had been some discussion
19 between Mr. Abdalla and Ms. Monts, the prosecutor,
20 about trying to roll it all up into one plea. But I
21 was not involved at that point. I just heard about
22 that second-hand from Mr. Abdalla.

23 Q. And I guess what he was also saying was there was
24 a transaction in Spartanburg that happened that -- I
25 guess I'm taking a huge -- you could have filed a

1 motion to suppress that information so that it didn't
2 come into his trial over in Greenville. Did you see
3 any legal issues with that that you ---

4 A. I think we made some objections to them
5 referencing it. But my recollection was that the
6 undercover buy involved with this trial had occurred in
7 Greenville County.

8 Q. Okay. And that was, I think, at a ---

9 A. Waffle House or something.

10 Q. --- Waffle House. Yeah. Now, he's testified
11 about some witnesses that would have testified to what
12 he was doing or why he went to the location in
13 Spartanburg. Do you remember ---

14 A. I don't recall that. I know -- I do recall that
15 he had -- he had told me he had given the information
16 to Mr. Abdalla. I don't recall getting updated contact
17 information for the proposed witnesses.

18 Q. Okay.

19 A. I would have had time to try and track them down,
20 even with it only being two weeks. So I don't, I don't
21 recall, but it would be my normal course to talk to
22 them.

23 Q. And I guess in this case it wouldn't -- there was
24 no alibi that you knew of that would have helped him or
25 misidentification or anything like that?

1 A. No. His whole issue was that he met Mr. West to
2 pick up clothes that belonged to this Sandy lady.

3 Q. Okay.

4 A. And we did bring that out to the jury, that it
5 showed on the video that there were bags of clothes in
6 his car and things of that nature.

7 Q. And I guess that was brought out because it was
8 showing that he was not -- he was entering into this
9 basically to help her out and not to sell drugs or ---

10 A. Right. That he had not met this gentleman to
11 sell him drugs. That he had met him to collect money
12 and clothes that belonged to this Sandy.

13 Q. Okay. Did you have a plea offer that existed at
14 the time or anything that was ---

15 A. The only plea offer I was aware of, and I
16 referenced it in a cover letter to Judge Patterson
17 dated February 26th of 2008, and I just made note, no
18 plea offer was ever made to Mr. Morrow other than the
19 offer to plead to all charges with no recommendation.
20 And I did send a copy of that to Mr. Morrow. So I
21 presume -- it would be my normal course to tell people
22 they can always enter a guilty plea; there just wasn't
23 going to be a recommendation.

24 Q. Right. Okay.

25 MR. ARIAIL: I have no further questions,

1 Your Honor.

2 **CROSS EXAMINATION**

3 **BY MR. RATIGAN:**

4 Q. So, Ms. Wiygul, Mr. Morrow testified you had
5 represented him on a federal charge. Is that correct?

6 A. That's correct.

7 Q. And after you helped him on that charge, he asked
8 you to kind of take over these charges for Mr. Abdalla;
9 would that be fair to say?

10 A. During that representation, I don't believe he
11 was sentenced on the federal charge until May of that
12 year.

13 Q. Okay. And did you obtain discovery from Mr.
14 Abdalla or the state or both; do you recall?

15 A. I know that I got a copy of discovery from Mr.
16 Abdalla on the 25th, on February 25th of 2008, prior to
17 filing those motions.

18 Q. Okay.

19 A. And at the same time he had given me a copy of
20 the micro cassette from the preliminary hearing, which
21 I believe had been held back in May of '05. Because I
22 had actually made a transcript of that entire
23 preliminary hearing to review with Mr. Morrow before
24 the trial.

25 Q. Okay. So Mr. Morrow did have a preliminary

1 hearing?

2 A. That's my understanding.

3 Q. And based on your understanding, was it Mr. Henry
4 or Mr. Abdalla who handled that? Do you recall?

5 A. I believe Mr. Henry represented him at the time,
6 and on May 19th when the preliminary hearing was held.

7 Q. And you transcribed it from the micro cassette?

8 A. I did.

9 Q. And did you review that transcript with Mr.
10 Morrow?

11 A. I would think that I would have. I don't have
12 any specific recollection of doing so.

13 Q. But that would have been your general practice to
14 have gone into that with him?

15 A. It would.

16 Q. Now, aside from the C.I. information, did you
17 review the rest of the discovery materials with Mr.
18 Morrow before trial?

19 A. I did.

20 Q. Did you provide him a copy?

21 A. I don't believe that I provided him a copy of the
22 discovery prior to trial. I had a note in my file that
23 a copy of all discovery except for his ten-year driving
24 record was provided to him on March 8th of 2008, and
25 that was at the Spartanburg Detention Center.

1 Q. And that would have been after the conviction?

2 A. That's correct.

3 Q. Okay. Did you perceive there to be any issue in
4 this case with the weight of any of the drugs?

5 A. I don't recall that being one of the big issues
6 in this case.

7 Q. And did you have any, in your opinion, any valid
8 motion to make regarding jurisdiction or venue because
9 it was partially in Spartanburg and then the rest of it
10 in Greenville?

11 A. Not that I recall. My recollection is there were
12 pending criminal charges in Spartanburg and in
13 Greenville.

14 Q. Okay. And you testified you were aware of some
15 witness names that had been given to Mr. Abdalla; is
16 that correct?

17 A. That's correct.

18 Q. Okay. And did you -- let me take that back. Let
19 me draw back a little bit. Did Mr. Abdalla ever tell
20 you he could contact or had had contact with any of
21 these individuals?

22 A. I don't recollect.

23 Q. And Mr. Morrow did not give you any kind of
24 updated information about these individuals?

25 A. I could not find any in the file, and I don't

1 recall him doing so. Just from the, from the things I
2 had time to do in preparation for trial such as make
3 flow charts to get straight all the letters he got from
4 the DMV and transcribing the preliminary hearing, I
5 would think that I would have contacted witnesses and
6 spent the time doing that if I had time to make flow
7 charts and transcribe tapes.

8 Q. And I believe you testified it would have been
9 part of your general practice to tell your client that
10 he could always plead straight up?

11 A. That's correct.

12 Q. And do you have any specific recollection of
13 telling Mr. Morrow this?

14 A. Only that I had sent him a copy of that February
15 26th letter that was addressed to Judge Patterson where
16 we noted that they had offered to let him plead with no
17 recommendation.

18 Q. Did you, in your opinion, have any kind of legal
19 or other basis to have a suppression hearing on the
20 highway patrol stop and search?

21 A. No.

22 Q. Did you explain that to Mr. Morrow?

23 A. I did.

24 Q. Did you explain to him the detrimental effect on
25 your case of him having been caught with drugs on his

1 person?

2 A. I did.

3 Q. Okay. As part of the information you received
4 from the state or from Mr. Abdalla, did you have a copy
5 of Mr. Morrow's NCIC?

6 A. I did.

7 Q. And in your opinion was there any problem with
8 the state pursuing these as third offenses?

9 A. I don't recall there being, I don't recall there
10 being an issue as to their being some type of breach of
11 contract from a 2006 plea agreement.

12 Q. And did you tell Mr. Morrow that if these cases
13 did go to trial, there would be -- the state would
14 pursue them as third offenses?

15 A. I would -- I mean, I would think that I would
16 have. I don't have any specific recollection of it.

17 Q. Did you ever meet with Mr. Morrow and tell him
18 that the trial wouldn't happen, it wouldn't go forward,
19 that Judge Patterson would continue the case?

20 A. I would have never told anyone that Judge
21 Patterson would definitely continue a case. I know
22 that. And I believe in my motion to -- in my motion
23 for the continuance that was filed with the clerk's
24 office, I attached Judge Miller's order in which Judge
25 Miller had specifically said that there would be no

14 [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 30, 2014

16

17

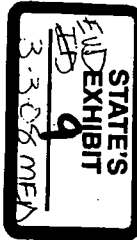
18

19

20



Circuit Court Reporter



Agency SHIP Case No. 03-108-0312
 Item No. 1 Officer Jeff Crank
 Suspect Mr. Manned
 Victim
 Date and Time of Recovery 3/1/05 1PM
 Recovered By Sgt. J.D. Owens
 Description and/or Location Clear bag cont. two rock-like
substance
@ 12 grams

CHAIN OF CUSTODY		
FROM	TO	DATE



350

PLAINTIFF'S
EXHIBIT
2
Th. H. H.

DO NOT OPEN - DO NOT CUT HERE

SCDPS EVIDENCE

Case # 05-23-HP8-0312

Item #1

Name: MORROW-EK

Record #OWENS

CHAIN OF CUSTODY

FROM TO DATE

STATES
EXHIBIT
3-3-08 MED

20-11-3-19-02

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Erik M. Morrow,)
 S.C.D.C. No. 266037,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-3756

ORDER OF DISMISSAL

2014 APR -9 P 3:13

FILED CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL D. WICKENSHER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 7, 2012. The Respondent made its amended return on February 13, 2013.¹ An evidentiary hearing into the matter was convened on February 19, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., 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 was the Applicant's trial counsel, Elizabeth P. Wiygul, 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 amended 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

¹ The Respondent originally made a return and motion to dismiss on September 11, 2012.

[Handwritten signature]

at the October 2005 term of the Greenville County Grand Jury for distribution of cocaine (2005-GS-23-8109), possession with intent to distribute (PWID) cocaine (2005-GS-23-8185), trafficking crack cocaine (2005-GS-23-8186), escape (2005-GS-23-8188), and habitual traffic offender (2005-GS-23-8189). He was represented by Elizabeth P. Wiygul, Esquire.

After the State brought the case to trial, and the Applicant was convicted on four charges – the escape charge was dismissed as a result of counsel's motion for directed verdict. On March 4, 2008, the Honorable Larry R. Patterson sentenced the Applicant to concurrent terms of twenty-five years for distribution of cocaine, third offense, twenty-five years for PWID cocaine, third, offense, twenty-five years for trafficking crack cocaine, third offense, and five years for habitual traffic offender.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, 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. Morrow, Op. No. 2011-UP-117 (S.C. Ct. App. filed March 23, 2011). The remittitur was sent on July 21, 2011.

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. Failure to investigate and prepare for trial.
 - b. Failure to advise Applicant on sentencing enhancements.
2. Ineffective assistance of appellate counsel.
 - a. Failure to raise all meritorious issues on appeal.

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).

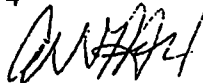
For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. 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 trial counsel was his third attorney and that she was appointed less than three weeks before trial. The Applicant stated he did not review the following with trial counsel: a complete set of discovery, his version of events, the charges against him, that these would be treated as third offenses. The Applicant stated trial counsel should have objected



because the first drug transaction took place in Spartanburg. The Applicant stated trial counsel should have made a motion to suppress. The Applicant stated trial counsel should have filed a motion to have the evidence testified because there was a problem with the weight of the drugs. The Applicant stated trial counsel should have called Sandy Smith, Joey Sims, Tammy Green, and Robert McMillan as witnesses because they were with the confidential informant that morning. The Applicant stated he gave these witnesses' names and phone numbers to trial counsel. The Applicant stated trial counsel never conveyed a plea offer for him to plead guilty without a recommendation.

Trial counsel testified she was appointed two and one-half weeks before trial. Trial counsel testified she had all of the discovery materials (which she received from the Applicant's prior attorney) except for those related to the confidential informant (which she received before trial and reviewed with the Applicant). Trial counsel testified she reviewed the discovery materials with the Applicant. Trial counsel testified she had the Applicant's NCIC report and that there were no issues with the current charges being treated as third offenses. Trial counsel testified she would have reviewed this information with the Applicant. Trial counsel testified she was aware the Applicant had charges in Spartanburg but did not recall there being a jurisdictional issue. Trial counsel testified she did not see any basis to file a suppression motion on the stop and search of the Applicant and his vehicle and that she reviewed with the Applicant the harmful impact of drugs being found on his person. Trial counsel testified she did not have any recollection of either the Applicant wanting the drugs to be tested or there being an issue regarding the weight of the drugs. Trial counsel testified she did not recall the witnesses mentioned by the Applicant and that she had ^{no m} updated contact information about them in her file. Trial counsel testified she would have had time to track down these witnesses for trial. Trial



counsel testified there was a February 2008 offer from the State for the Applicant to plead guilty without a recommendation and that she sent a copy of the offer to the Applicant. Trial counsel testified there was always an option of pleading guilty without a recommendation.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds trial counsel had full discovery in this case and reviewed those materials with the Applicant. Trial counsel testified she received the information about the confidential informant shortly before trial and reviewed it with the Applicant. This Court finds trial counsel's testimony to be credible and further finds the Applicant has failed to demonstrate how additional time to investigate and prepare his case would have had an impact on his trial. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have filed a motion to suppress. Trial counsel testified she did not believe there was a basis to challenge the stop of the Applicant's vehicle and subsequent search of both the vehicle and his person. This Court agrees and notes the Applicant failed to articulate the grounds for a suppression motion. Regardless, this Court finds that, given the facts in this case and the overwhelming evidence of guilt, the Applicant cannot prove he was prejudiced by the lack of a suppression motion because such a motion would have been unsuccessful. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that

such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.”) (citation omitted).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have obtained an independent analysis of the drug evidence because of discrepancies in the weights. Trial counsel testified the weight of the drugs would have been an inconsequential issue at trial. This Court finds further investigation into this issue would have been unproductive. This Court further finds the Applicant has failed to meet his burden of proof because he presented no testimony or evidence that an independent evaluation by a defense expert would have changed the outcome of his case. See Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 777 (2008) (finding that, as the applicant failed to present any expert testimony at the PCR hearing, “it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense”); Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, “any finding of prejudice is merely speculative”).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have called witnesses who were with the confidential informant that morning. Trial counsel testified she did not have updated contact information for these witnesses in her file. Regardless, as these witnesses did not testify at the PCR hearing, this Court cannot speculate as to whether their testimony would have affected the outcome of the trial. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”) (emphasis in original).

6
EW #46

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged jurisdiction in this case. The Applicant stated trial counsel should have objected because he was tried on events beginning in Spartanburg County and ending in Greenville County. Trial counsel testified there was no legal basis to make such an objection and noted the Applicant also had charges in Spartanburg County. This Court finds the Applicant has failed to articulate a cognizable legal basis for trial counsel to have made an objection to jurisdiction in this case. As such, the Applicant has failed to meet his burden of proof. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not explain that his charges would be treated as third offenses. Trial counsel testified she received the NCIC report of the Applicant's prior convictions and there was no basis to challenge that the current charges could be treated as third offenses. While the Applicant made a vague allegation that one of his prior convictions (from Spartanburg) was an illegal conviction, he provided no evidence to either corroborate this assertion or show that the current charges were not properly treated as third offenses. As such, the Applicant has failed to meet his burden of proof. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not convey a plea offer. Trial counsel testified her file reflected there was an offer for the Applicant to plead guilty without a sentence recommendation and that she relayed this to the Applicant. This Court finds trial counsel testimony is credible and that she satisfied her obligations in this regard. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). Even assuming arguendo that the Applicant did not receive notice of the offer, this Court notes the Applicant

7/2/2017

cannot prove prejudice because he did not testify that he would have accepted this offer and pled guilty without a sentence recommendation instead of going to trial.

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 her 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. 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.

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

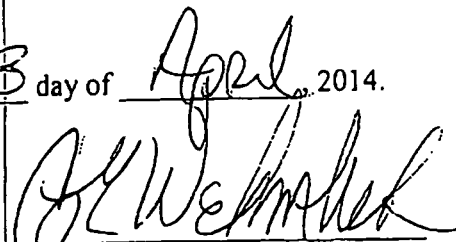


for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

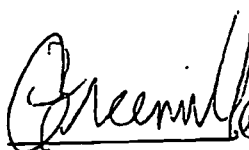
IT IS THEREFORE ORDERED:

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 3 day of April, 2014.



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit



South Carolina.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE 360 VS.

Erik Morrow

AKA:

Race: B Sex: M Age: 38

DOB: [REDACTED]

Address: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2005GS2308109

A/W#: 1795195

Date of Offense: 3/14/2005

S.C. Code § : 44-53-0370

CDR Code #: 0185

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: DISTRIBUTION COCAINE, 3RD OFFENSE

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 0185

☒ 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 initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jace Monts
Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

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, §35.13 TP

Requires \$500 be paid to Clerk during probation.

Paul B. Wickensmiller
Clerk of Court/ Deputy Clerk

Court Reporter: M. Di Girolamo

PRESIDING JUDGE

Judge Code: 21071315

Sentence Date: 3/4/08

SCCA/217 (10/2007)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISTRIBUTION OF COCAINE

At a Court of General Sessions, convened on OCTOBER 18, 2005 the Grand Jurors of Greenville
County present upon their oath:

That ERIK MORROW did in Greenville County, on or about the 14th day of March, 2005, distribute, dispense,
deliver, or aid, abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of
Cocaine, a controlled substance, such distribution 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.

Jay K. Monts
SOLICITOR

DOCKET NO. 2005-GS-23-
JLK 008109

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

OCTOBER TERM 2005

3/4/08

THE STATE

vs.

ERIK MORROW

GUILITY

WITNESSES

BRANHAM

SLED

4/22/2005

ARREST WARRANT NUMBER

1795195

FOREPERSON GRAND JURY
TRUE BILL

H. D. [Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Indictment for

0183

DISTRIBUTION OF COCAINE

VIOLATION § 44-53-0370

[Signature] 3/4/08
Foreperson of Petit Jury Date:

ARREST WARRANT

5667
1-795195 5-9-05

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Greenville

THE STATE
against

Erik Morrow

Address:

Phone: () SSN:
Sex: M Race: B Height: 5' 7" Weight: 155
DL State: DL #:
DOB: Agency ORI #: SCLD0000

Prosecuting Agency: Sled

Prosecuting Officer: S Branham

Offense: Drugs / Manufacture, distribution, etc., ice, crack,
crack cocaine - 1st offense

Offense Code: 0112

Code/Ordinance Sec: 44-53-0375(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to

defendant ERIC MORROW

on 4-22-05

J. J. BENNICK 867 / A-6
Signature of Criminal Justice Enforcement Officer

RETURN WARRANT TO:

Fairview/Austin Summary Court

3725 Grandview Drive, Suite 5

Simpsonville, SC 29680

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Greenville

Personally appeared before me the affiant S Branham

being duly sworn deposes and says that defendant Erik Morrow 2115

did within this county and state on 03/14/2005 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc., ice, crack, crack cocaine - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts.

The above listed defendant did distribute a quantity of crack cocaine to a confidential informant working on behalf of
the State Law Enforcement Division (SLED). This offense did occur in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Greenville

Affiant's Address 4400 Broad River Road

Columbia, SC 29221-

Affiant's Telephone (803)609-2748

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

defendant Erik Morrow

on 3/14/2005

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE:

Drugs / Manufacture, distribution, etc., ice, crack, crack cocaine - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 04/21/2005

Darrell Fisher (J.S.)
Signature of Issuing Judge

Judge Code: 5068

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 918

who

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE 364 VS.
Erik Morrow

INDICTMENT/CASE#: 2005GS2308185

A/W#: 1341404

Date of Offense: 3/14/2005

S.C. Code § : 44-53-0370

CDR Code #: 0185

AKA:

Race: B Sex: M Age: 38

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: POSSESSION WITH INTENT TO DISTRIBUTE COCAINE - 3RD offense

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 0185

☐ 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 initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor: Jaya Monts

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

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§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

_____ 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, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE L.R. [Signature]Judge Code: 210 [Signature]Sentence Date: 3/4/08

SCCA/217 (10/2007)

Clerk of Court/ Deputy Clerk

Court Reporter: M. DiGirolamo

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on OCTOBER 18, 2005 the Grand Jurors of Greenville County present upon their oath:

That ERIK MAURICE MORROW did in Greenville County, on or about the 14th day of March, 2005, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Cocaine, a controlled substance, 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.

James L. Meats
SOLICITOR

000185

DOCKET NO. 2005-GS-23-

JLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

OCTOBER TERM 2005

THE STATE

vs.

ERIK MAURICE MORROW

*Deemed as
guilty n. p. b.*

GUILTY

WITNESSES

JD OWENS

Diebensohn

SCHP

3/23/2005

ARREST WARRANT NUMBER

1341404

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Indictment for

0183

POSSESSION OF COCAINE WITH INTENT TO
DISTRIBUTE

VIOLATION § 44-53-0370

[Signature] 3/4/08
Foreperson of Grand Jury Date:

Certified Copy
J. D. R. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated: 3/28/08

209

ARREST WARRANT

1-341404

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of Greenville

Greenville

THE STATE

against

Erik Maurice Morrow

Address:

Phone:

Sex: M

Race: B

Height: 5'8"

Weight: 155

SSN: [REDACTED]

DL State: SC

DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SCSHP0300

Prosecuting Agency: S. C. Highway Patrol

Prosecuting Officer: J.d. Owens

Offense: Drugs / Trafficking in cocaine, 10 g or more, but

less than 28 g - 1st offense

Offense Code: 0278

Code/Ordinance Sec: 44-53-0370(e)(2)(X)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Date:

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Erik Maurice Morrow

03/14/2005

Signature of Constable or Enforcement Officer

Signature of Constable or Enforcement Officer

RETURN WARRANT TO:

City Magistrate #1

4 Mc Gee Street Room 116-A

Greenville, SC 29601-2256

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of Greenville

Personally appeared before me the affiant J.d. Owens

being duly sworn deposes and says that defendant Erik Maurice Morrow

did within this county and state on 03/14/2005

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

In the following particulars:

DESCRIPTION OF OFFENSE:

Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON ABOVE DATE AND TIME THE DEFENDANT WAS STOPPED FOR A LEGAL TRAFFIC VIOLATION AND FURTHER INVESTIGATION REVEALED THAT THE DEFENDANT GAVE FALSE INFORMATION IN REGARDS TO HIS IDENTITY. THE DEFENDANT WAS THEN PLACED UNDER ARREST AND SEARCH INCIDENT TO ARREST. FOUND THE DEFENDANT TO BE KNOWINGLY IN POSSESSION OF 10 GRAMS OR MORE OF COCAINE, A SCHEDULE II CONTROLLED SUBSTANCE WITHOUT AUTHORITY TO DO SO. THE DEFENDANT HAD SAID SUBSTANCE CONCEALED IN THE PANTS OF HIS PERSON. CASE #05-23-HP-0312. THIS OFFENSE OCCURRED IN GREENVILLE COUNTY.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of Greenville

Affiant's Address

100 EXECUTIVE CENTER DR A-1

Affiant's Telephone

(803)896-5470

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 3/14/2005

defendant Erik Maurice Morrow

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE:

Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 03/23/2005

(L.S.)

Signature of Issuing Judge

Horace Butler Jr

Judge Code: 5020

Judge's Address

4 Mcgee Street Room 116-A

Greenville, SC 29601-

Judge's Telephone

(864)467-5315

Issuing Court:

☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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AFFIDAVIT

who

violate the criminal laws of the

Greenville

367

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE 368 VS.
Erik Morrow

INDICTMENT/CASE#: 2005GS2308186

A/W#: 1341406

Date of Offense: 3/14/2005

S.C. Code § : 44-53-0375

CDR Code #: 0452

AKA:

Race: B Sex: M Age: 38

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: TRAFFICKING CRACK COCAINE > 10 GRAMS. 3RD OFFENSE

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 0452

☐ 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 initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

James Monte
Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

_____ 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 §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21071315Sentence Date: 3/4/08

SCCA/217 (10/2007)

Paul B Wickensm
Clerk of Court/ Deputy Clerk

Court Reporter: M. Di Girolamo

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING CRACK COCAINE

At a Court of General Sessions, convened on OCTOBER 18, 2005 the Grand Jurors of Greenville County present upon their oath:

That ERIK MAURICE MORROW did in Greenville County, on or about the 14th day of March, 2005, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 10 grams of crack cocaine. 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.

Joyce K. Monto
SOLICITOR

008186

DOCKET NO. 2005-GS-23-

JLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

OCTOBER TERM 2005

3/4/08

GUILTY THE STATE

vs.

ERIK MAURICE MORROW

Indictment for

0450

TRAFFICKING CRACK COCAINE

VIOLATION § 44-53-0375

210

WITNESSES

OWENS

SCHP

3/23/2005

ARREST WARRANT NUMBER

1341406

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

[Signature] 3/4/08

Date:

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE 372 VS.

Erik Morrow

AKA:

Race: B Sex: M Age: 38

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2005GS2308189

A/W#: B848674

Date of Offense: 3/14/2005

S.C. Code § : 56-01-1100

CDR Code #: 0057

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: VIOLATION OF HABITUAL TRAFFIC OFFENDER

in violation of § 56-01-1100 of the S.C. Code of Laws, bearing CDR Code # 0057

☒ 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 initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor:

Defendant

Attorney for Defendant

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.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

_____ 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 §35.13 TP
Requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: M. DiGirolamo

PRESIDING JUDGE

Judge Code: 210

Sentence Date: 3/4/08

SCCA/217 (10/2007)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
HABITUAL TRAFFIC OFFENDER

At a Court of General Sessions, convened on OCTOBER 18, 2005 the Grand Jurors of Greenville County present upon their oath:

That ERIK MORROW did in Greenville County, on or about the 14th day of March, 2005, operate a motor vehicle in this State while his driver's license was suspended, and after having been declared a Habitual Traffic Offender. This is in violation of §56-1-1100 of the South Carolina Code of Law (1976) as amended.

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

Gayle E. Mout
SOLICITOR

008189

DOCKET NO. 2005-GS-23-

JLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

OCTOBER TERM 2005

3/4/08

THE STATE

vs.

ERIK MORROW

GUILTY

Indictment for

0057

HABITUAL TRAFFIC OFFENDER

VIOLATION § 56-01-1100

213

WITNESSES

Owens

S. C. Highway Patrol

3/14/2005

ARREST WARRANT NUMBER

B848674

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

3/4/08

Date:

Foreperson of Grand Jury

Erik
Morrow, Maur
B8486
Viol. Habb. C

375

Form 400
Rev. 5-80

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

5531
6-3-05

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME
Erik

MIDDLE NAME
Maurice

LAST NAME
Morrow

STREET AND NO.
[REDACTED]

CITY
[REDACTED]

STATE
SC

ZIP CODE
[REDACTED]

DRIVER LICENSE NO.
[REDACTED]

ORI LIC. CLASS
TD

VEH. LIC. NO.
806 AFS

STATE
SC

PLATE NO.
77

VEH. CLASS
AUTO

TRUCK
COMB

HAZ. MAT.
MOPED

MOTORCYC.
OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER
Judge Eagle

STREET AND NO.
6277 White Horse Rd.

CITY
Spartanburg

STATE
SC

ZIP CODE
29161

DATE OF TRIAL
3/14/05

TIME OF TRIAL
10:00

VIOLATION SECTION NO.
32-1-1020

OWNER OF VEHICLE
L. Jackson

ADDRESS OF OWNER
Greenville, SC

DATE OF VIOLATION
3/14/05

NAME OF ARRESTING OFFICER
V.D. Adams

RANK
Sgt.

DESCRIPTION OF ACCUSED
[REDACTED]

COUNTY
Greenville

BADGE
461

DATE OF TRIAL
3/14/05

TIME OF TRIAL
10:00

VIOLATION SECTION NO.
32-1-1020

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐

TRIAL BY: TRIAL OFFICER ☐ JURY ☐

VERDICT OF TRIAL: GUILTY ☐ NOT GUILTY ☐

DATE OF TRIAL: 3/14/05

TIME OF TRIAL: 10:00

COMMITTED TO: [REDACTED]

CERTIFIED CORRECT: [REDACTED]

DATE: 3/14/05

DOCKET NO.
B 848674

DRIVER RECORDS COPY