

The State of South Carolina
In the Court of Appeals

10665

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

Case No. 09-GS-42-6452, 09-GS-42-6453

State of South Carolina,

Respondent,

v

Derrick Lamar Cheeks,

Appellant

RECORD ON APPEAL VOLUME I

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IN THE STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA) ORDER DENYING MOTION FOR
VS) NEW TRIAL
DERRICK LAMAR CHEEKS) M-111926
DEFENDANT) M 087870
) M 087869

WHEREAS the Court has reviewed the Defendant's Motion for New Trial in this case and this Court hereby **DENIES** the Defendant's motion

In pretrial motions certain evidence obtained during the search of the premises in question revealed incriminating evidence against the Defendant Mr. Cheeks. His attorney sought to suppress that evidence but the evidence was deemed admissible for trial. Defense counsel seeks a new trial claiming the admissibility of such evidence was in error. This Court reaffirms its ruling at trial based on the following reasons:

I Did the Defendant, Derrick L. Cheeks, have a reasonable expectation of privacy in the premises searched?

A person seeking to have evidence suppressed on Fourth Amendment grounds must establish that his own rights have been violated. State v. Crane, 296 S.C. 536, 372 S.E.2d 587 (1988). Fourth Amendment rights are personal rights which cannot be asserted vicariously. Thus, a defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate a legitimate expectation of privacy in connection with the searched premises in order to have standing to challenge the search. Id. The burden of establishing a legitimate

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expectation of privacy is on the person challenging the search. Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980). An overnight guest has sufficient expectation of privacy in premises to assert Fourth Amendment standing. Minnesota v. Olson, 495 U.S. 91, 110 S.Ct. 1681, 109 L.Ed.2d 85 (1990). However, a person who is merely present with the consent of the owner may not. Minnesota v. Carter, 525 U.S. 83, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998). See State v. Missouri, 361 S.Ct. 107, 603 S.E.2d 594 (2004) (the defendant had a reasonable expectation of privacy where the owners of the home chose to share the privacy of their home with the defendant on several occasions in the past and on the occasion in question); Koller v. State, 386 S.Ct. 578, 690 S.E.2d 72 (2010) (where the person who leased the apartment befriended the defendant and permitted him to stay for an extended period of time at the residence, the defendant had a reasonable expectation of privacy in the apartment and therefore had standing to challenge the search). A guest in an apartment has no legitimate expectation of privacy where the relationship between the guest and the tenant is a business one. U.S. v. Gray, 191 F.3d 138 (4th Cir. 2007), cert. denied, 552 U.S. 1190, 128 S.Ct. 1226, 170 L.Ed.2d 77 (2008).

As to the facts of this case, Cheeks had access to the residence searched due to his relations with a resident of the house, Tracey Markley. However, at the time of the search, the home was owned by the parents of Tracey Markley, and Cheeks was only a visitor to the residence. At trial, testimony was presented that Cheeks possessed a key to the house in question and may have actually used this key to enter the residence on the day of the search.

Additionally, the testimony states that Cheeks was seen at the house on 50 different occasions, but there was no indication of the length of time between each of these visits. Moreover, no evidence offered that these visits occurred over one month, one year or five years. Furthermore,

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On the morning of the search Checks was picked up from a hotel and carried to the residence in question. He was not an overnight guest on the day in question. Founded on this fact, this Court finds most credible the evidence displaying that Checks lived at a motel. Based on the testimony and the reasonable inferences that can be drawn from it, this Court finds Checks intentionally set-up the arrangement with the occupant of the searched residence in order that he would have no legitimate connection with the crack house at times when he was not present. Likewise, the fact that Checks' work shirts were located at the residence in question but no other types of clothing persuades this Court that he did not fully reside there and had no legitimate expectation of privacy in the house. A person expecting privacy in a location would have an entire wardrobe or work outfit located at the home, however, in this case Checks had merely a few shirts and no additional pieces of clothing. Therefore, this evidence helps the Court conclude that Checks had no reasonable expectation of privacy in the location searched.

Additionally, although Checks presented evidence demonstrating a social relationship with the residence searched, additional testimony indicated that Checks' relationship with the residence was strictly business in nature. The following questioning between Solicitor Hunter and Mr. Markley (resident of the house) elicits testimony of a business relationship:

Mr. Murley. At one point he did, but that particular day I don't know if he did or not.

Mr. Hunter: Okay. Why did Mr. Cheeks have a key to your house?

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Mr. Markley: It was - I guess you could say I was a heavy sleeper and cause I did so many drugs. When I finally go to sleep I was real hard to wake up. So it was I guess so he could come in and wake me up because I was pretty much like a chauffeur to him. I drove him everywhere.

In addition to the statement that Markley acted as Cheeks' chauffeur, Markley testified that he allowed Cheeks to use his house to cook crack as a method of repayment.

Mr. Hunter: Okay, did you have an arrangement with Mr. Cheeks regarding your house?

Mr. Markley: No, not really. It was - it just happened because the one, the one car that we had loaned to his, one of his lady friends had had some damage done to it and I'm a mechanic by trade. So I started working on it. But the process I wasn't thinking, I was rushing, and I basically made it so instead the car, it costing say a thousand dollars to fix, it ended up costing him \$5,000 because I was rushing it and didn't do a proper job. So because of that I owed him quite a bit of money.

Mr. Hunter: And how did you repay that?

Mr. Markley: By letting him cook (crack) at my house.

Furthermore, Markley also testified that Cheeks would pay him with crack for services rendered.

This Court finds the above mentioned facts most credible in holding that Cheeks used Markley and his home for business purposes. Markley drove Cheeks in exchange for crack and allowed Cheeks to use his home as repayment of a debt owed and in exchange for additional crack. U.S. v. Gray held that a guest had no expectation of privacy when his relations with the

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tenant were business in nature and here Checks and Markley's relationship was business in nature 491 F.3d 138 (4th Cir. 2007) cert. denied 552 U.S. 1190 128 S.Ct. 1226 170 L.Ed.2d 77 (2008). Herefore Mr. Checks had no reasonable expectation of privacy in the premises searched and the evidence was properly admitted at trial.

Even if the Defendant had proper standing the evidence was still properly admitted and this Court's ruling at trial is hereby reaffirmed based on the following analysis:

II. Was the description of the premises included in the attached affidavit sufficient to meet the search warrant particularity requirement required by the Constitution?

The place to be searched and the things to be seized must be stated with sufficient particularity in the warrant. U.S. Const. amend. IV; S.C. Const. art. I §10; S.C. Code Ann. § 17-13-140. The warrant and affidavit may be read together to determine if the place to be searched and the things to be seized are set forth with sufficient particularity. State v. Williams, 297 S.C. 404, 377 S.E.2d 308 (1989) (things to be seized); State v. Crane, 296 S.C. 336, 372 S.E.2d 587 (1988) (place to be searched). Additionally, it is sufficient either for the warrant to incorporate the supporting document by reference or for the supporting document to be attached to the warrant itself. U.S. v. Huwiltz, 459 F.3d 463, 471 (4th Cir. 2006).

Here, the search warrant and the affidavit were attached to each other. The search warrant under "description of premises to be searched" portion did not describe the premises searched. However, the affidavit attached to the search warrant did describe the premises searched with particularity. Furthermore, the warrant referred directly to the attached affidavit for support. Therefore, this Court reaffirms its ruling that an affidavit may incorporate by reference the location of the premises searched where none is contained in the search warrant to satisfy S.C. Code Sections 17-13-140 and 17-13-160. This Court relies on the language from

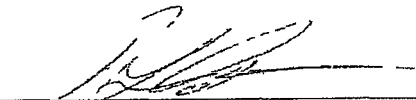
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State v. Williams which holds the warrant and affidavit may be read together in order to meet the particularity requirement Williams 297 S.C. 404. Additionally, this Court relies on the language from Hurwitz, a Fourth Circuit case, which holds that the particularity requirement is met when the affidavit is incorporated by reference or when the supporting affidavit is attached to the warrant. Hurwitz 459 F.3d 463. In this case, it was evident that, at the least, the affidavit with the description of the premises was attached to the search warrant, therefore, the search warrant was valid and the evidence was properly admitted at trial.

For the previous mentioned reasons, the Court **DENIES** the Defendant's Motion for New Trial.

IT IS SO ORDERED

December 21, 2010



Judge Roger L. Couch,
Seventh Judicial Circuit

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I CHEEK'S LEGITIMATE EXPECTATION OF PRIVACY IN THE EVIDENCE SEIZED OR THE PREMISES SEARCHED

The Fourth Amendment guarantees individuals the right to be free from unreasonable searches and seizures *US Const amend IV, S C Const art I, § 10* To claim protection under the Fourth Amendment of the U S Constitution, defendants must show that they have a legitimate expectation of privacy in the place searched Rakas v Illinois, 439 U S 128, 143, 99 S Ct 421, 430, 58 L Ed 2d 387 (1978) ¹A legitimate expectation of privacy is both subjective and objective in nature the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as

¹ Standing is not the correct standard for the Fourth Amendment issue The United States Supreme Court has expressly rejected the application of an analysis based on the standing doctrine, instead, the analysis is based on substantive Fourth Amendment law Rakas v Illinois, 439 U S 128, 140, 99 S Ct 421, 429, 58 L Ed 2d 387 (1978) The use of the term "standing" has created confusion in the context, and therefore "standing" is no longer appropriate to "connote the legitimate expectation of privacy in the evidence seized or the premises searched" United States v Bouffard, 917 F 2d 673, 675 (1st Cir 1990)

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reasonable Oliver v United States, 466 U S 170, 177, 104 S Ct 1735, 1741, 80 L Ed 2d 214 (1984) (*citing* Katz v United States, 389 U S 347, 361, 88 S Ct 507, 516, 19 L Ed 2d 576 (1967) (*Harlan, J., concurring*))

It is fundamental that Fourth Amendment rights are personal in nature and may not be vicariously asserted Rakas v Illinois (1978), 439 U S 128, 133-34, 99 S Ct 421, 58 L Ed 2d 387 A person aggrieved by the introduction of evidence secured by an illegal search of a third person's premises or property has not suffered any infringement upon his Fourth Amendment rights *Id* at 134

Consequently, a person challenging the legality of a search bears the burden of proving that he has standing The burden is met by establishing that the person has a legitimate expectation of privacy in the place searched that society is prepared to recognize as reasonable Rakas, 439 U S at 143 Overnight guests have a reasonable expectation of privacy in the home in which they are staying, while a person merely

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present in the home with the consent of the owner may not Minnesota v Olson (1990), 495 U S 91, 96-97, 110 S Ct 1684, 109 L Ed 2d 85, Minnesota v Carter (1998), 525 U S 83, 119 S Ct 469, 142 L Ed 2d 373

In Carter the Supreme Court opened the door to argue that not just overnight guests will be afforded Fourth Amendment protection " See Minnesota v Carter, 525 U S 83, 90, 91, 119 S Ct 469, 142 L Ed 2d 373 (1998), see also *id* at 99, 101-02, 119 S Ct 469 (*Kennedy, J, concurring*), *id* at 103, 119 S Ct 469 (*Breyer, J, concurring*), *id* at 106-12, 119 S Ct 469 (*Ginsburg, J, dissenting*) "[T]he defendant must demonstrate that his own reasonable expectation of privacy was violated by the action of the State " *Id* , see also Rakas v Illinois, 439 U S 128, 133-34, 99 S Ct 421, 58 L Ed 2d 387 (1978)

Whether a person has a reasonable expectation of privacy in a third person's place falls somewhere on the continuum between the overnight guest in Minnesota v Olson, 495 U S 91, 96-97, 110 S Ct 1684, 109

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L Ed 2d 85 (1990) (overnight guests have a reasonable expectation of privacy in a third person's property), and the person who was present solely for the purpose of conducting a business transaction in Carter, 525 U S at 90-91, 119 S Ct 469 (a person legitimately on a third party's property solely for the purpose of conducting a business transaction does not have a reasonable expectation of privacy in that property)

In the present case Cheeks had a substantial legitimate connection to the property searched. Cheeks' connection to the property differs from cases where the accused's only connection was business related or illegitimate in nature. In this case Cheeks can not be said to have had merely a commercial relationship to the property. Unlike the present case, in cases such as State v Gray, the defendant had no significant connection to the property. When the police arrived the defendant gave a false name, had \$8,000 in his pants pocket, crack in his shoe, had been at the residence for just a short period of time, had no key, and was one of several visitors. Similarly, in Minnesota v Carter, supra, the defendant

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The evidence shows that Cheeks spent the night at the premises on more than one occasion. Being, or having been an overnight guest in the past is a strong factor in determining a third party's expectation of privacy. Although a strong consideration, it is not essential. Our Court

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has recognized that at least five members of the United States Supreme Court — the three who dissented and the two who concurred in Carter — would be willing to extend protection to guests present for social reasons and present for some time less than an overnight stay State v Missouri, 361 S C 107 (2004) If not an overnight guest at the time of the search, then the question of Fourth Amendment protection turns on the defendant's other connections with the property Evidence of having been an overnight guest in the past becomes a consideration in the amount of contact and the reasonableness of one's expectation of privacy

The evidence shows that Cheeks and Markley were friends for five or six years They were co-workers Markley often gave Cheeks a ride to and from work Cheeks had spent the night at Markley's residence on occasion Cheeks had a key to Markley's residence and apparently had a key to the residence on the day of the search as he had let himself and two others in the house while Markley was still asleep From Markley's

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testimony this was not uncommon and Cheeks was welcome to do so. Cheeks often washed his clothes at Markley's residence. He visited the residence frequently. He left clothes at the Markley residence often and had clothes there at the time of the search. Cheeks could come and go as he pleased at the Markley residence and could invite others to the residence. Cheeks would bring food to the Markley residence from his work to put in the refrigerator. At the time of the search there were boxes of food in the refrigerator from Cheeks' work place. Markley testified that while at the residence Cheeks participated in normal activities such as playing darts, watching television and playing with the X-Box game system. Markley testified that Cheeks has taken showers or baths at the residence. At times over the years prior to the search Cheeks visited the residence as often as every other day. Based on contacts with the premises of the type recognized by the courts under Fourth Amendment analysis, Cheeks had a legitimate expectation of privacy in the residence. Cheeks therefore has the right to raise an issue in this case as to any

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defect in the search warrant

II SEARCH WARRANT WAS DEFECTIVE FOR FAILING TO STATE WITH PARTICULARITY THE PREMISES TO BE SEARCHED

The Fourth Amendment requires that search warrants be issued only "upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized " Finding these words to be "precise and clear," Stanford v Texas, 379 U S 476, 481 (1965), this Court has interpreted them to require only three things First, warrants must be issued by neutral, disinterested magistrates *See, e g* , Connally v Georgia, 429 U S 245, 250-251 (1977) (*per curiam*), Shadwick v Tampa, 407 U S 345, 350 (1972), Coolidge v New Hampshire, 403 U S 443, 459-460 (1971) Second, those seeking the warrant must demonstrate to the magistrate their probable cause to believe that "the evidence sought will aid in a particular apprehension or conviction" for a particular offense Warden v Hayden, 387 U S 294, 307 (1967) Finally, "warrants must

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particularly describe the "things to be seized," as well as the place to be searched Stanford v Texas, *supra*, at 485 Dalia v United States, 441 U S 238, 255 (1979)

Article I, Section 10 of the Constitution of South Carolina, as amended, and the Fourth Amendment to the United States Constitution, are practically identical, and as to searches and seizures provide that "

* no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, * * *"

Pursuant to S C Code Section 17-13-160 a search warrant must be on the form prescribed by the Attorney General. A search warrant must identify the property and naming or describing the person or place to be searched. S C Code Section 17-13-140 South Carolina Court Administration provides SCCA 513 as the standard search warrant form for use in South Carolina (See Attachment 1). On the face of the search warrant form SCCA 513, there is a section conspicuously identified as

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rant form
titled

DESCRIPTION OF PREMISES (PERSON OR THING) TO BE

SEARCHED followed by four lines on which to describe the premises to be searched to satisfy the provisions of the Fourth Amendment, Article I, Section 10, and S C Code Section 17-13-140 SCCA 513 as provided as an attachment or part of the Summary Court Judge's Bench Book indicates on its face that it is SCCA 513 and is the proper form approved by the Attorney General

The South Carolina Bench Book for Summary Court Judges, in the provision applicable to search warrants states *(3) The Particularity Requirement* - "Both the affidavit and the search warrant must particularly describe the place to be searched and the objects to be seized " (See Attachment 2)

The search warrant at issue, which the State contends to authorize the search of the Markley residence, fails to provide any description of the premises to be searched (See Attachment 3) It further does not appear to be SCCA 513 provided by the bench book on line, nor does it

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indicate that it is a form approved by the Attorney General. It is important to note that the search warrant for the Markely residence did not simply fail to describe the place to be searched with particularity, it failed to give any description of the premises whatsoever. The search warrant for the Markely residence is therefore defective on its face and fails to satisfy the provisions of the Fourth Amendment, Article I, Section 10, S.C. Code Sections 17-13-140, and 17-13-160.

In this case the Court held that information in the affidavit was sufficient to overcome a search warrant's complete failure to identify the place to be searched. Our Supreme Court has held that in some cases allow information in the affidavit to *supplement* the information as to the place to be searched identified in the search warrant. The holding of Ellis however does not cure the defect in this case. Ellis does not hold that the affidavit alone may substitute for the lack of any description in the search warrant itself. Ellis specifically provides that "the description in the caption of the warrant *when taken in connection with the affidavit*

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was sufficient to sustain the warrant as against the attack that it was constitutionally deficient for not particularly describing the place to be searched ” Ellis at 19 *Emphasis added* In Ellis the search warrant identified the location as “88 Columbus Street, up and down stories Charleston, South Carolina ” The ambiguity which the information in the affidavit helped clarify in *Ellis* was the specific location within the property generally identified by the search warrant

Cases cited by the Court in Ellis likewise pertain to the use of information in the affidavit to identify specific sub-units of multi-occupancy structures identified in the search warrant and do not support the Court’s holding in this case In State v Crane, 296 S C 336 (1988), which cites to Ellis, the search warrant describing the premises as “the residence” was held adequate where it described the premises to be searched by giving directions to it along with a description As in Ellis, information in the affidavit in Crane merely added specificity to the description contained in the search warrant itself There is no case in

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South Carolina which supports an argument that the affidavit can be used to satisfy the particularity requirement of a search warrant that completely fails to identify the premise to be searched

The Court in this case has held specifically that an affidavit may provide the location of the premises searched where none is contained in the search warrant. It has done so on a finding that the search warrant at issue contained specific language incorporating the description in the affidavit so as to satisfy the statutory requirements of S C Code Sections 17-13-140 and 17-13-160. To support its decision the Court relied on the case of State v. Williams, 297 S C 404, 377 S E 2d 308. In doing so the Court has erred as there is no specific language of incorporation that will meet Fourth Amendment scrutiny. Nor is Williams decided on Fourth Amendment grounds. Any reference to a Fourth Amendment or Article 10 analysis in Williams is dicta, as the case was clearly decided by an interpretation and application of S C Code Section 17-13-140. Williams nor Ellis therefore support a finding that the search warrant in this case

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meets Fourth Amendment requirements as to particularity

The traditional rule is that the generality of a warrant cannot be cured by the specificity of the affidavit which supports it because, due to the fundamental distinction between the two, the affidavit is neither part of the warrant nor available for defining the scope of the warrant

United States v Johnson, 541 F 2d 1311, 1315 (8th Cir 1976) The general rule is not without exception and an affidavit may supplement the search warrant if properly referenced in the body of the search warrant

"An affidavit may be referred to for purposes of providing particularity if the affidavit accompanies the warrant and the warrant uses suitable words of reference which incorporate the affidavit " United States v Klein, 565 F 2d 183, 186 n 3 (1st Cir 1977), *See also*, Groh v Ramirez, 540 U S 551, 557-58, 124 S Ct 1284, 157 L Ed 2d 1068 (2004) (listing cases from multiple circuits which have allowed warrants to be construed with reference to an incorporated affidavit)

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In considering whether under the Fourth Amendment the information in an affidavit can supplement an incomplete description in a search warrant, the federal courts have found that two conditions must first be met. First, the search warrant and affidavit must be physically attached to one another. This requirement is not met unless the record shows affirmatively that the search warrant and the affidavit were physically attached at the time of execution. Second, **“the search warrant must expressly refer to the affidavit and incorporate it by reference using suitable words of reference”** United States v Williamson, 1 F.3d 1134 (10th Cir. 1993) (*quoting 2 Wayne R. LaFare, Search and Seizure Section 4 6(a), at 241* (2d ed. 1987)). Emphasis added.

Most importantly, the issue presented is not one of the affidavit adding specificity to the description in the search warrant. Nor is it an issue of expressly referring to the affidavit and incorporating it by reference by use of suitable words of reference. This case presents the

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JIM HOLLAND

issue of a complete lack of the search warrant to identify the place to be searched In addressing the issue of a complete lack of information as to particularity in a search warrant the Supreme Court has stated

This warrant did not simply omit a few items from a list of many to be seized, or misdescribe a few of several items Nor did it make what fairly could be characterized as a mere technical mistake or typographical error Rather, in the space set aside for a description of the items to be seized, the warrant stated that the items consisted of a "single dwelling residence blue in color " In other words, the warrant did not describe the items to be seized at all *In this respect the warrant was so obviously deficient that we must regard the search as "warrantless" within the meaning of our case law See Leon, 468 U S, at 923, cf Maryland v Garrison, 480 U S 79, 85 (1987), Steele v United States, 267 U S 498, 503-504 (1925)*

Groh v Ramirez, 540 U S 551, 557-58, 124 S Ct 1284, 157 L Ed 2d 1068 (2004) *Emphasis added*

In this case it is clear that the search warrant failed to provide any description of the place to be searched and further failed to expressly refer to the affidavit and incorporate it by reference Under both state and federal law, the warrant in this case is so deficient as to make the

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MICHELLE JO KILBY

search in this case a warrantless search

A warrantless search is presumptively unreasonable. In Groh the Court reiterated that the presumptive rule against warrantless searches applies with equal force to searches whose only defect is a lack of particularity in the warrant.

The exclusionary rule provides that evidence obtained as a result of an illegal search must be excluded. State v. Sachs, 264 S. C. 541, 560, 216 S. E. 2d 501, 511 (1975). The fruit of the poisonous tree doctrine, most often associated with violations of the Fourth Amendment's prohibition of unreasonable searches and seizures, prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure. Wong Sun v. U.S., 371 U.S. 471, 484 (1963).

In this case, the search warrant was so deficient on its face (failing to particularize the place to be searched or things to be seized) that the police officers executing the warrant could not reasonably presume it to be valid. United States v. Leon, 468 U.S. 897 (1984). The good faith

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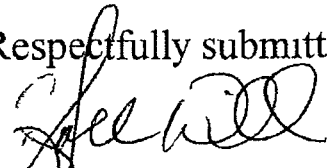
exception to the exclusionary rule therefore does not apply in this case

The United States Supreme Court in Groh held that given that the particularity requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with that requirement was valid *See Harlow v Fitzgerald*, 457 U S 800, 818-819 (1982) As a result, the evidence from the search of the Markely residence must therefore be excluded

CONCLUSION

Any evidence obtained as a result of the search, as well as its subsequent fruits, should have been excluded from the trial of this case As a result, the Defendant Derrick Lamar Cheeks hereby moves for a new trial on that basis

Respectfully submitted,


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J. HOPKINS

STATE OF SOUTH CAROLINA

County of _____

SEARCH WARRANT

Date _____

Officer _____

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SPARTANBURG COUNTY (461-3)
SCCA 513
2010 OCT 12 AM 9 41

ATTACHMENT 1
APPROVED SEARCH WARRANT FORM
BOA 26

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)

SEARCH WARRANT

Form Approved by
SC Attorney General
Section 19 13 160
March 15 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF _____

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property
subject to seizure under provisions of Section 17 13-140 1976 Code of Laws of South Carolina as amended is
located on the following premises

DESCRIPTION OF PREMISES (PERSON OR THING)
TO BE SEARCHED

Now, therefore you are hereby authorized to search the subject premises for the property described
below and to seize such property if found

DESCRIPTION OF PROPERTY

This Search Warrant shall not be valid for more than ten days from the date of issuance

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant,
and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such
copy is made

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the
time of such search if practicable, and, if not, to such person as soon thereafter as is practicable, in the event the
identity of the person in charge is not known or if such person cannot be found after reasonable diligence
attempting to locate the person, a copy shall be attached to a prominent place on such premises

_____, South Carolina

Signature of Judge

Dated _____ 20 _____

SCCA 513
(3-1978)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
OCT 12 AM 9 42
J. CLAUDE

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

AFFIDAVIT

Personally appeared before me one _____ who being duly sworn says that there is probable cause to believe that certain property subject to seizure under provisions of S C Code Ann § 17-13 140 as amended is located on the following premises in this County

DESCRIPTION OF PROPERTY SOUGHT

**DESCRIPTION OF PREMISES (PERSON OR THING)
TO BE SEARCHED**

PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Sworn to and Subscribed before me)
_____ day of _____, 2 _____)
)
_____) Signature of Judge
)
) Address
) Phone

_____) Affiant
_____) _____
_____) _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 12 AM 9 42
H. J. E. BLAIRLEY

SCCA 513
(3-1978)

RETURN

I received the attached Search Warrant _____, 20__ and have executed it as follows

On _____ 20__ at ____ o'clock _____M I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with _____

Name of person searched or "at the place of search" with

Together with a receipt for the items seized

The following is an inventory of property taken pursuant to the warrant

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

This inventory was made in the presence of _____ AND _____

I swear that the inventory is a true and detailed account of all the property taken by me on the warrant

Sworn to and Subscribed before me
this day of , 2)

Signature of Judge

(Signature of Officer Executing Warrant)

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CLERK OF COURT
SPRINGFIELD COUNTY
2010 OCT 19 AM 9 42
Warrant
F4 H0126 LAUNLEY

b Search With a Warrant

(1) Generally

S C Code Ann §17-13-160 requires that all search warrants be on a form prescribed by the Attorney General's office. As in the case of arrest warrants (supra) the affidavit is completed from information provided by the affiant. From this information the magistrate or municipal judge must determine if there is probable cause to believe that particularly described seizable evidence is presently located at the particularly described location.

The initial step in the procedure is to place the affiant, usually a police officer, under oath. For example:

Do you swear or affirm that the information contained in this affidavit is true so help you God?

The affiant should be reminded that the penalty for perjury will attach to all statements of fact found in the affidavit.

Upon an objective determination by the magistrate or municipal judge that there is probable cause, the warrant should be issued to any bonded law enforcement officer for execution. The warrant must be executed and an inventory of all seized items made within 10 days from the date of issuance (§17-13-140). A copy of the warrant must be delivered to the person in charge of the premises by the officer and, if requested, a copy of the inventory must also be provided to the person (§17-13-150).

Section §17-13-141 provides:

(a) Every judiciary official authorized to issue search warrants in this State shall keep a record along with a copy of the returned search warrant and supporting affidavit and documents for a period of three years from the date of issuance of each warrant. The records shall be on a form prescribed by the Attorney General and reflect as to each warrant:

(1) Date and exact time of issuance

(2) Name of person to whom warrant issued

(3) Name of person whose property is to be searched or, if unknown, description of person and address of property to be seized

(4) Reason for issuing warrant

(5) Description of article sought in search

(6) Date and time of return

(b) Any person who alters or fails to keep for the prescribed period of time the records, warrants and documents as provided for in subsection (a) shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$100 or by imprisonment not to exceed 30 days. (See Forms)

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SOUTH CAROLINA
2010 OCT 12 AM 9 42
M HOPKINS COUNTY

The presumption of the Freedom of Information Act (FOIA) that disclosure of documents should be permitted does not apply to records of criminal investigations of which search warrants are an integral part. The FOIA would legally permit a public official who is custodian of the document or a copy of it, to refrain from disclosing search warrants based upon his or her evaluation of the particular document or material. This decision is subject to judicial scrutiny by the circuit court. The custodian may disclose search warrants to the public if he or she deems it would not harm law enforcement or a criminal investigation. Law enforcement officials would be in the best position to assess any harm to a investigation. Op. Atty. Gen. dated August 1, 1989.

(2) Probable Cause Requirement

Many of the same points of law discussed under the Arrest Warrant section are applicable to search warrants. A search warrant may issue only upon a finding of probable cause. State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997). A search is not reasonable unless there was probable cause to believe that the search would produce evidence of a crime or contraband. Probable cause is defined as a state of facts which would lead a man of ordinary care and prudence to believe that the object sought is presently located at the designated place. The standard is the same whether the search is with or without a warrant, but the constitutional provision and court decisions make it clear that a warrant is preferred unless there is good reason for not taking the time to obtain the warrant.

A mere hunch, suspicion, guess or unfounded opinion that evidence or contraband will be produced by the search is not probable cause. The person seeking the search warrant must reasonably believe that the evidence or contraband is there and must be able to point to facts which would create in any prudent and careful man a similar belief. However, if the affidavit standing alone is insufficient to establish probable cause, it may be supplemented by sworn oral testimony. State v. Adolphe, 314 S.C. 89, 441 S.E.2d 832 (1994); State v. Weston, 329 S.C. 287 at 290, 494 S.E.2d 801 at 802 (1997); State v. Robinson, 335 S.C. 620, 518 S.E.2d 269 (Ct. App. 1999).

Probable cause as defined above must exist at the time of the search. Thus, a popular belief that seizable items were in a building sometime in the past does not constitute probable cause for a search unless there is a reasonable belief that the items are still there. Staleness of information establishing probable cause cannot be defined by arbitrary time limits. The question of staleness must be reviewed in light of all the circumstances. See State v. Baker, 251 S.C. 108, 160 S.E.2d 556 (1968). In other words, the observations upon which probable cause is based must have been made relatively recently in light of all the circumstances. In order for affidavit in support of search warrant to show probable cause, it must state facts so closely related to time of issuance of warrant as to justify finding of probable cause at such time. Affidavit which fails altogether to state time of occurrence of facts alleged therein is insufficient. State v. Winborne, 273 S.C. 62, 254 S.E.2d 297 (1979).

The primary purpose of the search warrant is to provide for an independent judicial officer to objectively determine whether a search and seizure is justifiable.

The task of a magistrate when determining whether to issue a search warrant is to make a practical, common sense decision as to whether, under the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place. State v. Williams, 297 S.C. 404, 377

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SPARTANBURG COUNTY
2010 OCT 12 AM 9 42

S E 2d 308 (1989) The affidavit constitutes a permanent record of the facts upon which the magistrate bases his finding of probable cause and thus all pertinent information should be contained on this form

The magistrate or municipal judge just as in the case of an arrest warrant must insist that he be provided with the facts and not just the conclusions which the officer believes establishes probable cause Regardless of the credibility of the officer, if the affidavit contains only conclusions, then the search warrant will be found to be invalid on its face and consequently all evidence seized on its authority may be excluded and the defendant may well go free regardless of his actual guilt

Generally personal knowledge and observations cannot be used as a basis for a search warrant when the facts were gained in violation of the Constitution (See Silverthorne Lumber Co v United States 251 U S 385 40 S Ct 182 64 L Ed [1920]) For instance an officer secretly enters the basement of a man reported to be a bootlegger and while there he discovers several cases of moonshine He cannot then obtain a warrant to seize the liquor on the grounds that he has seen it because he knows of the liquor only through an unconstitutional intrusion There are exceptions to the exclusionary rule however as noted previously

In many situations the officer seeking the search warrant will provide the magistrate or municipal judge with second-hand information i e information provided by an informant There is no prohibition against a magistrate or municipal judge using hearsay information in determining probable cause However it is generally recognized that anonymous informants are for the most part associated with the criminal sector of society Consequently they may not be the most trustworthy persons Therefore when dealing with a request for a search warrant involving the anonymous informant the magistrate or municipal judge must be very careful in reviewing the information and distinguishing between facts and conclusions The purpose is to insure that the informant has provided you with facts which if true establish probable cause rather than reciting to you conclusions which may be no more than "vicious rumors of the underworld "

An officer can rely on an informant's tip if the totality of the circumstances appears to verify the accuracy of the information Illinois v Gates 462 U S 213 103 S Ct 2317 76 L Ed 2d 527 (1983) The test which the judge must apply in determining whether probable cause exists to issue a warrant based on an informant's tip is whether the circumstances taken as a whole (the "totality of the circumstances") provide a 'substantial basis' for a finding of probable cause Massachusetts v Upton, 104 S Ct 2085 (1984) The "totality of the circumstances" test is based upon "the factual and practical considerations of everyday life on which reasonable and prudent men not legal technicians act " Massachusetts v Upton supra, citing Brinegar v United States a 1949 U S Supreme Court case

In conclusion the magistrate or municipal judge must insist that the affiant provide him or her with all available facts and not merely recite all the facts from which the judge draws his conclusions Most importantly the judge not the police officer must make the determination of whether or not the sanctity of the threshold and the citizen's right to privacy must yield to the power of the state The magistrate or municipal judge serves a high function that of the independent judicial officer, and not that of mere bureaucrat rubber stamping the actions of law enforcement.

(3) The Particularity Requirement

Both the affidavit and the search warrant must particularly describe the place to be searched and the objects to be seized It is inadequate if the descriptions are so

CLERK OF COURT
CHARLESTON COUNTY
2010 OCT 12 AM 9 42
HUBBARD ALK-LY

general that the executing officer has discretion to search more than one place or seize more than that specifically intended. For example, if the place to be searched is an apartment, the apartment number as well as the address should be specified. Or for example, if the item to be seized is a gun, it must be described so as to distinguish it from other firearms that may be found.

The purpose of the particularity requirement is to prevent the issuance of general warrants which could be used for general exploratory searches. A search warrant cannot be issued for 'the search and seizure of evidence of a crime.' A search warrant cannot authorize a fishing expedition.

The search itself must be limited in its scope and intensity. That is, the search must be limited to those items specified in the warrant. If the warrant is for the search and seizure of 'one Brand Y 25 inch color TV, serial #2541,' the police must search only in those places of the specified location where such an item could be hidden. I.e., they could not search in desk drawers for a 25 inch TV set.

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CLERK OF COURT
SPARTANBURG COUNTY
2018 OCT 12 AM 9 42
J. H. L. L. L. L.

09-764

STATE OF SOUTH CAROLINA

County of SPARTANBURG, SC

ORIGINAL

SEARCH WARRANT

6-4-2009

Date

Officer

P NORRIS

1508
10/1/10

M HURF BLANKLEY

2010 OCT 12 AM 9 42

FILED
CLERK OF COURT
SPARTANBURG COUNTY

ATTACHMENT 3
SEARCH WARRANT AT ISSUE
ROA 34

SEARCH WARRANT

COUNTY OF SPARTANBURG, SC

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF SPARTANBURG COUNTY, SC

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina as amended is located on the following premises

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

Now, therefore, you are hereby authorized to search premises for the property described below and to seize such property if found

DESCRIPTION OF PROPERTY SOUGHT

Cocaine Base schedule II controlled substance—records, diaries, scales, electronic media, U S currency paraphernalia, and any other item related to the drug trade

This Search Warrant shall not be valid for more than ten days from the date of issuance

A written inventory of all property seized pursuant to this Search Warrant shall be made to

ANY SPARTANBURG COUNTY MAGISTRATE

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such property is made

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable in the event the identity of such person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises

Spartanburg, SC
6-4, 2009

[Signature] (L S)
Signature of Judge

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 OCT 12 AM 9 42
J. H. J. CLARK

Checks which he uses to follow behind the host vehicle allowing him to be separated from the currency and narcotics, however still offers him the opportunity to oversee the operation. The Confidential Informant also told Agents that Cheeks buys 'old police cars' and places antennas on the trunks and fixes them up to keep them looking as if they were actual working police vehicles which Cheeks feels would reduce the chances of being stopped by the police.

On June 2, 2009 S/A Hanning was contacted by a female who told him that her son was a close friend of Derrick Cheeks. The female further stated that her son has made several trips to the Anderson County area and has picked up large amounts of cocaine and returned to 152 Gordon Drive and watched as Cheeks cooked the cocaine powder into Cocaine Base.

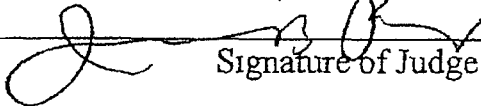
On June 4, 2009 S/A Hanning received a phone call from the female subject who told him that her son had just got off of the telephone with Derrick Cheeks who requested that he come to the Super 8 Motel on South Blackstock Road and pick him up. The female stated that she was on her way to drop off her son and would be at the motel in approximately fifteen minutes.

At this time surveillance was conducted and Investigator Norris located Derrick Cheeks in a black Ford Crown Victoria in the parking lot of the Super 8 Motel and occupied by Ricky Williams. Investigator Norris then watched as Eric Elder arrived and met with Williams as well as Derrick Cheeks in the parking lot. Further surveillance revealed that Elder, Cheeks and Williams left the parking lot and were followed to 152 Gordon Drive.

Approximately twenty minutes later the black Ford Crown Victoria was seen leaving from 152 Gordon Drive and followed to the Wal-Mart located at the Dorman Center. Upon arrival Elder was seen entering the store and watched as he selected one box of Arm and Hammer Baking Soda. Agents then saw Elder go to register 10 and pay cash. A copy of the receipt was obtained from Wal-Mart management which confirmed the purchase. Elder was then seen reentering the vehicle which was followed back to 152 Gordon Drive.

Based on the fact that Baking Soda is a necessary precursor for the manufacturing of Cocaine Base as well as the above listed facts, it is the Affiant's Belief that Derrick Cheeks is in the process of manufacturing Cocaine Base.

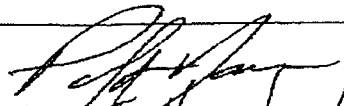
Sworn to and Subscribed before me

This 4 day of June, 2009

Signature of Judge

117400
10/1/10

Affiant

Address


8045 Howard St

Phone

SA671 SC 27301
503 4820

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF SPARTANBURG, SC}

Personally appeared before me, one Paul Norris, who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this county

DESCRIPTION OF PROPERTY SOUGHT

Cocaine Base- A SCHEDULE II CONTROLLED SUBSTANCE
RECORDS, DIARIES, SCALES, BAGGIES, OR ANYTHING ELSE RELATED TO THE SALE OF DRUGS,
U S CURRENCY

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

FROM SPARTANBURG TRAVEL JOHN B WHITE SR BLVD TOWARD I-26 TURN RIGHT ONTO SAVOY ST THEN TURN RIGHT ONTO ST JAMES DR TURN RIGHT ONTO GORDON DR AND THE RESIDENCE TO BE SEARCHED IS THE SECOND RESIDENCE ON THE RIGHT THE RESIDENCE IS DESCRIBED AS A TWO STORY BRICK DWELLING WITH WHITE TRIM THE NUMBERS "152" ARE LOCATED TO THE RIGHT OF THE FRONT DOOR THE NUMBERS "152" ARE ALSO LOCATED ON THE MAIL BOX IN FRONT OF THE RESIDENCE

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY
SOUGHT IS ON THE SUBJECT PREMISES

On or about February 6, 2009 the Spartanburg County Sheriff's office Narcotics unit and SLED received information from a confidential reliable informant, that a subject by the name of Derrick Cheeks was traveling to the Anderson County area and bringing back large amounts of cocaine to 152 Gordon Drive where he was converting it to Crack Cocaine and distributed throughout the upstate

On February 24 2009 a Confidential Informant was provided with \$220 00 in government funds and sent to Fatz Cafe in Boiling Springs, South Carolina, the place of employment of Derrick Cheeks The Confidential Informant purchased 1/4 ounce of Crack Cocaine from Cheeks in the restroom of Fatz Cafe

On March 3, 2009 the Confidential Informant made a controlled phone call to Derrick Cheeks and ordered 1/4 ounce of Crack Cocaine The Confidential Informant was provided with \$225 00 in government funds and was told by Cheeks to meet him at the Advanced Auto Parts store on Reidville Road Cheeks was observed arriving to the location with several other subjects in a vehicle Upon arrival Cheeks was and seen entering the Advanced Auto Parts store Upon Cheeks entering the store, Rickey Williams who is Cheeks' uncle, exited the vehicle and was observed making the transaction in the parking lot with the Confidential Informant as Cheeks was seen looking through the window Upon the completion of the transaction Cheeks exited the store and re entered the vehicle which left the area

On March 16, 2009 the Confidential Informant contacted Cheeks and ordered 1/4 ounce of crack cocaine for \$225 00 Cheeks told the Confidential Informant to meet him at the BP station on Reedville Road At this time surveillance showed that Cheeks was seen leaving 152 Gordon Drive along with several other subjects A short time later Cheeks was seen arriving at the location where he exited the vehicle and entered the gas station Agents observed a subject know as Ricky Williams exit the vehicle and meet with the Confidential Informant as he conducted the narcotics transaction Cheeks was then seen re entering the vehicle and leaving the area

Since beginning this investigation the Confidential Informant has been de briefed on a regular basis It has been learned that in the past the Confidential Informant has accompanied Derrick Cheeks to Anderson County on multiple occasions to make purchases of cocaine The Confidential Informant stated that all of the trips made to Anderson County were made on either Thursdays or Fridays and occurred every week or every other week and that Derrick Cheeks will use two vehicles One of the vehicles is used to carry the currency to the transaction location and the cocaine back to 152 Gordon Drive The other vehicle is used to carry the cocaine back to the residence

ATTACHMENT 3
SEARCH WARRANT AT ISSUE

Cont

RETURN

I received the attached Search Warrant June 4, 20 09 and have executed it as follows On June 4 20 09 at 432 o'clock P M,

I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with Residence
Name of person searched or "at the place of search" with
Together with a receipt for the items seized

The following is an inventory of property taken pursuant to the warrant Sgt Pharis (12) box
in which the large scale came in found on weight bench by Hutchins (13) a
glass measuring cup found on a kitchen counter by Sgt Pharis (14) box of
plastic baggies found in kitchen by Sgt Pharis (15) Plastic baggie found on
chair in bedroom by Tami Hutchins (16) black digital scale found
on counter in the bedroom by Tami Hutchins (17) three cellular
phones found on kitchen counter by Tami Raymond

10/1/10

This inventory was made in the presence of Off. Lapper, Sgt Pharis, Tami, Hutchins
AND Washington, Raymond, Numa, N. Fuatun, Sgt 61st, S.A. [unclear]
I swear this inventory is a true and detailed account of all the property taken by me on the warrant

CLERK OF COURT
STARTANBURG COUNTY
2010 OCT 12 AM 9 42
H HOFFE

SWORN to before me this 5

Day of June 2009

[Signature] (L S)
Signature of Judge

[Signature]
(Signature of Executing Office)

RETURN

I received the attached Search Warrant June 4, 20 09, and have executed it as

follows On June 4, 20 09 at 432 o'clock P M,

I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with The Residence

Name of person searched or "at the place of search" with

Together with a receipt for the items seized

15808 10/1/10

The following is an inventory of property taken pursuant to the warrant (1) clean plastic baggies

found in a trash can by Inv T M'Junkin in the living room (2) Seven
Rolls of US currency found in the front pocket of a black
suitcases in a back bedroom by Inv Hutchins (3) large off-white
Rock-like substances found on the counter in the kitchen by S. A. Hanning
(4) large off-white Rock-like substance wrapped in plastic bags found on
the counter in the kitchen by S. A. Hanning (5) white Rock-like shaped
substances found on microwave in kitchen by S. A. Hanning (6) off white
Rock-like substances found on a saucer on the kitchen counter by S. A.
Hanning (7) large scale found on the kitchen counter by Hutchins (8) small scale
found on kitchen counter by Hutchins (9) bottle of Iodine powder found in
kitchen cabinet by Hutchins (10) box of baking soda found in trash can in
the kitchen by Raymond (11) US currency found on the person of Derrick Cheeks by

This inventory was made in the presence of Off. Cooper, Sgt Pharis, Travis Hutchins

AND Washington, Raymond, Norris, M'Junkin, Sgt Gist, SA C Hanning

I swear this inventory is a true and detailed account of all the property taken by me on the warrant

SWORN to before me this 5

Day of June, 2009

(Signature of Executing Office)

Signature of Judge

(LS)

CLERK OF COURT
JAMES K. BURGESS
2009 OCT 12 AM 9 42
HONORABLE JUDGE
LESLIE

State,) **RULE 29 POST TRIAL MOTION**
) **DEFENDANT'S MOTION**
) **AND MEMORANDUM**
vs) **FOR NEW TRIAL**
)
Derrick Lamar Cheeks,) **CERTIFICATE OF SERVICE**
Defendant)

CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA
2010 OCT 12 AM 9 42
M HOPE B. WALKLEY

J Roger Poole
7th Judicial Circuit Public Defender's Ofc
366 N Church St , Ste 3000
Spartanburg, SC 29303

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. Falkner Wilkes".

J Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile

October 11, 2010

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } COURT OF GENERAL SESSIONS

3

4

STATE OF SOUTH CAROLINA,
PLAINTIFF,

5

6

VS

7

DERRICK LAMAR CHEEKS AND
RICKY DWIGHT CHEEKS,

8

9

DEFENDANTS

TRANSCRIPT

OF

RECORD

09-GS-42-6452, 6453
09-GS-42-6455 - 6457

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October 4th - 6th, 2010
Spartanburg, South Carolina

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B E F O R E

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THE HONORABLE ROGER L COUCH, Judge, and a jury

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16

A P P E A R A N C E S

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EDDIE HUNTER
ASSISTANT SOLICITOR
Attorney for the State

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JEFF WILKES
ESQ
Attorney for the Defendant Derrick Cheeks

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ROGER POOLE
ESQ
Attorney for the Defendant Ricky Cheeks

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PAMELA E GREEN
Circuit Court Reporter
Seventh Judicial Circuit

25

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E X H I B I T S

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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S-1	Photograph	81	82
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S-6	Bag	124	
S-7	Baking Soda	125	126
S-8	Scale	125	126
S-9	Scale	125	126
S-10	Evidence Bag	127	
S-11	Scale	128	128
S-12	Inositol	128	129
S-13	Drugs	181	327

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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Defendant's Exhibits</u>		
D-1	Form C	231	

1	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibit</u>		
3				
4	C-1	Search Warrant	41	
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1 today he is not the same person there arrested

2 THE COURT Is there an identity issue in the case?

3 SOLICITOR HUNTER There, there's not an identity
4 issue I'm, I'm just, as a caution, I'm not sure how
5 they're gonna testify as to the codefendants as to how they
6 acted, how they looked I would be willing to stipulate
7 that if none of that type of testimony comes in I will not
8 present that picture

9 THE COURT I think we'll have to judge it at the time

10 MR WILKES Right, I don't think we'll---

11 THE COURT Okay

12 SOLICITOR HUNTER And I'll make sure that I ask before
13 we---

14 THE COURT Okay That will be fine Thank you
15 We'll, we'll deal with it in the context of the proof

16 (WHEREUPON, the search warrant was marked as Court's
17 Exhibit No 1 for identification purposes only at this
18 time)

19 THE COURT They're challenging the, the sufficiency of
20 the search warrant In what respect, as to the affidavit or
21 the---

22 MR WILKES No, sir, as to the form of the search
23 warrant, the description of the premises is omitted There
24 is no premises on the search warrant authorized to be
25 searched Accordingly, it is deficient under both state law

1 and federal law, and it has been marked as, as a Court's
2 Exhibit I believe if the Court would like to see it

3 THE COURT I'd like to see a copy of it

4 SOLICITOR HUNTER I have the Court's Exhibit There
5 is a description of premises on the, on this copy, Your
6 Honor

7 THE COURT There is?

8 SOLICITOR HUNTER On the first page there isn't
9 However, on the second page, and that's the certified copy
10 from the Magistrate Court, there is a description of the
11 premises

12 MR WILKES All right I don't see that in the search
13 warrant itself, Your Honor I see it in the affidavit, but
14 I do not see it in the, in the search warrant

15 THE COURT Well, now, I'm looking at the description
16 of the premises

17 THE COURT All right Mr Hunter

18 SOLICITOR HUNTER Yes, Your Honor I believe that the
19 search warrant, along with the affidavit, should be read
20 together The affidavit clearly states the description of
21 the property sought, the description of the premises, the
22 reason for the, the affidavit, and that it should be read
23 together as one document as opposed to parsing it into two
24 separate pieces It clearly gives notice to the magistrate
25 what premises are to be searched, the property to be sought

1 I do note that it is not listed on the first page of
2 the, of the search warrant signed by Judge Pasley However,
3 he did have the search warrant affidavit He looked over
4 that It was sworn before the magistrate So, he had that
5 information and to, to separate the two would be uncalled
6 for, Your Honor

7 MR WILKES Groh versus Ramirez, United States case,
8 Your Honor The Supreme Court has addressed this issue
9 In, in dealing with this, it -- there was a case where I
10 believe in this respect it was the particularized places or
11 things When the particular things were left out, the
12 Supreme Court said, in this respect, the warrant was so
13 obviously deficiency that it must regard the search as
14 warrantless within the meaning of our law under Leon,
15 Maryland, and Steel

16 There has been case law, of course, that says there are
17 times when it is appropriate to read an affidavit and search
18 warrant in conjunction with one another when the facts and
19 the details of the affidavit supplant the, the description
20 in general of the search warrant There is no case stating
21 that a complete omission of the description to these, of the
22 premises can be supplemented or not even supplemented, but
23 can be replaced by a description in the affidavit because
24 the search warrant serves a completely different purpose
25 than the affidavit

1 The search warrant is the judicial order, and then this
2 has been addressed in a number of cases. The Stanford
3 versus Texas when it says upon probable cause supported by
4 oath or affirmation particular describing the place to be
5 searched and the persons or the persons to be seized, things
6 to be seized, Stanford said that these words are precise and
7 clear. That has been pretty consistent throughout the
8 country and throughout the federal law as well.

9 The only exception to having a deficiency in the
10 description of the premises in a search warrant body to
11 allow an affidavit to, to add to that, not to replace it
12 completely, but just to add to it, the Ninth Circuit and I
13 believe the Tenth Circuits, federal circuits, have, have
14 said that that may be allowed, but only if two things are
15 met. One, it has to be clearly referenced and incorporated
16 in the search warrant, and it has to be clear that it uses
17 words of incorporation, which this one didn't. It was just
18 omitted.

19 So, under the Fourth Amendment, it, it fails and I
20 would also add this additional argument as well. But the,
21 the search warrant, under 160 being on a form prescribed by
22 the attorney general, I would provide the Court with I
23 believe form SCCA 513 as the standard search warrant form
24 that is approved by the Court and it is on-line. It had
25 clearly a place for description of a search warrant.

1 particularly, and I think that the Court can take judicial
2 notice of that form, and that fact that it has four clear
3 lines for the placement of the, of the description of the
4 premises

5 If I may mark one as an exhibit, Your Honor, I'm
6 referring to

7 (WHEREUPON, the form was marked as Court's Exhibit No
8 2 and an incident report was marked as Court's Exhibit No
9 3 Both were for identification purposes only at this
10 time)

11 MR WILKES I would also make reference, in the,
12 addition to the, to the form that is approved by the
13 attorney general for use, that the magistrate's, the summary
14 bench book for magistrates and, and city court judges for
15 the issuance of search warrants, in the provision under
16 search warrants in particular, it states that clearly for
17 the instructions for magistrates to fill out both the place
18 to be searched with particularity and the items to be
19 searched for, and I would ask the Court to take judicial
20 notice of the provisions of the summary court bench book
21 setting forth those provisions

22 It, it is intended, it's suppose to be filled out
23 because it is the warrant that provides authority It is
24 the blank warrant that allows unbridled discretion in where
25 they will search

1 SOLICITOR HUNTER Your Honor, if you look at the
2 attached document that he just gave you, at the top of the
3 search warrant form provided to the magistrates it says
4 appear, it appearing from the attached affidavit that there
5 are reasonable grounds to believe that certain property
6 subject to seizure under 17-13-40 as omitted is located on
7 the following premises What I think is important here is
8 the attached affidavit to -- the attached affidavit in this
9 case does provide a description of the premises traveling
10 down John B White Boulevard to I-26, turning right onto
11 Gordon, on to St James Drive, and then turning right onto
12 Gordon Drive

13 It, it is my belief and my understanding that as long
14 as the description of premises is, premise, excuse me,
15 premise it says, is on the affidavit that it, read together
16 with the search warrant, would be enough particularity to
17 rule in this case

18 MR WILKES And, and, again, Your Honor, I, I will say
19 that the United States Supreme Court has addressed that and
20 I think that, that Groh would cover that, Groh versus
21 Ramirez at 540 U S 551, and it is not -- and, and in Groh,
22 the operative language I believe would be this warrant did
23 not simply omit a few items from a list of many to be seized
24 or missed to describe a few or several nor did it make what
25 fairly would be characterized as a mere technical mistake or

1 typographical area Rather, in the space set aside for
2 descriptions of the items to be seized, the warrant stated
3 that the items consisted of a single dwelling residence,
4 blue in color In other words, the warrant did not describe
5 items to be seized at all

6 The particularity requirement of the Fourth Amendment
7 applies to the two things, the items to be seized and the
8 place to be searched, and they're treated equally And in
9 Groh, the, the Court found that omitting them is tantamount
10 to a warrantless search, which is exactly, not exactly, but
11 it falls under the same Fourth Amendment protections and
12 that's what we have here

13 This is not a case where the Fourth Amendment will
14 allow an affidavit to add details to the generalities of the
15 description in the search warrant This search warrant has
16 no description It's left out Erroneous or not, it
17 doesn't matter It's a general warrant and it, it is, it
18 is, it is not, it does not pass muster under the Fourth
19 Amendment

20 THE COURT Are you gonna hand up some of those cases?

21 MR WILKES I, I can, Your Honor

22 MR WILKES Groh, I have cited to a number of, a
23 number, a number of federal cases I can also---

24 MR POOLE May it please the Court, Your Honor?

25 THE COURT Yes, sir

1 MR POOLE Naturally I would put on the record that we
2 are joining in Mr Wilkes motion and continue from beginning
3 to end for my defendant

4 THE COURT Well, now, your gentleman though was
5 stopped somewhere else, right?

6 MR POOLE But he's charged also with the house

7 THE COURT Oh, okay okay

8 MR WILKES Your Honor, I don't have -- I apologize
9 I should of made an index of all the cases I can hand up
10 an argument that contains the cases for the Court's review
11 if that would be permissible

12 THE COURT Well, anything you've got that will let me
13 take a look at what I need to look at

14 MR WILKES Thank you, Your Honor I'm sorry I
15 should of printed out the cases

16 THE COURT All right Any other issues concerning the
17 search warrant other than the one you've argued?

18 MR WILKES No, sir, it's just our motion to suppress
19 the search warrant

20 MR POOLE And we join in the same argument

21 THE COURT All right Any other pretrial motions?

22 SOLICITOR HUNTER Nothing from the State

23 THE COURT Is that the only pretrial motion you're
24 gonna have?

25 MR WILKES Yes, sir

1 THE COURT All right I'll take a brief break while I
2 go back and take a look at it

3 MR WILKES Thank you, Your Honor

4 (WHEREUPON, a short recess was taken at this time)

5 THE COURT All right I've had an opportunity to
6 review the search warrant in issue in this case along with
7 the cases that appear to apply to the case Of particular
8 interest was the State versus Freddie Williams, and while
9 the facts are not exactly in line with this particular case,
10 it did -- the basic premise of that case is that, in South
11 Carolina, and it was a Supreme Court case decided in 1989,
12 was that you can read the warrant and the affidavit together
13 to supply information upon which a warrant is based

14 Now, in this particular case the warrant itself does
15 not have a description of the place or property to be
16 searched in a, in the blank that is provided for that I do
17 note, however, the warrant, in the very first paragraph,
18 refers back to the attached affidavit and states that
19 there's reasonable grounds to believe that certain property,
20 subject to seizure, is located on the following premises,
21 and that's where the, the description is omitted from the
22 warrant itself

23 I have reviewed the Groh case I did not find in the
24 Groh case any discussion concerning whether or not the
25 warrant in anyway referred back to the affidavit In this

1 case the warrant does refer back to the affidavit,
2 affidavit, and I know arguably, by the defense side, it does
3 not do so with specific specificity. However, it goes on to
4 say now, therefore, you are hereby authorized to search the
5 premises for the property described below and to seize the
6 property if found. So, again, it's referring to the entire
7 document.

8 Now, according to this, the affidavit was attached to
9 the search warrant when it was served, is that correct?

10 SOLICITOR HUNTER That's correct, Your Honor.

11 THE COURT So, they were served in, at the same time,
12 and, of course, the affidavit specifically describes the
13 real estate even to the point of description and a house
14 number on, on how to get it there or how to get to that
15 location.

16 For that reason, and, of course, the Williams case has
17 not been overturned at this point in time, and I do find
18 that there was no mention in the Groh case about any
19 reference back to the affidavit, which does exist in this
20 case, although, again, arguably by the defense not
21 sufficiently, I am going to find that under the Williams
22 case it is sufficient, that I am not going to suppress the
23 warrant.

24 MR. WILKES And, Your Honor, may I be heard---

25 THE COURT Yes, sir.

1 MR WILKES ---just so I can be clear?

2 The -- I have submitted to the Court a few pages of our
3 argument that are detailed that I think the Court had the,
4 the ability to see our argument in detail

5 THE COURT Yes, sir

6 MR WILKES May we mark that as an exhibit so that---

7 THE COURT If you'd like I mean I don't know---

8 MR WILKES I would like to

9 THE COURT You're gonna have to let the State take a
10 look at it and see if there's any information there that
11 they find objectionable

12 MR WILKES Yeah, I think it's all argument, but we
13 would just like the record to be clear on what we argue
14 instead of having to---

15 THE COURT Well, those cases exist

16 MR WILKES And -- right

17 THE COURT They can, they can be referred to and I've
18 read your argument

19 MR WILKES And just in---

20 THE COURT So, I don't know that that's an exhibit
21 That's just an argument

22 MR WILKES Well, as long as the argument's preserved
23 I, I think I was clear in, in our position on Williams is
24 Williams was a ruling on 17-13-140, not the Fourth
25 Amendment, and, therefore, we do not believe that it would

1 control the search warrant issue here under the Fourth
2 Amendment

3 THE COURT Well, I understand, understand that's your
4 argument

5 MR WILKES Okay Very good

6 THE COURT All right And I know you're making the
7 same argument, Mr Poole

8 MR POOLE That's right, Your Honor

9 THE COURT Okay

10 MR POOLE On behalf of Ricky Cheeks

11 THE COURT All right Anything further that we need
12 to cover before we bring the jury in?

13 MR WILKES Not that I'm aware of

14 SOLICITOR HUNTER Nothing from the State, Your Honor

15 THE COURT All right You can bring the jury in

16 (WHEREUPON, the following takes place within the
17 presence of the jury)

18 THE COURT All right Good afternoon, ladies and
19 gentlemen I'm gonna -- I told you that when you returned
20 to the courtroom you would be taking an oath concerning your
21 duties and responsibilities as jurors in this case, and at
22 this time I'm going to ask that the clerk please swear the
23 jury panel

24 (WHEREUPON, the jury panel was placed under oath at
25 this time)

1 THE COURT All right If any member of the jury panel
2 either failed or refused to take the oath just administered
3 by the clerk, I'd ask that you now please stand

4 (No response)

5 THE COURT And the record will reflect that all jurors
6 have now been sworn for purposes of the trial

7 Now, ladies and gentlemen, before we actually begin the
8 trial of the case there's some things that I want to go over
9 with you because, for some of you, this may be your first
10 experience in actually serving on a jury during the trial of
11 an actual case, and I'm going to speak to those individuals
12 who've not had this experience and go over some matters that
13 I think that you should be aware of concerning the procedure
14 that we'll follow, the way the case will proceed, and your
15 role and responsibility as jurors in this case

16 Probably, for those of you who have never served on a
17 jury before, most of what you might know about how the jury
18 system operates in our country you would have learned from
19 such sources as television shows or books that you've read
20 or movies that you've seen or things of that nature And
21 while those are always interesting, they're full of good
22 story lines, interesting plots, and excellent acting, and
23 that sort of thing, those are intended primarily for your
24 entertainment

25 I think that's obvious when you see a television show

1 where a crime can be committed, the case tried and ended in
2 the space of an hour, and they even have time for
3 commercials during that period of time So, obviously they
4 take some license with the way things actually are done in a
5 court of law And, again, those are intended to entertain
6 you, to keep your interest concerning those matters

7 what you're engaged in today is intended for anything
8 but your entertainment What you're engaged in is a
9 fundamental part of our democracy, and I hope you appreciate
10 that because, in most countries around the world, you don't
11 see situations where citizens are allowed to come into
12 courtrooms and directly participate in the important
13 decisions that take place in the court, courts of those
14 countries Our system is somewhat different in that regard
15 in that we have a jury system that dates back to the time of
16 the Magna Carta in 1214 Almost 800 years old is the
17 tradition that we follow

18 what we're engaged in is a search for the truth, and
19 you can expect that a search for the truth is gonna be slow
20 It's gonna be deliberate Sometimes it's going to be
21 repetitive as you would expect a search for the truth to be
22 what you're engaged in is an effort to see that justice is
23 done between the parties that come before the Court

24 Now, this courtroom is a place of honor It's
25 dedicated to the preservation of citizens' rights through

1 what many people believe to be one of the greatest justice
2 systems ever devised on the face of this earth It's not a
3 perfect system No system operated and devised by man will
4 ever be perfect But, again, it's an effort to see that
5 justice is done between the parties that are before the
6 courts

7 The attorneys that are going to be appearing in this
8 case are here to represent their client's interest, and I'm
9 sure they'll do an excellent job in doing that But first
10 and foremost, these attorneys are also officers of this
11 Court At some point in time they appeared before some
12 tribunal in this state and took an oath to assist you in
13 your search for the truth You can expect from them that
14 they act in a reasonable, professional, and an ethical
15 manner in the presentation of their client's cases before
16 you during this trial

17 I'll remind you too that you have now come before this
18 Court, you've taken an oath to decide the case based upon
19 the evidence and the law presented during the trial You're
20 expected to act in a reasonable, ethical, and a professional
21 manner in the discharge of your duties as jurors Again,
22 I've told you several times today and I'll continue to thank
23 you for your willingness to come forward and serve in the
24 jury system that we have in our court system in this state
25 today

1 Now, again, I'm not intending to charge you concerning
2 the law that you will apply in this case. Later on I will
3 do that once all the evidence has been presented and the
4 arguments have been completed. What I'm attempting to do at
5 this time is to explain to you your role and responsibility
6 as jurors and the procedure that we'll follow in this
7 courtroom.

8 I've already gone over the, the indictments with you
9 during jury selection earlier. I'm not going to go over
10 those indictments with you again. But I will tell you that
11 those indictments represent the formal charges that have
12 been brought before the Court, and, again, can not be used
13 by you in any fashion in determining the guilt or the
14 innocence of a defendant in this case.

15 Now, to those indictments the defendants have pled not
16 guilty, and under the law and the Constitution of this state
17 that plea places the burden upon the State to prove the
18 defendant's guilt beyond a reasonable doubt. I will go over
19 with you the burden of proof that's upon the State and what
20 that means during my charge on the law. It's your duty
21 though, ladies and gentlemen, to decide, at the close of the
22 trial, whether or not the State has met that burden of
23 proving the defendants' guilty beyond a reasonable doubt.

24 Your purpose, as jurors, therefore, is to find and
25 determine the facts of this case and the law and the

1 Constitution of this state makes you the sole judges of the
2 facts in this case I am the presiding officer in this
3 trial and it will my responsibility, from time to time, to
4 rule on the admissibility of evidence or the appropriateness
5 of questions that have been asked I will tell you now that
6 you should not take from anything that I do in the discharge
7 of my duties as the presiding officer in this trial that I
8 have any opinion whatsoever as how you find and determine
9 the facts in this case The law doesn't allow me an opinion
10 on that subject I do not have opinion as to how you should
11 determine the facts in this case

12 I will tell you that you are to determine the facts
13 from the testimony that you hear during this trial and the
14 other evidence that comes into the trial record through that
15 testimony But it's up to you to determine the inferences
16 that you feel you can reasonably draw from the evidence
17 that's been presented to you Therefore, it's especially
18 important that you do your duty of finding and determining
19 the facts in this case diligently and conscientiously
20 because ordinarily there's no means whatsoever by which we
21 can correct an erroneous determination of the facts by a
22 jury

23 Now, the same law that makes you the sole judges of the
24 facts makes me the sole judges, judge of the law in this
25 case The law, as I give it to you at the close of the

1 trial, is the only law that you can use in determining the,
2 the verdict in this matter

3 Now, the law does not allow me to have an opinion
4 concerning the facts that you find and the law doesn't allow
5 you to disagree with me concerning the law to be applied
6 So, if you came into the courtroom with a notion or an idea
7 as to what the law is or what the law ought to be, you'll
8 need to leave those notions or ideas outside of the jury
9 room before you begin your deliberations

10 Now, as I told you earlier, until I advise you to begin
11 deliberations in the case, please do not discuss the case
12 with anyone, even among yourselves, because if you do that
13 before I tell you to begin your deliberations you'll be
14 discussing the case on partial information, partial
15 evidence And, again, I don't want you to do anything to
16 begin to, to make decisions or reach conclusions until
17 you've heard all the evidence and I've charged you
18 concerning the law to be applied in this case So, again,
19 please don't begin any discussions or try to gather any
20 information about this case from any other source during the
21 trial of this case

22 Now, at the close of this trial, as I told you, it will
23 be your solemn responsibility to determine the guilt or the
24 innocence of the defendants that are before this case and
25 that verdict must be based solely upon the evidence

1 presented to you during the trial The only evidence that
2 you will hear will be the statements of witnesses who've
3 been sworn to tell the truth who will testify from the
4 witness stand before you, and whatever evidence comes in
5 through that testimony So, it's important that you not let
6 your thoughts wonder Pay close attention to what goes on
7 in the courtroom so that at the close of the trial you'll be
8 in a position to discuss the case with your fellow jurors
9 during deliberations

10 we'll open the trial with opening statements made by
11 the attorneys We will then have the presentation of
12 evidence Then we'll allow the attorneys to make a closing
13 or final argument before you I will tell you that the
14 statements made by attorneys both at the beginning and
15 closing of the trial are not, those statements are not
16 evidence and can't be used by you in directly determining
17 the guilt or the innocence of a defendant

18 At the beginning of the trial it will serve to tell you
19 what the case is about At the close of the trial they'll
20 sum up the evidence from their client's prospective But,
21 again, statements made by attorneys in the trial are not
22 evidence and can't be considered by you as evidence in this
23 case

24 Now, from time to time during the trial there may be
25 issues that arise concerning the presentation of evidence

1 that require me to discuss those matters with the attorneys,
2 and if it's my belief that those discussions may involve
3 discussions of matters which might not be admissible into
4 evidence, I may ask you, on those occasions, to step into
5 the jury room while I discuss those matters with the
6 attorneys Please don't take from the fact that I asked you
7 to leave the court during the trial, again, that I have an
8 opinion as to how you determine the facts It's simply me
9 doing my job to see to it that you only consider the
10 evidence that's properly admitted under the rules that we
11 follow in this Court for the admission of evidence

12 Once the argument is completed I'll bring you back into
13 the courtroom, I'll make a ruling, and we'll proceed with
14 the trial But, again, don't take from the fact that I've
15 asked you to step out that I have an opinion as to how you
16 determine the facts in this case

17 Now, in determining what facts are it's gonna be
18 necessary that you make judgments concerning the credibility
19 or believability of witnesses that testify before you and
20 that's what credibility means It means believability I
21 will tell you to use your own good common sense in making
22 that determination On a daily basis, basis you use your
23 common sense to decide what you believe and what you do not
24 believe, and in -- this Court is no different You should
25 use your own good common sense in determining credibility or

1 believability

2 As the sole judges of the facts you have the right to
3 believe all of what a witness tells you, part of what a
4 witness tells you, or none of what a witness tells you You
5 have the right to believe one witness against all of the
6 others or all of the others against one witness You're the
7 sole judges of the facts You're the sole judges of the
8 credibility of the witnesses, and you're the sole judges of
9 the weight that you assign to the testimony that they offer
10 during the trial

11 Now, I will tell you that I appoint the foreperson of
12 the jury at the close of the trial So, there will not be a
13 foreperson appointed until I give you my charge concerning
14 the law At that time that person has no greater say in the
15 outcome of the case than any other of you Each of you has
16 the same voice in the, in the verdict in this case since the
17 verdict must be unanimous So, I'll appoint the foreperson
18 at the close of the trial Their only function is to
19 preside over deliberations and to communicate with the Court
20 and to write a verdict once you have unanimously agreed upon
21 the verdict But, again, that appointment will take place
22 at the close of the trial

23 I want to be sure that I haven't violated anyone's
24 rights from my opening comments, does the State have any
25 objection to my opening statements?

1 SOLICITOR HUNTER No objection from the State, Your
2 Honor

3 THE COURT Defense have any objection, Mr Wilkes?

4 MR WILKES None from me, Your Honor

5 THE COURT Mr Poole

6 MR POOLE No, sir

7 THE COURT I told you that the defendants' plea of not
8 guilty places the burden upon the State, and the only, only
9 burden of proof is upon the State in this trial For that
10 reason we allow the State to go first with the opening
11 arguments followed by the defense Then the State will
12 proceed with the presentation of its evidence first The
13 defense then has the right to present any evidence that they
14 choose to present We then will do closing arguments and
15 then I'll charge you concerning the law That's the
16 procedure or the process that we'll follow and the order
17 that we will go in during the trial

18 So, at this time, Mr Hunter, you may begin with the
19 State's opening statements

20 SOLICITOR HUNTER Thank you, Your Honor
21 May it please the Court?

22 THE COURT Yes, sir

23 SOLICITOR HUNTER What the State intends to prove
24 during this trial is that Derrick Cheeks was the cooker and
25 Ricky Cheeks was his runner Now, starting on June 4th,

1 Craig Hanning with SLED -- would you please stand up?

2 (Witness complies)

3 SOLICITOR HUNTER Observed Derrick Cheeks and Ricky
4 Cheeks I'll start calling them Derrick and Ricky cause the
5 Cheeks will start getting confusing Observed Derrick
6 Cheeks and Ricky Cheeks, along with a man named Eric Elder
7 who you'll hear later this week, leaving the Super 8 Motel
8 on East or South Blackstock Road at Reidville Road, the one
9 that's right there by the Denny's and the fireworks store
10 From that location Mr Hanning followed them to 152 Gordon
11 Drive 152 Gordon Drive is the home of Mr Tracy Markley
12 His father lives upstairs and Mr Markley lives downstairs

13 From there the story of Matt Hutchins takes over
14 That's where the real crux of this case is Matt Hutchins
15 is setting up surveillance on this house At this point he
16 sees Eric Elder and Ricky Cheeks drive a black Crown Vic
17 that looks like a police car to the Wal-Mart at the Dorman
18 Center

19 Investigator Hutchins, along with Investigator Raymond
20 of the Sheriff's Office, entered the Wal-Mart and followed
21 Eric Elder around the store Eric Elder picks up a box of
22 baking soda from Arm and Hammer and purchases that baking
23 soda

24 why is that important?

25 Arm and Hammer baking soda is a precursor for cooking

1 cocaine into, to crack cocaine

2 They're followed back to the house at 152 Gordon and
3 enter the house At that point the search warrant is about
4 to be executed But before it is, Ricky Cheeks and Eric
5 Elder leave the house in that same vehicle They drive down
6 Briarwood towards West Main Street, cross over Warren
7 Abernathy Highway, get to Main Street where there's a stop
8 sign

9 At that stop sign Eric Elder rolls through the stop
10 sign They're pulled over by Investigator Hutchins along
11 with Nate Cantrell of the Sheriff's Office with DEA Task
12 Enforcement, and then, at the performance of the stop, over
13 100 grams of crack cocaine is found right where Ricky Cheeks
14 was standing The search warrant then is executed at the
15 house of 152 Gordon Drive Matt Hutchins, who just
16 participated in the car stop, is the first one into the
17 house

18 well, the house, it's large At one, one side is a
19 car, and the other side it's a garage that has a length of
20 maybe two cars, three cars length wise And that garage is
21 dirty It's full of tools, full of crap Mr Markley will
22 testify to that

23 while they're entering all officers are yelling search
24 warrant, Sheriff's Office, search warrant But they can't
25 find the door There's too much stuff Finally

1 Investigator Hutchins realized that the door is being hidden
2 by a slab of wood, that piece of wood, and the team enters
3 when they enter there's a door to their right, and a
4 staircase with red carpeted stairs leading up to the Elder,
5 to Mr Markley's house They're still yelling search
6 warrant, Sheriff's Office, search warrant They're wearing
7 the protective gear with their badges At this point they
8 enter the door to the right They're looking at the room
9 directly in front of them, the kitchen At that point
10 Investigator Hutchins sees Derrick Cheeks running from the
11 kitchen into the first bedroom on the left
12 what did he find on the kitchen counter?
13 Finds 27 bags of crack cocaine right where Derrick
14 Cheeks was standing
15 Now, he enters this room It's dark Investigator
16 Hutchins doesn't know where he is So, he starts telling
17 him come out with your hands up, come out with your hands
18 up Nothing It's a dark room Finally Mr Cheeks
19 complies
20 Mr Hanning comes into the house Obviously it's very
21 noticeable, 27 bags, approximately 27 bags of crack cocaine
22 sitting on the counter Also in this house are two digital
23 scales, which are used to measure out the cocaine so that
24 you can put it in each separate bag so they weigh the same,
25 about an ounce a piece

1 Derrick Cheeks was cooking crack cocaine in
2 Mr Markley's house Now, Mr Markley was gonna get some of
3 that crack cocaine for letting him cook in his house, but
4 Derrick Cheeks is the cook, and Ricky Cheeks is his runner

5 Now, I'm gonna ask you to use your common sense when
6 hearing the evidence in this case, listening to the
7 officers, looking at the pictures and the evidence that we
8 presented, and the crack cocaine Just use your common
9 sense, and you'll see that Derrick is the cook, and Ricky's
10 the runner

11 Thank you

12 THE COURT Mr Wilkes

13 MR WILKES Thank you, Your Honor
14 Please the Court?

15 THE COURT Yes, sir

16 MR WILKES Ladies and gentlemen of the jury, the most
17 important thing the State failed to point out is the reason
18 that Mr Markley and Mr Elder are not on trial today, and
19 that would be conspicuously obvious to you as we go through
20 the trial The question will become where did the crack
21 come from, who's responsible for it, and that would be the
22 question

23 You'll hear testimony today from two people that will
24 tell you that it was the Cheeks' responsibility, that it
25 belonged to them Those two people will be people that are

1 codefendants in this case, and they are not being tried
2 today because what you will see is there are rewards given
3 for testimony

4 SOLICITOR HUNTER Objection, Your Honor

5 THE COURT Just one second

6 (Pause)

7 THE COURT Ladies and gentlemen of the jury, at this
8 point in time I'm gonna ask you to step back to the jury
9 room Don't begin any discussion until I've advise you to
10 do so

11 Thank you

12 (WHEREUPON, the following takes place outside the
13 presence of the jury)

14 THE COURT State the objection

15 SOLICITOR HUNTER Your Honor, Mr Wilkes is aware that
16 there's been no deal placed on the table for Mr Markley or
17 Mr Elder They still face the charges of, of trafficking
18 just like Mr Cheeks, both Mr Cheeks and that is just
19 outside the bounds of, of opening statement, Your Honor

20 MR WILKES I don't think so, Your Honor I'm allowed
21 to comment on the motivations of the witnesses that are
22 gonna testify, and the key defense in this case is not that
23 they were not in the room, but that they were not
24 responsible for the drugs And the motivation in this case
25 is, appears pretty obvious that when we stood before the

1 Court for the calling of the case all of the defense
2 attorneys stood up and said this is a trial And yet,
3 Mr Cheeks and Mr Cheeks are sitting before the jury today
4 Mr Markley and Mr Elder are not going to be before a jury,
5 and I think that it would be hard to deny that The
6 statement---

7 THE COURT Well, is there something in the discovery
8 that indicates that there is a deal that's been struck
9 between them?

10 MR WILKES Your Honor, that -- the motivation that
11 they are not sitting in front of the jury as codefendants is
12 their motivation The fact that the State may in---

13 THE COURT Well, now, but your comment that was
14 objected to was that there was some reward

15 MR WILKES There will be a reward for them The
16 reward is that they are not before this jury today, Your
17 Honor They -- we called the cases this morning and they
18 were all trials, but we are here today and there's no reason
19 for me and Mr Poole to be sitting here by ourselves other
20 than the fact that there's nothing that they can do with a
21 trafficking 400 gram case other than to dismiss it, to
22 reduce it to give them the benefit of their cooperating
23 witnesses

24 THE COURT I understand that But I'm trying to find
25 out if there is some agreement in writing that---

1 SOLICITOR HUNTER There's no agreement

2 THE COURT Let me finish

3 SOLICITOR HUNTER Yes, Your Honor

4 THE COURT Don't be cutting me off I haven't gotten
5 in a full sentence since you started

6 MR WILKES I---

7 THE COURT You too

8 MR WILKES I was going, but I hadn't quite got it out
9 yet

10 THE COURT But I have not seen thus far in this
11 argument any evidence that there is some type of written
12 agreement or some kind of, some kind of dismissal of charges
13 or something that would constitute a reward being offered at
14 this time I'm being told by the solicitor the charges are
15 still pending and they could be tried

16 MR WILKES Sure And they're always gonna say that
17 because that is how we do it as attorneys to keep the
18 witnesses less---

19 THE COURT Yes, sir, but I'm not gonna let you tell a
20 jury that there's a reward out there that has not yet been
21 consummated in some fashion

22 MR WILKES Your Honor, that is an inference that I
23 believe that---

24 THE COURT You have every right to comment on
25 inferences That's not the way you placed it to the jury

1 MR WILKES I'm sorry How did I --?
2 THE COURT You said that there was a reward that they
3 were receiving We can play it back
4 MR WILKES No, I'm not arguing with you at all I --
5 if I -- I didn't intend it as though they have received it,
6 but it is a clear inference that they are---
7 THE COURT That's how I took it
8 MR WILKES Okay well, I understand that
9 THE COURT Okay
10 MR WILKES But that---
11 THE COURT And, so, my ruling would be that you can
12 comment well why aren't they on trial too
13 MR WILKES Right
14 THE COURT You can raise those issues or questions to
15 the jury all day long---
16 MR WILKES That---
17 THE COURT ---but not in the fashion -- let me finish
18 MR WILKES I'm sorry, Your Honor I'm agreeing with
19 you I understand
20 THE COURT But you can't place it in the fashion that
21 there's some kind of a, almost a contractual relationship or
22 formal agreement unless there is one If there is one, show
23 me
24 MR WILKES I understand I did not mean to carry it
25 that far My intent was that they are not here and that

1 that creates the inference that the reward is there, and
2 that is their---

3 THE COURT Well, there's a possibility of a reward

4 MR WILKES Correct, and that -- if I overstepped,
5 that, that was not intended I have been told that there is
6 nothing in writing, and I don't know how I can get past
7 that, but---

8 THE COURT Now, I don't know that you can because I've
9 been in situations like this before

10 MR WILKES I know

11 THE COURT Okay As long as we understand ourselves,
12 you certainly have the right to comment on the fact that
13 they're not being tried with your clients

14 MR WILKES Right

15 THE COURT Their cases are still out there and lots of
16 things could happen to those cases

17 MR WILKES Right

18 THE COURT You have a right to talk about that

19 MR WILKES Thank you That's all I was trying to do

20 THE COURT Bring the jury in

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

23 THE COURT All right The record will reflect that
24 the jury has returned to the courtroom

25 I have sustained an objection The defense will be

1 allowed to proceed with its opening statement pursuant to my
2 ruling

3 You may proceed, Mr Wilkes

4 MR WILKES Thank you, Your Honor

5 what we will ask you to do today is look at the
6 motivation of the witnesses Look at why they may testify
7 to what they testify to That is the most important thing
8 in any case is to examine why somebody testifies as they do
9 in a trial because, unfortunately, not all the testimony
10 that comes to court will be truthful The purpose of the
11 jury is to determine, looking at motivation, looking at what
12 somebody has to gain, is to examine it, make a determination
13 of what is true, and that is the question that faces you

14 All we ask is you be fair and you examine the evidence
15 hard And when the judge gives you instructions on applying
16 the presumption of innocence that you apply it truthfully
17 and as seriously as the judge will tell you to do so

18 Thank you

19 THE COURT Mr Poole, you may proceed

20 MR POOLE May it please the Court?

21 THE COURT Yes, sir

22 MR POOLE Good afternoon I'm Roger Poole I
23 represent Ricky Dwight Cheeks, and Mr Ricky Dwight Cheeks
24 is seated over there in the white shirt He's a little past
25 middle age He is in not good health and these are obvious

1 things

2 The most obvious thing right now is that he is an
3 innocent man. He remains innocent until 12 of you agree
4 that the State has proved their case and every element of
5 the offense or offenses for which he is charged beyond a
6 reasonable doubt. Mr. Ricky Dwight Cheeks stays innocent
7 until and unless you find him guilty of the charges. He
8 does not have to prove his innocence. The State has the
9 burden of proof all the way through this thing.

10 Judge Couch, a moment ago, mentioned a couple of things
11 that are going to be variations on a continuing theme and
12 themes in this case. He mentioned your ability and your
13 right and duty, in fact, to look at the believability and
14 the credibility of each and every witness that is sworn and
15 gives testimony. He also said that there will be a certain
16 amount of repetitiveness, and, unfortunately, when you have
17 two defendants or more and you have two lawyers at a defense
18 table, there is inherently a degree of repetitiveness.

19 Now, what I will try to do is not to infringe on your
20 time by being unnecessarily repetitive because we have two
21 defendants who are related by blood, and they have --
22 they're similarly situated, and the evidence is, at some
23 time, going to be overlapping and include both of them. So,
24 I will have to answer the same, ask the same questions of a
25 witness that Mr. , my friend, Jeff Wilkes, will ask a witness

1 or vice versa

2 So, please bear with us as we go through that we're
3 doing our job We are representing our clients and I thank
4 you for being here I thank you for the attention you've
5 shown so far and the attention that I am assured that will
6 you follow as we go through this case, and I ask that you,
7 in the end, will return a verdict that speaks the truth, and
8 at the end of the day, whatever day that will be this week,
9 you can go home and everybody can say we did our job

10 Thank you very much

11 THE COURT The State may call its first witness

12 SOLICITOR HUNTER Your Honor, may---

13 MR WILKES Your Honor -- excuse me

14 Before we begin, we still -- we have one of -- we have
15 several witnesses in the courtroom, but Mr Markley is still
16 here

17 Can we sequester Mr Markley?

18 THE COURT Any objection?

19 SOLICITOR HUNTER Your Honor, I, I have no objection
20 to that

21 In fact, can we excuse Mr Markley for today?

22 He'll show back up tomorrow

23 THE COURT Any objection?

24 MR WILKES None

25 THE COURT Mr Markley, you're free to go at this

1 time Thank you very much

2 SOLICITOR HUNTER May I take a moment to set up the---

3 THE COURT Yes, sir, you may

4 (Pause)

5 SOLICITOR HUNTER Thank you, Your Honor

6 THE COURT Yes, sir

7 SOLICITOR HUNTER The State will call Craig Hanning

8 THE COURT Come forward, sir, to my left to be sworn

9 WITNESS Yes, sir

10 CRAIG HANNING, having been first duly
11 sworn, testified as follows

12 THE COURT Have a seat please Once seated, state
13 your name

14 WITNESS Craig Hanning

15 THE COURT Mr Hunter, your witness

16 DIRECT EXAMINATION

17 BY SOLICITOR HUNTER

18 Q Mr Hanning, who's your current employer?

19 A I currently work for the State of South Carolina, Law
20 Enforcement Division, or SLED, and I'm currently assigned to
21 the narcotics unit in the Piedmont region

22 Q How long have you been doing that?

23 A I've been employed with SLED since 2008

24 Q Okay what did you did before SLED?

25 A I worked for Greenville County Sheriff's Office for two

1 years

2 Q And before that?

3 A Prior to that I was a police officer in Palm Beach
4 County, Florida for 15 years

5 Q Okay So, your total law enforcement experience is?

6 A About 17 years total

7 Q Okay Now, explain the Piedmont area if you will

8 A Basically I work anything in the Upstate Spartanburg
9 County, Cherokee County, Greenville County, Anderson County

10 Q Did you have an opportunity to be at the Super 8 Motel
11 on Blackstock Road on June 4th?

12 A I did

13 Q And what were you doing at that point?

14 A On June 4th I received a phone call in reference to a
15 subject by the name of Eric Elder whose mother called me and
16 told me that---

17 MR WILKES Objection

18 MR POOLE Objection

19 MR WILKES Hearsay

20 THE COURT Sustained

21 Q What, what were you doing at the Super 8 Motel?

22 A We were conducting surveillance

23 Q Okay And who were you surveilling at that point?

24 A Ricky Cheeks, Derrick Cheeks, and Eric Elder

25 Q Okay What did you view at the Super 8 Motel?

1 A At that afternoon we received a phone call, responded,
2 we set up surveillance and I saw a black Ford Crown Victoria
3 Police Interceptor Package parked back into a parking space
4 at the end of the building

5 Q Could you please describe the vehicle to us?

6 A Sure It's painted black It had a, it had fake
7 antennas on the vehicle It had police rims, dark tinted
8 windows, and it appeared to us to have been a retired police
9 car that would have been sold at auction

10 Q Okay Who was at the vehicle?

11 A Ricky Cheeks and then Eric Elder was dropped off there

12 Q Okay How long were they there together?

13 A About ten minutes

14 Q Okay Did anybody come visit them?

15 A They did Derrick Cheeks came down from the hotel to
16 meet with them at which time they all got in the vehicle and
17 left

18 Q Okay And from there, where did they go?

19 A They went to 152 Gordon Drive

20 Q Can you please explain where that is in Spartanburg?

21 A Off John B White Boulevard or John B White Senior
22 Boulevard There's a school, woodland, woodmont Elementary
23 It's directly behind that little small neighborhood

24 Q Would that school be woodland Heights?

25 A Woodland Heights, yes, sir

Craig Hanning - Direct examination
by Solicitor Hunter

1 Q Did they stop anywhere between Super 8 Motel and the
2 residence?

3 A No, sir, they did not

4 Q Are you sure?

5 A I'm positive

6 Q Okay At this point do you continue surveillance or
7 where do you go?

8 A We establish surveillance at different parts of the
9 neighborhood at which time I left surveillance, I left my
10 position to Investigator Raymond, and I met with
11 Investigator Hutchins at the Sheriff's Office

12 Q Okay Now, I want to go to the execution of the search
13 warrant---

14 A Yes, sir

15 Q ---for a second

16 where was your position on this execution team?

17 A I was the third person in the stack or in the, in the,
18 in line to enter the door

19 Q Okay where did y'all first enter?

20 A If you're facing 152 Gordon Drive there's a front door
21 to the house or the surveillance noted that they always used
22 the house, the, the door to the left next to the garage for
23 the side garage entrance

24 Q Okay So, where did you enter through?

25 A The side garage door

1 Q Could you please describe the state of the garage?

2 A Yes, sir, when we, we had arrived, we all stacked up on
3 the outside of the door. We had made several announcements,
4 police, search warrant, Sheriff's Office, search warrant.
5 Once we entered the door, once we breached the door, we came
6 into the garage. It was very cluttered with tools, wood.
7 It had one single pathway basically through the entire
8 garage.

9 Q How large was the garage?

10 A It was large. It was very long. It almost looked like
11 it was an unfinished basement, more than a garage that they
12 had turned into a workshop.

13 Q Okay. And were you able to find the door at first?

14 A The side door to the garage we were. The garage door
15 to the entry house, to the house we were not.

16 Q Why not?

17 A It was hidden behind a piece of wood---

18 Q Okay.

19 A ---or some clothes, some clothes were on it and stuff.

20 Q How long did it take you to finally enter the house?

21 A It probably took about 30 seconds for us to work our
22 way through the garage to that door.

23 Q So, you say there was one pathway?

24 A Yes.

25 Q And how many people were with you at this point?

1 approximately?

2 A Seven I believe

3 Q okay And would it have been seven abreast or---

4 A It would of been almost in a straight-line

5 Q okay Now, when you get to the door that you're
6 actually able to find, what happens next?

7 A We, again, continue yelling police with a search
8 warrant, Sheriff's Office with a search warrant, put your
9 hands up We breached that door when we enter that door
10 there's a stairway to the left and a closed door to the
11 right

12 Q okay

13 A Based on our informant's description of the inside of
14 the house we knew that the suspect had lived downstairs
15 So, we went to the house -- we went to the, to the right

16 Q okay When you entered the room, where did you go?

17 A As soon as we entered the room it opens up to a, a
18 large family room, a large sitting room, which you could see
19 directly into the kitchen at which time I entered I was
20 behind Investigator Hutchins and Lieutenant Cooper, both
21 from the Sheriff's Office, and I encountered a white male
22 who was sitting in a chair and he put his hands up

23 Q Was that white male previously here in a wheelchair?

24 A Yes, he was

25 Q Did he make any type of movements?

Craig Hanning - Direct examination
by Solicitor Hunter

1 A Absolutely not

2 Q Okay

3 A He was taken into custody without incident

4 Q When you went into the house, what did you first see in
5 the kitchen?

6 A I saw somebody run from the kitchen and go into a
7 bedroom at which point Investigator Hutchins and Lieutenant
8 Cooper had gone in towards that bedroom to secure that
9 bedroom, and I was securing Mr Markley, and looking into
10 the kitchen I saw what appeared to be a large amount of
11 crack cocaine on the counter

12 (WHEREUPON, a photograph was marked as State's Exhibit
13 No 1 for identification purposes only at this time)

14 SOLICITOR HUNTER Your Honor, may I approach the
15 witness?

16 THE COURT You may

17 Q Mr Hanning, I'm showing you what has been previously
18 marked as State's Exhibit No 1

19 Do you recognize that picture?

20 A I do

21 Q What is it?

22 A It is the photograph of the kitchen area of
23 Mr Markley's residence

24 Q Does it fairly and accurately depict what you saw on
25 that day, June 4th, 2009?

Craig Hanning - Direct examination
by Solicitor Hunter

1 A Yes, sir, it does

2 SOLICITOR HUNTER Your Honor, at this time I'd move to
3 admit State's Exhibit 1 into evidence

4 THE COURT Any objection?

5 MR WILKES I don't have the numbering I don't know
6 which one is which, but---

7 SOLICITOR HUNTER It's the one I just showed you

8 MR WILKES No objection

9 THE COURT Mr Poole

10 MR POOLE None here, Your Honor

11 THE COURT Without objection it will be admitted as
12 marked

13 (WHEREUPON, State's Exhibit No 1 was received into
14 evidence at this time)

15 Q I'm gonna put it up on the large screen so that
16 everybody can see it

17 Okay Now, in relation to this picture, where did you
18 first enter?

19 A It would be straight back It would be -- when you
20 enter the residence you look directly into the microwave
21 there That wall would be the, as far back as you can go
22 inside the residence

23 Q Okay So, you're looking at the back wall where the
24 microwave is?

25 A Yes

Craig Hanning - Direct examination
by Solicitor Hunter

1 Q Okay Could you briefly describe the state of the
2 room, not the kitchen, but the room that this connects to?

3 A Disarray There was a couch, a chair, a table, and
4 then tool boxes, big large rolling tool boxes, clothes
5 Very disorganized---

6 Q Could you---

7 A ---and unkept

8 Q Can you describe the state of the kitchen?

9 A The kitchen was very clean There was no dishes on the
10 sink The only thing that was present in the kitchen area
11 in plain view was the crack cocaine baggies The stove had
12 boiling water indicating that there was a possible cocaine
13 cook being done at the time, scales, razors blades, and
14 plates which are all kindly used in the process of cooking
15 crack cocaine

16 MR WILKES Your Honor, I would impose one small
17 objection, that the references as to what's viewed as being
18 the substance I think at this point would be an alleged
19 substance

20 SOLICITOR HUNTER Your Honor, we, we are gonna prove,
21 through the chain and as well as the testimony of the
22 chemist, that that substance is crack cocaine

23 THE COURT Well, I'm gonna sustain the objection at
24 this point in time---

25 SOLICITOR HUNTER I will---

1 THE COURT ---and instruct the witness to -- he can
2 state what his state of mind is or what he believed it to be
3 or alleged it to be, but there's been no evidence to
4 establish exactly what it is

5 SOLICITOR HUNTER I'll refer to it as a substance from
6 now on

7 MR WILKES Your Honor, also, can this be subject to
8 my pretrial, my suppression motion so I don't, and it be
9 continuing, so I don't have to object everytime there's a
10 mention of it?

11 THE COURT Yes, sir

12 MR WILKES Thank you, Your Honor

13 THE COURT And I assume, Mr Poole, you want to say
14 the same thing?

15 MR POOLE Yes, sir

16 THE COURT All right It will be -- it's noted that
17 the objection continues

18 MR WILKES Thank you, Your Honor

19 Q Now, in the background of this picture you described
20 the microwave

21 Is that underneath the cabinet that has two glass
22 doors?

23 A It's the, it's the black object underneath that glass
24 cabinet all the way in the back right corner of the kitchen
25 area

Craig Hanning - Direct examination
by Solicitor Hunter

1 (WHEREUPON, a photograph was marked as State's Exhibit
2 No 2 for identification purposes only at this time)

3 SOLICITOR HUNTER May I approach the witness?

4 THE COURT You may

5 Q I'm gonna show you what's been premarked as State's
6 Exhibit 2

7 Do you recognize that?

8 A I do

9 Q How so?

10 A This is the photograph taken -- it's actually a
11 close-up of the microwave under the, the cabinet there, and
12 also it has an area of the stove with a pot of water on
13 it---

14 Q Does it fairly and accurately---

15 A ---and a scale

16 Q ---depict the scene as you remember it on June 4th?

17 A It does

18 SOLICITOR HUNTER Your Honor, at this time the State
19 would move to admit State's Exhibit 2 into evidence

20 THE COURT Any objection---

21 MR WILKES None, Your Honor

22 THE COURT ---to No 2?

23 MR WILKES None, Your Honor

24 MR POOLE No, sir

25 THE COURT It'd be admitted as marked

1 (WHEREUPON, State's Exhibit No 2 was received into
2 evidence at this time)

3 Q So, with your testimony, you would say State's Exhibit
4 2 is this area of the kitchen?

5 A Yes

6 Q Can you please describe what you see there?

7 A Yes, sir, there's a pot of water on the stove with a
8 spoon next to it and a digital scale, an unknown substance,
9 some of it in plastic bags, and then a microwave, and I
10 believe that's all I can't see what's on top of the
11 microwave

12 Q Okay Does it appear to be a spoon or excuse me
13 okay Another white substance?

14 A On the top of the microwave, yes, sir

15 Q Okay

16 (WHEREUPON, a package containing drugs was marked as
17 State's Exhibit No 3 for identification purposes only at
18 this time)

19 SOLICITOR HUNTER Your Honor, may I approach the
20 witness?

21 THE COURT Yes, you may

22 Q I'm gonna hand you what's been premarked as State's
23 Exhibit 3

24 Do you recognize that?

25 A I do

Craig Hanning - Direct examination
by Solicitor Hunter

1 Q Briefly describe what it is

2 A Inside this plastic bag is some more plastic bags,
3 which is considered a B E S t kit or an evidence collection
4 bag, which also contains multiple off-white rock like
5 substances and here's one as well as a glass Pyrex measuring
6 cup

7 Q Okay That's fine

8 Now, are you familiar with the execution procedures of
9 a search warrant?

10 A I am Yes, sir

11 Q Did you collect State's Exhibit 3?

12 A I would have to check the inventory return, but I
13 believe I did, yes, sir

14 Q Well, did you, did you recover State's Exhibit 3 there?

15 A Yes, sir, I did

16 Q Who would you have called over to collect the evidence?

17 A Anytime we do a search warrant there's several parts
18 after the, the scene is secured Once everybody is secured
19 in the residence, usually one person will take photographs,
20 and then one person will do what we call an inventory
21 return, which is every item that we are gonna collect as
22 evidence has to be documented, photographed, documented, and
23 then handwritten Once I recovered what I suspected to be
24 an illegal substance on the counters, I contacted Kelvin
25 Washington, he's a deputy with the Sheriff's Office, advised

Craig Hanning - Direct examination
by Solicitor Hunter

1 him what I had, he came over and took possession of the
2 items and brought them back to the area where he was working
3 and he completed his inventory return

4 Q Now, if I could go back for a second

5 (WHEREUPON, a photograph was marked as State's Exhibit
6 No 4 for identification purposes only at this time)

7 SOLICITOR HUNTER May I approach the witness, Your
8 Honor?

9 THE COURT You may

10 Q Showing you what's been previously marked as State's
11 Exhibit 4, do you recognize that item?

12 A I do This is the, the garage

13 Q Does it fairly and accurately depict the garage as you
14 remember it the day on June 4th, 2009?

15 A It does

16 SOLICITOR HUNTER And, Your Honor, at this time the
17 State would move to admit State's Exhibit 4 into evidence

18 THE COURT Any objection, Mr Wilkes?

19 MR WILKES None, Your Honor

20 MR POOLE No, sir

21 THE COURT Mr Wilkes, when you address the Court---

22 MR WILKES I'm sorry, Your Honor

23 THE COURT ---I'm gonna ask that you stand Thank
24 you

25 It's admitted as marked

Craig Hanning - Direct examination
by Solicitor Hunter

1 (WHEREUPON, State's Exhibit No 4 was received into
2 evidence at this time)

3 SOLICITOR HUNTER May I approach, Your Honor?

4 THE COURT You may

5 SOLICITOR HUNTER May I publish to the jury, Your
6 Honor?

7 THE COURT You certainly may

8 Q Please just note one more time the state, the state of
9 the garage

10 A Oh, I'm sorry I thought The -- this would be from
11 the entry door going into the garage, and if you see where
12 the water heater there is the right-hand corner, the door to
13 the left of that is the actual entry door into the
14 residence

15 Q Let me see if I can zoom in a little better

16 A It's the biggest brown article in that picture That's
17 the entry door of the residence

18 SOLICITOR HUNTER Your Honor, may I have the---

19 A ---to get into that

20 THE COURT May I have the witness step down and point
21 where his position was?

22 THE COURT Yes, you may

23 SOLICITOR HUNTER Thank you

24 Q Would you please show the jury actually what you're
25 speaking of?

Craig Hanning - Direct examination
by Solicitor Hunter

1 A There's a door right here that goes into the residence
2 I'm sorry I thought that was a water heater It's a
3 bookshelf

4 Q Okay

5 A Right in here

6 Q Thank you

7 A (Witness returns to the stand)

8 (WHEREUPON, a photograph was marked as State's Exhibit
9 No 5 for identification purposes only at this time)

10 SOLICITOR HUNTER Your Honor, may I approach the
11 witness?

12 THE COURT Yes, you may

13 SOLICITOR HUNTER Thank you

14 Q I hand you what's previously marked as State's Exhibit
15 5

16 Do you recognize this picture?

17 A Yes, sir, this is a picture of myself holding a large
18 amount of U S currency that was rubber banded together

19 Q Okay And does it fairly and accurately depict the
20 scene as you remember it on June 4th, 2009?

21 A It does

22 SOLICITOR HUNTER Your Honor, at this time the State
23 would move to admit State's Exhibit 5 into evidence

24 THE COURT Any objection?

25 MR WILKES No objection

Craig Hanning - Direct examination
by Solicitor Hunter

1 THE COURT Sir?

2 MR WILKES No objection

3 THE COURT No objection?

4 MR POOLE No, sir

5 THE COURT All right It will be admitted as marked

6 (WHEREUPON, State's Exhibit No 5 was received into
7 evidence at this time)

8 SOLICITOR HUNTER May I publish, Your Honor?

9 THE COURT You certainly may

10 Q Can you describe what is seen in this picture?

11 A There's a I believe seven or eight bundles of money
12 that are all rubber banded together, and they were at,
13 located in the suitcase inside one of the bedrooms inside
14 the residence

15 Q Okay Please answer any other questions that the
16 defense might have for you Thank you

17 A Yes, sir

18 THE COURT Mr Wilkes, your witness

19 MR WILKES Thank you, Your Honor

20 CROSS-EXAMINATION

21 BY MR WILKES

22 MR WILKES May I approach?

23 THE COURT Yes, you may, sir

24 MR WILKES Thank you

25 Q Agent Hanning, will you look at State's Exhibit No 4,

1 and tell me, the door, does that door have a dartboard or
2 something on it?

3 A Looks like there's a picture on it

4 Q Or a picture on it?

5 A Yes, sir

6 Q Is that the door leading into the, the living area or
7 Mr Markley's bedroom?

8 The -- do you know which door that would be?

9 A I'm assuming it's to the living area, but I wouldn't be
10 able to tell without a wider picture

11 Q Is that the door you entered the living space through?
12 Did you go through that door?

13 A It appears to be that door But, again, I don't know
14 we would need a bigger picture of the garage This only
15 depicts a small corner of the garage

16 Q Okay But that's y'all's evidence, right?

17 A Yes, sir

18 Q You, you're familiar with those pictures?

19 A Yes, sir

20 Q Did one of the doors lead into Mr Markley's bedroom?

21 A Mr Markley's had a -- his bedroom had an exterior
22 door --

23 Q All right

24 A -- to the house Not from the garage

25 Q So -- but there was no interior door to his bedroom?

1 A No, there was, there was an interior door If you're
2 inside Mr Markley's residence you can walk from the family
3 room area into his bedroom---

4 Q Uh-huh (Affirmative)

5 A ---and also there's an exterior door to the outside to
6 the open area

7 Q Okay

8 A Not the garage

9 Q Okay

10 A If I explained that correctly to you
11 Do you understand?

12 Q I think I understand

13 A Okay

14 Q So, you entered into a door which led into the room
15 which you say Mr Derrick Cheeks was?

16 A Yes

17 Q When you entered the door, did you enter the room
18 straight into the room looking at the microwave?

19 Did I understand that correctly?

20 A A little bit to the left The microwave, if you enter
21 the door straight in, the room opens up

22 Q Okay

23 A And straight ahead of you against the far wall would be
24 the kitchen area So, you'd be able to see the microwave,
25 the sink, the stove, or the range

- 1 Q Okay
- 2 A And then to the left of that would be two bedroom
3 doors So, it was one large room and two bedroom doors to
4 the left
- 5 Q And one of those was Mr Markley's?
- 6 A Yes
- 7 Q And the other was?
- 8 A Could of been a spare -- it's a spare, it's a spare
9 bedroom We don't know who stayed in there
- 10 Q Okay Is that where Mr Derrick Cheeks was ultimately
11 found?
- 12 A No, he was found in Mr Markley's bedroom
- 13 Q Mr Markley's room?
- 14 A Yes, sir
- 15 Q Now, is that the room just straight across closest to
16 where you entered?
- 17 A It'd be the one closest to where we entered, yes, sir
- 18 Q Okay
- 19 A You have to walk in and then take three or four steps
20 and that would be the first door on your left
- 21 Q Where was Mr Markley at the time?
- 22 A He was sitting in a recliner in the large open air room
23 in the family room if you will
- 24 Q Is the open air room part of the kitchen area?
- 25 A Yes, sir, I would say it's an open floor plan if you

1 will There's no walls There's only a small, a small area
2 that you, that you wouldn't be able to walk into the
3 kitchen It's a -- there's an entryway into the kitchen,
4 but there's no walls You'd be able to see right through
5 it

6 Q Okay

7 A It's just a small 4-foot wall where the sink is

8 Q And you were third through the door?

9 A Yes, sir

10 Q When you came through the door, did you personally see
11 Mr Markley sitting -- he's to the right of you?

12 A Yes

13 Q And Mr Cheeks is going to the left?

14 A Mr Cheeks went -- when, when I was the third person
15 through the door, generally the way search warrants are
16 executed, you go to the open area threat, the first threat
17 that you see, which would be any open door or any door

18 Q Right

19 A Being the third person in I would of been the first
20 person past the first door if you will

21 Q Right

22 A So, Lieutenant Cooper and Investigator Hutchins, when
23 they saw Mr Cheeks running at them and went into that, to
24 that bedroom, they begin securing that bedroom at which time
25 I would of taken the next immediate threat which would of

1 been Mr Markley in that large family room

2 Q And my question specifically, did you see Mr Cheeks
3 when you came through the door?

4 A I, I did not I was -- I can't say I saw Mr Cheeks
5 I just know that they were going after a threat into that
6 room, and I was focused on my responsibility, which would be
7 the family room

8 Q The next door?

9 A Yes, sir, or the -- actually the open room

10 Q But you didn't see where Mr Cheeks was when that door
11 got kicked open or whatever?

12 A No, sir

13 Q Okay Thank you That's all I have

14 THE COURT Mr Poole

15 MR POOLE Thank you, Your Honor

16 THE COURT Just one second before we begin, Mr Poole
17 There's some discussion going on among people in the
18 gallery I will clear the courtroom unless it stops

19 You may proceed, Mr Poole

20 MR POOLE Thank you

21 CROSS-EXAMINATION

22 BY MR POOLE

23 Q Agent Hanning, who owns the property at 152 Gordon
24 Drive?

25 A I believe Mr Markley, Senior does, which would be

1 Tracy Markley's father and his mother

2 Q Tracy Markley's father and mother?

3 A Yes, sir

4 Q Do they live there also?

5 A They do

6 Q Okay And, of course, Mr Markley lives there?

7 A Yes, sir

8 Q And when you say on June 4 -- was it June 4---

9 A Yes, sir

10 Q ---2009?

11 when you saw Mr Markley you said he was in a recliner?

12 A Yes, sir

13 Q Is that right?

14 A I believe it was some sort of recliner

15 Q And was he watching television or, or what he was
16 doing?

17 A I don't recall if the television was on I don't
18 remember

19 Q Okay

20 A He was sitting there when we entered the residence and
21 he had a look of shock on his face, and he just -- he didn't
22 resist He put his hands up and he just---

23 Q Okay

24 A ---did everything I asked him to

25 Q All right well, did you ask him to get up and---

- 1 A I did not
- 2 Q Okay Did he get up and move around?
- 3 A I didn't ask him to get up Based on Mr Markley's
- 4 size, the facts that his hand were in plain view, I wasn't
- 5 gonna have him go from a recliner from a sitting position
- 6 down to the floor when his hands were up, he was in a non --
- 7 he was in a passive state He was handcuffed and taken into
- 8 custody
- 9 Q Right
- 10 Okay So, he was handcuffed?
- 11 A Yes, sir
- 12 Q And, and he walked?
- 13 A No, sir, we left him right where he was
- 14 Q Okay
- 15 A And he---
- 16 Q Was he taken into custody?
- 17 A Yes, sir
- 18 Q Well, how was he taken out of the home?
- 19 A Eventually when we, when we secured him, I consider
- 20 that taking into custody He was in my custody He wasn't
- 21 free to leave
- 22 Q Right
- 23 A But he was to sit right where he was
- 24 Q Okay
- 25 A And then once he left, once we were finished with the

Craig Hanning - Cross-examination
by Mr Poole

1 residence, with the search, he was escorted to a police car

2 Q He was escorted?

3 A Well, walked out, yes, sir

4 Q He walked out?

5 A Uh-huh (Affirmative)

6 Q Okay Thank you, Agent Hanning

7 A Yes, sir

8 THE COURT Redirect?

9 SOLICITOR HUNTER Yes, Your Honor, briefly

10 THE COURT Yes, sir

11 REDIRECT EXAMINATION

12 BY SOLICITOR HUNTER

13 Q Mr Wilkes was talking about where you entered

14 Could you briefly describe exactly how you entered into
15 the room?

16 A Into the room where Mr ---

17 Q Into the entire house Just go through your pathway

18 A We went to the garage door on the outside, the exterior
19 open air garage door We knocked and announced Nobody
20 came to the door The door was locked We re-breached it
21 we entered through the cluttered garage to another interior
22 door

23 Q And where did that interior door lead to?

24 A The residence of Mr Markley or the basement of the
25 residence, the 152---

1 Q Was there a hallway before that door?

2 A We actually went -- yes, sir, we went into a hallway
3 and then to another door

4 Q In that hallway, what was to your left?

5 A Stairs

6 Q And to your right?

7 A A closed door

8 Q Okay Now, Mr Wilkes had you say that you didn't see
9 Mr Cheeks run

10 You saw Mr Markley, right?

11 A Correct

12 Q And what was Mr Markley doing?

13 A He was sitting in a recliner Upon executing search
14 warrants, it's, it's our duty and our responsibility to yell
15 as loud as we can who -- we are wearing identifiable vests
16 that say either sheriff, mine says police because I work for
17 the state All of us in the stack are announcing Sheriff's
18 office, search warrant, get down on the ground, put your
19 hands up

20 When I went in Mr Markley had the look of surprise,
21 which is generally seen on subjects when the, the police
22 execute a search warrant at their house It was -- he had a
23 look of amazement and just stood there with his or sat there
24 with his hands up in a non-aggressive demeanor

25 Q Now, you say Mr Markley today in the wheelchair,

1 correct?

2 A Yes, sir

3 Q Could you please describe his appearance on that date,
4 June 4th, 2009?

5 A He was not as heavy He was in, medically speaking,
6 I'm not a doctor, but he had some -- you could tell that
7 there were some medical issues, and he was pretty
8 disheveled His appearance was that of somebody who is
9 unkept

10 Q Okay when you say not as heavy, I know you can't get
11 into he's 50 pounds less, but if you had to approximate?

12 A I would say probably 200 pounds heavier then he was 18
13 months ago

14 Q You're saying he's heavier today?

15 A Yes, sir

16 Q Okay Thank you

17 THE COURT Recross

18 MR WILKES None, Your Honor

19 MR POOLE And none here, Your Honor

20 THE COURT You may step down

21 WITNESS Yes, sir

22 THE COURT The State may call its next witness

23 SOLICITOR HUNTER Your Honor, the State would call
24 Investigator Hutchins

25 THE COURT Come forward, sir, to my left to be sworn

Matt Hutchins - Direct examination
by Solicitor Hunter

1 MATT HUTCHINS, having been first duly
2 sworn, testified as follows

3 THE COURT Please be seated State your name please

4 WITNESS It's Investigator Matt Hutchins

5 THE COURT Mr Hunter, your witness

6 DIRECT EXAMINATION

7 BY SOLICITOR HUNTER

8 Q Mr Hutchins, who do you work for?

9 A Spartanburg County Sheriff's Office

10 Q And how long have you been employed there?

11 A Since 2002

12 Q In what capacity?

13 A I'm currently -- I'm assigned to the vice and narcotics
14 unit of the Sheriff's Office

15 Q Did you start out in that unit?

16 A No, I did not

17 Q What did you do before that?

18 A When I first came to the Sheriff's Office I was
19 assigned to uniform patrol After a little over a year
20 there then I was assigned to narcotics

21 Q Okay So, you've been at the Sheriff's Office for
22 eight years?

23 A Yes, sir

24 Q Okay How much law enforcement experience did you have
25 before the Sheriff's Office?

Matt Hutchins - Direct examination
by Solicitor Hunter

1 A Prior to the Sheriff's Office, in 19, starting in 1998
2 I served as Magistrate's Court constable After that, in
3 2000, I worked as a lake warden for two years, and then came
4 to the Sheriff's Office

5 Q Okay On this particular day, particular day,
6 June 4th, 2009, where did you first begin your
7 surveillance?

8 A I first -- first I got involved was I received a call
9 from Investigator Norris that he needed assistance on
10 surveillance, and I was told that a black Crown Vic---

11 MR WILKES Objection

12 MR POOLE Objection

13 MR WILKES Hearsay

14 THE COURT Sustained

15 A I, I became involved conducting surveillance of a black
16 Crown Vic traveling up Reidville Road

17 Q Okay And that black, black Crown Vic, do you know who
18 the occupants of the vehicle were?

19 A Yes, I do

20 Q Who were they?

21 A It was Mr Ricky Cheeks was the passenger and, and Eric
22 Elder was the driver

23 Q And where did this vehicle go?

24 A Went to the Wal-Mart at Dorman Center

25 Q Did anyone get out of the vehicle?

1 A They did

2 Q Who?

3 A Mr Eric Elder

4 Q And where did he go?

5 A He walked inside of the Wal-Mart and I, myself, and
6 Investigator Raymond followed him into Wal-Mart

7 Q When you went into Wal-Mart, how far back were you from
8 him?

9 A Initially a pretty good ways to let him get inside the
10 door Then I exited my vehicle and I went inside And when
11 I first observed him he was coming off of a grocery aisle on
12 the grocery side I observed him carrying a box of baking
13 soda and the aisle he was coming off of was the baking soda
14 aisle

15 Q Okay Did you follow him to the register?

16 A I did And to be exact, it was lane ten I believe

17 Q All right And what did he do at this register?

18 A When he walked to the register it appeared to me that
19 he was checking out, and I then went outside to my vehicle

20 Q Did he come out with anything?

21 A Came out with a bag

22 Q Okay Now, from that point where did the vehicle go?

23 A The vehicle then went back to the address that
24 Investigator Norris had had under surveillance I believe
25 it was Gordon, which to be exact is 152 Gordon Drive in

1 Spartanburg

2 Q Okay And what county is this?

3 A Spartanburg County

4 Q Okay Now, how long did you wait there?

5 A After he was followed back to that location, my job
6 then was to take up Investigator Norris' surveillance
7 position, and I took up that position, which was the, the
8 main eye per se of the residence

9 Q when you came back to the residence from Wal-Mart, what
10 did Eric Elder and Ricky Cheeks do?

11 A when, when we followed them back or when I followed
12 them back, I did not have the initial eye of them getting
13 back to the residence I -- when I took up my surveillance
14 point and relieved Investigator Norris, the, the subjects
15 had went inside and the vehicles were in the driveway

16 Q when you say the subjects, who is that?

17 A That would be Mr Elder and Mr Ricky Cheeks

18 Q Okay At that point, following along the time line,
19 what did you do next?

20 A I then -- the next thing I observed at the residence
21 was Mr Ricky Cheeks and Mr Elder getting back in the Crown
22 Vic and leaving the residence

23 Q Okay And did you follow them at this point?

24 A I, I did I noticed the vehicle leaving the driveway
25 at a high rate of speed, and I followed them from that

1 location

2 Q And where did you follow them to?

3 A Followed them crossing over W O Ezell Boulevard on
4 Briarwood, and at Briarwood is a stop sign that intersects
5 with West Main I observed the car to slow, not come to a
6 stop, and kind of like yield sign, instead of making a stop
7 sign, a yield sign, and taking a left and then an immediate
8 right

9 Q So, did, did this vehicle -- who was driving this
10 vehicle by the way?

11 A Mr Elder

12 Q Okay And did this -- was there a passenger in the
13 vehicle?

14 A There was

15 Q Who was that passenger?

16 A Mr Cheek, Ricky Cheeks

17 Q Okay Can you point out Mr Ricky Cheeks?

18 A Be the gentleman in the white shirt sitting at the
19 defense table

20 Q Okay And they were in this vehicle at this time?

21 A Yes, sir

22 Q And it failed to complete a stop?

23 A Yes, sir, it failed to come to a complete stop at the
24 stop sign

25 Q At what location?

1 A At Briarwood and West Main

2 Q Okay Did you pull them over?

3 A I activated my blue lights They actually had taken a
4 right onto Vanderbilt, activated the blue lights, and the
5 vehicle pulled to the side of the road

6 Q Okay In what county did, was this on?

7 A Spartanburg County

8 Q Okay At this point what did you do next?

9 A I approached the vehicle

10 Q Which, which side did you approach?

11 A The driver's side Approached the driver's side of the
12 vehicle I noticed that the driver passenger seemed to be
13 nervous

14 Q Could you describe their nervous behavior?

15 A The driver was noticeably shaking The passenger had
16 his hands clinched towards his pocket, and it was kind of
17 looking straight ahead instead of looking at me I then
18 told both subjects to put their hands up on the dash in fear
19 of maybe weapons in the vehicle Both subjects complied I
20 then asked the driver, Mr Elder, to step out of the
21 vehicle

22 Q Okay Now, when you asked them to step out of the
23 vehicle, what did he do?

24 A Mr Elder then stepped out of the driver's side of the
25 vehicle

1 Q Okay where did he go from there?

2 A Took him back to the front driver's side corner of my
3 patrol vehicle

4 Q Did he, at anytime, go to the passenger side of the
5 vehicle, of his vehicle or yours?

6 A No, sir

7 Q Where was your vehicle in the location, in reference to
8 his vehicle?

9 A My vehicle was directly behind his

10 Q And this was that same black Crown Vic?

11 A Yes, this was the same black Crown Vic that they had
12 been observed in earlier

13 Q Your vehicle is not equipped with a in camera system,
14 is it?

15 A No, mine's actually an undercover vehicle It's an
16 SUV It's equipped with blue lights and sirens

17 Q Was there anybody else there with you, police presence?

18 A Investigator McJunkin, Investigator Cantrell, and
19 Investigator Beck that I, I recall

20 Q Okay Did Investigator -- did you observe what
21 Mr Nate Cantrell did?

22 A I did

23 Q What, what did -- what were your observations of his
24 conduct?

25 A Well, Mr Cheeks had been asked to step from the

1 passenger side of the vehicle while I was getting the
2 driver's license information from Mr Elder, Investigator
3 Cantrell had a drug detection K-9 on the scene and ran the
4 vehicle, which means conducted a free air sniff of the
5 vehicle to which the K-9 alerted

6 Q Now, from there I want you to go to the search warrant
7 Did you leave the scene of the car stop?

8 A I did

9 Q And, and where did you go?

10 A I went to a staging location where we were briefing for
11 the search warrant

12 Q And what was that staging location?

13 A It was the, the -- if I recall, the back parking lot of
14 Woodland Heights Elementary I believe

15 Q Approximately how far is Woodland Heights Elementary
16 from 152 Gordon Drive?

17 A Yards I mean it's, it's very close

18 Q Very close

19 So, it's less than one-half mile?

20 A Oh, easy

21 Q Investigator Hanning testified that he was the third
22 man in

23 what was your position?

24 A My position was to be the lead man or guinea pig I
25 was to be the first one through the door once the door is

1 breached

2 Q Okay where did you first enter the house?

3 A We entered on the -- if you're standing at the road
4 looking at the residence, we entered on the left side, which
5 is the left lower basement carport door Entered it from
6 the left side, which would of been clearing the house from
7 the left to the right

8 Q Okay when you first entered the house, what did you
9 come to?

10 A Once, once we entered the carport door it was clutter
11 There was -- you could tell was a path where they had kept
12 clear to walk When we got to the end of that path there
13 was no door that could be easily seen to enter into the
14 residence what probably took 30 seconds seemed like
15 minutes trying to locate the door to get into the residence

16 Q And were you saying anything at the time?

17 A We were announcing Sheriff's Office, search warrant,
18 show me your hands, Sheriff's Office, search warrant

19 Q when you say announcing, could you please do maybe that
20 decibel level of what you were doing that day?

21 A In this microphone it's gonna be loud

22 Q You can back away from the microphone, microphone

23 A Sheriff's Office, search warrant

24 Q okay So, pretty loud?

25 A It's pretty loud

1 Q Okay Now, you get to this door, what do you do next?

2 A Once we finally realize that there had to be a door
3 there, it was like wood It was like a paneling on kind of
4 like a screen door The door would pull back and forth
5 Had clothes and whatnot hanging on it Opened that door
6 Entered the door and it entered into a hallway On the left
7 was a set of red carpeted stairs, which had another door at
8 the top To the right was a door, another door

9 Q Which way did you go from there?

10 A I went right because the intel that we had received was
11 that the door to the right would of been the target
12 location

13 Q Okay When you enter the door, just tell me what you
14 saw first

15 A Once the door was kicked open, tactical wise, once the
16 door is breached, you don't run straight in You try to
17 assess real quick what's going on, any dangers you perceive
18 When I opened the door I observed Mr Derrick Cheeks, who
19 was running from the end of the counter which would of been
20 closest to me at the kitchen area to what would have been
21 the first bedroom on my left

22 Q I'm gonna put up what's been admitted as State's
23 evidence 1

24 Your Honor, may I have the witness step down from the
25 witness stand?

1 THE COURT Yes, you may

2 SOLICITOR HUNTER Thank you

3 A (Witness comes down from the stand)

4 Q Where exactly did you see Derrick Cheeks when you first
5 entered the room?

6 A The first place that I observed him was coming from
7 that corner right there

8 Q Okay And as Mr Hanning testified, that back wall
9 with the microwave is facing you?

10 A Yes, I, I actually, from my location, would of been
11 looking straight on towards this

12 Q Were there any impediments to your view, any objects
13 blocking your view?

14 A No

15 Q Okay

16 A (Witness returns to the stand)

17 SOLICITOR HUNTER Your Honor, may we take something up
18 outside the presence of the jury?

19 THE COURT Certainly

20 Bring the lights up

21 Ladies and gentlemen of the jury, I'll ask you to step
22 back to the jury room As always, when we do this, I'll
23 instruct you not to begin any discussions until I advise you
24 to do so You may retire

25 (Whereupon, the following takes place outside the

Matt Hutchins - Direct examination
by Solicitor Hunter

1 presence of the jury)

2 THE COURT Yes, sir

3 MR WILKES Your Honor, we would object to the details
4 of the tasing as being unnecessary, subjective on the parts
5 of the officers in deciding to do so The fact that a
6 person may flee a scene is admissible perhaps and not
7 whether or not the police decided to shoot him or tase him
8 as he flees So, I think that the fleeing is sufficient
9 The tasing is just prejudicial

10 SOLICITOR HUNTER Your Honor, it's the State's
11 position that Mr Cheeks obviously was standing at that
12 counter in sight of law enforcement He fled to the first
13 bedroom, which was dark In fact, I could proffer the
14 testimony from Mr Hutchins as to this if you'd like to hear
15 that testimony first before we---

16 THE COURT why don't we do that?

17 SOLICITOR HUNTER okay

18 Q Where did Derrick Cheeks run to?

19 A The first bedroom on the left as I was entering

20 Q Okay what was the state of the bedroom?

21 A Cluttered Trash was piled up in the corners Just
22 total clutter There was a large treadmill probably twelve,
23 ten, twelve feet inside the doorway of the room

24 Q was -- what was the color of the room?

25 were there lights?

- 1 A It was dark It was dark
- 2 Q Okay Could you see into the room very well?
- 3 A Could not other than with a flashlight
- 4 Q And who had a flashlight?
- 5 A I believe -- I know I did I believe Lieutenant Cooper
- 6 may have also
- 7 Q Okay And at that point what are you yelling in the
- 8 room?
- 9 A We're ordering the subject to show his hands and come
- 10 out
- 11 Q Did he do that?
- 12 A No
- 13 Q Approximately how many times did you command the
- 14 subject or, in this case, Mr Cheeks to do that?
- 15 A At least six, eight, ten times
- 16 Q Okay Were you able then to locate Mr Cheeks?
- 17 A Eventually Mr Cheeks did stand up from behind the
- 18 treadmill He kept his hands towards his waistband After
- 19 repeated orders to show us his hands, he then began to walk
- 20 towards us
- 21 Q Okay Could you please stand up and, and at least show
- 22 us what you mean by kept, keep his hands by his waistband?
- 23 A Would not show his hands
- 24 Q Let the judge see this
- 25 THE COURT Go ahead

1 WITNESS Kept his hands right here and walked towards
2 us

3 THE COURT All right

4 Q What were you telling him to do with his hands?

5 A To show us his hands, to put his hands up, and, and at
6 that point he continued to walk I then conducted a leg, a
7 leg sweep and put him on the ground At that point his
8 hands was still under him and he would not bring his hands
9 out after repeated commands for him to bring his hands out
10 from under him

11 Q Now, at that point what happened?

12 A After repeated times of instructing him to get his
13 hands out from under him, Lieutenant Cooper then yelled
14 taser, taser, which I knew is command, is the initial
15 command prior to someone tasing somebody At that point I
16 got out of the way of the taser prongs

17 Q Is Mr Cheeks, at that point, given another chance to
18 show his hands to you?

19 A Well, when, when I then moved he had ample opportunity
20 prior to Lieutenant Cooper firing the taser

21 Q And did he move?

22 A No, he did not show his hands

23 Q Did he show his hands to you?

24 A None -- not until after he was tased and got into
25 custody

Matt Hutchins - Direct examination
by Solicitor Hunter

1 Q And then what happened after he didn't show his hands?

2 A He -- well, Lieutenant Cooper tased him

3 Q Okay

4 THE COURT Are you through?

5 SOLICITOR HUNTER Yes, Your Honor

6 THE COURT Mr Wilkes

7 MR WILKES May I ask him some questions?

8 THE COURT Certainly

9 CROSS-EXAMINATION

10 BY MR WILKES

11 Q From underneath him did you find drugs?

12 A Not from underneath him

13 Q From underneath him did you find a weapon?

14 A No, sir

15 Q Did you find any reason that his hands would be
16 underneath him?

17 A I, I don't know why he would not show us his hands

18 Q Was he fighting?

19 A He was not complying

20 Q Well, was he fighting?

21 A It's -- as far as fist fighting, no, cause his hands
22 was under him

23 Q Did he have any kind of weapon or anything at all when
24 you picked him up?

25 A After the fact, no At the time he was tased we did

Matt Hutchins - Cross-examination
by Mr Wilkes

1 not know whether he had a weapon not

2 Q Okay Yes, sir

3 THE COURT Mr Poole

4 MR POOLE No questions, Your Honor

5 THE COURT All right All right I'll hear you

6 concerning---

7 MR WILKES Thank you, Your Honor

8 THE COURT ---your argument

9 MR WILKES Again, the subjective decision to tase him
10 is, is no more than that I'm not saying it's unjustified,
11 but I am saying that it is a bit prejudicial because it
12 creates a, just an inference that there was some sort of, of
13 fight or violence or drugs being hid and there's no evidence
14 of that So, I don't know why it has to go any further than
15 to simply say that he did whatever he did and that he was
16 compelled to, to comply But that the tasing, I don't know
17 that that is relevant and it appears to be much more
18 prejudicial than it would be probative on the issue we're
19 dealing with

20 SOLICITOR HUNTER Your Honor, it's the State's
21 position that this is very probative in this matter Mr
22 Cheeks was given the opportunity, as Mr Hutchins has
23 testified multiple times as well as Mr Hanning, to leave
24 search warrant was yelled out in the garage, in the hallway,
25 in the entrance to the room Mr Cheeks flees law

1 enforcement, hides himself in a dark room where law
2 enforcement doesn't know if he has a weapon, drugs, money,
3 anything that could harm a law enforcement officer At this
4 time, Mr Hutchins---

5 THE COURT Start your argument again We've got --
6 we're gonna have to have a discussion with the people in the
7 courtroom

8 SOLICITOR HUNTER Okay It's the State's position
9 that this is probative to a matter at hand Mr Cheeks was
10 given ample opportunity, as the State has already presented
11 evidence, that police officers are yelling search warrant
12 They're identifying themselves as police officers They
13 enter the room Mr Cheeks flees law enforcement into a
14 dark room where they don't know if a weapon, drugs, or any
15 other item that might harm them is present

16 He has his hands hidden underneath or near his
17 waistband He won't comply with the officer's orders We
18 think that's very probative in this case as, I believe, you
19 know, obviously he's saying the drugs aren't his

20 MR WILKES And I didn't disagree with anything other,
21 other than the fact that then they tased him That's the
22 only part that I'm objecting to The facts that he's, he
23 states may be relevant under case law The fact that they
24 then tased him I don't think is necessary to the point that,
25 that they're making, and it's just prejudicial

1 THE COURT Last word
2 Anything else you want to tell me?
3 SOLICITOR HUNTER Nothing, Your Honor
4 THE COURT All right I'm not gonna allow you to go
5 into the fact that he was tased I will allow you to go
6 into the fact that he was cooperative and that police had to
7 take additional measures to bring him under control So,
8 I'll sustain the objection to that
9 MR WILKES Thank you
10 THE COURT All right We're gonna take a brief break
11 I'm gonna caution those who are as spectators In
12 the -- I don't have any problem you being present I had to
13 stop the proceedings on one occasions You were talking
14 back and forth I have seen you shaking your head, making
15 demonstrations in reaction to testimony
16 This particular gentleman in the red fleece, your name
17 is, sir?
18 MR RICHARDS Kevin
19 THE COURT Sir, stand up
20 MR RICHARDS Kevin
21 THE COURT Kevin what?
22 MR RICHARDS Richards
23 THE COURT Mr Bridges, you--
24 MR RICHARDS Richards
25 THE COURT Sir?

1 MR RICHARDS Richards
2 MR WILKES Richards
3 THE COURT Richards You've been very fidgety
4 You've been bending over---
5 MR RICHARDS No, I was---
6 THE COURT Don't argue with me I'm telling you what I
7 observed I'm gonna hold you in contempt of Court if you
8 continue to disrupt the proceedings in this Court
9 You understand what that means?
10 MR RICHARDS Yes, sir
11 THE COURT I have the authority, if you, if you show
12 contempt of this Court in my presence, to put you in jail
13 for up to one year without a hearing, and there will be no
14 good time You will serve that day for day
15 Do you understand what I just said?
16 MR RICHARDS Yes, sir
17 THE COURT Can you behave while you're in the
18 courtroom?
19 MR RICHARDS Yes, sir
20 THE COURT I'm gonna urge you to do so if you wish to
21 stay
22 I've noticed also, Mr Wilkes, your client reacting to
23 testimony through head shakes, and nods, and facial
24 expressions I will caution him at this time as well
25 MR WILKES Yes, sir

1 THE COURT Court will be in recess for a period of
2 about five to ten minutes

3 I'll caution the witness not to discuss your testimony
4 with anyone during the break

5 WITNESS Yes, sir

6 THE COURT Thank you

7 (WHEREUPON, a short recess was taken at this time)

8 THE COURT State ready to proceed, Mr Hunter?

9 SOLICITOR HUNTER Yes, sir, Your Honor

10 THE COURT Mr Wilkes, you ready to proceed?

11 MR WILKES I am, Your Honor

12 THE COURT And, Mr Poole, are you ready?

13 MR POOLE Yes, sir

14 THE COURT Bring the jury in

15 (WHEREUPON, the following takes place within the
16 presence of the jury)

17 THE COURT All right The record will reflect the
18 jury has returned to the courtroom

19 You may proceed, Mr Hunter, in accordance with my
20 instructions

21 SOLICITOR HUNTER Yes, Your Honor

22 CONTINUED DIRECT EXAMINATION

23 BY SOLICITOR HUNTER

24 Q You earlier testified that you saw Mr Cheeks run from
25 that kitchen counter in the front bedroom

- 1 A Yes, sir
- 2 Q What did you do next?
- 3 A I then posted up on the door of the bedroom
- 4 Q What is posted up mean?
- 5 A When I go in we're, we're trained to identify threats
- 6 Of course, a subject running into a room is an immediate
- 7 threat cause you know he's in there Did a quick scan of
- 8 the living room, observed a large white male standing,
- 9 sitting in a chair with his hands up To me, that's not as
- 10 big of a threat as a subject that's just running into a
- 11 room Me being the lead man in, I go in, weapon drawn,
- 12 ordering the subject to come out and show me your hands
- 13 Lieutenant Cooper, who was the second subject behind me
- 14 or would be the immediate subject behind me, pushed up on
- 15 the other side of the doorway We tried to triangulate,
- 16 it's called, so I have a view of this side of the room
- 17 He's got a view of that side of the room
- 18 Q Are you able to look into the room at this time?
- 19 A I can see into the room, yes
- 20 Q Please describe to the jury what the state of the room
- 21 was
- 22 A It was clutter Trash bags piled up, food Just
- 23 massive clutter Just inside the doorway, ten, twelve feet,
- 24 was a treadmill, large treadmill standing upright Then
- 25 behind there was what appeared to be a sliding glass door

1 which would exit the room The door was---

2 Q When you said exit the room, where would it exit to?

3 A To the outside of the residence The door was closed,
4 which, and I observed to be clutter around it, which led me
5 to believe the subject was still inside the room

6 Q Okay Were the lights on in the room?

7 A No, it was, it was dark

8 Q How were you able to observe what you just said?

9 A With flashlights

10 Q Okay Who had a flashlight?

11 A I did and I believe Lieutenant Cooper did But I know
12 I did

13 Q Were you telling Mr Cheeks to do anything at this
14 point?

15 A Continued to order come out, show me your hands, put
16 your hands up Did that six, eight, ten times Finally I
17 observed Mr Cheeks stand up from behind the treadmill

18 Q Were you entering the room at this time?

19 A At that point I was still standing at the doorway
20 what we're trained is, the doorway would provide some cover
21 if you did have a weapon We stood up, continued to order
22 him to put his hands up, and he refused

23 Q Where were his hands at that point?

24 A They were down in his, in his waistband area

25 Q Did you continue to order him to put his hands up?

Matt Hutchins - Direct examination
by Solicitor Hunter

1 A Continued to order him to put his hands up He
2 continued to refuse at that point He stepped out from
3 behind the treadmill and started to walk in my direction
4 still refusing to show his hands

5 Q After he refused did you then enter the room?

6 A As he started walking towards us I then entered the
7 room and took him into custody

8 Q Okay Now, once you take him into custody, did you
9 participate in the search of this residence?

10 A I did

11 SOLICITOR HUNTER Your Honor, at this point I submit
12 to the Court that this evidence bag, at this particular
13 point, is closed and we're opening it to get the items out

14 THE COURT All right Has it been marked?

15 SOLICITOR HUNTER She's marking it now

16 (WHEREUPON, the evidence bag was marked as State's
17 Exhibit No 6 for identification purposes only at this
18 time)

19 SOLICITOR HUNTER May I approach, Your Honor?

20 THE COURT You may

21 Q Investigator Hutchins, would you briefly describe what
22 that is It's been premarked as State's Exhibit 6

23 A This is an evidence bag In the front of it it's got
24 the case number that matches this case It says Item Number
25 1, digital scale, Item Number 2, digital scale, and Item,

1 Item Number 3, Arm and Hammer baking soda

2 Q Would you please open the bag?

3 A (Witness complies)

4 (WHEREUPON, the baking soda was marked as State's

5 Exhibit No 7 Two scales were marked as State's Exhibit

6 Nos 8 and 9 All were for identification purposes only at
7 this time)

8 SOLICITOR HUNTER Your Honor, may I approach?

9 THE COURT Yes, you may

10 Q Let me show you what's been premarked as State's

11 Exhibit 8 and 9

12 Can you please tell me what those are?

13 A That is digital scales

14 Q Okay You were at the execution of the search warrant
15 on June 4th?

16 A That's correct

17 Q Were those -- are those in the same or substantially
18 the same condition as when you recovered them on that date?

19 A Kelvin Washington is who recovered all the evidence
20 Basically what we do is locate it, and once we locate it we
21 let, one person's designed to collect all the evidence, know
22 where it is and they come and actually collect the evidence

23 Q Are they in the same or substantially the same
24 condition as when you located them?

25 A Yes

Matt Hutchins - Direct examination
by Solicitor Hunter

1 SOLICITOR HUNTER Okay Your Honor, at this time the
2 State would move to admit State's Exhibit 8, 9, and 10 into
3 evidence

4 THE COURT Any objection, Mr Wilkes?

5 MR WILKES Subject to our objection on the search
6 warrant

7 THE COURT All right

8 MR POOLE Same here, Your Honor

9 THE COURT All right They'll be admitted as marked
10 (Whereupon, State's Exhibit Nos 7 through 9 were
11 received into evidence at this time)

12 SOLICITOR HUNTER Your Honor, may I approach?

13 THE COURT Yes, you may

14 Q I'll give you a second to read over that

15 A Okay

16 Q Okay All right State's Exhibit 8 and 9, can you
17 tell me where you located those in the residence?

18 A The one would be find, I don't know which item it is,
19 No 8, small scale found on kitchen counter by Hutchins

20 Q Uh-huh (Affirmative)

21 So, that's the, the small scale that you found on the
22 kitchen counter?

23 A Yes

24 Q Which kitchen counter is that?

25 A Be the kitchen counter that's in view in the picture

1 Q So, that's not the one with the microwave That's the
2 one with the Glad bag and the, and the baggies of the white
3 substance?

4 A Yes

5 Q Okay And the other digital scale, where did you find
6 that?

7 A The other small digital scale would be counter bedroom

8 Q In the bedroom where?

9 A Be the second room to my left as I entered

10 Q So, not the room that Mr Cheeks went into?

11 A No

12 SOLICITOR HUNTER Okay Your Honor, may I approach?

13 THE COURT Yes, you may

14 (WHEREUPON, an evidence bag was marked as State's
15 Exhibit No 10 for identification purposes only at this
16 time)

17 Q I'm handing you what's been marked previously marked as
18 State's Exhibit 10

19 Do you recognize this?

20 A I do

21 Q And what is that?

22 A It's an evidence bag again marked with this case number
23 labeled large digital scales, item number one, and number
24 two is two bottles of Inositol

25 Q Okay could you please break the seal?

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by Solicitor Hunter

1 A (Witness complies)

2 Q You can just hand me the bags

3 (WHEREUPON, the scale was marked as State's Exhibit No

4 11 The bottle of Inositol was marked as State's Exhibit

5 No 12 Both were for identification purposes only at this
6 time)

7 SOLICITOR HUNTER Your Honor, may I approach?

8 THE COURT You may

9 Q I hand you what's been marked State's Exhibit 11

10 Do you recognize this?

11 A That would be the large set of digital scales that is
12 item number seven on the search warrant return

13 Q Did you locate this item?

14 A I did

15 Q Is this in the same or substantially the same condition
16 as the day when you found it?

17 A It is

18 SOLICITOR HUNTER Your Honor, at this time the State
19 would move to admit State's Exhibit No 11 into evidence

20 THE COURT Any objection?

21 MR WILKES Same objection

22 THE COURT Mr Poole

23 MR POOLE Same here, Your Honor

24 THE COURT All right It will be admitted as marked
25 (WHEREUPON, State's Exhibit No 11 was received into

1 evidence at this time)

2 Q Is that that same scale?

3 A That is

4 Q Okay So, that's located on the kitchen counter, the
5 back kitchen counter?

6 A On the back wall, yes, sir

7 Q Okay Go ahead and get some of this stuff out of your
8 way I'll hand you what's been marked as State's Exhibit
9 12

10 Do you recognize this?

11 A It's two bottles of, labeled GNC Inositol powder

12 Q Did you locate those items with this search warrant?

13 A I did

14 Q Are they in the same or substantially the same
15 condition as when you found them?

16 A They are

17 SOLICITOR HUNTER Your Honor, at this time the State
18 would move to admit State's Exhibit 12 into evidence

19 THE COURT Any objection?

20 MR WILKES Same objection

21 THE COURT All right

22 MR POOLE Same

23 THE COURT And I'll rule the same and it's admitted

24 (WHEREUPON, State's Exhibit No 12 was received into
25 evidence at this time)

Matt Hutchins - Direct examination
by Solicitor Hunter

1 Q Where did you locate the bottles of Inositol powder?

2 A The Inositol powder was located in the kitchen cabinet

3 Q Okay So, up there in the glass cabinets?

4 A In the glass cabinets, correct

5 Q Now, please explain to the jury why Inositol powder is
6 important in this case

7 A Inositol is commonly used as a cutting agent in powder
8 cocaine

9 Q What is a cutting agent?

10 A It's used to make the volume more, add to it to
11 increase your profits to, to cut down the purity

12 Q What are some other cutting agents to give the jury an
13 idea of what you're talking about?

14 A Inositol, Creatine, anything that resembles a, a powder
15 form close to the cocaine consistency

16 Q When Mr Elder purchased the Arm and Hammer baking
17 soda, would that be considered a cutting agent?

18 A Baking soda is commonly used when you cook the cocaine
19 into crack Baking soda is used as an agent in crack
20 cocaine or cocaine base

21 Q So, the Inositol is for the actual cocaine?

22 A Yes, and, and different agents can be used But
23 Inositol usually---

24 Q It could be?

25 A Yes

1 Q Make it less pure?

2 A Yes, so -- to increase profits

3 Q How many years experience do you have as a narcotic's
4 agent?

5 A Since 2003 So about seven

6 Q Have you been present during undercover, undercover
7 buys?

8 A I have

9 Q Have you actually participated in undercover buys?

10 A I have

11 Q Do you have information as to the price of crack
12 cocaine in June 2009?

13 A I do

14 Q And now, with your office, do you deal with any
15 publications as to the price of crack cocaine during any
16 time period?

17 A Do DEA issues and publications about once a year that
18 relates to prices of cocaine, crack, meth, different drugs
19 in different areas of the country

20 Q Okay Does your office submit information to the DEA
21 for this publication?

22 A We do

23 Q And have you done it in the years past previous to
24 this?

25 A I personally haven't, but our agency has

Matt Hutchins - Direct examination
by Solicitor Hunter

1 Q But your office has?

2 A Yes

3 Q Have you ever testified in Court in this jurisdiction
4 as an expert in the value of narcotics?

5 A I have

6 Q Okay And approximately how many times?

7 A Four to five

8 Q When was your last time testifying to that fact?

9 A A few months ago in trial

10 SOLICITOR HUNTER Okay Your Honor, at this time the
11 State would offer Matt Hutchins as an expert in the value of
12 narcotics

13 THE COURT Any objection?

14 MR WILKES None

15 MR POOLE None here

16 THE COURT All right He'll be qualified as an expert
17 within this field

18 Ladies and gentlemen, what this means is that this
19 witness will be allowed to state his opinion within the area
20 of expertise for which he's been qualified I'll give you
21 additional instructions during my charge to the jury at the
22 close of the trial as to how you can consider testimony by
23 an expert

24 He's been qualified as such, and you may proceed, Mr
25 Hunter

1 SOLICITOR HUNTER Thank you, Your Honor

2 Q Mr Hutchins, how is crack cocaine commonly sold on the
3 street?

4 A Common on the street is sold by the crack rock

5 Q Okay what's the approximate size of the crack rock?

6 A Approximate crack rock is 2 grams

7 Q So, you said 2 grams?

8 A Yes, sir

9 Q So, if you were to sell 2 grams times five, a gram,
10 how much would that cost?

11 A Usually a crack rock is \$20

12 Q Okay So, if you sold a gram, how much would that
13 cost?

14 A It'd be---

15 Q well, if you multiple it out -- would a, would a
16 hundred dollars sound about right?

17 A Yeah, it would be a hundred dollars per gram 2 is 20

18 Q Okay Now, if you were to take approximately 650 grams
19 and sell it retail value, what would, what would the price
20 be?

21 A Price varies well, I can give you the lowest range we
22 saw---

23 Q well, I'm saying retail Not wholesale So, with the
24 hundred dollars---

25 A You figure---

1 Q If you took 650 grams---

2 A You figure a hundred grams, there's 28 grams in an
3 ounce

4 Q I'm going with just the retail value, the value we just
5 talked about The one gram equals a hundred dollars

6 If you had 650 grams, how much would that be worth
7 retail?

8 A Be 650 times a hundred So, 65,000

9 Q \$65,000?

10 A Roughly

11 Q Now, as crack cocaine's also sold, you know, wholesale,
12 like at Costco, how is crack cocaine usually sold wholesale
13 value?

14 A Buying wholesale, when you -- it's, it's like, you
15 know, Costco/Sams, quantity, the larger quantity you buy the
16 less it cost Wholesale is when you get into buying ounces
17 Typically in 2009, which is when, the date of this case, we
18 were seeing prices anywhere a thousand dollars to \$1,200 an
19 ounce As low as a thousand, as high as 1,200

20 Q Okay So, with 650 grams is approximately how many
21 ounces?

22 A It's---

23 Q I'll get the calculator

24 A 650 divided by 28 grams in an ounce It's---

25 Q It's about 23 ounces?

Matt Hutchins - Direct examination
by Solicitor Hunter

1 A That sounds right

2 Q So, how much would, would an ounce go for?

3 A An ounce would go anywhere from a thousand dollars to
4 1,200

5 Q So, if you go on the lower end, if you had 650 grams
6 and you sold about an ounce, it would be \$23,000?

7 A Yes, that's correct

8 Q So, the value---

9 A On the low end

10 Q Okay So, between 23,000 and 65,000 depending on
11 wholesale or retail?

12 A That's correct

13 Q Please answer any questions the defense may have

14 THE COURT Mr Wilkes

15 MR WILKES Thank you, Your Honor

16 CROSS-EXAMINATION

17 BY MR WILKES

18 Q You were at the initial traffic stop of Ricky Cheeks
19 and Mr Elder?

20 A Yes, sir

21 Q And you say that they were stopped for not completely
22 stopping at a stop sign?

23 A That's correct

24 Q And how long was that after, after that did
25 Investigator Cantrell show up?

1 A Investigator Cantrell was seconds behind me in the
2 stop

3 Q With a drug dog, Igor, in the car?

4 A Igor, yes, sir

5 Q Igor, Igor's in the car

6 How, how is it that Igor was there for the traffic
7 stop?

8 Was he just nearby or was that part of the plan?

9 A Igor is assigned to our narcotic unit Nate Cantrell
10 is the K-9 handler Igor's always with Investigator
11 Cantrell

12 Q Now, the driver of the car was whom?

13 A Mr Elder

14 Q And what was your contact with Mr Elder?

15 A I approached him, identified why I stopped him, and
16 observed him to be nervous

17 Q Had you ever met Mr Elder before?

18 A I have not to my knowledge

19 Q And you said Mr Elder appeared nervous?

20 A Uh-huh (Affirmative)

21 Q You didn't find any drugs on Mr Elder, did you?

22 A I did not, no, sir

23 Q Did anyone, as far as you know?

24 A Not to my knowledge

25 Q How far were, was it from the house of 152 Gordon

1 Drive, the place of the stop?

2 A Approximately a mile maybe Maybe a mile and a half

3 Q Mr Elder followed all the way out of 152 Gordon Drive?

4 A Yes, sir, I followed him

5 Q Did you follow him to 152 Gordon Drive?

6 A As far as when?

7 Q Were you at the wal-Mart?

8 A Yes

9 Q what did Mr Elder do at the wal-Mart?

10 A He purchased a box of baking soda

11 Q where was that box of baking soda found?

12 A There was a box of baking soda found during the
13 execution of the search warrant in the trash can

14 Q All right The trash can in the kitchen?

15 A In the kitchen, yes, sir

16 Q Of whose, whose residence?

17 A Mr Markley

18 Q Had you had contact with Mr Markley before this?

19 A No, sir, I had not

20 Q The residence belonged to Mr Markley?

21 A I was not lead investigator I -- to be honest with
22 you, I don't -- I'm not sure

23 Q Were you there -- you were the, the lead man---

24 A I was---

25 Q ---on the search warrant team?

- 1 A On the entry team, yes, sir
- 2 Q And you observed Mr Markley in the residence at the
3 time of the search warrant?
- 4 A He was in the residence, yes, sir
- 5 Q And at the time he did not weigh as, quite as much as
6 he does today?
- 7 A That, that -- he -- I don't know how much me weighed,
8 but he was not as heavy as he is today
- 9 Q Okay But he was escorted out So, he was certainly
10 ambulatory, if I'm correct in my terminology?
- 11 He could walk?
- 12 A He walked out, yes, sir
- 13 Q Okay But he happened to be sitting down when you came
14 through the door?
- 15 A Yes, sir
- 16 Q And how far away from the drugs that we saw was he?
17 Same room?
- 18 A The picture that's up there now shows the kitchen area
- 19 Q Uh-huh (Affirmative)
- 20 A On the -- could I step down to the picture?
- 21 Q Absolutely
- 22 A (Witness comes down from the stand)
23 This is the kitchen area here
- 24 Q Uh-huh (Affirmative)
- 25 A On the other side of this counter --

1 Q Right

2 A -- is, it starts the living room

3 Q Okay

4 A And he would be the, sitting over towards this area --

5 Q Okay

6 A -- is a, starts a table and then chairs and TV, things
7 of that nature

8 Q All right

9 A So---

10 Q He, he would be close enough to know it's, either
11 participate or know what's going on in the kitchen?

12 A It would be in view

13 Q Okay Nothing further

14 THE COURT Mr Poole

15 MR POOLE Thank you, Your Honor

16 CROSS-EXAMINATION

17 BY MR POOLE

18 Q Investigator Hutchins, you were involved in a
19 surveillance and also of the following of the Crown Victoria
20 automobile, right?

21 A Yes, sir

22 Q Surveillance of a residence and then following a car?

23 A Yes, sir

24 Q And, and you were involved in the search of the home?

25 A Yes, sir

1 Q Now -- and when you followed the car to Wal-Mart, you
2 were the one who got out of your car and walked in and
3 followed, and watched Elder's activities, right?

4 A Myself and Investigator Raymond, yes, sir

5 Q Okay And you and Raymond got back into the car and
6 then followed, went back to Gordon Drive, is that right?

7 A We were in separate vehicles

8 Q Okay

9 A When we conduct surveillance we want to stay behind the
10 vehicle the whole way Other investigators take up parts,
11 in and outs, switching out so they don't see the same
12 vehicle behind them

13 Q Okay Now, this car was always driven by Elder, is
14 that correct?

15 A I don't know who, in the history of the car, always
16 drove it

17 Q All right

18 A The time I observed it driven to Wal-Mart I observed
19 Elder, Elder driving it The time I observed it leaving the
20 residence when the car stop took place Elder was driving
21 the -- if he was the only one that drove it I can't testify
22 to that

23 Q All right Do you know who, to whom the car belonged?

24 A I do not recall

25 Q Okay But -- and then when Elder -- when you got back

1 to the residence on Gordon Drive, you followed the car and
2 Elder was driving it at that time?

3 A You talking about when it left the residence?

4 Q Right

5 A Yes, sir

6 Q Okay You said it left in a high rate of speed?

7 A Yes, sir

8 Q Okay And then you testified that shortly thereafter
9 it ran a stop sign?

10 A Yes, sir

11 Q Okay So, that's what gave you probable cause to stop
12 the car, right?

13 A That's correct

14 Q All right And, so, did you write a ticket?

15 A I believe I issued a warning

16 Q You issued a warning?

17 A Uh-huh (Affirmative)

18 Q And to whom was that warning issued?

19 A I don't have a copy in front of me I believe it was
20 the driver of the car

21 Q The driver of the car?

22 A Driver of the car, Mr Elder

23 Q Mr Elder?

24 A Uh-huh (Affirmative)

25 Q And, so -- and Mr Elder was the one who appeared to be

1 nervous upon your first observations?

2 A Both of them appeared -- you know, when you say
3 nervous, people think it's just shaking The passenger, I
4 observed him clinching like his pocket and had a straight
5 away stair, which, you know, usually if you're a passenger
6 of a vehicle you're looking to see what's going on That,
7 my training and my experience, is also a nervous behavior
8 when you've got the thousand yard stair ahead of you So,
9 in my opinion, both of them was acting nervous

10 Q Okay All right Well, you're -- we're talking about
11 Mr Cheeks now Okay Ricky Cheeks

12 A Uh-huh (Affirmative)

13 Q And you say he was acting nervous, and you said he's
14 clinching something in his and you gestured like this?

15 A Yeah, he had it clinched towards his pocket, yes, sir

16 Q Okay And towards the pocket?

17 A Uh-huh (Affirmative)

18 Q So, he was on the passenger side?

19 A Yes, sir

20 Q So, he would of been clinching with his left-hand, is
21 that right?

22 A Let me see I got in my notes he was clinching his
23 pocket That's what I observed But it would be his
24 left-hand I would presume---

25 Q Now, you're trying to observe, investigator I know

1 you are You're trying to observe

2 My question to you, he was clinching, you indicated
3 with your left-hand, clinching on your suit like I'm doing
4 with my left-hand right here

5 A Uh-huh (Affirmative)

6 Q And, therefore -- and he was on the passenger side?

7 A Uh-huh (Affirmative)

8 Q So, if you're looking in through the driver's side---

9 A Uh-huh (Affirmative)

10 Q ---he would of been clinching with his left-hand,
11 right?

12 A Well, I mean -- yeah, I could still, would still be
13 able, even if it's with his right-hand, I don't recall which
14 hand, as my report states, he was clinching I'll read
15 verbatim Also observed cheeks to be clinching his hand in
16 the pocket area of his pants while sitting in the vehicle

17 Q Okay Again, he was in the passenger side?

18 A He was in the passenger side

19 Q And you just testified a moment ago, and you gestured,
20 using your left-hand?

21 A I was, I was gesturing clinching whether it's left,
22 right, I don't recall

23 Q How -- now, the -- this car ran a stop sign?

24 A Uh-huh (Affirmative)

25 Q And you got -- how many vehicles are involved at this

1 point in time when the car was running the stop sign?

2 A I was the initial vehicle

3 Q You were the initial vehicle?

4 A Uh-huh (Affirmative)

5 Q How many other cars were involved in following the, the
6 Crown Victoria after the---

7 A Investigator---

8 Q ---after the stop, not stopping for the stop sign?

9 A Investigator Cantrell was the secondary vehicle

10 Q Yes, sir

11 A He arrived shortly after I got them stopped

12 Q Okay Okay And now how long was this detention?
13 How long did you talk to Elder?

14 A I let him know why I was stopping him

15 Q Which was?

16 A For failing to stop for the stop sign

17 Q Uh-huh (Affirmative)

18 A And then asked him to step from his vehicle

19 Q Okay

20 A Get his driver's license and identification, things of
21 that nature

22 Q What else did you ask him?

23 A Well, once, once I noticed him nervous I asked him to
24 put his hands on the dash, and then that's when I asked him
25 to step from his vehicle

1 Q How long did this stop last for running a stop sign?

2 A The initial stop, I'm gonna -- five, six, seven
3 minutes Long enough for -- I asked him to step from his
4 vehicle Investigators asked the passenger to step from it
5 while I was checking his information, Igor conducted the
6 free air sniff So --

7 Q Okay So -- and then you, you stopped Elder?

8 A Uh-huh (Affirmative)

9 Q He got out of the car or at some point in time the
10 first thing you asked him was do you know why I stopped you,
11 right?

12 A I---

13 Q You asked him---

14 A ---didn't ask him why I told him why I stopped him

15 Q Oh, you told him?

16 A Uh-huh (Affirmative)

17 Q Did you write the ticket right then?

18 A Not when I gave him that I asked for his ID, proof of
19 insurance, registration, and things of that nature

20 Q All right And after you, complied with you, did you
21 write the ticket right then?

22 A As he was, he was stepped back -- while he was getting
23 the information I was checking his driver's license through
24 our comp center That's when it was doing the free air
25 sniff And then once the dog alerted, Investigator Cantrell

1 talked with the driver as to the alert, and he was -- and it
2 was at that point---

3 Q When was this warning written then?

4 A The warning was written after, once he was notified
5 that the dog had alerted on his vehicle, was asked as to,
6 you know, things of that nature on why the dog would alert
7 Then a search was conducted of his vehicle

8 Q The warning for stopping a, for failure to stop at a
9 stop sign---

10 A Uh-huh (Affirmative)

11 Q ---was written after a complete search with a K-9 was
12 involved, is that right?

13 A Uh-huh (Affirmative)

14 Q Is that your testimony?

15 A Yes, sir

16 Q At the very end?

17 A Once, once he was -- yes, once all the paperwork, once
18 all the search, the warning was issued

19 Q And it only took about six minutes or so for a K-9
20 search to occur, people to get out of the car, and you check
21 registration legitimacy, and driver's license legitimacy?

22 Is that all it took?

23 How long did it take?

24 A Talking about the whole time for when---

25 Q The whole time

Matt Hutchins - Cross-examination
by Mr Poole

1 A ---he was transported to jail and all?

2 Q Uh-huh (Affirmative)

3 A That whole time probably was---

4 Q Not the, not the transporting I'm talking about at the
5 scene right there where he, he failed to stop for the stop
6 sign

7 A From the time he was blue lighted to the time of the
8 arrest---

9 Q That's right

10 A ---and cleared up, fifteen, twenty minutes

11 Q Fifteen, twenty minutes?

12 A Uh-huh (Affirmative)

13 Q So, it was about fifteen or twenty minutes into this
14 that you wrote him a warning for failure to stop at a stop
15 sign?

16 A Uh-huh (Affirmative)

17 Q Okay Thank you

18 THE COURT Redirect?

19 SOLICITOR HUNTER Yes, Your Honor Briefly

20 REDIRECT EXAMINATION

21 BY SOLICITOR HUNTER

22 Q In your years as an officer, an officer, have you
23 conducted many traffic stops?

24 A Yes, sir

25 Q Have you been in there when a dog or a K-9 does a open

1 air sniff on a vehicle?

2 A I have

3 Q In fact, how long does that usually take?

4 A Thirty, forty-five seconds, long enough for a dog to
5 run around the vehicle

6 Q So, it's not a long time at all?

7 A No

8 Q And when you're sitting there checking the license, how
9 long does that usually take?

10 A Two to three minutes

11 Q Okay So, the whole process of stopping the car
12 doesn't take that long?

13 A No, sir

14 Q And you didn't issue the warning -- where was Mr Ricky
15 Cheeks by the time you issued the warning?

16 A Out of the vehicle standing on the passenger side

17 Q Of your vehicle?

18 A Yes

19 Q Okay Thank you

20 THE COURT Mr Wilkes?

21 MR WILKES Nothing further

22 THE COURT Anything further?

23 MR POOLE No, sir

24 THE COURT You may step down, sir

25 All right Ladies and gentlemen of the jury, we're

1 about 5 15 We're gonna stop at this point in time for the
2 afternoon I'll ask you to be back in the jury room at nine
3 o'clock in the morning

4 Same cautions I gave you earlier when you left the, the
5 courthouse Don't attempt to gather any information from
6 any other source concerning this matter Don't listen to,
7 watch, or read any media reports concerning the case Don't
8 discuss the case with anyone, and don't allow anyone to
9 discuss the case with you Should anyone attempt to contact
10 you concerning this case, please report that upon your
11 return

12 Again, back in the jury room at nine o'clock in the
13 morning We should be in a position to proceed You may
14 retire for the evening Thank you very much

15 (Whereupon, the following takes place outside the
16 presence of the jury)

17 THE COURT All right Any objection to the defendant
18 who's not in custody remaining out on bond?

19 SOLICITOR HUNTER No objection from the State, Your
20 Honor

21 THE COURT All right Then I will caution your
22 client, Mr Poole, that we will begin the trial of his case
23 again in the morning at nine o'clock Should he fail to
24 appear we will continue in his absence

25 Do you understand that, sir?

1 DEFENDANT RICKY CHEEKS I know that

2 THE COURT The other defendant remains in custody

3 Thank you very much

4 SOLICITOR HUNTER Your Honor, may Investigator

5 Hutchins and Agent Hanning be excused?

6 MR WILKES I would object to Agent Hanning being

7 excused

8 THE COURT All right We'll ask you to stay

9 SOLICITOR HUNTER And as far as Investigator Hutchins?

10 THE COURT Any, any problem with Investigator Hutchins
11 being excused?

12 MR WILKES None at all, Your Honor

13 THE COURT Mr Poole, any problem with that
14 arrangement?

15 MR POOLE No, sir

16 THE COURT All right, sir You're free to go
17 Court's in recess then until nine o'clock

18

19 (Whereupon, Court was in recess for the evening)

20

21

22

23

24

25

1 Tuesday, October 5th, 2010

2

3 THE COURT All right We had a brief meeting in
4 chambers and during that time -- just one second

5 (Pause)

6 THE COURT All right We had a brief conference and
7 at that time it was brought to the Court's attention that
8 Indictment 2009-GS-42-6457, that is for trafficking in crack
9 cocaine more than a hundred grams, was not announced to the
10 jury yesterday during voir dire I don't believe the Court
11 announced to the jury at the beginning of the trial the
12 indictments I think that at that time I indicated that I
13 had read them previously That indictment, however, has not
14 been presented to the Grand Jury It apparently was
15 attached to the back of other indictments and was not
16 brought to the Court's attention until this morning

17 I've discussed the matter with counsel, and I'll be
18 glad to hear from you concerning the matter

19 Mr Poole

20 MR POOLE May it please the Court?

21 THE COURT And does that correctly state our pretrial
22 conference?

23 MR POOLE Yes, sir Yes, sir But one addition I
24 think that case may have been presented to the Grand Jury

25 THE COURT I'm talking about to the jury pool during

1 voir dire

2 MR POOLE That, that's right That's right

3 THE COURT It was not presented during that period of
4 time

5 MR POOLE That's right That's right But it, but
6 it was duly---

7 THE COURT Now, does that correctly state our
8 conference?

9 SOLICITOR HUNTER Yes Yes, sir, it does

10 THE COURT And, Mr Wilkes, does that correctly state
11 the conference?

12 MR WILKES Yes, sir, I believe it does

13 THE COURT All right Now, Mr Poole

14 MR POOLE May it please the Court

15 Your Honor, first of all, I bear a certain amount of
16 responsibility as an officer of the Court not to have
17 brought this to the Court's awareness, and I assure you that
18 it was unintentional It was one of the, the situation
19 where I'm sitting at the table getting ready for the trial

20 THE COURT Well, apparently it was paper-clipped to
21 the back of other indictments---

22 MR POOLE Yes, sir

23 THE COURT ---and I was not aware that it was back
24 there

25 MR POOLE Yes, sir, but nevertheless, I bear a

1 certain amount of responsibility in not bringing it to the
2 Court's attention and for that I do apologize

3 THE COURT All right, sir

4 MR POOLE Now, what my motion is at this point in
5 time is a motion for mistrial, a mistrial on behalf of Ricky
6 Cheeks These cases -- we'll talk about two of them One
7 is greater than 400 and one is greater than 100 We have
8 two separate indictments relating to both of these cases
9 And in preparation for this trial, and in looking at these
10 cases, I have viewed them as being individual and insular
11 and separate, and the preparation for the trial of the case
12 involved a lot of the departmentalization of looking at the
13 indictments in those terms

14 Now, I know they're related The State's position is
15 that they are related, and, and one can be contained within
16 the other But I do not believe that is the case

17 what we have, and by way of showing a prejudice at this
18 point in time, is that yesterday we've had two witnesses
19 that have testified I'm -- the Special Agent Hutchins, and
20 no, excuse me, it was Special Agent Hanning was the first
21 SLED officer who testified, and there was testimony in my
22 notes that reflect that Ricky Cheeks was under surveillance
23 for certain activity on June 4th, and then the more
24 important and weighty testimony came in yesterday through
25 Investigator Hutchins who testified to the traffic stop

1 Now, the traffic stop goes to the greater than
2 100 grams, and there was a lot of testimony on that, and
3 we -- I cross-examined Investigator Hutchins about different
4 aspects of that. But his, his testimony in chief was that
5 he testified that the driver of the Crown Victoria, that is
6 one Elder, ran a stop sign, talked about the drug dog, there
7 was a massive police presence there, Ricky Cheek was, Cheeks
8 was a passenger in the car. There was a clinching observed
9 on, on his part, furtive gesturing, nervousness, and then
10 there was testimony that cocaine was found at the scene as a
11 result of Igor's search, and that that cocaine was
12 attributed to belong to Ricky Cheeks.

13 Now, that, that is contained -- that, that goes to the
14 document and the indictment that's greater than 100 grams.
15 Testimony is already been presented on that issue, on that
16 case, and what we have is the prejudice in that regard, but,
17 furthermore, we have the statement that Mr. Hunter, my
18 friend and colleague, made to the jury that there was, Ricky
19 Cheeks was the deliverer and that Derrick was the baker.

20 Now, these opening statements, although the jury has
21 been cautioned all the time that they don't have much weight
22 because they're made by us lawyers and other reasons,
23 nevertheless, the jury's heard this. The jury has heard
24 that Derrick is the baker, Ricky is the deliver like it's a
25 pizza.

1 Now, what we're talking about here now and, again, is
2 prejudice We got prejudice at the beginning of the case in
3 the remarks of the solicitor We've got prejudice in the,
4 in the testimony of the two witnesses that have been
5 presented and heard by the jury and thoroughly
6 cross-examined as to the, whether or not Ricky Cheeks owned
7 the cocaine that was found at the scene of the stop And,
8 so, in my opinion, there's prejudice to the degree that at
9 this point in time a mistrial should be granted

10 Now, if the Court sees fit to not grant a mistrial, I
11 refer back to my earlier motion to sever because this was
12 the same type of problem that I was talking about in our
13 pretrial motions to sever the cases because what we had was
14 a, an incident involving the traffic stop and the incident
15 involving the residence That, again, now has raised its
16 head in its glaring prejudicial manner

17 And, so, I respectfully submit my arguments on those
18 two points to the Court and in, seriously, the motion for a
19 mistrial is made in, in earnest

20 THE COURT All right And I assume you join in the
21 motion?

22 MR WILKES I would join if I could be heard

23 THE COURT Yes, sir

24 MR WILKES Your Honor, we, we would join in moving
25 for a mistrial in this case Obviously the intent was to

1 proceed on that indictment, and it was not called And for
2 whatever reason, that leaves us with a lot of evidence in,
3 in the record from that offense that's not gonna be before
4 the jury It's not something we can undo, and I, I would
5 submit that although there's always a great desire to press
6 through once something's started, that, that our clients'
7 overriding interest in a fair and clean trial should
8 overcome that

9 we would move for a mistrial and be allowed to come
10 back on a day that we can do this cleanly without having
11 that clutter in the record, Your Honor

12 THE COURT I'll hear from you, Mr Hunter

13 SOLICITOR HUNTER Yes, Your Honor

14 Under State v Tisdale and State v Beckham the
15 granting of a mistrial is an extreme measure which should be
16 taken only when an incident is so grievous that the
17 prejudicial effect can not be removed any other way

18 First, Your Honor, the State would argue that, one,
19 there is no prejudice If a mistrial were to be granted,
20 the exact same evidence, the exact same opening, the exact
21 same witnesses would be testifying to the exact same thing
22 And, second, even if you do find that there's precedence,
23 excuse me, prejudice that a reading of the indictment would
24 cure that prejudice The incident must be so grievous to,
25 to have a mistrial granted, and we argue that, in this case,

1 all the jury's not heard is that there's one other
2 indictment They've heard the evidence to the indictment
3 They just haven't heard that that indictment is out there,
4 and I believe, before the start of the case, the State did
5 call this indictment The jury was not here This was when
6 he asked me to present the case I believe the State did
7 call this indictment as part of this case

8 MR POOLE Final rebuttal, Your Honor

9 That's, that's our exact point, and the reason for
10 asking for a mistrial is that it is so grievous, and the
11 points I think I've already made into the record in that my
12 client, Mr Ricky Cheeks, is prejudiced to the degree that
13 all this evidence has been heard already by the jury that
14 relates to an indictment that has not been read to the jury
15 and, and that's about all I think I can say except that it's
16 my real belief that this is a grievous mistake to go
17 forward

18 THE COURT Let me ask you this

19 As far as the defense is concerned, you were aware of
20 the indictment all along and are prepared to go to trial on
21 the indictment?

22 This is not a surprise that the indictment exist?

23 MR POOLE It does not, does not -- it's not a
24 surprise that the document exists, correct

25 THE COURT And you were prepared and were defending

1 the case based on that indictment?

2 MR POOLE That's right That's right

3 THE COURT okay All right

4 MR POOLE But what we have is an indictment that is
5 not properly before the jury, and, and that relates to the
6 greater than 100 grams, which relates to the, the stop
7 and---

8 THE COURT Well, again, the jury is not made any
9 decisions on anything at this point in time I realize --
10 and, of course, the indictment was read during voir dire
11 It wasn't read at the beginning of the trial is my
12 understanding, my recollection of how, how this went down

13 Do you disagree with that?

14 MR POOLE I think you're correct, yes, sir

15 THE COURT All right Mr Wilkes, you seem to want to
16 talk Go ahead and say something

17 MR WILKES May I?

18 (The Court nods affirmatively)

19 MR WILKES Thank you

20 It, it would appear more structural in, in nature I
21 don't know that we can read the indictment and announce and
22 call a case to a jury in the middle of a trial

23 THE COURT Well, again, we've got an issue here, Mr
24 Wilkes, in that the case was called by the solicitor, and it
25 was called apparently properly at that time The issue is

1 whether or not I think I read the indictment to the jury
2 pool --

3 MR WILKES Correct

4 THE COURT -- entire pool during voir dire, and at
5 that time the purpose of that reading was to allow them to
6 more fully answer the questions That's exactly what I
7 instructed them

8 MR WILKES I, I believe and---

9 THE COURT Is that not what I told them I'll be glad
10 to go back and read, read, have the court reporter read what
11 I said to them at the time

12 MR WILKES I can

13 THE COURT That's what I always do So, I'm sure I
14 did that

15 MR WILKES I can't -- well, I don't, I don't doubt
16 it If you say you did you did I, I can't recall---

17 THE COURT well, that's just been my practice

18 MR WILKES Right

19 THE COURT Everytime I read it to them I tell them
20 that it can't be used as evidence

21 MR WILKES Right

22 THE COURT They can't consider them in reaching a
23 guilty verdict or a not guilty verdict, and the only purpose
24 for my reading them is to allow them to more fully answer
25 the questions that I'm about to ask

1 MR WILKES Okay
2 THE COURT I, I -- we can take it out of the record,
3 but I'm sure that's what I said
4 MR WILKES I, I believe that announcing to the jury
5 the indictments, I just -- I believe that that was not
6 announced in
7 THE COURT Beg your pardon?
8 MR WILKES I do not believe that the Court announced
9 that one indictment
10 THE COURT During voir dire?
11 MR WILKES I, I believe -- I thought that---
12 THE COURT Well, let's go back and look at the record
13 I'll take a---
14 MR WILKES Okay I just---
15 THE COURT I'll take a five minute break Come over
16 here and look at it
17 MR WILKES I appreciate it I just can't recall
18 THE COURT Take a look at it we'll take a break Go
19 ahead
20 MR WILKES Okay
21 (Pause)
22 THE COURT Now, Mr Wilkes, have you had a chance to
23 review the record?
24 MR WILKES I have, Your Honor It appears, from what
25 I understand, the solicitor did call five

1 THE COURT Uh-huh (Affirmative)
2 MR WILKES The Court announced four
3 THE COURT Uh-huh (Affirmative)
4 MR WILKES And then referred back to the indictments
5 I think later when the jury was seated So, we, we---
6 THE COURT I just said that I was gonna read them
7 again
8 MR WILKES Right, and we'll---
9 THE COURT And at, at the beginning I think that the
10 purpose I said that I read them for was for them to more
11 fully---
12 MR WILKES Right
13 THE COURT ---answer the questions that I was about to
14 ask
15 MR WILKES Right
16 THE COURT And I instructed them they can't be used by
17 them in any way in determining guilt or innocence
18 MR WILKES Correct, and then I believe---
19 THE COURT Is that a correct statement of what I said?
20 MR WILKES I believe that is, I believe that is
21 correct
22 THE COURT Okay
23 MR WILKES And then I believe that when the jury was
24 seated, the Court was giving initial instructions, it
25 referenced---

1 THE COURT I just said I was not gonna read them
2 again

3 MR WILKES Right Okay And we would maintain that
4 the reference back to the four indictments would be the same
5 as having announced four to them at that time, and for the
6 record---

7 THE COURT I understand that would be your position

8 MR WILKES That is my position and for the record we,
9 we'd just -- we'll stick with that

10 THE COURT well -- and does the record indicate though
11 that the State called all five cases?

12 MR WILKES It does It does

13 THE COURT And there was no objection I believe when I
14 finished my initial argument to the initial statement to the
15 jury?

16 MR WILKES Right

17 THE COURT I asked if anybody had an objection to
18 anything that I said---

19 MR WILKES Right

20 THE COURT ---and I don't believe the defense raised
21 any objections

22 MR WILKES That would put the defense in a tough
23 position to, to be asking for another charge to be brought
24 So, I don't know if Mr Poole would of been properly in that
25 position to raise it I certainly wouldn't

1 THE COURT Well, I'm not, I'm not -- I'm just saying
2 there was no objection to my---

3 MR WILKES That's -- you are correct I remember
4 that and that's, that's, that's correct

5 THE COURT And I always ask if there's any objection
6 to anything that I said in my opening statement

7 MR WILKES That's, that's correct

8 THE COURT And I did not hear any at that time

9 MR WILKES You would not hear an objection from the
10 defense for missing a charge I promise, but --

11 THE COURT Well, I didn't hear any from either side

12 MR WILKES Well, that's true But that, that, for
13 the record, would be our, our position, and we maintain that
14 that would prejudice us in increasing the charges for the
15 jury now

16 THE COURT Well, now, it doesn't increase it over the
17 cases that were called at the beginning of the trial

18 MR WILKES That is true

19 THE COURT The way -- the prejudice that I see is that
20 perhaps there would be jurors who did not have the benefit
21 of my having read that indictment during voir dire and
22 perhaps did not properly answer questions

23 MR WILKES Correct

24 THE COURT I'll be more than happy to inquire of the
25 jury at this time and read the indictment to them so that

1 they have a full understanding that that indictment does
2 exist, and would ask them if it would change any of the
3 responses that they had during voir dire

4 MR WILKES Without waiving the initial objection and
5 motion for mistrial---

6 THE COURT I'm not asking anybody to waive anything

7 MR WILKES The, the---

8 THE COURT I'm just saying that that is---

9 MR WILKES As, as---

10 THE COURT ---a possibility to try to cure the
11 situation

12 MR WILKES And, and for, for that portion, it, it
13 would cure their responses, and, and, therefore---

14 THE COURT Well, I understand that And I -- but,
15 again, we've got a situation where the case was called --

16 MR WILKES Correct

17 THE COURT -- by the solicitor to be tried And as
18 I've indicated, apparently this indictment was paper-clipped
19 to the back of another one and was not read during voir
20 dire

21 MR WILKES Right

22 THE COURT I did not read it again to them once the
23 case started, and I heard no objection to my having not done
24 it during voir dire

25 MR WILKES Right

1 THE COURT In fact, there was no objection at all to
2 the jury selection process either

3 MR WILKES That is, that is correct

4 THE COURT By either side cause I always ask for that
5 too

6 Okay Anything further, Mr Poole?

7 MR POOLE Yes, sir, just for the sake, I assume that
8 the Court would, is planning on reading the indictment and
9 asking certain questions of the jury on the 100 grams

10 THE COURT Well, the concern I have there is that,
11 that, from your prospective, is that it may over emphasize
12 that particular charge to the jury if I do that Mr Wilkes
13 seems not want to discuss my having done that I'll discuss
14 it with you as to whether or not you think that's a prudent
15 course if I decide not to mis-try the case, to bring that
16 indictment to the jury's attention, and also to cure any
17 possible problems that there might be with failure to
18 adequately answer the voir dire questions

19 But, again, there is -- that will call that indictment
20 clearly to the jury's attention, and I -- the Court doesn't
21 want to overly emphasize any one charge I can -- of
22 course, I intend and I always instruct the indictments at
23 the close of the trial during my charge on the law, and it
24 can just be included with the other charges at that time if
25 I decide to go forward

1 MR POOLE Okay
2 THE COURT But I think it's a real decision on your
3 part as to whether or not you want me to try a curative
4 situation or simply state the State called it, I failed to
5 read it, you don't want me to inquire of the jury as to
6 whether that prejudices their answers to the voir dire, and
7 we'll go forward If you want me to inquire to see if that
8 would change any answers that they gave during voir dire,
9 I'll be more than happy to do that
10 MR POOLE Let me give you -- give me a moment so I
11 can confer---
12 THE COURT All right
13 MR POOLE ---and then I'll get back to you
14 THE COURT Because I understand this charge relates
15 primarily to your client---
16 MR POOLE Sure
17 THE COURT ---Mr Poole, and not to Mr Wilkes
18 MR POOLE Sure
19 THE COURT So, he may be not so concerned about that
20 MR POOLE Sure
21 THE COURT You might be So, that is---
22 MR WILKES We are at odds now That is a problem
23 THE COURT I'm just pointing that out
24 (Pause)
25 MR WILKES Here's, here's our dilemma, Your Honor

1 I -- as you correctly noted, we obviously have different
2 concerns on it because my clients not necessarily part of
3 the charge and his is, and I would as soon have voir dire on
4 it and he would not So, now we are in a---

5 THE COURT Well, I can clearly instruct them that your
6 client is not involved in this charge at all That can be
7 made abundantly clear to the jury

8 MR WILKES And, and that would, that would suit me
9 well But now Mr Poole and I are at odds cause our
10 clients---

11 THE COURT Well, now I'm going to ask Mr Poole
12 whether he wishes for me to do anything curative as far as
13 voir dire is concerned If I do that, then in the interest
14 of protecting Mr Wilkes' client, I would clearly state that
15 this charge that I omitted during that discussion was, in no
16 way, involves my client cause he's not charged in it

17 MR POOLE Your Honor, the less mention of it, the,
18 the less mention the Court makes of it is what I want at
19 this point --

20 THE COURT Okay

21 MR POOLE -- if the Court is determined to do that
22 Less mention---

23 THE COURT So, basically you'd rather I not go back
24 and inquire concerning the voir dire responses?

25 MR POOLE That's right

1 THE COURT Okay

2 MR POOLE That's my position, and, and since that
3 does put us, puts us at odds, that leads to, again, to my
4 motion to---

5 THE COURT Well, I'm not sure that puts you at odds
6 because he doesn't want that mentioned at all I think

7 MR POOLE Right

8 THE COURT Let's ask him what he wants

9 Mr Wilkes, what do you want?

10 MR WILKES I would like the voir dire, and I would
11 like -- I would like the voir dire

12 THE COURT Does it involve your client at all?

13 MR WILKES In a way it does because now the evidence
14 is been introduced, and I think that, that, to have the voir
15 dire is important, and I think to have the instruction that
16 my client is not involved in it is important as the Court
17 said

18 Mr Hunter

19 SOLICITOR HUNTER Your Honor, during the voir dire we
20 had a trafficking cocaine or crack over 400 grams, PWID half
21 miles for both defendants I don't see how trafficking over
22 100 grams would, in anyway, influence their decisions in the
23 voir dire If you just read the indictment and just as
24 Ricky Cheeks name in it, they would understand what the
25 indictment is and nothing further would need to be said

1 THE COURT Are we through talking about it?

2 MR POOLE Yes, sir, just---

3 THE COURT Cause I've got a feeling that -- no, I
4 won't say that

5 Go ahead

6 MR POOLE For the sake of the, the record, Your
7 Honor, I make my objections now for the denial of my motions
8 for a mistrial and the denial---

9 THE COURT Well, I haven't denied it yet I'm still
10 considering it

11 MR POOLE Well, in the totality of circumstances

12 THE COURT Well, I'm simply discussing with you if I
13 decide not to grant it

14 MR POOLE Okay When I hear, when I hear the Court's
15 decision---

16 THE COURT Now we go from there

17 MR POOLE Okay

18 THE COURT Because I do recognize that there is
19 perhaps a difference of opinion on the defense as to how
20 that should be handled And, so -- but I'm not sure that
21 difference of opinion rises to the point that I should grant
22 a mistrial

23 MR POOLE Yes, sir

24 THE COURT I will consider that

25 MR POOLE Okay Well, upon the Court's ruling, I --

1 just a brief remark I need to make

2 THE COURT Okay All right I'm gonna take it under
3 advisement a few minutes

4 Court's in recess

5 (WHEREUPON, a short recess was taken at this time)

6 THE COURT Mr Poole, you want to take up something
7 with me before we start?

8 MR POOLE No, we're just awaiting your ruling, Your
9 Honor

10 THE COURT Okay All right All right It appears,
11 from what I have gathered, that the issue is the fact that
12 the Court failed to announce to the jury one of the
13 indictments against Ricky Dwight Cheeks That one being for
14 the, the, what I'll refer to as the traffic stop That is
15 in Case Number 09-GS-42-6457 That particular indictment
16 was not read to the Grand Jury during voir dire It was,
17 however, called by the State

18 I also recall that, on those indictments, I asked both
19 defense counsel if they, if their clients should be
20 arraigned on those charges, and that both sides waived a
21 formal arraignment and asked for jury trial, both of the
22 defense attorneys waived arraignment and asked for a jury
23 trial on the charges The purpose of my reading the
24 indictments to the jury panel as a whole was for the purpose
25 of allowing them to more fully respond to voir dire

1 questions that were about to be asked

2 This indictment was not read to them at that time, and
3 to the extent that the jury panel may have used this
4 indictment in responding to my questions, I will inquire of
5 the jury concerning that particular issue. I do not find,
6 however, that there is any prejudice to the defense's cases
7 since both defendants were aware of the indictments being
8 called by the solicitor, that they were, that indictment was
9 before the Court, they have argued it in their opening
10 statement, and I did not hear any argument during our
11 discussion of this issue that somehow the defense has failed
12 to present some evidence or ask some question or, in some
13 way, defend Mr. Cheeks, Ricky Cheeks, from this indictment.
14 The issue appears to be whether or not the jury was
15 prejudiced somehow by my failure to read that indictment to
16 them during voir dire.

17 For that reason I will inquire of them to determine
18 whether or not any answers to my questions would have been
19 different had that indictment been read, but it is clear to
20 the Court that the case was called and was before the Court
21 at that time. I will note that, during the, all steps of
22 the process, all sides were asked whether or not there was
23 any objection to the Court's presentations to the jury panel
24 and the jury selection process. No objections were raised
25 until this morning.

1 So, when I talk about prejudice, I'm talking about
2 whether or not the defendant has had an opportunity to fully
3 defend and argue this particular indictment, and I find that
4 this defendant has had an opportunity to fully defend to
5 this point and argue that the, the issues that are in this
6 indictment. In fact, it's my belief that the defense was
7 not aware of the fact that it was not read until perhaps
8 this morning. It seems to be what I've gathered from my
9 discussions with counsel.

10 So, to that extent, I will inquire of the jury as to
11 whether or not it would change any of their responses, and
12 it's my finding that it was called before the Court by the
13 solicitor, and everyone was aware that the indictment was in
14 controversy in this particular matter.

15 Mistrial is a drastic solution and I will be sure that
16 the jury, from this point forward, forward is fully aware of
17 all indictments that are before the Court and the
18 allegations that have been made in those indictments.

19 Anything you wish to put on the record, the State?

20 SOLICITOR HUNTER Nothing, Your Honor.

21 THE COURT From the defense?

22 MR. POOLE May it please the Court, Your Honor?

23 THE COURT Yes, sir.

24 MR. POOLE Just, just -- and this probably is
25 unnecessary, but I just want to make sure that the record

1 reflects that, that any, any introduction of evidence here
2 on, regarding the traffic stop indictment against Ricky
3 Cheeks we object to as a continuing objection based upon our
4 motion for a mistrial and our motion for severance

5 THE COURT Okay, sir

6 MR POOLE As a motion made now for---

7 THE COURT Any objection to him having a continuing
8 objection to any evidence you present on that particular
9 indictment?

10 SOLICITOR HUNTER None, Your Honor

11 THE COURT All right we'll note, note that your
12 objection continues throughout the trial

13 MR POOLE Thank you very much

14 THE COURT Anything further, Mr Wilkes?

15 MR WILKES No, sir

16 THE COURT All right Let's bring the jury in
17 (WHEREUPON, the following takes place within the
18 presence of the jury)

19 THE COURT All right The record will reflect the
20 jury has returned to the courtroom

21 First of all, let me apologize to you for your long
22 wait in the jury room this morning, and also make you aware
23 of the fact that it is fairly chilly in this courtroom We
24 go through this quite often this time of the year when the
25 weather changes In order to get this system turned over to

1 heat they have to climb up into the crawl space in the attic
2 and throw some switches and something That's been asked
3 for They're on their way suppose to be doing that

4 So, I'm aware that it's cold I apologize to you about
5 that But we're doing everything we can This is a fairly
6 old building and that -- it's, it's showing So, my
7 apologize, apologies to you and we'll try to get that
8 rectified as quickly as we can

9 Yesterday when I went over with you the indictments in
10 this case, and I did that when we were asking questions
11 about this case Apparently there was one indictment that
12 was called by the solicitor for trial that was attached to
13 the back of another indictment that I did not read to you at
14 that time So, I'm going to go over this indictment with
15 you again I'll remind you that you remain under oath to
16 respond to my questions in a truthful, honest, and complete
17 manner

18 The indictment that was not read to you at that time is
19 Case Number 09-GS-42-6457 That is an indictment against
20 Ricky Dwight Cheeks It is for the offense of trafficking,
21 trafficking in crack cocaine That indictment states that
22 Ricky Dwight Cheeks did, in Spartanburg County, on or about
23 June 4th of 2009, knowingly sell, manufacturer, deliver,
24 purchase, or bring into the State, or did provide financial
25 assistance, or did otherwise aid, abet, attempt, or conspire

1 to sell, manufacture, deliver, purchase, or bring into this
2 state, or did knowingly, actually or constructively,
3 possess, or did knowingly attempt to actually or
4 constructively possess more than a hundred, 100 grams of
5 cocaine base and or crack cocaine, a Schedule II controlled
6 substance, in violation of Section 44-53-375 of the Code of
7 Laws of South Carolina, 1976 as amended, against the peace
8 and dignity of the State and contrary to the statute in such
9 case made and provided

10 Now, that's the indictment, as I've said, that was
11 attached to another one and was not read to you yesterday

12 My question to you at this time is that having now
13 heard that indictment, would that have changed any of the
14 answers that you gave to any of my questions that I asked
15 during voir dire?

16 If it would change any of the answers that you gave me,
17 please stand

18 (No response)

19 THE COURT If any of you feel that that would, in any
20 way, change the Court's finding that you are a fair and
21 impartial juror in this case, please stand

22 (No response)

23 THE COURT Does the State wish any further inquiry of
24 the jury at this time?

25 SOLICITOR HUNTER Nothing, Your Honor

1 THE COURT Does the defense wish any further inquiry
2 of the jury at the time, Mr Wilkes?

3 MR WILKES No, sir

4 THE COURT Mr Poole

5 MR POOLE No, sir

6 THE COURT All right All right It will be my
7 finding that the jury's responses would have been the same
8 to the Court had that indictment been read As I stated
9 earlier, the case was called by the State, and now I will
10 allow the State to proceed with the calling of its next
11 witness

12 SOLICITOR HUNTER Your Honor, the State calls Officer
13 Nate Cantrell

14 THE COURT Come forward to my left to be sworn
15 NATE CANTRELL, being first duly
16 sworn, testified as follows

17 THE COURT Sir, once you're seated state your name for
18 the record

19 WITNESS It's Nate Cantrell

20 THE COURT Your witness, Mr Hunter

21 DIRECT EXAMINATION

22 BY SOLICITOR HUNTER

23 Q Mr Cantrell, did you have an opportunity to
24 investigate a car stop on June 4th, 2009?

25 A I did

Nate Cantrell - Direct examination
by Solicitor Hunter

1 Q Okay And where were you?

2 A We were at the intersection of Vanderbilt Road and

3 Textile Road located in Spartanburg County

4 Q Is that near Vanderbilt and West Main Street?

5 A That's correct

6 Q Okay When you first got there, what did you do?

7 A When I first got there I noticed that Investigator Matt

8 Hutchins had conducted a traffic stop on a black in color

9 Ford I believe it's a Crown Victoria I was there to help

10 back him up, support him on that traffic stop Once I got

11 there, realized that we may need to use my narcotics

12 detection K-9

13 Q Are you a K-9 officer?

14 A I am

15 Q What type of training goes into that?

16 A In the latter part of 2003 I went to a 13 week course

17 with U S Customs Border Patrol in Fort Royal, Virginia

18 That was to not only certify myself as a K-9 handler, but to

19 also certify my narcotics detection K-9 Igor

20 Q Okay And, so, you've been together how long?

21 A Since '03, latter part of '03

22 Q Have you taken any other courses since that time?

23 A We not only train weekly, but we certify annually every

24 year

25 Q So, you say weekly and annually?

1 A Yes, sir

2 Q Okay what type of training does he go through during
3 those weekly and annual certifications?

4 A Just general training as far as building searches,
5 vehicle searches what we'll do is we set up problems
6 we'll set out drugs that not only do I not know where it's
7 at, but obviously the K-9 doesn't either Set out by a
8 third person, and we run real life scenarios

9 Q what were to happen if he were to fail those tests?

10 A We would not be certified as a K-9 team

11 Q All right Were you currently certified June 4th,
12 2009?

13 A Yes, we were

14 Q Okay How far behind Matt Hutchins were you when you
15 made, he made the car stop?

16 A As far as a resting spot was probably half to a whole
17 car length

18 Q well, as far as how far were you behind him time wise?
19 were you pretty close to him?

20 A Yes, sir

21 Q Okay when you get out of the car with Igor, what do
22 you do next?

23 A I then begin to approach the suspect vehicle that we're
24 gonna conduct a free air sniff on

25 Q who's, who's at this vehicle?

1 A At the time it was Investigator Hutchins, I believe
2 Investigator McJunkin, and the two individuals that were in
3 the vehicle

4 Q Okay

5 A The suspect vehicle

6 Q Did you ask them to do anything?

7 A I -- best I recall, I believe they were out of the
8 vehicle when I approached, and I asked them to remove the
9 two suspects from their vehicle, from around that vehicle
10 where I could conduct a free air sniff

11 Q Now, why do you ask them to move from the vehicle?

12 A Mainly safety precautions and, and it doesn't hinder
13 our search area

14 Q Okay And when you approached the vehicle, where did
15 you approach it from?

16 A Again, that dictates as far as traffic and the, and the
17 environment on that particular day I believe I approached
18 the vehicle from the rear passenger side

19 Q Do you remember who was on the passenger side as far as
20 subjects?

21 A Yes, sir, that would of been a Mr Ricky Cheeks who
22 is---

23 Q Okay

24 A ---I believe in the passenger seat

25 Q who was the officer with him?

1 A Travis McJunkin, Investigator McJunkin

2 Q When you approached the vehicle, did you notice
3 anything on the ground?

4 A No, sir, I did not

5 Q Okay what did you do once Igor started to sniff?

6 A Well, again, we had the investigators remove both
7 suspects from the vehicle At that time I gave him a
8 command to conduct a free air sniff of the vehicle, and like
9 I said, approached him from the passenger rear side I can
10 not recall if we made it all the way around the vehicle
11 But the passenger door was partially opened At that time,
12 K-9 Igor jumped into the passenger seat and alerted by
13 sitting at the passenger seat

14 Q What, what type of alert dog is he?

15 A It's known as a passive alert, which means when he gets
16 into the presence of narcotics odor he'll sit at the, at the
17 closest point that he can get that odor and he sits and he
18 waits to be rewarded

19 Q Will he move at all?

20 A No, sir

21 Q What are the other types of alert dogs?

22 A It's also known as an aggressive alert, which basically
23 means that they will claw and scratch at the closest point
24 of the, the source of odor

25 Q So, what did Igor do at the passenger seat?

Nate Cantrell - Direct examination
by Solicitor Hunter

1 A He sat

2 Q Did he move?

3 A No, sir, not until I rewarded him

4 Q Okay And at that time, once you reward him, what
5 happened next?

6 A Once I rewarded Igor I removed him from the vehicle,
7 and I began to take him back to, to my vehicle to put him
8 up From there I would go back and, and help do a hand
9 search of the vehicle

10 Q Did you notice anything, anything on the ground when
11 you went back to the vehicle?

12 A No, sir, not that I recall

13 Q Okay When you came back to do the search of the
14 vehicle, what did you find?

15 A Found a clear plastic, plastic bag containing four
16 blocks of an off-white substance, and it was located on the
17 ground near the, the rear passenger area of the vehicle like
18 the rear fender weld

19 (WHEREUPON, a bag containing drugs was marked as
20 State's Exhibit No 13 for identification purposes only at
21 this time)

22 SOLICITOR HUNTER May I approach, Your Honor?

23 THE COURT You may

24 Q I'm gonna show you what's been premarked as State's
25 Exhibit 13

1 Do you recognize this?

2 A Yes, sir, I do

3 Q And how do you recognize that?

4 A This is the same substance I found on that day
5 There's a clear plastic bag and there's four blocks of
6 off-white substance

7 Q What is the plastic bag?

8 A I'm sorry?

9 Q What is the plastic bag called---

10 A It makes---

11 Q ---or the plastic bag that's in it?

12 A Okay

13 Q Correct

14 A You talking about---

15 A Correct

16 A This is a, a, an evidence B E S T Bag that we use at
17 the Sheriff's Office to, to place cocaine, crack, heroin, or
18 meth

19 Q Okay And what do you do with this B E S T Bag?

20 A We'll take the, the drugs, place it in the evidence
21 bag we'll then seal It has a, a plastic strip that we'll
22 take off, seal it until you see the red line here It has a
23 control number which identifies this bag We take the, the
24 first portion of it, sign it, keep it with your case file,
25 and we record exactly what the control number is That's

Nate Cantrell - Direct examination
by Solicitor Hunter

1 how we track

2 Q Did you do that in this case?

3 A Yes, sir, I did

4 Q And what do you do with the substance after that?

5 A We will deposit it into the evidence drop box or the
6 evidence locker of the Sheriff's Office and---

7 Q Where is that located?

8 A At the Spartanburg County Sheriff's Office on 8045
9 Howard Street

10 Q And who has access to that drop box?

11 A The evidence custodian officers

12 Q Does anybody else have access?

13 A No, sir

14 Q Okay Did you do that in this case?

15 A Yes, sir, I did

16 Q Now, where did you collect the substance again?

17 A It was located on the ground directly at the rear
18 passenger area

19 Q So, in the rear passenger side of the vehicle?

20 A Yes, sir

21 Q Okay Answer any questions the defense may have

22 THE COURT Mr Wilkes

23 MR WILKES Thank you, Your Honor

24 CROSS-EXAMINATION

25 BY MR WILKES

Nate Cantrell - Cross-examination
by Mr Wilkes

1 Q Officer Cantrell, have you had any contact or did you
2 have any contact in this case with Mr Elder?

3 A No, sir, not that I recall

4 Q Okay Did you have any contact with Mr Markley?

5 A Mr Martin?

6 Q Markley, Tracy Markley

7 A No, sir, not that I recall

8 Q And that was -- I'm -- have you had any in the case at
9 all?

10 Have you had any communications with him since the date
11 of arrest?

12 A No, sir

13 Q Very good No further questions

14 THE COURT Mr Poole

15 MR POOLE Yes, sir

16 CROSS-EXAMINATION

17 BY MR POOLE

18 Q Officer Cantrell, do you remember about what time you
19 arrived at the scene?

20 A I, I believe, and I don't have it in my report, but
21 looking from the other reports I believe it was around
22 four o'clock in the afternoon

23 Q Around 4 00?

24 A I believe so

25 Q And who -- this, this was in reference to a failure to

Nate Cantrell - Cross-examination
by Mr. Poole

1 stop at a stop sign, traffic stop?

2 A Best I recall, yes, sir

3 Q Is that right?

4 A Investigator Hutchins was the one who conducted the
5 traffic stop, and I believe that was the offense

6 Q Okay And you were, of course, dispatched to this
7 location, and as far as you knew at that time it was a
8 routine traffic violation, is that right?

9 A We were conducting an operation that day, surveillance
10 with the narcotic's unit

11 Q Okay

12 A I did know that Investigator Hutchins observed a
13 traffic violation at that time and that's why he conducted
14 the traffic stop

15 Q Okay And, so, do you know how long the car had been
16 detained prior to you getting there?

17 A Not even minutes because I was pretty close to---

18 Q All right

19 A ---Investigator Hutchins

20 Q Okay And I believe you stated that by the time you
21 got there the, both the, the, Elder and Ricky Cheeks were
22 still in the automobile?

23 A I believe, by the time I arrived, they were outside of
24 the vehicle

25 Q Okay

Nate Cantrell - Cross-examination
by Mr Poole

1 A I, I may be correct on that, sir I do know that by
2 the time I deployed my detection K-9 that they were outside
3 the vehicle I can not remember, once I arrived on the
4 scene, if they were inside or out

5 Q Once you arrived, were they, I'm talking about both of
6 them, were they outside of the vehicle---

7 A Once I---

8 Q ---or inside?

9 A Once I deployed my dog they were outside, yes, sir

10 Q Okay But you did -- you didn't deploy your dog as
11 soon as you got there?

12 A Shortly after, yes, sir I can't recall if they were
13 inside the vehicle the second I got there

14 Q Okay So, both of them could of been outside, is that
15 right?

16 A Possible

17 Q Okay And when -- Igor, what breed of dog is he?
18 I'm just curious

19 A He's a German Shepherd

20 Q Okay And how long have you been working with him, you
21 probably testified to that, how long?

22 A Since latter '03

23 Q Okay And when you deployed the dog, where, where was
24 the initial position of deployment?

25 A I retrieved him from the rear of my vehicle --

1 Q Okay

2 A -- which was located behind Investigator Hutchins'
3 vehicle

4 Q Okay And you take him around but, from behind your
5 car, around Investigator Hutchins' car, and to the Crown
6 Victoria?

7 A That's correct

8 Q All right What was the initial position of Igor on
9 the Crown Victoria?

10 where -- what did you do?

11 A We approached the vehicle from the rear passenger area
12 is where we, we approached the suspect vehicle

13 Q Rear passenger area and then---

14 A Yes, sir

15 Q ---he went up to the passenger area and sat?

16 A Yes, sir, he actually went to the front passenger door
17 and jumped inside the vehicle and sat at the passenger seat

18 Q Okay So, you did not take Igor all the way around to
19 the driver's side?

20 A I do not recall taking him around the driver's side
21 when I conduct a free air sniff with my dog, with Igor, he
22 will, he will work that area If he catches the presence of
23 narcotics odor he'll continue to work that If he does that
24 on the passenger side he may not make it to the driver's
25 side if that's where he's getting the, the strongest

Nate Cantrell - Cross-examination
by Mr Poole

1 presence of the odor

2 Q So, the answer to the question is then you do not
3 recall whether you took him around to the driver's side or
4 not, is that right?

5 A That's correct

6 Q Okay

7 A I don't recall

8 Q All right Thank you, Officer Cantrell

9 A Uh-huh (Affirmative)

10 THE COURT Redirect?

11 SOLICITOR HUNTER One quick question, Your Honor

12 REDIRECT EXAMINATION

13 BY SOLICITOR HUNTER

14 Q Mr Poole was asking how long you worked with Igor
15 How long have you been in law enforcement?

16 A Just a little over 12 years

17 Q Doing -- what, what were your duties?

18 A When I first arrived, was hired, hired with the
19 Sheriff's Office I was on patrol I've been in narcotics
20 for right at seven years

21 Q And what are you currently doing?

22 A I'm assigned to the DEA task force I'm still at the
23 narcotic's unit at the Sheriff's Office But I'm a federal
24 task force officer with the DEA

25 Q Okay Thank you

Nate Cantrell - Redirect examination
by Solicitor Hunter

1 THE COURT Mr Wilkes, any other questions?
2 MR WILKES No, sir Thank you, Your Honor
3 THE COURT Mr Poole
4 MR POOLE No, sir
5 THE COURT You may step down
6 State may call its next witness
7 SOLICITOR HUNTER State would call Investigator
8 McJunkin
9 THE COURT Come forward, sir, to my left to be sworn
10 TRAVIS MCJUNKIN, having been first duly
11 sworn, testified as follows
12 THE COURT Have a seat please
13 SOLICITOR HUNTER Your Honor, may Mr Cantrell be
14 excused?
15 THE COURT You can be seated
16 Any objection?
17 MR WILKES No objection, Your Honor
18 THE COURT Mr Poole, any objection?
19 MR POOLE None here
20 THE COURT He's free to go
21 SOLICITOR HUNTER Thank you
22 MR WILKES Your Honor, I'm not sure if that's
23 Mr Elder in the back If it is---
24 SOLICITOR HUNTER It's not
25 MR WILKES All right I was gonna make a suppression

Travis McJunkin - Direct examination
by Solicitor Hunter

1 motion

2 THE COURT I understand

3 All right Have you stated your name?

4 WITNESS Travis McJunkin

5 THE COURT Your witness, Mr Hunter

6 DIRECT EXAMINATION

7 BY SOLICITOR HUNTER

8 Q Mr McJunkin, who are you currently employed by?

9 A The Spartanburg County Sheriff's Office

10 Q And how long have you been so employed?

11 A Since May of 2006

12 Q Is that the basis of your law enforcement experience?

13 A No, sir, in 2003 I began working for the Spartanburg
14 Public Safety Department Worked with them until 2005 I
15 went to the South Carolina Department of Probation, Parole,
16 and Pardon Services after which I began with the Sheriff's
17 Office in May of 2006

18 Q Okay And the Spartanburg Public Safety Department, is
19 that the city police?

20 A Yes, sir, it is

21 Q Okay How long have you been in narcotics?

22 A Since January of 2009

23 Q Okay Did you have an opportunity to assist in the
24 investigation on June 4th, 2009?

25 A Yes, sir, I did

Travis McJunkin - Direct examination
by Solicitor Hunter

1 Q what were your duties at that time?

2 A Myself and Investigator Hutchins, Matt Hutchins, were
3 conducting surveillance during an operation that we had
4 during the process of which we began following a black Crown
5 Victor that committed a traffic violation at which time
6 Investigator Hutchins initiated a traffic stop on the same
7 vehicle and I assisted

8 Q where did Investigator Hutchins go?

9 A For the traffic stop?

10 Q Correct

11 A The traffic stop occurred on Vanderbilt Road near the
12 intersection of Textile Road in Spartanburg County

13 Q Now, when I said where did he go, I -- as far as once
14 the traffic stop was initiated, where was his movements, his
15 body movements to?

16 A Investigator Hutchins would be what we call the contact
17 officer He would make contact with the operator of the
18 motor vehicle So, he went to the driver's side of the
19 vehicle and spoke to a Mr Eric Elder I believe was the
20 driver of the vehicle

21 Q Okay And where were you?

22 A There was a passenger in the front passenger seat, and
23 I responded to the passenger seat location

24 Q who was the passenger of that vehicle?

25 A A Mr Ricky Cheeks

1 Q Okay Now, what did you do once you approached the
2 passenger?

3 A Initially, for safety reasons, I asked Mr Cheeks to
4 keep his hands on the dashboard so I could see them

5 Q Was he doing that?

6 A At that time, yes, sir

7 Q Okay At what point did you get him out of the car?

8 A I believe Investigator Hutchins asked Mr Elder to step
9 to the rear of the vehicle at which time he also asked me to
10 do the same with Mr Cheeks at which time I opened the door,
11 instructed him to unbuckle, and to step from the motor
12 vehicle

13 Q Can you describe his actions at that time?

14 A He appeared nervous His breathe---

15 Q By appear nervous, what do you mean?

16 A Breathing heavy, looking around, shaking Just, in
17 general, just seemed nervous by our presence

18 Q Okay Did you hand him anything when he got out of the
19 car?

20 A He had a walking cane I believe in the front passenger
21 seat with him and I retrieved that for him

22 Q Okay When he stepped out of the car, did you observe
23 him doing anything?

24 A Yes, sir, he made a motion to reach for the right side
25 of the shorts that he had on, had on, kind of like the cargo

1 pocket area of the shorts he had on at which---

2 Q How long, how long were his pants?

3 A They were pretty long If I'm not mistaken I think
4 they were below the knee

5 Q How would you describe his movements?

6 A well, he just kept reaching for the right side we
7 describe them in law enforcement as furtive, suspicious
8 There was something bulging in that area I noticed that
9 For safety I instructed him several times to keep his hands
10 away or keep from reaching for that right side of the pocket
11 area for my safety and Investigator Hutchins

12 Q Did he comply with your orders?

13 A No, sir, he would initially, but I had to repeat myself
14 several times

15 Q Okay And at that time did he comply with your orders?

16 A No, actually I walked him to the rear of the vehicle
17 Crown Victoria is a four door vehicle When Investigator
18 Hutchins walked Mr Elder to the rear of the vehicle I would
19 do the same with Mr Cheeks I escorted him to the rear of
20 the vehicle It's kind of in-between the passenger door and
21 the trunk area, and, again, he reached and at one point I
22 had to physically move his hand from that area of his body

23 Q Okay At any point was Eric Elder on the passenger
24 side of that vehicle?

25 A No, sir, it was just myself and Mr Cheeks

1 Q So, there's only two people on that side of the
2 vehicle?

3 A Yes, sir

4 Q Okay where did you take Mr Cheeks, Mr Ricky Cheeks,
5 from that point?

6 A Investigator Cantrell had arrived at this time
7 Investigator Cantrell was gonna take his K-9 around the
8 vehicle at which time we can't have persons around the
9 vehicle I escorted Mr Cheeks to the front of Investigator
10 Hutchins' vehicle I allowed Mr Cheeks to walk in front of
11 me for safety purposes so I could see them I wouldn't turn
12 my back to him and allow him to follow me, and I followed
13 him to the front of Investigator Hutchins' vehicle

14 Q Now, when you first approached the car, did you view
15 anything on the ground?

16 A No, sir, I did not

17 Q Okay And after taking Mr Cheeks back to Mr Hutchins
18 car, did you observe anything on the ground?

19 A No, sir

20 Q Once Igor did his sniff, did you observe anything on
21 the ground?

22 A No, sir, not at that time

23 Q Okay

24 THE COURT Just one second

25 Sir, the gentleman in the back, are you awake?

Travis McJunkin - Direct examination
by Solicitor Hunter

1 JUROR Yes, sir

2 THE COURT I have to be sure that all jurors are
3 paying attention Sit up so I can see your see, see your
4 eyes please, sir Sit up straight for me Thank you You
5 need to pay attention to what's going on

6 Thank you, Mr Hunter You may proceed

7 SOLICITOR HUNTER Thank you

8 Q Once the search began on the car did you view anything
9 on the ground?

10 A Yes, sir, after Investigator Cantrell located a bag of
11 off-white rock like substance on the ground I seen it on the
12 ground in the exact area that myself and Mr Cheeks were
13 when we were between the trunk area and the rear passenger
14 door on the Crown Victoria

15 Q Other than officers, was anybody in that area other
16 than Mr Cheeks?

17 A No, sir

18 Q Okay Please answer any questions the defense may
19 have

20 THE COURT Mr Wilkes

21 MR WILKES Thank you, Your Honor

22 CROSS-EXAMINATION

23 BY MR WILKES

24 Q Were you involved in the search in anyway?

25 A The search of the vehicle?

- 1 Q The residence
- 2 A The residence?
- 3 Q Yes, sir
- 4 A Yes, sir
- 5 Q What was your participation in the search of the
- 6 residence?
- 7 A I searched the house, assisted in searching a side
- 8 room
- 9 Q Which side room was that?
- 10 A I really can't recall It was several rooms My
- 11 Lieutenant assigned me to one room in particular
- 12 Q Can you describe which room it was as you went in the
- 13 building or in the bottom floor?
- 14 Was it to the right or the left?
- 15 A I believe it was to the left I can't -- it was
- 16 several rooms of the large basement area of the house
- 17 Q All right And the room that you searched, what did
- 18 you find?
- 19 A I can't recall if I found anything
- 20 Q Okay Did you have any conversation with Mr Elder?
- 21 A I'm not sure I do remember standing outside smoking,
- 22 talking with someone But what it was I couldn't recall
- 23 who it was I can't recall
- 24 Q Can you recall if it was a white male or a black male?
- 25 A It was, it was a large white male

- 1 Q All right Could that have been Mr Markley?
- 2 A Yes, sir, it could of been
- 3 Q And you were standing outside smoking with, with him?
- 4 A Yes, sir
- 5 Q Is that during the search or after the search?
- 6 A I believe it was well after
- 7 Q Did you have -- what, what was the nature of your
- 8 conversation?
- 9 A I think it was mostly about smoking being bad for you
- 10 maybe I'm not -- nothing, nothing pertaining to the case
- 11 Q All right And how long was that?
- 12 A I guess how long it takes to smoke a cigarette I'm --
- 13 I -- it wasn't a long time
- 14 Q Was he in your custody at that time?
- 15 A My custody or---
- 16 Q Yes, sir
- 17 A I remember him being in handcuffs, but I wouldn't say
- 18 he was under my custody But, yeah, I was the one watching
- 19 him at that point in time
- 20 Q Was there any other officer there with you?
- 21 A I can't recall People were walking in, out, and
- 22 about
- 23 Q Where did Mr Markley go after y'all smoked a
- 24 cigarette?
- 25 A I can't recall

1 Q You would have -- he's in handcuffs -- you would have
2 transferred him to somebody else's custody or put him in---

3 A Well, they're several officers---

4 Q ---into someone else's---

5 A Well, they're several officers out there I mean at --
6 I'm sure -- I mean he didn't, he didn't walk away I can't
7 remember, at that point after we finished the cigarette,
8 where exactly he went, at that point, who took custody of
9 him then

10 Q Got you

11 Did you take him from the inside of the house to the
12 outside of the house?

13 A I believe he was already outside whenever I stepped
14 outside

15 Q Okay Do you remember distinctly where you found drugs
16 on the ground?

17 You remember those facts very clearly today?

18 A I remember that Investigator Cantrell found drugs on
19 the ground during the traffic stop

20 Q Okay And your participation in the traffic stop?

21 A I was what we would call a cover officer My general
22 responsibilities would really be security base, make sure
23 that myself and Investigator Hutchins and those others
24 involved were safe

25 Q And, and did you testify that you did not observe drugs

1 on the ground at one point?

2 A Yes, sir, I believe so

3 Q And you would, you would recall what you did not
4 observe on the ground accurately?

5 You, you believe you had a clear recollection of that?

6 A Yes, sir

7 Q But not a clear recollection of what happened at the
8 house with Mr Markley?

9 A I was smoking a cigarette with him at that point I'm
10 not really investigating anything Just kind of smoking a
11 cigarette at this point I wasn't questioning him Nothing
12 pertaining to the case So, no, sir, I don't recall what my
13 exact conversation would have been with him at that time,
14 no, sir

15 Q Have you had any contact with Mr Markley or Mr Elder
16 since that time?

17 A No, sir

18 Q Had you had any before that time?

19 A No, sir

20 Q Nothing further

21 THE COURT Mr Poole

22 MR POOLE Thank you, Your Honor

23 CROSS-EXAMINATION

24 BY MR POOLE

25 Q And, Investigator McJunkin, I believe you testified

1 that when you arrived both passengers, both the driver and
2 the passenger, were inside the car?

3 A Yes, sir, I was in the vehicle with Investigator
4 Hutchins when he initiated the traffic stop

5 Q And, so, therefore, you, you arrived -- did you arrive
6 before Officer Cantrell?

7 A Yes, sir

8 Q Okay And then did you notice that Mr Cheeks had a
9 walking cane?

10 A Yes, sir, I retrieved it from the vehicle for him

11 Q Okay And you asked them both to get out of the car,
12 didn't you?

13 A No, sir

14 Q Okay You asked---

15 A I asked Mr Cheeks to step from the vehicle

16 Q Okay Did Mr Elder get out of the car at the same
17 time?

18 A I believe Investigator Hutchins asked Mr Elder to step
19 from the vehicle before Mr Cheeks

20 Q So, Elder was outside of the car before Mr Cheeks?

21 A Yes, sir

22 Q Okay And you asked Mr Cheeks to get out of the car
23 and you gave him his walking cane?

24 A Yes, sir

25 Q And does that cane serve a useful purpose?

1 In other words, did he use it?

2 A To assist with walking, yes, sir

3 Q Okay He's paralyzed on the left side of his body,
4 isn't he?

5 A I'm, I'm not aware

6 SOLICITOR HUNTER Objection, Your Honor No knowledge
7 of Mr. Cheeks' impairment

8 THE COURT Overruled He can state what he observed
9 or what, the extent of his knowledge So --

10 Q Okay well, let me ask you a few questions about that

11 A Sure

12 Q So, he has a walking cane?

13 A Yes, sir

14 Q In what, what hand did he place it?

15 A That I can't recall Initially he didn't place it
16 because we were just standing beside the car He wasn't
17 walking anywhere

18 Q Okay But to walk, he used a walking cane, right?

19 A Yes, sir

20 Q And do -- don't you recall that it was in his
21 right-hand?

22 A I can't recall which hand it was, which hand it was in
23 when I handed it to him

24 Q Okay Did you notice lack of mobility on his left side
25 of his body, actually his entire body, his leg and arm?

- 1 A I did notice that he had some sort of physical
2 impairment on the left side of this vehicle, yes, sir
- 3 Q Okay And obviously that walking cane was used for the
4 compensation of his inability to move the left side of his
5 body?
- 6 A It would appear so, yes, sir
- 7 Q Okay So, therefore, he has a walking cane in his
8 right-hand?
- 9 A It would appear so, yes, sir
- 10 Q All right And at the same time you stated that you
11 saw him reaching for the right side of his right leg---
- 12 A Yes, sir
- 13 Q ---and at this point he's got a walking cane in his
14 hand, does he not?
- 15 A I handed him the walking cane I'm -- as far as him
16 walking with the cane, while reaching, no, sir, I don't
17 think I testified he was talking and reaching We're
18 standing beside the vehicle
- 19 Q Okay
- 20 A There's no need for a cane at this point So --
- 21 Q Okay well, you gave him the cane?
- 22 A Yes, sir
- 23 Q All right And, and, so, whether he's using it or not
24 he's holding it in one hand, right?
- 25 A When I asked him to step from the vehicle, imagine, if

- 1 you will---
- 2 Q Uh-huh (Affirmative)
- 3 A ---going to the back side of the vehicle
- 4 Q Uh-huh (Affirmative)
- 5 A I want to have him turn his body facing the trunk. The
- 6 cane would of been resting against the motor vehicle. He
- 7 doesn't have to have the cane in his hand. Apparently he
- 8 didn't have the cane in his hand the entire time he was
- 9 reaching for his right pocket. I clearly had that
- 10 documented in my report. I clearly had, remember physically
- 11 moving his hands away from the right side of his pants. So,
- 12 either he was allowing his cane to rest against the
- 13 vehicle -- I wasn't looking at his cane when he was reaching
- 14 for the side of his pocket. I was looking for where his
- 15 hands were going for safety.
- 16 Q All right. You're looking for safety then, right?
- 17 A Yes, sir.
- 18 Q So, you've got a man who's paralyzed on the left side
- 19 of his body?
- 20 A Uh-huh (Affirmative)
- 21 Q And you're concerned about your safety?
- 22 A Absolutely.
- 23 Q And, and he's older than you?
- 24 A Absolutely.
- 25 Q And, and he's using -- he's got this cane in his

1 possession?

2 A Yes, sir

3 Q And, so, he's got to be using it or holding it, doesn't
4 he?

5 A Not necessarily he doesn't have to be holding it or
6 using it If we're standing still he's reaching for the
7 right side of his pocket and apparently he's not in use of
8 the case

9 Q You didn't see him drop anything, did you?

10 A No, sir, I did not

11 Q Okay All right And Elder was outside of the car
12 also?

13 A Yes, sir

14 MR POOLE Okay That's all the questions I have,
15 Your Honor

16 THE COURT Redirect?

17 SOLICITOR HUNTER None, Your Honor

18 THE COURT You may step down, sir

19 State may call its next witness

20 SOLICITOR HUNTER State would call Kelvin Washington

21 THE COURT Come forward, sir, to my left to be sworn

22 KELVIN WASHINGTON, having been first duly
23 sworn, testified as follows

24 THE COURT Have a seat please Once seated, state
25 your name for the record

Kelvin Washington - Direct examination
by Solicitor Hunter

1 WITNESS Kelvin Washington

2 THE COURT Mr Hunter, your witness

3 DIRECT EXAMINATION

4 BY SOLICITOR HUNTER

5 Q Mr Washington, how are you employed right now?

6 A Spartanburg County Sheriff's Office

7 Q How long have you been employed by the Sheriff's
8 Office?

9 A Since March of 2006

10 Q What are your current duties?

11 A I'm currently on uniform patrol

12 Q And have you ever been on the narcotic's team?

13 A Yes, I have

14 Q And how long were you on the narcotic's team?

15 A Since December of 2008

16 Q Okay Do you have any previous law enforcement
17 experience previous to the Sheriff's Office?

18 A Yes, sir

19 Q And what is that?

20 A I worked at the Spartanburg County Detention Facility

21 I worked at the Spartanburg Public Safety Department and

22 Orangeburg County Sheriff's Office

23 Q Okay For how long?

24 A Which, which department or all together?

25 Q All together

1 A Going on approximately 17 years

2 Q Seventeen years of experience?

3 A Yes, sir

4 Q Okay Have you ever had the opportunity to execute a
5 search warrant?

6 A Yes, sir, I have

7 Q As part of the execution of the search warrant have you
8 had the opportunity to prepare a return?

9 A Yes, sir, I have

10 Q Can you please explain what a return is?

11 A Return is an officer assigned to collect the evidence
12 that's been located by other investigators and inventory it
13 on, inventory it on a return part of the, return, return
14 section of the search warrant

15 Q Okay And in this case did you prepare a return?

16 A Yes, sir, I did

17 Q So, are you the officer who recovered the items within
18 the house?

19 A Yes, sir

20 Q And just for a moment were you involved in the car stop
21 in anyway?

22 A No, sir, I was not

23 Q Okay Now, when you're inside the house, what's the
24 proper procedure for collecting items and placing them into
25 evidence?

Kelvin Washington - Direct examination
by Solicitor Hunter

- 1 A Normally what happens I usually sit myself in a, in the
2 area and the officers, other investigators find the items in
3 the home, they call me and say look, I found items in this
4 area, I collect the area, and I log the officer name down,
5 what he found, and what area he found it in
- 6 Q Do they move the items?
- 7 A No, sir, they don't
- 8 Q Okay Did that occur in this case?
- 9 A Yes, sir, it did
- 10 Q When you collect the items of evidence, what do you do
11 with them?
- 12 A I log it on the return, I put down officer name who
13 recovered it, and I described the item on the return
- 14 Q Okay Did you do that in this case?
- 15 A Yes, sir, I did
- 16 Q Okay I'm gonna show you what's been premarked as
17 State's Exhibit 3
- 18 Do you recognize that item?
- 19 A Yes, sir
- 20 Q And how do you recognize that item?
- 21 A One of the items that was advised to me, showed to me
22 by one of the investigators and I recovered it and put it on
23 my return
- 24 Q Okay when you recover it what do you do with the
25 substance?

- 1 A I put it in a B E S T Bag Well, first I actually log
2 it on the return portion, and then I put it in a B E S T
3 Bag for it to be put in evidence for an analysis
- 4 Q Okay Did you do that in this case?
- 5 A Yes, sir, I did
- 6 Q And where do you take this?
- 7 A We take it to our evidence locker or drop box
- 8 Q Okay
- 9 A Drop it off
- 10 Q And is your name on it?
- 11 A Yes, sir Yes, sir, it is
- 12 Q Okay And did you write that information?
- 13 A Yes, sir, I did
- 14 Q Okay And what do you do with the evidence once you
15 get it from the evidence locker?
- 16 A I drop it off and then it's locked up and prepared for
17 the custodian to come pick it up the following day or that,
18 that same day
- 19 Q Did you do this in this case?
- 20 A Yes, sir, I did
- 21 Q With that evidence item?
- 22 A Yes, sir
- 23 Q Okay Can you explain the drop box to the jury?
- 24 A The drop box is at the Sheriff's Office It's either
25 a, either a locked locker or a box itself almost like a mail

1 box you drop it in I have no access to it afterwards The
2 only person who has access afterwards is the evidence
3 custodian

4 Q Okay Did you seal this bag?

5 A Yes, sir, I did

6 Q Looking at it today could you tell if there's any -- is
7 it a tamper evident bag?

8 A Yes, sir, it doesn't -- once we seal it it's not
9 tampered with until it goes to the chemist to be analyzed
10 So, we don't -- well, you can tell it's been opened to be
11 analyzed

12 Q Okay When you dropped it off at the evidence locker,
13 had it been tampered with?

14 A No, sir, not by me

15 Q Okay I'm gonna show you what's been marked as State's
16 Exhibit 7

17 A Yes, sir

18 Q Do you recognize that?

19 A Yes, sir

20 Q How do you recognize that?

21 A As one of the items showed to me by the officers I
22 recovered it and put it on the return

23 Q Is that in the same or substantially the same condition
24 as you found it?

25 A Yes, sir, it is

Kelvin Washington - Direct examination
by Solicitor Hunter

1 SOLICITOR HUNTER Your Honor, at this time the State
2 would move to admit State's Exhibit No 7 into evidence

3 THE COURT Any objection?

4 MR WILKES We do, Your Honor, and we have previously
5 stated our objection to items retrieved by a search warrant

6 THE COURT Yes, sir

7 MR WILKES Be glad to do it again

8 THE COURT No, I'm just -- is there an, an additional
9 objection?

10 MR WILKES Oh, no, sir

11 THE COURT Mr Poole

12 MR POOLE Subject to prior objections, Your Honor

13 THE COURT Prior objections

14 All right The ruling would be the same concerning the
15 prior issues It will be admitted as marked

16 Q where did you find that box of baking soda?

17 A It was, it was shown to me by Investigator Raymond in a
18 trash can in the kitchen

19 Q Okay In your experience as a narcotic's officer, what
20 is the use of baking soda in the manufacturing of crack
21 cocaine

22 A Use it -- it mixes with cocaine and use it to mix the,
23 the baking soda with it to put it in a microwave or they
24 cook it in a microwave or an oven, and then let it cool off
25 and it makes a cookie or, or a cake like or something and

Kelvin Washington - Direct examination
by Solicitor Hunter

- 1 then they cut it up after it dries off
- 2 Q Okay How far away from the white powder substance in
3 State's Exhibit 3 was that box?
- 4 A I think the kitchen trash can was right there by the
5 counter I think It was right there in the kitchen I
6 believe
- 7 Q So, not far at all?
- 8 A No, sir, probably a couple feet
- 9 Q I'm gonna take you back to the residence for a second
10 I show you what's been marked as State's Exhibit 2 It's
11 already into evidence
- 12 Do you recognize that scene?
- 13 A Yes, sir
- 14 Q Okay How do you recognize that?
- 15 A When you first went in and officers recovered this we
16 saw this It was actually in plain view when we first went
17 in for the search warrant
- 18 Q Okay
- 19 A And it was in the kitchen
- 20 Q In your experience as a narcotic's officer, what is
21 that scene on the oven or the stove?
- 22 A That's a pot, pot used to cook the crack with
- 23 Q Could you give a general description of the, the, not
24 of the arrangement of the house, but the items in the house?
- 25 A Well, I can recall the house being very cluttered I

1 mean when we first went in The kitchen had the -- when we
2 first went in the kitchen you could tell -- you had blocks
3 cut up on the kitchen counter, and you had that one other
4 counter there by the stove where you had the pot and the
5 other items already bagged up But you had some drying on
6 another section of the kitchen counter there, on another
7 counter there in the kitchen

8 Q How would you describe the state of the kitchen as
9 opposed to the rest of the house?

10 A The kitchen was in fairly good condition compared to
11 the rest of the house where I was at anyway where I was
12 sitting there trying to do the return was pretty cluttered
13 and messy and food all over the place Now, the kitchen
14 was -- I'm not gonna say immaculate, but it was in a pretty
15 good condition compared to the rest of the house

16 Q Okay Now, when you recovered State's Exhibit 3, how
17 was it packaged at that time?

18 A It wasn't packaged I think it was just in the trash
19 can

20 Q Well, State's Exhibit 3 Excuse me

21 A I'm sorry You talking about---

22 Q This It's right here

23 A I'm sorry Let me see that again

24 Q If I can give you a hand Hand you what's been shown
25 as State's Exhibit 2 and --

- 1 A On this
- 2 Q Two and---
- 3 A If they combined them together
- 4 Q Two and one
- 5 A Okay well, like I, like I said before, the one was --
- 6 you already had some that was already bagged up, and then
- 7 you had some that was on the counter drying already So, I
- 8 mean you had some that was already bagged up in baggies,
- 9 what we call baggies, tie them up in plastic bags, and, you
- 10 know, and then the other ones were on the counter drying
- 11 that I can recall when we first got there
- 12 Q Was there anything found on the microwave?
- 13 A I think there was some cookies in the microwave or
- 14 there was a cookie in the microwave that was drying
- 15 Q When you say cookie, what does, what does that mean?
- 16 A Well---
- 17 Q If you can refer to it as a substance
- 18 A All right It's -- we call it a cookie, but it's
- 19 actually crack cocaine in the shape of a brown circular
- 20 cookie
- 21 Q Hold on
- 22 MR WILKES Your Honor, again, I object to the
- 23 conclusion of the substance that they found
- 24 THE COURT I'll sustain the objection
- 25 A Oh, yes, sir well, it was what we call a cookie Not

Kelvin Washington - Direct examination
by Solicitor Hunter

1 a cookie

2 Q What does it, what does it look like?

3 A Well, it looks like a cookie, but it's not a cookie
4 You know, it's not a physical cookie per se like we would
5 eat in a cookie store or from a, from a, from a shop or
6 something It's not a cookie But it's a, you know---

7 Q Cookie shape?

8 A Right, it's the shape It's in the same circle shape

9 Q Please answer any questions the defense may have for
10 you Thank you

11 A Yes, sir

12 THE COURT Mr Wilkes, your witness

13 MR WILKES Thank you, Your Honor

14 CROSS-EXAMINATION

15 BY MR WILKES

16 Q Officer Washington?

17 A Yes, sir

18 Q You took -- did you take pictures also?

19 A Yes, sir, I don't personally take the pictures, but we
20 have someone assigned to take the pictures usually prior to
21 me getting these items

22 Q Okay The -- did you take into custody the pot that
23 was on the stove?

24 A I don't think so, sir I don't think that was part of
25 it No, sir, I think a picture was taken of it just to show

1 that, where the, supposedly where the crack was cooking at

2 Q Do you -- did you have the picture showing the stove

3 with you up there?

4 A Yes, sir, I do You, you---

5 Q Could you take a look at it and tell me is that -- you,

6 you observed that, the stove and the pot on the stove at the

7 time?

8 A Yes, sir, I think so

9 Q Can you tell me the condition of that pot, the water in

10 that pot?

11 Was it boiling?

12 A No, that -- no, sir, it wasn't boiling at the time

13 Q Okay

14 A But it -- I think it did have a little ring around the

15 top where you can see in the picture

16 Q Okay Did -- do you recall whether that pot was hot?

17 A No, sir, I can't recall I couldn't tell you

18 Q All right Do you -- does it appear to you that, in

19 the picture, the eye is turned off?

20 A Yes, sir, it appears to be, yes

21 Q I assume, in the process of the search, did you enter

22 the house?

23 Were you in the initial entry team?

24 A Yes, sir, I was

25 Q Where were you located in that initial entry team?

Kelvin Washington - Cross-examination
by Mr Wilkes

1 A Probably five or six -- probably the fifth officer back
2 probably

3 Q Okay And how long was it before you began collecting
4 evidence?

5 A Once we secured the residence and we secured everyone
6 inside, make sure it's safe for everybody, I was like five
7 minutes maybe

8 Q Okay And within that few minutes, how soon was it
9 before you went to the kitchen area?

10 A whenever someone called me and told me they found
11 something

12 Q How long do you think that was?

13 A After we secured the residence, probably a couple
14 minutes

15 Q Okay When you noticed the pot sitting on the stove---

16 A Uh-huh (Affirmative)

17 Q ---a couple minutes after entering the residence, you
18 saw no indication of that pot boiling?

19 A No, sir, I did not

20 Q Okay Did you have any conversation with Mr Markley
21 at the residence?

22 A No, sir, I don't believe so

23 Q Mr Elder?

24 A No, sir

25 Q Any conversations with them before or since the date of

Kelvin Washington - Cross-examination
by Mr Wilkes

1 this search?

2 A No, sir

3 Q Thank you

4 No further questions, Your Honor

5 THE COURT Mr Poole, your witness

6 MR POOLE No questions, Your Honor

7 THE COURT Redirect

8 SOLICITOR HUNTER None, Your Honor

9 THE COURT You may step down, sir

10 SOLICITOR HUNTER May Investigator McJunkin and

11 Mr Washington be excused?

12 THE COURT Any objection to the excusing of those two
13 witnesses?

14 MR WILKES None, Your Honor

15 MR POOLE No, sir

16 THE COURT They're free to go

17 Mr Hunter, you may call your next witness

18 SOLICITOR HUNTER Your Honor, the State would call

19 Anita Mullinax

20 THE COURT Come forward, ma'am, to my left to be
21 sworn

22 ANITA MULLINAX, having been first duly
23 sworn, testified as follows

24 THE COURT Have a seat please Once you're seated,
25 state your name

Anita Mullinax - Direct examination
by Solicitor Hunter

1 WITNESS Anita Mullinax

2 THE COURT Mr Hunter, your witness

3 DIRECT EXAMINATION

4 BY SOLICITOR HUNTER

5 Q Mrs Mullinax, how are you employed?

6 A Spartanburg County Sheriff's Office

7 Q And what are your current duties at the Sheriff's
8 Office?

9 A I'm master deputy in evidence

10 Q How long have you been doing that?

11 A Approximately three years in evidence

12 Q Okay Can you please give us a run down of your career
13 through law enforcement?

14 A I been there 27 years I have been an administrative
15 lieutenant I've been an investigator I've been a crime
16 analyst I've been a dispatcher I've been a sergeant in
17 administration I've -- the longest time was serving
18 warrants I've served warrants for 16 years

19 Q Okay But you've currently been in evidence for three
20 years?

21 A Correct

22 Q Could you please briefly describe the duties of an
23 evidence tech as it relates to a drug case?

24 A Basically what we do is we empty our, our drop box
25 that's sealed in the morning we'll take everything out

1 We'll -- especially like on a B E S T Bag, it will be in an
2 envelope It will have an S number on it, which, like he
3 said, will already have the top taken off of it, and it will
4 be in an envelope with B and C forms The B form is the
5 person who actually takes the drug in, and then the next
6 person that receives that drug will be the C form

7 So, if we take it out of the drop box and we enter it
8 in our computer, we would be the C form And then it has a,
9 a piece of paper in here I don't know if it's in here
10 right now But anyway, it lists who the person is that took
11 the drug in, it has the case number on it, and then it has
12 that S number And what we'll do is we'll enter the case
13 number, the item number, the S number in our computer, and
14 then we'll put it in the back where it's sealed It's a,
15 it's a room that we call our drug room It's got a lock on
16 it It can only be accessed by an evidence custodian We
17 have a thumb lock where we have to put our thumb on it, and
18 then we wait for the lab person to come and pick it up from
19 us, and then they will find -- they will see a C form and
20 they will sign it before they test it

21 Q All right Starting in this case, when did you receive
22 control of that bag?

23 A Do you have my C form?

24 Says I received it on June 5th of 2009 from Kelvin
25 Washington

1 Q If you had ever received a bag that had been tampered
2 with, what would you do with it?

3 A I would not, I would not keep it I would call the
4 investigator and tell them that it was not sealed properly

5 Q When you received this bag, was it tampered with?

6 A No, it was sealed

7 Q Okay So, at that point, what do you do with this bag?

8 A After I enter it in the computer, then it goes to our
9 drug room for, waiting for the lab personnel to be able to
10 pick it up

11 Q Who has access to the drop box where this bag was
12 received?

13 A Just myself and Robert Rosenberg right now

14 Q Okay And in June 4th, 2009, who would of had
15 access?

16 A It would of been myself, Robert Rosenberg, and Jack
17 Westmoreland

18 Q Okay Are all the two, those other two individuals in
19 the courtroom today?

20 A Yes, they are

21 Q You can stand up

22 A Yes, they are

23 Q Where is Mr Rosenberg?

24 A He is seated beside the, behind the prosecutor table

25 Q Is he the one in the Sheriff's Office uniform?

- 1 A Yes, he is
- 2 Q And where is Mr Westmoreland?
- 3 A He's at the back standing near the door with the short
- 4 sleeves on
- 5 Q Also in a Sheriff's Office uniform?
- 6 A Correct
- 7 Q Who has access to the drug room?
- 8 A Just the evidence custodians and then we allow the lab
- 9 personnel to come and pick up from that drug room
- 10 Q Okay So, it's just the three of y'all and the lab
- 11 personnel as well?
- 12 A Correct
- 13 Q Now, when you received this evidence, you have a form,
- 14 is that correct?
- 15 A Our C form, yes
- 16 Q What do you write on that form when you receive it?
- 17 A I write down the date that I receive it, the person
- 18 that I received it from, and then I also write on it that I
- 19 received a B E S T Bag and the control number, which I get
- 20 from the bag itself
- 21 Q So, that's on State's Exhibit -- if you could just read
- 22 the red sticker
- 23 A Three
- 24 Q Okay Is there anyway you could of written the report
- 25 before you received the bag?

1 A No, there's no way

2 Q Why not?

3 A Cause I wouldn't of -- we enter it in the computer by a
4 case number, and then we attach this number on it, and I
5 can't enter it without a case number

6 Q Okay Are you ever out at the scene June 4th, 2009?

7 A I was not

8 Q Okay So, you just -- you're in the evidence room and
9 that's where you receive the evidence?

10 A Correct

11 Q Is that true for all cases?

12 A Yes, it is

13 Q Okay Thank you Please answer any questions the
14 defense may have

15 THE COURT Yes, sir, Mr Wilkes, your witness

16 MR WILKES Thank you, Your Honor

17 CROSS-EXAMINATION

18 BY MR WILKES

19 Q Mrs Mullinax, you say the purpose of the Form C is
20 what?

21 A It's a chain to show---

22 Q Chain?

23 A ---who covered, where it -- from hand-to-hand

24 Q And you generally will fill these out for what purpose?

25 A Anytime the drug changes hands

1 Q And that is to ensure that the drugs are properly
2 handled/identified?

3 A Yes

4 Q Okay And filling out the forms is a critical function
5 of your job?

6 A Absolutely

7 Q Let me ask you -- may I approach, Your Honor?

8 THE COURT You may

9 MR WILKES Thank you, Your Honor

10 Q Can you take a look at two Form C's and tell me if you
11 recognize those?

12 A One of them is mine from where I took it in, and then
13 the other one is signed by Robert Rosenberg

14 Q And can you tell me the difference between the two as
15 far as filling out the forms?

16 A They're two different B E S T bags

17 Q Okay And I notice that Mr Rosenberg's is completed
18 as far as having a witness, is that correct?

19 A It is

20 Q And at the bottom it says place, date, sworn to before
21 me, and the notary has signed the form where Mr Rosenberg
22 has signed?

23 A Correct

24 Q You did not do that?

25 A I have not been taught to have a notary sign any of my