

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
COMMON PLEAS COURT  
Mark, J. Hayes, II, Circuit Court Judge

Case No. 08-CP-42-3298

**RECEIVED**

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**S.C. SUPREME COURT**

Nathaniel Green, ..... Petitioner,  
v.  
State of South Carolina, ..... Respondent.

SUPPLEMENTAL APPENDIX

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*Counsel for Respondent*

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STATE OF SOUTH CAROLINA )  
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 COUNTY OF SPARTANBURG )  
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 Nathaniel Green, #307622 )  
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 Applicant, )  
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 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2008-CP-42-3298

ORDER OF DISMISSAL  
 APPLICANT'S 60(b) MOTION

This matter comes before the Court by way of a 60(b) Motion filed on February 9, 2012, seeking relief from the Order of Dismissal in the above listed matter. The Respondent made its Return and Motion to Dismiss and a hearing was held on the Respondent's motion. Following the denial of the Respondent's motion, an evidentiary hearing into the matter was convened on January 21, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by J. Falkner Wilkes, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

Both Applicant and Respondent agreed to submit the records from a previous case, which addressed the issue at hand, as well as memoranda regarding the matter in place of testimony.<sup>1</sup> This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, trial transcript, and Applicant's appellate records.

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 SPARTANBURG COUNTY  
 J. D. E. HACHLEY  
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<sup>1</sup> Robert Rosenberg and Jane Millwood, current and prior Evidence Custodians for the Spartanburg County Sheriff's Department, both testified at the hearing for Gibson v. State, 2008-CP-42-6126. Applicant's Counsel was also present and questioned these witnesses at the Gibson hearing. Both Applicant and Respondent agreed to submit the record of their prior testimony in place of calling them as witnesses again because the issue was the same and testimony would be identical.

*Ass  
 p1*

## PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted during the November 2004 term of the Spartanburg County Grand Jury trafficking in crack cocaine (04-GS-42-4993). Thomas A.M. Boggs, Esquire, represented the Applicant. On February 15, 2005, a bench trial was held before the Honorable J. Derham Cole. Judge Cole found the Applicant guilty and sentenced him to confinement for a period of twenty-five (25) years with credit for time served.

A timely notice of appeal was filed and Joseph L. Savitz, III, Esquire, submitted an Anders appeal on the Applicant's behalf. The Court of Appeals dismissed the appeal by order filed June 11, 2007. The remittitur was issued on June 27, 2007.

The Applicant filed an Application for Post-Conviction Relief on June 23, 2008. In his Application, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Failure to argue "ambiguities in title 17-25-50;"
3. Failure to object to chain of custody;
4. Failure to challenge the credibility of drugs;
5. Failure to object to the State's line of questions on direct; and
6. Brady violation were the State withheld information.

An evidentiary hearing into the matter was convened on July 27, 2009, at the Spartanburg County Courthouse. The Applicant was present at the hearing and represented by Vanessa Cason, Esquire. Michelle Parsons Kelley of the South Carolina Attorney General's Office represented the State.

At this PCR hearing, the Applicant claimed the State had used a form that had been signed and notarized prior to being filed out. The Applicant alleged this violates the rule requiring personal signature. At the PCR hearing, Applicant submitted a memorandum alleging that the Form C in his case, dated 7-1-04 and with Control No. 5007684, bears the signature of Jane Millwood as the Evidence Officer and Robert Rosenberg as the Notary Public. Applicant alleged that the document was not personally signed by Jane Millwood in the presence of Robert Rosenberg. The Applicant also claimed Jane Millwood made errors to the form and failed to come to his trial and testify. The Applicant claimed Counsel was ineffective for disputing the chain of custody on these grounds. Counsel testified he did not know of any chain of custody issues at trial and was unaware of the chain of custody signature as a point of argument prior to the trial. Applicant failed to produce original forms or the testimony of anyone to support those allegations.

Following the hearing, the Honorable J. Mark Hayes II denied the application on November 2, 2009. A 59(e) motion was filed by Applicant and subsequently dismissed on December 2, 2009.

A timely notice of appeal and Johnson Petition were filed and while the matter was pending before the South Carolina Supreme Court, Counsel was substituted. Counsel then sought leave from the Supreme Court to hold the appeal in abeyance and file a 60(b) motion in the lower court. *Currently, Applicant's appeal from the denial of his post-conviction relief application is being held in abeyance pending this Court's ruling.* This motion was granted and Applicant filed a 60(b) Motion on February 9, 2012. The State filed a Return and Motion to Dismiss and a hearing on the State's Motion was held. The Honorable J. Derham Cole denied the State's motion and ordered an evidentiary hearing.

*Del.  
p3*

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has reviewed the submitted memoranda. As a result, set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

As to the relevant portions of the record, this Court finds it pertinent that at Applicant's trial, the State introduced the videotape of the confidential informant buy, a photo lineup with the Applicant identified as the person selling drugs, as well as the crack cocaine in the BEST bag and analysis report, including chain of custody documents. At trial, Investigator Raymond, the lead investigator on the controlled buy, identified the BEST bag, State's Exhibit #6, as the same bag he used to collect the drugs from Keith Pearson and identified his [Raymond's] signature on the bag. (ROA p. 18). Raymond testified that he placed the BEST bag in the Sheriff's Office Evidence Locker. (ROA p. 18-9). Raymond also identified his signature on the chain of custody documents, State's Exhibit #7. (ROA p. 18-9). Keith Pearson, the confidential informant, identified his signature on State's Exhibit #7 as his signature once he handed over the drugs to Investigator Raymond. (ROA p. 29).

Analyst Beth Vaughn testified as to her process for reviewing the BEST bag to ensure that there has not been any tampering with the evidence prior to her analysis. (ROA p. 34). Vaughn identified the BEST bag, State's Exhibit #6, with her initials and the date the bag was opened, as well as her initials and the date she resealed the bag following her analysis. (ROA p. 35). Vaughn also identified the chain of custody documents, State's Exhibit #7, including the Form A, which was signed by Vaughn following her analysis of the drugs. (ROA p. 36).



Addressing the information provided by consent of both parties, which included the testimony of both Robert Rosenberg and Jane Millwood, evidence custodians at the time of Applicant's arrest and trial<sup>2</sup>. Both Rosenberg and Millwood testified as to their policies and procedures for handling evidence transfer from the Drop off for the Sheriff's Office to the Chemical Analysis Drop off. The Form C from Applicant's case has the date the BEST bag was received by Jane Millwood from the drop box (7-1-04) and indicates that the BEST bag was submitted by Investigator Raymond. The form further indicates that Millwood then delivered the BEST bag to the drug vault of the Sheriff's office on 7-1-04. (Green - PCR Evidence p. 116).

This Court finds that although the testimony and evidence presented during the Gibson PCR hearing shows a practice of pre-notarizing the signature of the evidence custodian and then using copied forms to enter each piece of evidence, there is no indication that the evidence was ever tampered with or affected by this process in Applicant's case. The Applicant failed to meet his burden of proving that the outcome of his trial would have been different had Counsel known of this practice and objected to the chain of custody prior to trial. In fact, had Counsel made a pre-trial objection, the issue would have most likely been moot as soon as the State called Jane Millwood to testify.

Further, this Court finds that in actuality neither the Form C nor testimony of Millwood was necessary according to case law. The South Carolina Supreme Court held that "where all individuals in the chain are, in fact, identified and the manner of handling is reasonably demonstrated, it is not an abuse of discretion for the trial judge to admit the evidence in the absence of proof of tampering, bad faith, or ill-motive." State v. Hatcher, 392 S.C. 86, 93, 708 S.E.2d 750, 753-54 (2011). Further, the Court held that "[t]estimony from each custodian of

---

<sup>2</sup> As mentioned earlier, Robert Rosenberg and Jane Millwood both testified at the PCR hearing for Gibson v. State, 2008-CP-42-6126. Both Applicant and Respondent agreed to submit the record of their prior testimony in place of calling them as witnesses again because the issue was the same and testimony would be identical.

Handwritten signature and initials, possibly "RSL" and "P 5", in black ink.

fungible evidence [] is not a prerequisite to establishing a chain of custody sufficient for admissibility. State v. Hatcher, 392 S.C. 86, 93, 708 S.E.2d 750, 753-54 (2011).

“The ultimate goal of chain of custody requirements is simple to ensure that the item is what it is purported to be.” State v. Hatcher, 392 S.C. 86, 95, 708 S.E.2d 750, 755 (2011); see Howard-Arias, 679 F.2d at 366 (“The purpose of this threshold requirement is to establish that the item to be introduced, i.e., marijuana, is what it purports to be, i.e., marijuana seized from the ‘Don Frank.’”). Notably, “[c]ourts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts.” Hatcher, 392 S.C. at 94, 708 S.E.2d at 754. In order to satisfy the requirements for establishing the chain of custody, the evidence and testimony presented during trial must simply not leave to conjecture who was in possession of the fungible item and what was done with it between its seizure and analysis. State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 443 (Ct. App. 1995). The record clearly establishes that the evidence was obtained by the confidential informant (Keith Pearson), Investigator Raymond secured the evidence and submitted it for analysis, and it was subsequently analyzed and confirmed to be crack cocaine. This Court finds that even if counsel were deficient for failing to challenge the chain of custody on these grounds, there is no evidence that the Applicant was prejudiced by counsel’s failure to do so. The evidence submitted at trial was overwhelming and as such, this Court finds no prejudice. Therefore, this Motion is denied.

#### CONCLUSION


Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his Motion. Therefore, this Motion for Relief From Judgment, Rule 60(b)(2), SCRCP, must be

denied and dismissed with prejudice.

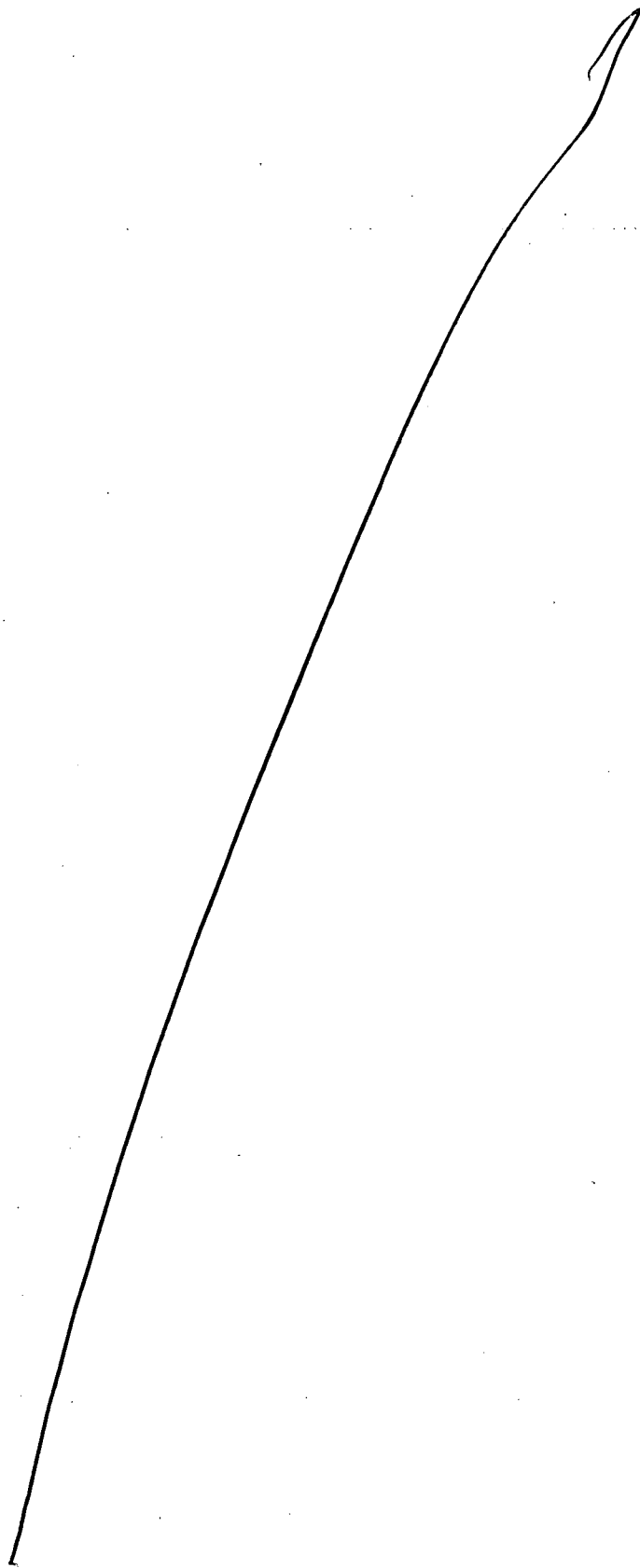
**IT IS THEREFORE ORDERED:**

1. That the Motion for Relief From Judgment, Rule 60(b)(2), SCRCF, must be denied and dismissed with prejudice; and
2. Jurisdiction returns to the South Carolina Supreme Court for review of and determination of Applicant's pending appeal.

AND IT IS SO ORDERED this 28<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
Roger L. Couch  
Presiding Judge

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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY



1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF SPARTANBURG ) COURT OF COMMON PLEAS NONJURY

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BOBBY GIBSON, JR., )  
APPLICANT, )  
VS. )  
STATE OF SOUTH CAROLINA, )  
RESPONDENT. )

TRANSCRIPT  
OF  
RECORD  
08-CP-42-6126

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September 14<sup>th</sup>, 2010  
Spartanburg, South Carolina

B E F O R E :

THE HONORABLE ROGER L. COUCH, Judge.

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

J. FALKNER WILKES  
ESQ.  
Attorney for the Applicant

SUZANNE H. WHITE  
ESQ.  
Attorney for the Respondent

PAMELA E. GREEN  
Circuit Court Reporter  
Seventh Judicial Circuit

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

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THE COURT: Now, are we ready to proceed with the Gibson case I believe?

MS. WHITE: Yes, Your Honor.

THE COURT: All right. Yes, ma'am.

MS. WHITE: Hold on one moment, Your Honor.

THE COURT: Yes, ma'am.

(Pause.)

MS. WHITE: Your Honor, I just want to note, Mr. Boggs, you know, yesterday had informed us that he had something this morning, but he was gonna be here a little bit after 9:30. So, he should be here soon.

THE COURT: All right.

MS. WHITE: This is the case of Bobby Gibson, Junior versus The State of South Carolina. It's Case Number 2008-CP-42-6126. Mr. Gibson's represented today by Mr. Jeff Wilkes. He was originally indicted in November of '04 on a possession of crack cocaine charge, and then in January of '05 on two trafficking cocaine charges, proceeded to trial, was represented by Mr. Tam Boggs, and was found guilty and convicted on April 8<sup>th</sup> of 2005, received a total sentence of 30 years and a fine of \$265,000. There was an appeal, which his conviction was affirmed.

He filed his post-conviction relief alleging

1 ineffective assistance of counsel, ineffective assistance of  
2 appellate counsel, and a Brady violation with several, if I  
3 can find the amendment, it was numerous detailed attachments  
4 for ineffective assistance and Your Honor has a copy of that  
5 on the back of his actual application. It's where it  
6 details probably about ten different ineffective assistance  
7 of trial counsel allegations and the ones with discovery and  
8 appellate counsel related to discovery, effectively  
9 challenging the State's expert witnesses, failure to argue  
10 and preserve legal issues, failure to call witnesses,  
11 failure to investigate, present evidence, cross-examine, and  
12 make motions to suppress, failure to move for a mistrial  
13 when jurors saw the defendant in a prison jumpsuit and  
14 shackled during a break, failure to challenge introduction  
15 of prejudicial evidence of funds, failure to move for a  
16 continuance based on accident and admission of appellate or  
17 the applicant to the ER on the day of the trial, and I  
18 believe we have filed, after talking with Mr. Wilkes, we  
19 have filed a motion for a more definite statement as to some  
20 allegations that, that they were proceeding on that were not  
21 included in that list.

22 So, I will turn it over to him at this point.

23 MR. WILKES: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 MR. WILKES: I have communicated with the attorney

1 general, and I think we have, both have copies of the  
2 material that we're going to use today. The major had  
3 delivered them. So, I don't think there's any objections  
4 as, as to chain and authenticity.

5 THE COURT: There is no objection to the chain you  
6 said?

7 MR. WILKES: To the chain or authenticity of these  
8 documents. The major brought them over yesterday and we  
9 didn't---

10 THE COURT: Okay.

11 MR. WILKES: ---think he needed to stay to testify to  
12 them.

13 THE COURT: Thank you.

14 MR. WILKES: So, the majority of this will be going  
15 from the sheriff's own records.

16 THE COURT: All right.

17 MR. WILKES: And I'll, I'll narrow things down. We've,  
18 we've put a lot of stuff in the application when we amended.  
19 There will be some obviously we will not proceed on, but  
20 we'll, we'll begin with our challenge to the chain of  
21 custody under the ineffective and discovery issues.

22 THE COURT: All right, sir. Are you ready to call your  
23 first witness?

24 MR. WILKES: Thank you, Your Honor.

25 We'll call Deputy Rosenberg to the stand please.

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 THE COURT: Come forward, sir, to my left to be sworn.

2 ROBERT ROSENBURG, having been first duly  
3 sworn, testified as follows:

4 THE COURT: Have a seat please and state your name  
5 please.

6 WITNESS: I'm Robert Rosenberg.

7 THE COURT: Mr. Wilkes, your witness.

8 MR. WILKES: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. WILKES:

11 Q Mr. Rosenberg, where are you employed?

12 A At the Spartanburg County Sheriff's Office.

13 Q And what is your duty there?

14 What is your job there?

15 A Currently I'm assigned as the evidence custodian.

16 Q And as the evidence custodian what do you do?

17 A I take in evidence that's brought in, catalog it, and  
18 store it in a secure area.

19 Q And what type of evidence would be stored in the  
20 evidence room?

21 A It could -- it's a wide range of numerous things. I  
22 don't know how to -- it's a broad -- anything could be  
23 brought in except for vehicles. We don't do vehicles.

24 Q Okay. And in this case in particular, are you aware of  
25 being in the chain of custody -- may I approach, Your Honor?

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 THE COURT: You may.

2 Q Are you aware of being -- let me mark this if I can.  
3 I'll ask to mark this as our exhibit.

4 THE COURT: Any objection to those documents?

5 MS. WHITE: I just want to glance at them and see  
6 exactly what---

7 THE COURT: Yes, ma'am.

8 MS. WHITE: ---which ones cause I know we had so many.  
9 (Pause.)

10 MS. WHITE: No objection, Your Honor.

11 THE COURT: without objections they'll be marked as  
12 Applicant's Exhibits.

13 (Whereupon, the chain of custody document was marked as  
14 Applicant's Exhibit No. 1 and received into evidence at this  
15 time.)

16 Q If you'll look at Applicant Exhibit No. 1, which appear  
17 to be Mr. Gibson's chain of custody documents for his  
18 convictions.

19 Can you look through there and tell me if you're  
20 involved in any of that, if you're on an evidence sheet?

21 A My notary is on I believe four of the sheets.

22 Q Okay. And what does it indicate -- what does the  
23 evidence sheet indicate, intend to indicate?

24 Just in general, what are those sheets for?

25 A The chain of process when it comes in.

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 Q Okay. The chain of custody?

2 A Yes, sir.

3 Q And what is the purpose of the chain of custody  
4 documents?

5 A To show that the, it went through a proper procedure.

6 Q Okay. Now, will you look carefully at those documents  
7 and you see that your name appears on those documents?

8 A Yes, sir.

9 Q Do you know whether or not you signed those documents?

10 A They're photocopies of my signature.

11 Q So, you did not sign those documents?

12 A I signed an initial document verifying Jane Millwood's  
13 signature.

14 Q Okay. And when did you do that initial document.

15 A I do not know what the precise date would be.

16 Q Okay. Let me show you what we would ask to mark as  
17 exhibit, Applicant Exhibit No. 2.

18 (Whereupon, the documents were marked as Applicant's  
19 Exhibit No. 2 for identification purposes only at this  
20 time.)

21 Q Will you look through those approximately 20, 30, 50,  
22 however many documents, and tell me if your signature  
23 appears on any of those?

24 MS. WHITE: And, Your Honor, I'm gonna object if he's  
25 planning on entering these into evidence based on relevance

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 grounds.

2 MR. WILKES: I'll get to the relevance real quick, Your  
3 Honor, if you'll let---

4 THE COURT: He hasn't asked to have them admitted yet.  
5 He just asked if he saw his signature on any of them.

6 MS. WHITE: Okay.

7 A Yes.

8 THE COURT: I'll allow him to ask that question.  
9 You may proceed.

10 MR. WILKES: Thank you, Your Honor.

11 A Yes, sir.

12 Q Okay. Would that be the same signature that appears on  
13 Mr. Gibson's and---

14 A Probably, yes, sir.

15 Q Okay.

16 A With the procedure we use, yes, sir, it would be.

17 Q Okay. Now, when I say the same signature, that is not  
18 an original signature on any of those documents, is it?

19 A No, sir.

20 Q So---

21 MS. WHITE: Your Honor, I would object. He's  
22 testifying essentially to that as this evidence, and if he  
23 hasn't entered that into evidence I'll still object on  
24 relevance grounds to his testimony.

25 MR. WILKES: I'm laying the groundwork for the

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 relevance to---

2 THE COURT: I'm gonna allow him to continue to go  
3 forward.

4 Q Now, tell me about this, the photocopy.

5 Are those documents, in Exhibit No. 2, the same exact  
6 photocopied signature that we see in Mr. Gibson's?

7 A No.

8 Q They're not?

9 A No.

10 Q Look carefully at them.

11 A Mr. Gibson's, I didn't take any evidence on Mr.  
12 Gibson's trial---

13 Q Okay.

14 A ---of the case. I only notarized it. You've got  
15 Officer Millwood's and mine in here. Mine, I didn't  
16 notarize -- I mean I notarized Officer Millwood's.

17 Q Okay. Tell me -- when you say you notarized Mr.  
18 Gibson's document---

19 A Yes.

20 Q ---when Mrs. -- explain how that works.

21 A Okay.

22 Q Did Mrs. Millwood sign it in front of you?

23 A What the procedure was---

24 Q Wait, wait, let me ask a question first.

25 A Okay.

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 Q Did Mrs. Millwood sign that document in front of you?

2 A In front of me, yes, sir.

3 Q The document with Mr. Gibson's name on it?

4 A In front of me, no, probably not. I don't know. I  
5 couldn't say if I was there or not.

6 Q Okay. But you notarized it?

7 A I notarized, yes, sir.

8 Q Okay.

9 A But not the date that it came in.

10 Q When did you place your signature on Mr. Gibson's  
11 document?

12 A When I placed it Officer Millwood---

13 THE COURT: Just one second.

14 Are you asking about Exhibit 1 or Exhibit 2?

15 MR. WILKES: Exhibit 1. I'm sorry.

16 THE COURT: Thank you.

17 MR. WILKES: I apologize.

18 A Okay. Our procedures were, at that time, we'd take a  
19 form, a blank form. We'd fill in our name, but not the  
20 dates, not any pertinent information. Only information  
21 saying like Spartanburg County Sheriff's Office, my, my or  
22 Jane's signature, whoever it was, and then we would notarize  
23 it without putting a date on it that -- none of the  
24 pertinent information involving Mr. Gibson would be filled  
25 in. We'd make a photocopy of that and then use those forms.

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 Q Are you saying that you had a stack of forms with both  
2 signature and notary signature on it that you filled out?

3 A I had a stack of my forms with my signature on it  
4 notarized by Officer Millwood. Those are my -- the ones I  
5 notarized, those are her signatures as proper representation  
6 of the chain.

7 Q Are you telling me that the signature -- you're telling  
8 me that there was not a stack of photocopies with both  
9 signatures already placed on them?

10 A I had my -- yes, I had mine, yes, sir.

11 Q You had a stack of notary's with your signature already  
12 on it and Mrs. Millwood's signature on it and---

13 A No.

14 Q ---she has---

15 A No, I had, I had a stack of mine, of mine. Not Jane  
16 Millwood's. I didn't have her paperwork.

17 Q What, what are you saying you had a stack of yours?  
18 What was on---

19 A There's a difference here. She signed some of these.  
20 Well, what I would do -- let's see. This is mine. She  
21 would notarize it but not put any of the pertinent  
22 information in.

23 Q When would she notarize it?

24 A At a, at a time earlier when we, when I'd run out of  
25 them.

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 Q Okay. So, you would have -- you're, you're telling me  
2 that you took a blank form with her notary already on it and  
3 signed it or are you---

4 A No, no, I took my form, signed it, and she would  
5 notarize it without putting the date that anything,  
6 pertinent information came in on.

7 Q So, you're telling me that she was -- when, when were  
8 you both in the room to, to do this.

9 Tell me -- I mean---

10 A We worked together during the day.

11 Q So, every form there you're telling me that you would  
12 have a stack of forms already signed by you?

13 A Yes, sir.

14 MS. WHITE: Your Honor, I was just trying to clarify  
15 and object to the continued line of questions. I feel like  
16 we have a set of forms that's been introduced into evidence  
17 for Bobby Gibson's case as relevant, and then we have an  
18 entire stack of forms that we seem to be referencing at  
19 times, and, again, that keeps kind of winking up, and we  
20 don't, we don't really know -- I don't think those have been  
21 entered into evidence, and I don't think he can really  
22 testify.

23 MR. WILKES: I, I think, Your Honor, his signature  
24 appears on all of the documents from the period that we have  
25 subpoenaed as examples to try to explain what's going on.

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 MS. WHITE: But, Your Honor, his signature does not  
2 appear on any of the forms in Bobby Gibson's case as the  
3 evidence custodian that received the evidence. His  
4 signature, in Bobby Gibson's case, is purely as the notary.

5 MR. WILKES: Let, let -- I'll explain where I'm going  
6 with this.

7 THE COURT: Yes, sir.

8 MR. WILKES: Your Honor, it may be a good -- let me  
9 make a motion to sequester Mrs. Millwood cause we're gonna  
10 ask her the same questions. It might be appropriate to have  
11 these two witnesses sequestered if we could cause this is  
12 gonna get confusing.

13 THE COURT: Any objection?

14 MS. WHITE: Well, Your Honor, I would object just  
15 because we've been discussing this and I believe he  
16 subpoenaed the same documents, they worked together in the  
17 same situation, and have the same procedures. I don't  
18 really see any necessary, necessity to sequester anybody  
19 from this case.

20 THE COURT: Well, I generally grant motions to  
21 sequester.

22 Is she in the courtroom?

23 MS. WHITE: Yes, she's right here.

24 THE COURT: All right, ma'am. I'm gonna ask you to  
25 step outside and part of the sequestration order is for you

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 not to discuss your future testimony with anyone.

2 And, Mr. Rosenberg, I will instruct you not to discuss  
3 your testimony with anyone either.

4 WITNESS: Yes, sir.

5 MS. WHITE: Thank you.

6 THE COURT: You may step outside. Thank you, ma'am.

7 Now, let's get back to the basic question here. The  
8 documents that are in Exhibit 2, which is not yet in  
9 evidence?

10 MR. WILKES: Right.

11 THE COURT: Are, are those being used as exemplars?

12 MR. WILKES: Yes, sir.

13 THE COURT: Okay.

14 MR. WILKES: They, they will be---

15 THE COURT: Then I'll overrule the objection.

16 You may proceed.

17 MR. WILKES: Thank you, Your Honor.

18 Q Now, Mr. Rosenberg, you have -- you're, you're saying  
19 that you have a stack of documents, they're blank documents  
20 except for your notary signature's on it?

21 A I would have a stack. What, what we would do is I take  
22 a form and I'd type in Spartanburg County Sheriff's Office,  
23 my name, Spartanburg County Sheriff's Office evidence, and  
24 I'd write it in or type in what year, and, and it says I  
25 received in person from the drop box, and I'd put

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 Spartanburg County Sheriff's Office.

2 Q All right.

3 A Then down here I would enter where we would go to the

4 drug vault as a representative of the Spartanburg County

5 Sheriff's Office. What I would do, with Jane present, I

6 would sign my name, she would notarize it, and put her

7 expiration date. No information about anything, any

8 pertinent information about anybody else would be entered on

9 that form. I'd keep those forms. I'd keep them in a secure

10 area where nobody has access to them.

11 Q Okay. Let me, let me stop you right there.

12 A Okay.

13 Q I think I understand.

14 So, at, at some point you took a form, a original---

15 A Yes, sir.

16 Q ---she signed it, you notarized it, and it---

17 A Yes, sir.

18 Q ---had Sheriff's Office information on it---

19 A Yes, sir.

20 Q ---and, and blank information for who, whose name it

21 would be in and what the evidence was?

22 A Yes.

23 Q And then you photocopied that?

24 A Yes.

25 Q And then you used that with chain documents for the

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 chain of custody in various cases?

2 A Yes.

3 Q Okay. So---

4 A Only in drug cases.

5 Q Okay.

6 A That's the only thing we used it for.

7 Q Okay.

8 MS. WHITE: And, Your Honor, I do just want to clarify.  
9 I believe Mr. Rosenberg has just testified to his signature  
10 and Mrs. Millwood's notary, and Mr. Wilkes was testifying as  
11 to forms that were signed by Mrs., Mrs. Millwood and  
12 notarized by Mr. Rosenberg. So, I do want to clarify that  
13 they're two separate.

14 THE COURT: All right.

15 MS. WHITE: And if he's discussing one, then I want to  
16 make sure that he's not mistaking what Mr. Rosenberg---

17 THE COURT: I take it---

18 MS. WHITE: ---has testified to.

19 THE COURT: I have not seen the documents yet, but I  
20 take it, in this case, that Mrs. Millwood signed as the  
21 custodian?

22 MS. WHITE: In these -- in this case, yes.

23 THE COURT: In this case.

24 MS. WHITE: Yes, Your Honor.

25 THE COURT: Okay.

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 MR. WILKES: Now---

2 THE COURT: I think I've gotten it clear.

3 MS. WHITE: Okay.

4 MR. WILKES: I apologize cause I got a little confused  
5 for a second.

6 THE COURT: Okay. All right.

7 MR. WILKES: I know what they are.

8 THE COURT: All right.

9 Q All right. Mr. Rosenberg---

10 A Yes, sir.

11 Q ---will you look -- because now I would like to ask --  
12 I'm gonna ask you about the time period that this occurred  
13 over.

14 Did you use this procedure over a long period of time?

15 A Yes, sir, that was the established procedure we used at  
16 the Sheriff's Office when I came into the evidence office.

17 Q Okay.

18 A That's how I was trained to do it. That's how I did  
19 it.

20 Q Okay. If you look, Exhibit 2, are those documents all  
21 using that same photocopy procedure that you used with Mr.  
22 Gibson's case either---

23 A Yeah.

24 Q ---either---

25 A Basically.

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 Q Okay. Those are all the same procedure?

2 A Yes, sir.

3 Q Okay. Look on there at the front and the back and, and  
4 tell me the dates.

5 Just roughly the dates that those documents cover.

6 A Of which exhibit?

7 Q The---

8 A Two?

9 Q Are those documents from 2004?

10 A Yes, sir.

11 Q Okay. And, so, those would be the same forms, blank  
12 forms that you used as your chain documents as was used in  
13 Mr. Gibson's case with the addition that some are reversed  
14 with Mrs. Millwood being the---

15 A She would have her set of forms.

16 Q She had her set of forms.

17 Now -- and, Your Honor, at this time I'd move to  
18 introduce those. Those are the same format, the same  
19 procedure, and the same forms used in Mr. Gibson's.  
20 They're, therefore, relevant.

21 MS. WHITE: Your Honor, I would just -- I would renew  
22 my objection to relevance say from the fact that these forms  
23 have nothing to do with Mr. Gibson's case. We do have the  
24 relevant forms for Mr. Gibson's chain of custody, and I  
25 would move to strike any testimony having to do with those

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 forms.

2 THE COURT: What, what new information do they provide  
3 other than the ones that are used in his case?

4 MR. WILKES: They establish the fact that they are  
5 indeed photocopies, that it is the longstanding policy or  
6 that's what they do there.

7 THE COURT: Well, he's testified to that.

8 MR. WILKES: He has and, therefore, they're relevant to  
9 that testimony to show that testimony is accurate.

10 THE COURT: All right. I find it somewhat tenuous, but  
11 I'll allow it in.

12 MR. WILKES: Thank you, Your Honor.

13 MS. WHITE: Thank you, Your Honor.

14 (Whereupon, Applicant's Exhibit No. 2 was received into  
15 evidence at this time.)

16 Q Now, Mr. Rosenberg, you execute these or you fill in  
17 these documents, would -- when you execute these documents,  
18 would both of you be in the evidence room that day?

19 A Possibly. Maybe not.

20 Q Very good. I would like -- I'd like to show you the  
21 attendance calendar and some chain of custody documents that  
22 we'll mark as Applicant's 3.

23 MS. WHITE: Your Honor, I just want to ask for a little  
24 bit of clarification if I could on the, the last question  
25 and answer. I believe Mr. Wilkes asked when you complete

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 these documents. One is gonna be an evidence custodian and  
2 one is a notary, and I think it needs to be defined as to  
3 when he's asking if the documents are completed, if both are  
4 there, a little clarification as to whether or not he's  
5 discussing the person who received the evidence or the  
6 notary in that situation.

7 MR. WILKES: Your Honor, may I respond?

8 THE COURT: Sure.

9 MR. WILKES: Can she ask that on cross-examination and  
10 let me just---

11 THE COURT: I'll allow -- I think that's proper  
12 cross-examination. I'll allow you to go into that at that  
13 time.

14 MS. WHITE: Thank you, sir.

15 MR. WILKES: Thank you judge.

16 (Whereupon, the documents were marked as Applicant's  
17 Exhibit No. 3 for identification purposes only at this  
18 time.)

19 Q I ask you to look at what's marked as Applicant's 3.  
20 Do you recognize that as your attendance calendar for  
21 the Year of 2004?

22 A Yes, sir.

23 Q And Mrs. Millwood's as well right behind it?

24 A Yes, sir.

25 Q Now, would you agree with me that the documents that

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 follow would be chain of custody documents?

2 A Yes, sir.

3 Q And each of those documents has you as either a  
4 signatory, as the recipient of the evidence, or as a notary?

5 A Yes, sir.

6 Q And Mrs. Millwood in the other role?

7 A Yes, sir.

8 Q And if you would like to take a minute to look at it,  
9 but I would like for you to tell me are those documents or  
10 following the attendance calendars---

11 A Yes.

12 Q ---those documents that you got---

13 A That represents Jane Millwood's signature. I notarized  
14 it. It does represent Jane Millwood's signature.

15 Q And those are on dates where either one of you, at  
16 least one of you was not working?

17 A Yes.

18 Q So, it is true that it is, it was not necessary for  
19 both of you to be there for one of you to submit a document  
20 in the chain of custody with both signatures?

21 A That's true.

22 Q Okay. Now---

23 A But the law doesn't require notarization.

24 Q Well, who told you that?

25 who told you that and when did they tell you?

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 A That's what I've always -- around a week ago.

2 Q Okay. who told you that?

3 A A SLED, a SLED agent.

4 Q And were you talking to the SLED agent to prepare for  
5 your testimony?

6 A No, sir.

7 Q How did it come up with the SLED agent?

8 A What they did is conducted -- when I was subpoenaed for  
9 this there was a concern about it and they wanted to be  
10 examined by SLED, make sure if any violation of the law has  
11 occurred.

12 Q All right. As a notary public, what does the notary  
13 public, when you sign a chain of custody and notarize  
14 something, what does a notary represent to you?

15 Are you a notary?

16 A Yes, sir.

17 Q Current notary?

18 A Yes, sir.

19 Q And you were current at the time that you notarized  
20 those documents---

21 A Yes, sir.

22 Q ---or that they were submitted?

23 What does the -- does the notary not require that you  
24 be present or the person be present and sign before you?

25 A Yes, and she was.

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 Q How could she be present if she wasn't there that day  
2 or you weren't there?

3 A Like I explained, the -- we took a form, a blank form  
4 and I would observe her signing her name and I'd notarize  
5 it. We'd make a copy of that. No pertinent information  
6 about the, the client. I mean --.

7 Q Okay. I understand. Let me ask this question.

8 A Yes.

9 Q You say that because -- and, and this went on for  
10 years, didn't it?

11 A Yes, sir.

12 Q Okay. So, this document -- all of these documents  
13 could be off of the same form or---

14 A No.

15 Q ---or one of two forms, right, hers and yours?

16 A All documents, B or C, for years be off -- yes, sir.

17 Q A pile of yours and a pile of hers.

18 So, you're, you're saying that you, at some point maybe  
19 in 2003 or whenever, she signed it, you signed the notary,  
20 and it was blank---

21 A I would do it every year.

22 Q Every year.

23 So, for a year you'd use the same form. So, you -- the  
24 form was not completed as the information relevant to the  
25 chain of custody when you both signed it?

Robert Rosenberg - Direct examination  
By Mr. Wilkes

- 1 A No.
- 2 Q Okay. All right. Now, you, your understanding of the  
3 form is that it is a Rule 6 form. It says that on it,  
4 correct?
- 5 I mean look at the top of it and tell me what it says.
- 6 A Yes, sir.
- 7 Q And it says -- well, this was -- you agree that this  
8 was not certified or sworn to at the time that the form was  
9 completed?
- 10 A It's completed?
- 11 Q At the time---
- 12 A Yes.
- 13 Q ---it was filled in---
- 14 A It was a proper representation.
- 15 Q Was it sworn to and signed at the time the information  
16 was put on it as to the chain of custody?
- 17 A It was sworn and signed as a proper chain, yes, sir.
- 18 Q A year before?
- 19 A Not a year -- what do you mean a year before?
- 20 Q You would sign and swear or whatever you did on a blank  
21 form.
- 22 A Yes, sir.
- 23 Q And then use that for a whole year?
- 24 A Yes, sir.
- 25 Q Okay. You agree that you would use that form even

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 though both of you weren't present on that day?

2 A We were -- only two of us were in the evidence  
3 department, yes, sir.

4 Q I understand that.

5 But you, you agree with me that you would use those  
6 forms even if the other person was not present?

7 A Yes, sir, I would use my forms.

8 Q Okay. Now, at the time or shortly before this were you  
9 on probation with the Sheriff's Department?

10 A At the time, in 2004?

11 Q In 2004, had you been placed on probation for something  
12 to do with the distribution of, of money from the evidence  
13 room, the way it was distributed?

14 A No.

15 Q Let, let me show you an exhibit.

16 A I've only been on probation I think once or twice and  
17 it has nothing to do with money.

18 MR. WILKES: May I approach, Your Honor?

19 THE COURT: Yes, you may.

20 MR. WILKES: If I can mark this as 4 for identification  
21 please.

22 (Whereupon, a document was marked as Applicant's  
23 Exhibit No. 4 for identification purposes only at this  
24 time.)

25 Q I'm gonna show you a document, I'm gonna show you a

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 document marked for identification only as Exhibit 4.

2 Can you take a look at, there's two pages, and see if  
3 that refreshes your, your memory?

4 A It wasn't in reference to money.

5 Q I'm sorry then. I didn't mean to misstate it.

6 what, what would that---

7 A Officer Foster is incorrect on that. I was charged, I  
8 mean not charged, but I was accused of being disrespectful  
9 to a supervisor.

10 Q Okay. Well, you, you put on -- but probation?

11 A Probation, yes, sir. But it didn't have anything to do  
12 with money.

13 Q Okay. That's just what the document said. That's the  
14 reason I said that.

15 A Yes, sir.

16 Q Okay. We'll give that back to the clerk.

17 But you---

18 A Okay.

19 Q Do you recall being placed on---

20 A Probation, yes, sir.

21 Q ---probation---

22 A Yes, sir.

23 Q ---for a period of time in 2004 for something occurring  
24 in the evidence room in the course of your duties?

25 A Do what, sir?

Robert Rosenberg - Direct examination  
By Mr. Wilkes

1 Q Something happening in the evidence room?

2 A Yes, sir.

3 MR. WILKES: Okay. Now, if I can have one second, Your  
4 Honor?

5 THE COURT: Yes, sir.

6 (Pause.)

7 Q Mr. Rosenberg, thank you. The attorney general has  
8 some questions.

9 A Okay.

10 THE COURT: Ms. White, your witness.

11 MS. WHITE: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. WHITE:

14 Q I want to start off with what I believe Mr. Wilkes has  
15 up there as the Applicant's Exhibit 1, which is a packet of  
16 forms specifically relating to Bobbie Gibson's case.

17 A Yes, sir. Yes, ma'am.

18 Q That's all right.

19 A Excuse me.

20 Q Can you tell me if you ever were involved in the intake  
21 of evidence in Mr. Gibson's case?

22 A No, ma'am.

23 Q And, in fact, your signature is on that in the form of  
24 a notary, is that correct?

25 A Yes, ma'am.

Robert Rosenberg - Cross-examination  
By Ms. White

1 Q Okay. So, you were not directly involved with any of  
2 the drug evidence that was received from Mr. Gibson during  
3 this case?

4 A No, ma'am.

5 Q Okay. In the situations where you have intake forms  
6 that are an, in Exhibit 2 that Mr. Wilkes has presented, and  
7 you have signed those as the officer, I guess the intake  
8 officer or the evidence officer in charge of the evidence in  
9 that situation, were you present on the day that you took  
10 that evidence in?

11 If there is a form with your signature on it as the  
12 evidence intake officer, would you have been present on that  
13 day?

14 A On October 1<sup>st</sup>, yes, I would of been present.

15 Q Okay. And I'll just go with you over your attendance  
16 calendar that he's put up into evidence I believe. He's got  
17 several forms listed beneath there. I think first in my  
18 packet is August 12<sup>th</sup> of 2004.

19 Do you see that or --?

20 A I, I have August 16<sup>th</sup>.

21 Q Okay. Is that one where you have signed as the  
22 evidence intake officer or as a notary?

23 A As a notary.

24 Q Okay. I want to -- may I approach, Your Honor?

25 THE COURT: You may.

Robert Rosenberg - Cross-examination  
By Ms. White

1 Q I want to get, get you to the place where your  
2 signature is as the -- he's got -- we've got them all as  
3 Jane's intake signatures and then we've got Robert's intake  
4 signatures.

5 Okay. And that's -- if you'll compare for me your  
6 attendance calendar.

7 Were you present on the day of August 12<sup>th</sup>, 2004?

8 A Yes, I was.

9 Q And that form that is, we're looking at involves a  
10 case, I guess the best way to acknowledge it, a control  
11 number at the top, S0007414?

12 A Yes, ma'am.

13 Q Okay. Now, there's another form beneath that,  
14 August 13<sup>th</sup>, 2004, where some drugs were received from  
15 Officer Glen.

16 You signed as the evidence custodian?

17 A Yes.

18 Q Were you present that day?

19 A Yes, ma'am.

20 Q And you were at work in the evidence room?

21 A Yes, ma'am.

22 Q And did you, in fact, receive the drugs and process  
23 them in person that day?

24 A Yes, ma'am.

25 Q Okay. August 9<sup>th</sup> of 2004 is the next page?

Robert Rosenberg - Cross-examination  
By Ms. White

1 A Uh-huh. (Affirmative).

2 Q And were you present that day when you received the  
3 drugs and processed them?

4 A Yes, ma'am.

5 Q And, in fact, as you go through the rest of these,  
6 August 9<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, are the following dates, 9<sup>th</sup>,  
7 11<sup>th</sup>, and 13<sup>th</sup> are the, the rest of the forms.

8 Were you present on those days---

9 A Yes, ma'am.

10 Q ---at work?

11 And were you processing evidence in the evidence room  
12 in person?

13 A Yes, ma'am.

14 Q Okay. And you said that you would keep the forms in a  
15 secure area where no one could access that.

16 Can you explain a little more about that?

17 A We have a, our evidence room is secure. It's like --  
18 the public's not allowed. The officers are not allowed in.  
19 They have the -- we bring them in and they can sign in by a  
20 book that meets CALEA standards, and we have to stay with  
21 them and --.

22 Q And who had keys to the evidence room?

23 A At that time probably Officer Millwood, myself. I  
24 don't know who the captain would of been. It would have  
25 been the captain of the detective's division, technically

Robert Rosenberg - Cross-examination  
By Ms. White

1 he's over us, and the sheriff.

2 Q Okay. Now, you testified that the forms were filled in  
3 partially when they had been signed and notarized, is that  
4 right?

5 A Yes, ma'am.

6 Q What additional information would be filled in on days  
7 when you would receive evidence?

8 A The day I would receive evidence would be the pertinent  
9 information about the case itself. An example would be this  
10 one right here on this exhibit. I entered it -- as the  
11 B.E.S.T. Bag came in I would enter the B.E.S.T. Bag number,  
12 what date it came in, what officer obtained the B.E.S.T.  
13 Bag, and, like I said, it lists the B.E.S.T. Bag as what we  
14 received and on what date I received it.

15 Q And, in fact, in most of these that information is  
16 handwritten, is that correct?

17 A Yes, ma'am.

18 Q And is that in your handwriting?

19 A Yes, ma'am.

20 Q Okay. Now, just to touch on this probation that  
21 Mr. Wilkes has raised. I want to clarify.

22 You, you testified that it was involving disrespect  
23 with a supervisor?

24 A Yes, ma'am.

25 Q Okay. So, that, that supervisor -- that temporary

Robert Rosenberg - Cross-examination  
By Ms. White

1 probation had nothing to do with how you handled evidence in  
2 the evidence room?

3 A No, ma'am.

4 MS. WHITE: Okay. That's all the questions I have at  
5 this time, Your Honor.

6 THE COURT: Any other questions for this witness, Mr.  
7 Wilkes?

8 MR. WILKES: Just a few if I may.

9 THE COURT: Yes, sir.

10 MR. WILKES: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. WILKES:

13 Q Now, when you say you kept these forms in a secured  
14 place, there's two stacks of forms?

15 A They're in my desk.

16 Q They're in your desk?

17 A Mine is.

18 Q Okay.

19 A Mine are.

20 Q where, where was Mrs. Millwood's?

21 A I believe in her desk.

22 Q Okay. And those desks are?

23 A In the evidence room.

24 Q Okay. Is it locked?

25 A Not open to the public.

Robert Rosenberg - Redirect examination  
By Mr. Wilkes

1 Q Are they locked?

2 A The desk?

3 Q Yes.

4 A Sometimes. Not all the time.

5 Q Not all the time.

6 If I could ask you -- if I give you a highlighter, can  
7 you highlight for me on Mr. Gibson's form, which I believe  
8 is No. 1, Applicant's 1, can you highlight on that chain  
9 document the signatures and the information that was already  
10 on it before that day?

11 Can you do that for me?

12 A I mean this is Officer Millwood's.

13 Q Okay.

14 A I mean I can. I suppose.

15 Q Are you familiar with it?

16 A Oh, yes.

17 Q Okay. Put -- how about the portion that you're aware  
18 of?

19 THE COURT: Now, Mr. Wilkes, my understanding is that  
20 the person who would probably have filled that in was  
21 Mrs. Millwood.

22 MR. WILKES: That's correct, Your Honor. Let me  
23 follow-up with a relevant question.

24 THE COURT: All right.

25 Q Mr. Rosenberg---

Robert Rosenberg - Redirect examination  
By Mr. Wilkes

1 THE COURT: So, you're gonna have to establish the  
2 basis that he participated in the filling out of them  
3 cause---

4 MR. WILKES: You're correct.

5 THE COURT: ---you've created the inference that---

6 MR. WILKES: That, that is my case.

7 THE COURT: Okay.

8 Q You don't have any idea of, of what's on that document,  
9 do you?

10 You're not familiar with that document, Mr. Gibson's in  
11 particular?

12 A Not his personal information. I'm familiar with the  
13 document, the document.

14 Q All right. So, you're telling me that I really  
15 couldn't have you highlight any of it because you, you can't  
16 say what was on it that day?

17 A I can say my signature was on there and Jane Millwood's  
18 signature.

19 Q Highlight that for me then.

20 THE COURT: All right.

21 Q And just do that on each of those documents that you  
22 see.

23 A Do I need to highlight her signature?

24 Q If you know that it was already on there you can.

25 A (Witness complies.)

Robert Rosenberg - Redirect examination  
By Mr. Wilkes

1 Q Done with that?

2 A (Witness nods affirmatively.)

3 Q Thank you.

4 Now, you have not highlighted that portion involving  
5 Mr. Gibson's information---

6 A No, sir.

7 Q ---cause you have no way of knowing anything about  
8 that?

9 A No, sir.

10 Q And yet your notary is on that page?

11 A Yes, sir.

12 Q Now, when you say you were present on October 1<sup>st</sup>,  
13 are each of you confined to that room all day long?

14 A No, sir.

15 Q So, is it possible that each of you may enter and exit  
16 that room as necessary throughout the day?

17 A Yes, sir.

18 MR. WILKES: That's all I have of this witness, Your  
19 Honor.

20 THE COURT: Any recross?

21 MS. WHITE: Nothing, Your Honor.

22 THE COURT: You may step down, sir. Again will caution  
23 you not to discuss your testimony with anyone.

24 WITNESS: Yes, sir.

25 THE COURT: Thank you.

Jane Millwood - Direct examination  
By Mr. Wilkes

1 You may call your next witness, Mr. Wilkes.

2 MR. WILKES: Thank you, Your Honor.

3 We would call Mrs. Jane Millwood at this time.

4 THE COURT: Yes, he should leave the courtroom.

5 (Pause.)

6 THE COURT: All right. Now, Mr. Wilkes, call your next  
7 witness.

8 MR. WILKES: Thank you, Your Honor.

9 We'll call Mrs. Jane Millwood.

10 THE COURT: All right. The bailiff will get her.

11 Mrs. Millwood, come forward please. Right over here to  
12 my left to be sworn.

13 JANE MILLWOOD, having been first duly  
14 sworn, testified as follows:

15 THE COURT: Have a seat please. And, ma'am, once  
16 you're seated, state your name.

17 WITNESS: Jane Millwood.

18 THE COURT: All right. Mr. Wilkes, your witness.

19 MR. WILKES: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. WILKES:

23 Q Mrs. Mill, Millwood, where do you work?

24 A I'm not employed. I'm just a homemaker.

25 Q Were you employed with the Spartanburg County Sheriff's

Jane Millwood - Direct examination  
By Mr. Wilkes

1 office in 2004?

2 A Yes, sir, I was.

3 Q what was your capacity there?

4 A Evidence officer.

5 Q And as the evidence officer what did you do?

6 A well, we picked up drugs and evidence from the drop  
7 box, what we called a drop box, which is, primarily was a  
8 mailbox that was converted to make it into a drop box, and  
9 also I, excuse me, I picked up evidence, whether it be drugs  
10 or whatever, from a little cabinet that was in the I.D.  
11 Division at that time.

12 Q That would be when it comes back from forensics?

13 A No, this was like in the mornings when or during the  
14 night when officers would bring evidence in --

15 Q Uh-huh. (Affirmative).

16 A -- they would leave it in there, and, and then I would  
17 or either Officer Rosenberg would go in there in the  
18 mornings and pick it up, take it back to our office, log it  
19 into the computer, do the paperwork, whatever, and then  
20 place it wherever it needed to be, whether it be---

21 Q Okay.

22 A ---drugs or other evidence.

23 Q Okay. Now, when you would pick up items from the drop  
24 box, would there be more than one item in the drop box at  
25 times?

Jane Millwood - Direct examination  
By Mr. Wilkes

1 A Oh yes.

2 Q What is the purpose of filling out the paperwork when  
3 you pick those items up and log them in?

4 A Well, it's to show who picked it up and who put it in  
5 there, and then it may show -- it just shows the contents of  
6 the bag or whatever it was in.

7 Q And would you agree that this is to keep all of the  
8 evidence that you pick up from getting mixed up?

9 A Yes, sir.

10 Q Now, when you -- part of the paperwork that you fill  
11 out or I guess the essential paperwork you fill out would be  
12 the Form C, is that correct?

13 A As well as I can recollect. It's been four years  
14 now---

15 Q Yes, ma'am.

16 A ---and---

17 Q Will you take a look at the thing, the pile of  
18 documents on your right?

19 I believe that says Applicant's Exhibit No. 1.

20 Do you recognize those?

21 A Okay. Bryan Duncan brought it in and dropped the  
22 container into the drop box, and then I would have picked it  
23 up by the Form C.

24 Q Right.

25 A And then I just -- well, most of the time I typed mine

Jane Millwood - Direct examination  
By Mr. Wilkes.

1 and I typed it up. He dropped it and I didn't -- he dropped  
2 it in 9/30 and I picked it up on October the 1<sup>st</sup> of '04, and  
3 it was one sealed B.E.S.T. Bag, and on October, October the  
4 1<sup>st</sup> I put it in the drug vault---

5 Q Uh-huh. (Affirmative).

6 A ---that we have.

7 Q And when you put it in the drug vault, when it passes  
8 through your hands, the paperwork, the Form C that you fill  
9 out goes with it, correct?

10 A Yes, sir.

11 Q All right. And if -- the Form C ensures the identity  
12 of what you're transferring from the one box to the other  
13 box?

14 A Well, when -- this is a sealed B.E.S.T. Bag. See when  
15 these officers like---

16 Q Well, I understand.

17 A ---Bryan---

18 Q Let me ask that question again cause I'm asking, I'm  
19 trying to ask a specific question, and if you need to  
20 explain you, you can.

21 The paperwork is intended to go with the evidence from  
22 one place to the other?

23 A Yes, sir.

24 Q And it identifies that evidence---

25 A Yes, sir.

Jane Millwood - Direct examination  
By Mr. Wilkes

1 Q ---correct?

2 All right. Now, are there -- do you see your name on  
3 three different Form C's in Exhibit 1?

4 The -- there's, there's three Form C's. There's a lot  
5 of other papers too. But if you'll look for the Form C's.

6 A Yes, sir.

7 Q Now, how many Form C's do you believe you might deal  
8 with in the course of a day, just a typical day?

9 A Well, okay. I'm gonna say on a typical day it might of  
10 been ten to fifteen.

11 Q All right. Okay. And there could be higher days,  
12 lower days, but---

13 A Yes, sir.

14 Q ---but over the course of a week or a month or extended  
15 to a year it would be a whole lot?

16 A Yes, sir.

17 Q Would it be possible for you to remember any particular  
18 evidence one from the other?

19 Could you distinguish one from the other six months  
20 late without your paperwork?

21 A No, sir.

22 Q Okay. Would your paperwork then be critical to your  
23 testimony if you testified at trial to identify something?

24 A Yes, sir, cause I can't, if I don't have paperwork, I,  
25 I don't know what I'm testifying to.

Jane Millwood - Direct examination  
By Mr. Wilkes

1 Q Okay. Now, tell me the, the, the procedure that y'all  
2 had at the time, as I understand it, was that Mr. Rosenberg  
3 had a set of forms photocopied, and you had a set of forms  
4 photocopied?

5 A Yes, sir.

6 Q Okay. And those forms, y'all might do those once a  
7 year and make a new form and have a stack?

8 A Well, not really. A little bit more than once a year,  
9 you know, cause we didn't have that much room in our files  
10 to---

11 Q But you, you would make a big stack photocopies?

12 A Yes, sir.

13 Q Okay. Those photocopies, tell, tell me what you would  
14 put on those photocopies.

15 A Well, you couldn't put a whole lot if you were just --  
16 it was just basically where you might -- it would just have  
17 the, the notary stamp---

18 Q Uh-huh. (Affirmative).

19 A ---on it. But I meant, you know, no date filled in or  
20 anything.

21 Q Right.

22 Are you saying that the notary, that the, that each  
23 stack of photocopies would contain a signature of both you  
24 and Mr. Rosenberg either as notary or recipient?

25 A Yes, sir, we did it for each other.

Jane Millwood - Direct examination  
By Mr. Wilkes

1 Q Okay. Now, there were days when you might not be  
2 present or he might not be present.

3 Is it possible that on a day that say Mr. Rosenberg was  
4 not present that you would use one of the forms with his  
5 notary already on it?

6 A Yes, sir.

7 Q Okay. Now, let me ask you this. Are there times  
8 during the day when you would leave the evidence room for  
9 any reason?

10 A Yes, sir, when I would go to the restroom or I went to  
11 lunch, but I still locked it.

12 Q Uh-huh. (Affirmative).

13 A The door was locked---

14 Q Right.

15 A ---and it had an alarm on it.

16 Q Right.

17 And only you and Mr. Rosenberg and maybe a higher  
18 officer would have access, correct?

19 Definitely you and Mr. Rosenberg?

20 A Yes, sir.

21 Q Okay.

22 A Cause I really -- I'll, I'll have to testify to the  
23 fact I honestly don't know if the major could get in back  
24 there.

25 Q Okay. Now, there's nothing keeping you, if, if Mr.

Jane Millwood - Direct examination  
By Mr. Wilkes

1 Rosenberg had to go somewhere or you had to go somewhere and  
2 you're receiving evidence, there would be nothing to prevent  
3 the use of the form during that time, is there?

4 In other words, during any particular day if you---

5 A You mean someone else coming in?

6 Q No, no, no, I'm sorry. Let me, let me try again.

7 Let's say during an average day or any day Mr.

8 Rosenberg asked to, to go somewhere. He goes to lunch. He  
9 goes to the bathroom. He goes on a mission for the sheriff  
10 or whatever.

11 A Right.

12 Q If you're there, just like any other day that he might  
13 be gone, is it possible that you would use one of your forms  
14 and process all that evidence as usual?

15 A Yeah, if, if it's my day to collect it then I processed  
16 it.

17 Q Okay. And he would go about his business and you're  
18 doing your processing?

19 A Uh-huh. (Affirmative).

20 MR. WILKES: Okay. If I can have just one second,  
21 judge.

22 THE COURT: Yes, sir.

23 MR. WILKES: Thank you.

24 (Pause.)

25 Q: If I can, can you please look at Exhibit No. 2, which I

Jane Millwood - Direct examination  
By Mr. Wilkes

1 think is the smaller -- yes, ma'am, that one there without  
2 the big clip. Just the one on top. Yes, ma'am.

3 Does that, does that say Exhibit 2?

4 Let me see.

5 If I may approach, Your Honor?

6 THE COURT: You may.

7 MR. WILKES: Thank you.

8 Q I'm sorry. They had been separated. It's No. 3.

9 Will you take a look at that document I laid down on  
10 the left there, Applicant's No. 3, and tell me if you  
11 recognize that to be your calendar from 2004, attendance  
12 calendar. Yours may be the first or second sheet. I'm not  
13 sure which one. I think it says it on the top.

14 A I guess it's showing, you know, when I was off taking  
15 vacation or---

16 Q Right.

17 A I mean that's all I can testify to.

18 Q Okay. Well, if I, I told you that the major gave us  
19 that, you, you wouldn't dispute that that would be your  
20 calendar?

21 A No, sir.

22 Q If you'll look in the back. There's some Form C's in  
23 the back.

24 Will you take a look at those briefly and see if you  
25 can identify each of those as having your signature in one

Jane Millwood - Direct examination  
By Mr. Wilkes

1 place or another?

2 A Oh, I dropped it.

3 Q Oh, that's okay. You want me to get -- I'll get it for  
4 you.

5 A Yeah, they's several pages with my Form C's, and then  
6 it starts with Robert.

7 Q Yes, ma'am.

8 Mrs. Millwood, if you -- would you, without having to  
9 go through each one, would you agree that those documents,  
10 some of those with your signatures on them as notary public,  
11 would be from days that you were on vacation or holidays and  
12 not present at the sheriff's office?

13 A Probably so.

14 Q Okay. Now, just when I asked you you indicated that  
15 there was a whole lot of these things that you deal with in,  
16 in a week or a month overtime, that the volume is very big.

17 A It was when, before I retired.

18 Q Yes, ma'am.

19 will you look at the middle one, the big pack there,  
20 and just kind of flip through that.

21 Over approximately a month or so, does that indicate  
22 kind of the volume that you would have to deal with in  
23 filling out these Form C's?

24 A well, now, this looks like it's running from not a  
25 months time cause it's, some of it's June.

Jane Millwood - Direct examination  
By Mr. Wilkes

1 Q Uh-huh. (Affirmative).

2 A Some of it's in---

3 Q A couple, a couple of months.

4 Whatever dates are on there, a couple of months or so?

5 A Uh-huh. (Affirmative).

6 Q But those, those are the forms, same forms that y'all  
7 photocopied that y'all used?

8 A Yes, sir.

9 Q Okay. And that would be representative of a pretty  
10 short period of time, a few months time?

11 A Uh-huh. (Affirmative).

12 Q You deal with a lot of things?

13 A Yes, sir.

14 MR. WILKES: Your Honor, at this time I would like to  
15 introduce the Exhibit -- those exhibits up here that I have  
16 not offered, already had introduced. I think one or two  
17 might be still for identification, 1 through 3, whichever  
18 has not been, those documents.

19 THE COURT: Any objection?

20 MS. WHITE: Just same objections to 2 and 3 involving  
21 relevance, Your Honor.

22 THE COURT: All right. I'll allow them in.

23 MR. WILKES: Thank you, Your Honor.

24 (Whereupon, Applicant's Exhibit Nos. 3 and 4 were  
25 received into evidence at this time.)

Jane Millwood - Cross-examination.  
By Ms. White

1 Q Thank you, Mrs. Millwood. The attorney general will  
2 have some questions.

3 CROSS-EXAMINATION

4 BY MS. WHITE:

5 Q Mrs. Millwood, I want to start off with a couple of  
6 things. One of the first things you talked with, with  
7 Mr. Wilkes was about picking up evidence from a, from a drop  
8 box.

9 A Uh-huh. (Affirmative).

10 Q Where was the drop box located in relation to I guess  
11 maybe where you worked or where the Sheriff's Office was?

12 A As well as I can remember, I -- in the, what we  
13 referred to as the squad room.

14 Q Okay. So, this wasn't -- you mentioned it was  
15 essentially a former mailbox.

16 A Yeah.

17 Q This wasn't out on the side of the road somewhere?

18 A Oh, no, no, no, no.

19 Q Okay.

20 A No, it was just something they had converted and made  
21 for us cause once you drop that package in there---

22 Q Uh-huh. (Affirmative).

23 A ---no one except someone that had a key could get it  
24 out.

25 Q And who had keys to the lock, the drop box at that time

Jane Millwood - Cross-examination  
By Ms. White

1 in 2004?

2 A Myself and Officer Rosenberg.

3 Q Okay. Now, same question about the cabinet. You said  
4 there was a cabinet maybe in the I.D. Division that you  
5 got---

6 A Uh-huh. (Affirmative).

7 Q ---evidence from.

8 How was that secured in that location?

9 A It -- we had the key to that too.

10 Q Okay. And when you say we, that's you and Mr.  
11 Rosenberg?

12 A Yes, sir.

13 Q Okay.

14 A Yes, ma'am.

15 Q Now, when you picked up evidence from there, you've  
16 testified and we've gone through testimony that there were  
17 forms that were pre-signed by you and pre-notarized by Mr.  
18 Rosenberg.

19 A Yes.

20 Q What other information would you complete on those  
21 forms when you processed the evidence?

22 A Well -- okay. Just say, for instance, on a B.E.S.T.  
23 Bag, what we referred to that would have like crack cocaine  
24 or whatever, and the narcotic officer would put that down in  
25 a plastic bag that had a control number on it, which is at

Jane Millwood - Cross-examination  
By Ms. White

1 the top of the page. And, so, when he brought it in, we  
2 didn't have our hands on the actual drug, you know, or rocks  
3 or whatever. We didn't have our hands on them cause they  
4 were in this plastic bag, and then that bag went down into  
5 like a manila colored folder, and it had information on the  
6 front of what was inside. Plus it had that same control  
7 number on it.

8 And, so, when I picked it up, then I had to match this  
9 control number up with what this officer had written, put my  
10 Form C in there, but still I did not open that plastic bag.  
11 That was a seal -- that's why I signed for like a sealed  
12 B.E.S.T. Bag.

13 Q Okay.

14 A And then -- so, I filled in the, the date that I picked  
15 it up and the, also the date that I would put it in our drug  
16 vault, and the only time it was -- when it was moved from  
17 there was when the technician would come and want to pick up  
18 the drugs to test them.

19 Q Okay. Now, on these, on the drugs, I know you talked  
20 with Mr. Wilkes about using the Form C and how the Form C  
21 would go with the drugs and that helped you identify it.

22 A Uh-huh. (Affirmative).

23 Q Were there other ways that the drugs were identified  
24 other than just your form that you could kind of link up  
25 together?

Jane Millwood - Cross-examination  
By Ms. White

1 I know you just testified as to the control number.

2 A Other than -- nothing -- you know, everything was  
3 sealed in that plastic bag. I made a label and put on mine  
4 and I typed it in and -- because I actually did more typing  
5 than I did anything. Robert wrote his labels and put on  
6 this glass bag.

7 Q When you say glass bag, you mean the bag -- is that the  
8 B.E.S.T. Bag you're talking about?

9 A B.E.S.T. Bag.

10 Q Okay.

11 A I'm, I'm sorry.

12 Q No, that's fine. I just wanted to make sure we're---

13 A But other than that, and then putting all the  
14 paperwork, every piece of paperwork I filled out or Robert  
15 filled out, I'm sorry, Officer Rosenberg, we slid down in  
16 that outer bag that I said looked like a manila folder.

17 Q Okay.

18 A Now, also on it would be information that a narcotic  
19 officer would write. Now, I didn't have to write on the  
20 outside of this bag. Only the narcotic officer that picked  
21 it up did.

22 Q Okay.

23 A But that -- he got the control number there, and it  
24 matched the little, the B.E.S.T. Bag on the inside. These  
25 bags came like this and I don't know where the bags came

Jane Millwood - Cross-examination  
By Ms. White

1 from. I don't have any idea.

2 Q Okay.

3 A Unless they came from Columbia or, you know, prior to  
4 us getting them.

5 Q Okay. So, once you processed the evidence, did you  
6 process the evidence at the same time as you completed the  
7 form, the Form C that we're discussing?

8 A Yeah.

9 Q Was that done at a different time?

10 A All of your -- all of this paperwork and everything  
11 that you were doing to it had to be processed all at one  
12 time. You didn't walk off and leave it. You had to do it  
13 at one time, and, and I'm almost sure, as good as I can  
14 remember, Robert did his basically the same way I did. We  
15 processed, processed our drug -- anything we picked up in  
16 the drug line we processed that first and got it out of the  
17 office, and then we did our other evidence that we had  
18 picked up.

19 Q Okay. And the same thing, you said you processed the  
20 evidence at the same time you filled in the form. You  
21 mentioned a label that you put on the B.E.S.T. Bag.

22 When was that done?

23 A When I finished, you know, looking at it and seeing  
24 that everything was right. You had to kindly watch to see  
25 that an officer that picked it up, that all his information

Jane Millwood - Cross-examination  
By Ms. White

1 was on, on there right and also you had to look and see if  
2 it, the little seal that was on this glass bag or some of  
3 them called it a glassen, I called it a B.E.S.T. Bag, if a  
4 seal was broken, we got on the phone right then and called  
5 that officer and told him to come and pick it up cause we  
6 could not handle it. We could not, you know, we didn't have  
7 anything to do with it at all.

8 Q So, you wouldn't process evidence that appeared to have  
9 been tampered with?

10 A No, sir.

11 Q Okay. I want to just kind of touch base with you on or  
12 talk with you a little bit about the Applicant's Exhibit 3,  
13 which is the attendance calendar that Mr.---

14 A Uh-huh. (Affirmative).

15 Q ---Wilkes went over with you.

16 A Uh-huh. (Affirmative).

17 Q Now, they're groups of forms in there where you're the  
18 signature and Robert's the, the notary.

19 A Uh-huh. (Affirmative).

20 Q And then times when Robert's the signatory and you're  
21 the notary.

22 A Uh-huh. (Affirmative).

23 Q If you can, take a look at your attendance calendar for  
24 me, and I don't know if that's the first one.

25 A That's Robert's. Let's see. Okay.

Jane Millwood - Cross-examination  
By Ms. White

1 Q All right. And I'm just gonna read you a few dates  
2 that are the forms that followed, and, if you could, these  
3 are forms that are in that packet that you have signed as  
4 the evidence technician. If you'll just tell if you were  
5 working that day in the evidence room on October 16<sup>th</sup>, I  
6 mean, excuse me, August 16<sup>th</sup>.

7 A Yes.

8 Q Okay. August 18<sup>th</sup>?

9 A Yes.

10 Q How about August 26<sup>th</sup>?

11 A Yes.

12 Q August 25<sup>th</sup>?

13 A Yes.

14 Q The 23<sup>rd</sup> of August?

15 A Yes.

16 Q The 24<sup>th</sup> of August?

17 A Yes.

18 Q The 20<sup>th</sup> of August?

19 A Yes.

20 Q And the 19<sup>th</sup> of August?

21 A Yes.

22 Q So, did you ever complete any forms to go along with  
23 the evidence perhaps after a day of vacation you'd actually  
24 come back and Robert had taken the evidence in and you  
25 actually---

Jane Millwood - Cross-examination  
By MS. White

1 MR. WILKES: I object. That's a leading question.

2 MS. WHITE: I'm on cross-examination, Your Honor.

3 THE COURT: She's on cross-examination. I'll allow her  
4 to ask it.

5 Q Would there ever be any days when you would come in and  
6 Robert would of taken evidence in and then you, the next  
7 day, came in and filled the form in with your signature as  
8 the person that received the evidence?

9 A Okay. Maybe I'm not -- are you saying he got the  
10 evidence out of the lockers and the drop box?

11 Q So maybe on a Monday you were on vacation.

12 A Uh-huh. (Affirmative).

13 Q Robert came in, got the evidence, but you came in on  
14 Tuesday, filled in the form---

15 MR. WILKES: I---

16 Q ---and processed it.

17 MR. WILKES: Your Honor, I object. Cross or not cross,  
18 that's not a question. That's a narrative.

19 THE COURT: Well, she never finished. So, I'm gonna  
20 allow her to finish her statement.

21 MS. WHITE: I'm trying to clarify for her the way I was  
22 trying to ask the question.

23 Q Would there ever be anytime when you would fill in  
24 these forms when you were not the one who received the  
25 evidence from the drop box or the cabinet as the evidence

Jane Millwood - Cross-examination  
By Ms. White

1 custodian?

2 A Excuse me. If, if I'm understanding it, I, I would not  
3 fill out anything if, if I didn't pick it up, you know. I  
4 mean I, I feel like my writing, and as I say, I typed just  
5 about everything I did in there cause we got so tired of  
6 writing, you know. I just -- my hand wouldn't hold out to  
7 it.

8 Q All right. And in regards to that, you said your hand,  
9 it was just, it was just tired and that's why you typed a  
10 lot of information?

11 A Uh-huh. (Affirmative).

12 But are you asking me would I finish a job like maybe I  
13 just left it on Monday and came back and finished it on  
14 Tuesday?

15 Was that what---

16 Q No, I was asking if you would of ever signed a,  
17 completed a form, one of these Form C's---

18 A Uh-huh. (Affirmative).

19 Q ---if you were not the person who had actually received  
20 the evidence---

21 A No.

22 Q ---from the locker?

23 A No.

24 MS. WHITE: Okay. One moment please, Your Honor.

25 THE COURT: Yes, ma'am.

Jane Millwood - Cross-examination  
By Ms. White

1 (Pause.)

2 Q All right. Now, I want to ask you just real quick  
3 about Bobby's Gibson's case.

4 Do you recall testifying in this case?

5 A No, I don't.

6 Q And have you had a chance to review the transcript of  
7 your testimony from the case?

8 A I looked over it some yesterday when I was here.

9 Q And did that help refresh your memory at all as to  
10 the---

11 A No, to be honest it didn't.

12 Q And you've testified a lot of times in Court---

13 A Yes.

14 Q ---involving evidence, is that right?

15 A That's what I was fixing to say.

16 Q Yeah.

17 A I've testified so many times that it didn't -- one, one  
18 name didn't stand out anymore than another one.

19 Q How many years did you work as an evidence custodian  
20 for the Sheriff's Office?

21 A Thirteen and I, I was an officer for 25 years.

22 Q Okay. Now, when you testified in any case, Mr.  
23 Gibson's or not, did you testify truthfully and honestly?

24 A Yes, I did.

25 Q And you testified as to your process and, and how you

Jane Millwood - Cross-examination  
By Ms. White

1 handled or processed the drugs or any evidence as required?

2 A Yes, I did.

3 Q Okay. And, and just to follow-up, you said you  
4 reviewed your testimony, you didn't remember it, but you did  
5 note that you testified in Mr. Gibson's trial as to the  
6 chain of custody?

7 A Yes.

8 Q Okay. Okay. In regards to these forms, just one final  
9 question, the forms that were already filled out with the  
10 signature, the notary, the stack of forms that were  
11 photocopied, where did you keep those?

12 A Well, I kept them -- I don't remember. I had a file  
13 cabinet behind me. But I believe mine was kept -- I think  
14 we both -- now, here again, I'm having to think back. It's  
15 been a lot, a lot's happened in four years. In a file right  
16 here beside of us because most of our personal things stayed  
17 right where we could have access to them. You know, no one  
18 else could get to them and---

19 Q And this is in like a file cabinet or---

20 A Yeah.

21 Q ---or a drawer or something?

22 A On, on our desk. Our desk---

23 Q Uh-huh. (Affirmative).

24 A ---had drawers in them.

25 Q Okay. And did you keep yours together with Robert's?

Jane Millwood - Cross-examination  
By Ms. White

1 A No, hu huh. (Negative).

2 Q Okay.

3 A He kept his. I kept mine.

4 MS. WHITE: Okay. That's all the questions I have at  
5 this time, Your Honor.

6 THE COURT: Re, redirect.

7 MR. WILKES: I believe one, Your Honor.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. WILKES:

11 Q Mrs. Millwood, you had been asked a question and your,  
12 your response was you, part of your filling out your  
13 paperwork and your job was to make sure everything was right  
14 if the officer put all the information on the documents that  
15 you were receiving, correct?

16 A (Witness nods affirmatively.)

17 Q Will you look at Applicant's Exhibit No. 1 please.

18 It's the one on the far right of you. Yes, ma'am.

19 Will you flip through that and look at the Form B

20 that's got Demetric Glen's signature on it?

21 Do you see that?

22 A Maybe I need to go back a little bit. Okay. I see

23 Form B.

24 Q Is that the form that you received -- that's the  
25 paperwork you're talking about as receiving it, and checking

Jane Millwood - Redirect examination  
By Mr. Wilkes

1 it making sure it's right?

2 Is the Form B the form you were talking about in  
3 general as far as checking?

4 It comes in with the evidence.

5 A Uh-huh. (Affirmative.)

6 And making sure it, it matches, you know, what he --.

7 Q Yes, ma'am.

8 And you do that by the control number?

9 A Yes, sir.

10 Q That form does not have a control number, does it?

11 A No, sir. Wait a minute. Let's see. No, sir, it  
12 doesn't.

13 Q And the control number is the identifier for the  
14 evidence coming in---

15 A Uh-huh. (Affirmative).

16 Q ---is that correct?

17 Thank you. No further questions.

18 MS. WHITE: Just one briefly, Your Honor.

19 THE COURT: Yes, ma'am.

20 RE-CROSS EXAMINATION

21 BY MS. WHITE:

22 Q When you received the B.E.S.T. bags or the evidence  
23 that you're talking about with these forms, is there any  
24 identification on the actual bag or the evidence itself from  
25 the officer?

Jane Millwood - Recross examination  
By Ms. White

1 A Okay. The actual B.E.S.T. Bag is inside -- the  
2 B.E.S.T. Bag is inside of a manila like envelope that has  
3 the control number on both of them.

4 Q Okay. And do the officers initial anything on the  
5 B.E.S.T. bags on the forms, I mean, excuse me, on the, the  
6 manila envelopes or do you recall that or---

7 A No, I'm gonna have to say I can't remember.

8 Q Okay. All right. Thank you, Mrs. Millwood.

9 MR. WILKES: No further questions.

10 THE COURT: You may step down, ma'am.

11 Applicant may call its next witness.

12 MR. WILKES: Thank you, Your Honor.

13 MS. WHITE: Your Honor, does Mrs. Millwood need to go  
14 back outside now at this point or---

15 THE COURT: It was your motion.

16 Do you wish for her to be sequestered outside?

17 MR. WILKES: It would -- well, we've got one --

18 Mr. Rosenberg's outside. So, I guess it would be more  
19 appropriate.

20 THE COURT: Well, I can instruct her not to discuss her  
21 testimony.

22 MR. WILKES: Well, that would be fine.

23 THE COURT: Ma'am, if you'll step outside. Do not  
24 discuss your testimony with anyone while you're outside.

25 Thank you very much.



Bobby Gibson - Direct examination  
By Mr. Wilkes

1 Applicant's No. 5.

2 Do you recognize those as being the search warrants  
3 introduced from your trial?

4 A One minute please.

5 (Pause.)

6 A I do.

7 Q Now, are there -- tell me, tell me, are there unsigned  
8 warrants in there?

9 A Yes, sir.

10 Q Okay. Tell me, where did those unsigned search  
11 warrants come from?

12 A After I got locked up in September, September the  
13 30<sup>th</sup>, '04, and I, I stayed in jail for like a month and a  
14 half. I got out around the first of October on bond. Once  
15 I got to the house I noticed one of the search warrants for  
16 the house was on the dresser, and I asked my mom where did  
17 those documents come from, and she actually told me that  
18 those were the documents that they left with my sister when  
19 they come out to the house to serve the warrant.

20 Q All right. And there was a second place searched as  
21 well?

22 A Yes, sir.

23 Q And you have an unsigned search warrant from that place  
24 also?

25 A I do.

Bobby Gibson - Direct examination  
By Mr. Wilkes

1 Q Now, these were both Court Exhibits at the trial,  
2 correct?

3 A Yes, sir.

4 Q Okay. Now, did you ever see a signed copy of the  
5 search warrant before the trial or before your attorney  
6 showed you one?

7 A No, sir, not until after my attorney showed me one.

8 MR. WILKES: Your Honor, we'd ask that that be  
9 introduced into evidence.

10 THE COURT: Any objection?

11 MS. WHITE: No objections, Your Honor.

12 THE COURT: Without objection it will be introduced as  
13 marked.

14 (Whereupon, Applicant's Exhibit No. 5 was received into  
15 evidence at this time.)

16 Q Now, Mr. Gibson, will you tell me the, the events  
17 leading up to the police approaching you at your mother's  
18 house on Howard Street?

19 A Well, me and a, a worker of mine, we were actually  
20 sitting in the truck in the backyard of my mom's house when  
21 two Spartanburg County sheriff officers actually pulled in  
22 the driveway. There were no sirens on or nothing. So, I  
23 actually got out of the truck from the driver's side to  
24 approach the officers and when they got out of the car they  
25 approached me, and I asked them what was the problem.

Bobby Gibson - Direct examination  
By Mr. Wilkes

1           It was Officer Bryan Duncan told me at that time that I  
2 couldn't be the driving -- the law in South Carolina was you  
3 had to have a driver's license to drive in the State of  
4 South Carolina. I replied to him that I'm sitting in my  
5 mom's yard, what is you talking about, and he pretty much  
6 just said well, you heard what I said. You're under arrest  
7 and at, at that time I was asked to spread my legs, take  
8 out, take off my cell phone, my wrecker service phone, and  
9 everything out my pockets.

10           He proceed to search me and at that point in time,  
11 after he searched me, he, he handcuffed me. Excuse me.  
12 After he handcuffed me he put me in the back of his patrol  
13 car, which was the second vehicle in the driveway. At that  
14 time he went back and the officer in the first car, the  
15 employee of mine, was still sitting in the truck. The other  
16 officer, which was Caldwell, he proceeded to step over to  
17 the truck.

18           I, I couldn't really tell from where I was sitting in  
19 the patrol car as to what was taking place. But it was  
20 probably about ten minutes later a third officer pulled up  
21 on Howard Street and he had his blue lights on. He actually  
22 blocked the driveway off and he got out and he come back and  
23 all three of them sort of like huddled up in a conversation,  
24 which I'll say took about around ten more minutes. And at  
25 that time Officer Duncan come to the car, the car which I

Bobby Gibson - Direct examination  
By Mr. Wilkes

1 was sitting in the back seat of, and told me that I was  
2 under arrest for possession of crack cocaine.

3 Q All right. Now, let me ask you this. Did -- is it  
4 your understanding that all of this at one time would of  
5 been on videotape?

6 A Yes, sir, it was my understanding after reading his  
7 incident report.

8 Q Uh-huh. (Affirmative).

9 A Because on his incident report he stated that it was  
10 audio/video available.

11 Q Okay. And over the course of time did you make  
12 numerous attempts to obtain, to obtain the video?

13 A Yes, sir, after being convicted, and once I was  
14 confined to Perry Correctional Institution, I, within like  
15 the first two weeks, I wrote Spartanburg County Sheriff's  
16 office in reference to the tape, and I was actually told  
17 that it was, it was being sought for, but at that time they  
18 couldn't give it to me because they didn't have it.

19 (Whereupon, the documents were marked as Applicant's  
20 Exhibit No. 6 for identification purposes only at this  
21 time.)

22 Q If you'll take a look at what's marked as Appellate's  
23 No. 6.

24 Would those be the responses you received relevant to  
25 the videotapes?

Bobby Gibson - Direct examination  
By Mr. Wilkes

1 A Yes, sir.

2 Q And, to your knowledge, you believed that they existed  
3 at one time?

4 A Yes, sir, due to the fact of him actually writing it on  
5 the incident report. It was only until reading case law  
6 that had come out in Rock Hill probably about, around 2006,  
7 and it actually stated that upon activation of the blue  
8 lights that the audio/video would automatically come on.  
9 Well, as I said earlier, when Officer Duncan and Caldwell  
10 pulled up in the yard, neither one had their blue lights on.  
11 So, I knew then that it wasn't a tape.

12 So, I actually asked my attorney, which is my appellate  
13 attorney at the present time was Mrs. Katherine Links, to go  
14 ahead and ask for a chain of custody on the two tapes being  
15 Officer Duncan testified that both of them blue lighted me  
16 on Howard Street. So, that would of been two tapes. So --.

17 Q All right. So, you did that to show that there was no  
18 tape?

19 A Yes, sir.

20 Q And let me ask you this. Tell, tell me about you're in  
21 Court in the middle of a trial.

22 Will you explain the circumstances of a juror or jury  
23 members seeing you in a jumpsuit?

24 A It was on the second day of trial. I come up from back  
25 from the basement of the county jail. They brought me up.

Bobby Gibson - Direct examination  
By Mr. Wilkes

1 And as we were approaching the jury room, and when we went  
2 to pass by, I had actually three males on my jury. Two  
3 white males and one black. And it just so happened one of  
4 the black, the black male and one of the white males were  
5 actually standing out when I come by in my orange jumpsuit  
6 with my shackles on.

7 Q Okay. No question they saw you?

8 A No, no doubt they saw me.

9 Q And did you make an objection?

10 Did your attorney make an objection to that during the  
11 trial?

12 A No, sir.

13 Q Okay. Did you make him aware that the jury had seen  
14 you in---

15 A Yes, sir.

16 Q ---prison -- were you also in shackles at the time?

17 A When I made him aware of it?

18 Q No, no, no, no.

19 A Oh.

20 Q Were you wearing handcuffs or anything at all other  
21 than the prison jumpsuit when you were observed by the jury?

22 A That's -- yeah, that's what I was wearing.

23 Q I---

24 A Prison jumpsuit.

25 Q ---may of missed that, but I was asking were you

Bobby Gibson - Direct examination  
By Mr. Wilkes

1 handcuffed?

2 A Yes, sir.

3 Q Okay. That's, that's what I was asking you.

4 Were you or anyone ever served with a signed copy of  
5 the search warrants or the returns?

6 I'm not talking about your attorney in discovery or the  
7 trial. I'm talking about after the search.

8 Were you or anybody ever served with a signed copy of  
9 the search warrant and a signed copy of the return?

10 A No, sir.

11 Q That's all I have of Mr. Gibson. The attorney general  
12 has some questions.

13 MS. WHITE: Thank you.

14 THE COURT: Ms. White, you may cross-examine.

15 MS. WHITE: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. WHITE:

18 Q Mr. Gibson, just a couple of things I wanted to go over  
19 with you.

20 You said that you talked about the search warrants and  
21 that they were not signed at the time?

22 A Yes, ma'am.

23 Q Now, y'all went over that pretty extensively at jury  
24 trial, didn't you?

25 A Yes, ma'am, on the second day my, Mr. Boggs moved for a

Bobby Gibson - Cross-examination  
By Ms. White

1 motion to squash I believe it was.

2 Q Okay. He made a motion to suppress evidence initially  
3 on the illegal, he claimed an illegal stop, is that right?

4 A Well, not on the stop itself, but just on the scope of  
5 the search of the stop.

6 Q Okay. But they went beyond the scope?

7 A Yes, ma'am.

8 Q Okay. And then he also made a motion, as you said, to  
9 quash the, the warrants saying that since the basis was this  
10 stop, that, that all the evidence that was found as a result  
11 should be suppressed, is that right?

12 A Yes, ma'am, but he did that at the -- not in the  
13 suppression hearing. He did it -- he made, made a motion to  
14 squash on the second day of trial.

15 Q Okay. And, in fact, he made the motion to suppress the  
16 evidence pretrial, y'all had a hearing on that, correct,  
17 where he interviewed and I think Mr. Duncan testified at the  
18 pretrial hearing?

19 A Yeah, all that was in reference to the, the one rock.  
20 Not the warrants of what was obtained from the search at the  
21 house or the building.

22 Q Okay. But if the transcript reflects that it was about  
23 the subsequent warrants at the time, would you disagree with  
24 that?

25 could it be maybe---

Bobby Gibson - Cross-examination  
By Ms. White

- 1 A During, during the suppression---
- 2 Q ---that was part of the argument and you just missed
- 3 that part of the argument or---
- 4 A What, during the suppression hearing?
- 5 Q During the suppression hearing, yes, sir.
- 6 A Yes, I would dispute that as far as him moving to
- 7 squash the warrants during the suppression hearing.
- 8 Q Okay.
- 9 A That was the pretrial motion before we actually went
- 10 before the jury.
- 11 Q Okay. So, I was just trying to, to clarify that the
- 12 issues of the warrants and the stop were pretty well argued
- 13 at your trial, isn't that right?
- 14 A Well, they were argued. But at the same time the
- 15 warrants were only argued after the evidence had been
- 16 entered, right.
- 17 Q Okay. Now, in regards to the videos that you've
- 18 requested, the letters that we have into evidence, those are
- 19 letters that you sent after your trial, is that right---
- 20 A Yes, ma'am.
- 21 Q ---in response to that?
- 22 A Yes, ma'am.
- 23 Q Okay. And were videos or audio used against you in
- 24 your trial?
- 25 A No, ma'am, they wasn't.

Bobby Gibson - Cross-examination  
By Ms. White

1 Q Okay. All right. Now, you talked about there being  
2 tapes on the copy of the incident report.

3 A Yes, ma'am.

4 Q Is that something that's in the, the State's -- is that  
5 in the evidence that your attorney put in?

6 A Could you repeat the question please?

7 Q The copy of the incident report that, that you  
8 testified has a mention of there being audio and video.

9 Do you have that to present to the Court today?

10 A Yes, I don't know if my attorney has it, but I have a  
11 copy of it, yes, ma'am.

12 Q Okay. All right. And you testified that you made your  
13 attorney aware of the jury seeing you in your shackles and  
14 your jumpsuit, is that right?

15 A Yes, ma'am.

16 Q And you told Mr. Boggs about that?

17 A Yes, ma'am.

18 Q And did he -- he didn't make a response to you or  
19 didn't --?

20 A Pretty much didn't make a---

21 Q Okay.

22 A ---go into a response to it.

23 Q Okay. All right. And do you recall Mr. Boggs making  
24 several motions, in addition to directed verdict motions,  
25 based on trying to get some of the evidence out at the end

Bobby Gibson - Cross-examination  
By Ms. White

1 of the State's case?

2 A Well, I -- if I recall correctly he moved for a direct  
3 verdict after the State case on the evidence found behind  
4 the house --

5 Q Right.

6 A -- I believe due to the simple---

7 Q Okay.

8 A ---fact it was some to do with the, them not actually  
9 presenting documents to show or state that it was actually  
10 on the property.

11 MS. WHITE: Okay. All right. That's all the questions  
12 I have at this time, Your Honor.

13 THE COURT: Redirect?

14 MR. WILKES: Nothing, Your Honor.

15 THE COURT: You may step down, sir.

16 Applicant may call its next witness.

17 MR. WILKES: That would be the Applicant's case, Your  
18 Honor.

19 THE COURT: All right. We're gonna take a short break,  
20 about ten, ten minutes or so. The Court will be in recess  
21 for that length of time.

22 MS. WHITE: Thank you, Your Honor.

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

24 THE COURT: All right. All right. The State may call  
25 its first witness.

Tam Boggs - Direct examination  
By Ms. White

1 MS. WHITE: Your Honor, we call Tam Boggs to the stand.

2 THE COURT: Sir, come forward to my left to be sworn.

3 TAM BOGGS, having been first duly  
4 sworn, testified as follows:

5 THE COURT: Have a seat please. Once you're seated  
6 state your name.

7 WITNESS: Tam Boggs.

8 THE COURT: Your witness.

9 MS. WHITE: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. WHITE:

12 Q Mr. Boggs, were you appointed or retained in the case?

13 A Retained.

14 Q And do you recall how far in advance of the trial, I  
15 believe this was in April of '05, that you were retained?

16 A Probably not too long after the arrest cause I, I  
17 worked with Bobby before on some matters.

18 Q Okay. So, you felt like you had a sufficient amount of  
19 time to prepare for the trial or---

20 A Yes.

21 Q Okay. Now, when you first met with Mr. Gibson, I  
22 guess, and began investigating or maybe I should stop.

23 What did you do once you first met with Mr. Gibson in  
24 regards to the case?

25 A I pretty much go over his side of the story of what

Tam Boggs - Direct examination  
By Ms. White

1 happened, compiled notice of representation, filed Brady  
2 motions, Rule 5 motions, waited till the discovery package  
3 comes in, and then Bobby and I would sit down and take what  
4 his story was, what the police's story was, put them  
5 together and see where the holes were.

6 Q Okay. And, so, you had a chance to review the  
7 discovery with the applicant?

8 A Yes.

9 Q Does that include the information about the search  
10 warrants that we've talked a little bit about today?

11 A I would of, I would of had copies of whatever they  
12 would of had.

13 Q Okay. And do you recall, just to kind of go ahead and  
14 talk about that issue to, he's raised the issue of the fact  
15 that there were some unsigned search warrants that were left  
16 at his home after the search.

17 Do you recall that?

18 A Yes.

19 Q Okay.

20 A And everything that I'm working from is from memory at  
21 this point.

22 Q Sure.

23 A My file, unfortunately, got destroyed when I moved my  
24 office, but, yes.

25 Q Okay.

Tam Boggs - Direct examination  
By Ms. White

1 A That was an issue.

2 Q And have you had a chance to review the transcript in  
3 the case a little bit?

4 A Briefly a couple months ago.

5 Q Okay. Do you recall -- did you make any motions in the  
6 case involving the search warrants or any other issues that  
7 you saw?

8 A Well, I think the search warrant was probably an add-on  
9 to the main motion, which was to -- well, we contested --  
10 his, his whole case, in my opinion, centered around  
11 contesting the detention and search after the purpose of the  
12 initial stop if there ever was a stop was completed.

13 Q Okay. So, did he -- he told you his version of what  
14 had happened?

15 A Right.

16 Q And did that conflict with the, the version from the  
17 police?

18 A Only to the point that I don't think they probably saw  
19 Bobby driving immediately before him going to his mother's.  
20 I think they possibly could of seen him driving earlier.  
21 The way they made it sound it's like they followed him into  
22 his mother's driveway.

23 Q Okay.

24 A And I always had questions about that, but --.

25 Q All right. And what sort of preparation did you do for

Tam Boggs - Direct examination  
By Ms. White

1 this case in addition to meeting with him and reviewing  
2 discovery?

3 A Primarily that was it because there were -- the only  
4 witnesses that we could of used could of been, that would of  
5 had nothing to do with the principal issue, which was the  
6 search, because the police basically admitted that they were  
7 searching. They came up with some cock and bull story as to  
8 why they had reasonable suspicions. But -- so, it's  
9 primarily Bobby and me putting our heads together on it and  
10 doing research as far as the case law, trying to put this  
11 case into the State v. Williams framework and that type of  
12 thing.

13 Q And just to give a little background, how long have you  
14 been practicing law here in South Carolina?

15 A Thirty-four years.

16 Q And do you handle primarily criminal cases or a  
17 combination?

18 A The majority was criminal. The rest was made up of  
19 Family Court.

20 Q Okay. And in regards to drug cases, do you handle a  
21 good many of those or---

22 A That was a substantial portion of the probably 60,  
23 65 percent that I did criminal.

24 Q How do you prepare for drug cases?

25 You said -- you testified something just recently about

Tam Boggs - Direct examination  
By Ms. White

1 State v. Williams.

2 Is that something that you work on case law or---

3 A Oh, yeah, yeah, try to keep up with what, particularly  
4 on search and seizure questions, whether it be a house or a  
5 car stop or whatever.

6 Q Okay. And do you recall your, the motion to suppress,  
7 the pretrial motion in this?

8 A Vaguely, yeah.

9 Q Okay. And do you recall asking -- I guess you  
10 cross-examined the, the officer, Mr. Duncan, Officer Duncan  
11 that originally stopped him?

12 A Yes.

13 Q Okay. Ultimately you argued that issue and, and the  
14 judge found on your behalf?

15 A No, it was Judge Early.

16 Q Okay. So, I assume that that means---

17 A That's a no.

18 Q ---that was a no on---

19 A Yeah.

20 Q Okay. And in that motion you were attempting -- you  
21 said it was a motion or the record reflects that it was a  
22 motion to suppress the evidence.

23 Had you ever talked with Bobby about what would happen  
24 if you lost that motion?

25 I mean were, were you always going to trial in this?

Tam Boggs - Direct examination  
By Ms. White

1 A Well, I think we had to go to trial because, in my  
2 opinion, his strongest way of winning the case was to win  
3 the suppression.

4 Q Okay.

5 A And if we had lost the suppression and he had pled he  
6 would of forfeited his right to appeal that, that issue---

7 Q Okay.

8 A ---without some protection from the Court on it. It's  
9 not like Federal Court. The, the -- yes, I -- we were, we  
10 were planning to go to trial the whole time. I think the  
11 best offer they made to Bobby was 18 years. He wasn't  
12 interested in that.

13 Q Okay.

14 A Of course, I couldn't make any kind of guarantee, but I  
15 thought he had a legitimate argument on the, the detention  
16 issue.

17 Q And, so, in regards to strategy, you probably, you  
18 pretty much just testified to that one, but could you  
19 articulate for me your, the strategy particularly for this  
20 case?

21 A Well, it was to certainly move to suppress the  
22 evidence, and I'm not -- I might of done it in a motion in  
23 limine. It should of been a motion to suppress. But that  
24 was the substance. But try to lay at least enough into the  
25 record that would give him an appealable issue in the event

Tam Boggs - Direct examination  
By Ms. White

1 we didn't win the suppression at the trial level.

2 Q And do you know if this was an issue on appeal?

3 A I do not.

4 Q Okay.

5 A I would, I would hope so.

6 Q Okay. In regards to the issue of him being seen in his  
7 prison jumpsuit and shackles, were you aware, at the time,  
8 that he had been seen in the prison jumpsuit and shackles  
9 during the course of the trial?

10 A I don't have a specific recollection. However,  
11 Bobby's, Bobby's pretty sharp, and if he says it, that  
12 happened, then he told me about it at trial, then, yes, I  
13 don't have any question about it, about it happened.

14 Q Okay. And---

15 A In other words, I don't think this is something he  
16 would make up.

17 Q Sure.

18 In regards to making a motion, I believe he alleged  
19 that you should of made a motion for a mistrial.

20 would -- is that something that you would normally do  
21 in a situation like that?

22 A I think it should of been brought to the Court's  
23 attention in some fashion, and if, if he said it to me then  
24 I probably should of done something. I don't think we'd of  
25 been successful, but he, but it should of at least been on

Tam Boggs - Direct examination  
By Ms. White

1 the record.

2 Q Okay. And do you normally, if something like that is  
3 brought to your attention in your practice, is that a normal  
4 practice to bring that to the Court's attention?

5 A I think the only time that we've actually addressed it  
6 was in a death penalty case and that Court determined it was  
7 a harmless situation.

8 Q In your experience and knowledge, why, why -- you just  
9 said that you don't think it would of been successful.

10 what, what is that reason?

11 A It was during the trial. It was just a, a glance and,  
12 again, just a forum we were in.

13 Q Right.

14 Okay. And this is a pretty -- this was a multiple  
15 day -- was this a multiple day trial?

16 A I think it was two.

17 Q Okay. And during that, do you recall you, you went  
18 through and cross-examined the majority of the witnesses?

19 A Yes.

20 Q And most of those witnesses from the State were  
21 officers to your recollection---

22 A Right.

23 Q ---or---

24 A Right.

25 Q Okay. And, in fact, that was -- the basis was just the

Tam Boggs - Direct examination  
By Ms. White

1 officers of the State's case and the introduction of  
2 evidence, is that right?

3 A Right.

4 Q Okay. Do you recall making a motion, a later motion to  
5 quash the search warrants later on in the trial as well?

6 A At some point we had, we had addressed that, yeah. I  
7 don't remember if it was at the close of the case or during  
8 the---

9 Q Okay.

10 A ---during the actual trial. I'm not sure.

11 Q And ultimately -- obviously that was denied as well?

12 A Right.

13 Q And you also made a directed verdict motion---

14 A Right.

15 Q ---for one of that, which was denied as well, is that  
16 right?

17 A Correct.

18 Q Okay. I think that's all the questions I have at this  
19 time.

20 Oh, the -- just let us go back to the unsigned search  
21 warrant---

22 A Right.

23 Q ---that we raised.

24 Was that an issue that was brought to your attention  
25 during the trial or pretrial?

Tam Boggs - Direct examination  
By Ms. White

1 Do you recall that?

2 A I would of been aware of that before trial and it's  
3 something that Bobby and I would of discussed.

4 Q Okay.

5 A I think probably what I mean just mysteriously appeared  
6 was the signed copies cause I think they had, if I can  
7 remember correctly, they actually had signed ones at the  
8 trial itself, and I, I don't remember the ruling. But I  
9 would assume that it would of been the old ministerial error  
10 or something like that.

11 Q And I believe the record does reflect that that was an  
12 argument made and that was also the, the subsequent  
13 argument---

14 A The ruling?

15 Q ---that it was a ministerial error?

16 A Okay.

17 MS. WHITE: Okay. That's all the questions I have at  
18 this time, Your Honor.

19 THE COURT: Your witness.

20 MR. WILKES: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. WILKES:

23 Q Mr. Boggs, you're, you're aware that the Court of  
24 Appeals, in ruling on the issues under 150 and 140, the  
25 search warrant statutes, that they held that the issues were

Tam Boggs - Cross-examination  
By Mr. Wilkes

1 not preserved?

2 A No, I'm not aware of that.

3 Q Okay. If, if they did, let me ask you this, would  
4 there be -- do you recall any reason not to maintain the  
5 objections throughout the trial?

6 A Nope.

7 Q Okay. Now, did you---

8 A Oh, you said the Court of Appeals didn't even address  
9 that issue because they weren't preserved?

10 Q I said that. Yeah, that's the basis of my question.

11 A Okay.

12 Q That, that was not part of your strategy obviously to,  
13 to waive any---

14 A Well, no, but anytime you've got an unsigned search  
15 warrant, it's certainly something to---

16 Q Okay.

17 A ---to be addressed, yeah.

18 Q Right.

19 Did you, at anytime, have the opportunity to view,  
20 before the trial anyway, the actual evidence?

21 A Did I have the opportunity to?

22 Q Well---

23 A Or did I?

24 Q Did you?

25 A Other than what was delivered in discovery I don't

Tam Boggs - Cross-examination  
By Mr. Wilkes

1 know.

2 Q Okay. You -- were you here earlier through the  
3 testimony of Millwood or anybody?

4 A No.

5 Q Okay.

6 A I came in at the end of Millwood's.

7 Q Okay. You would not then, pretrial as far as you can  
8 tell me, you would not have viewed the original  
9 documentation with the evidence, the drugs?

10 A Like the chain, chain---

11 Q The chain.

12 A ---documents, that's correct. I would not have seen  
13 them then.

14 Q Okay.

15 A I would of dealt just strictly off my copies---

16 Q Copies.

17 A ---and not photocopies.

18 Q You were not aware then that the chain documents were  
19 nothing more than photocopies?

20 A No.

21 Q Okay.

22 MS. WHITE: Your Honor, I'm gonna object because the  
23 forms itself I don't believe has been established that the  
24 entire form is a photocopy.

25 MR. WILKES: That's, that's true. I'm sorry. Let me

Tam Boggs - Cross-examination  
By Mr. Wilkes

1 restate that. I apologize.

2 Q The -- you were not aware that the signatures on those  
3 forms had been placed on the forms well in advance of  
4 receiving the evidence?

5 A That is correct. I was not aware of that.

6 Q Okay. Would there have been anything preventing you  
7 from actually viewing the original evidence and the  
8 documents?

9 A No.

10 Q Now, you did raise an issue on the search warrant?  
11 You did make a motion to quash the search warrant?  
12 You remember that?

13 A Yes.

14 Q But you -- do you recall -- you -- it appears that you  
15 did not raise the issue of the sufficiency of the affidavit?  
16 Would I be incorrect in that?

17 A Whatever the transcript says.

18 Q The transcript says---

19 A Yes, I would agree with whatever it is.

20 Q If the transcript indicates that, that you did not  
21 raise an argument on that---

22 A Then I would agree with that.

23 Q ---sufficiency---

24 A Then I would agree with that.

25 Q Okay. Would there have been any reason not to include

Tam Boggs - Cross-examination  
By Mr. Wilkes

1 the sufficiency argument if one existed just as a---

2 A No.

3 Q Okay.

4 A No, there would of been no strategy to not do it.

5 Q Okay. And to your knowledge -- you were aware that the  
6 police reports indicated something about there being the  
7 existence of videotapes from the incident?

8 A And we never, we never got them.

9 Q Couldn't find them?

10 A Never were, never were produced.

11 MR. WILKES: If I can have just one second, Your Honor.

12 THE COURT: Yes, sir.

13 (Pause.)

14 MR. WILKES: Your Honor, at this time I need to ask, so  
15 I don't have to introduce it through the witness, there's,  
16 there's a transcript that I believe is automatically part of  
17 the record in this case, which I can refer to---

18 THE COURT: Yes, sir.

19 MR. WILKES: ---in my argument cause there's no sense  
20 in having him read all the -- okay. And---

21 THE COURT: The transcript is part of the record.

22 MR. WILKES: And I also believe that the appellate  
23 arguments, the briefs and the opinion of the Court of  
24 Appeals, have probably been submitted by the attorney  
25 general in the record.

Tam Boggs - Cross-examination  
By Mr. Wilkes

1 MS. WHITE: I know the opinion is.

2 THE COURT: The opinion has been.

3 MR. WILKES: Okay.

4 THE COURT: I have gotten a copy of the final brief of  
5 the appellate.

6 MR. WILKES: That's, that's the most important from my  
7 standpoint. They may want to---

8 THE COURT: I think I have it from the respondent as  
9 well.

10 MR. WILKES: They may want to give you theirs as well.

11 THE COURT: Well, I, I have copies of those.

12 MR. WILKES: Okay. I think that that will complete the  
13 record that we need to argue. I have arguments on parts  
14 that are in the record that I don't need to go over with---

15 THE COURT: Okay, sir.

16 MR. WILKES: No further questions.

17 THE COURT: Anything on redirect?

18 MS. WHITE: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. WHITE:

21 Q You said that you were aware that videos were  
22 supposedly in existence.

23 Did you ask for the videos?

24 A Well, I know that there was a notation of videos.

25 Q Okay.

Tam Boggs - Redirect examination  
By Ms. White

1 A And it was asked for in my---

2 Q Discovery.

3 A ---discovery motion.

4 Q And did you ever receive a response as to why you  
5 didn't receive any?

6 A I can't recall. I can say my practice would of been  
7 anytime there's a video or an audio, I, I pretty much dog  
8 them until I find out whether they do or don't have one.

9 Q Okay. Now, in regards to the chain of custody, do you  
10 recall whether or not each person in the chain testified at  
11 the trial versus were there any of these forms that can be  
12 used sometimes in place of testimony?

13 A Yeah, the -- I think it was Caldwell who took some  
14 dope. The best I can remember, everyone that would of been  
15 necessary for the chain, because I think in this case they  
16 used their in-house chemist, so everyone, everyone that was  
17 involved in securing it and both at the scene and at the  
18 Sheriff's Office testified.

19 Q And do you recall if you cross-examined or asked a few  
20 questions of each of those folks?

21 A Did I ask?

22 Q Yes, sir.

23 A I'm sure I asked some. But probably people like the  
24 chemist I wouldn't have asked much.

25 Q Okay. And I believe the record does reflect that, that

Tam Boggs - Redirect examination  
By Ms. White

1 you did cross-examine each of those folks.

2 All right. That's all the questions I have, Your  
3 Honor.

4 THE COURT: Anything further?

5 MR. WILKES: One.

6 RE CROSS EXAMINATION

7 BY MR. WILKES:

8 Q At the trial you did not ask for or examine any  
9 original documents coming into evidence, did you?

10 A No.

11 Q Thank you.

12 THE COURT: All right. You may step down, sir.

13 MS. WHITE: The State has no other witnesses, Your  
14 Honor.

15 THE COURT: All right. I'll hear from the applicant.

16 MR. WILKES: Thank you, Your Honor.

17 I would like to incorporate specifically for the  
18 Court's record, there's a page of the transcript and I  
19 believe it's Page 205, Line 16 through 20, that relates to  
20 Mrs. Millwood's testimony. On Page 205 the, the record  
21 indicates where she says well, right now I couldn't. It  
22 would have to be the chain, the paper chain, what we usually  
23 put in the drop box, and that is testimony that is relevant  
24 to our issue because it, it indicates that the State can not  
25 rely on the testimony of Mrs. Millwood personally to

1 identify that documentation or to identify the evidence  
2 because, in fact, she said I can't recall and I am going by  
3 the paperwork.

4 So, to the extent that we show the paperwork is flawed,  
5 then her testimony---

6 THE COURT: Well, now what's she referring to there is  
7 who put the item in the box. That would be paperwork before  
8 she took, took possession of it.

9 MR. WILKES: The, the question -- the line of  
10 questioning -- let me turn to it. I believe the line of  
11 questioning---

12 THE COURT: It says tell me where you got it from. It  
13 says Bryan Duncan. Okay. Put in there. All right. And  
14 put it in the -- well, right now I couldn't. It would have  
15 to be the chain. Okay. The paper chain. She's talking  
16 about the evidence of who put it in the box originally.

17 MR. WILKES: Well, we, we believe that she is  
18 testifying at trial and they're asking her to identify the  
19 things in front of her, which would be the evidence that  
20 they're---

21 THE COURT: Now, again, I'm looking at that transcript,  
22 and they're asking her specifically about who put the  
23 evidence in the box.

24 MR. WILKES: Right.

25 THE COURT: And she's referring to Bryan Duncan, who I

1 assume is one of the arresting officers.

2 MR. WILKES: It, it is. That's correct.

3 THE COURT: And, and, so, she was talking about how she  
4 would be able to say who put that in the box, and she said  
5 she had to refer to the papers.

6 MR. WILKES: Well, we, we believe that that indicates  
7 that she can not identify, at that trial, that she could not  
8 identify that particular piece of evidence without that  
9 chain paperwork. I believe that that---

10 THE COURT: Well, the part that you've brought into  
11 question is the paperwork that had to do with when---

12 MR. WILKES: Correct.

13 THE COURT: ---she took possession of it---

14 MR. WILKES: Yes, sir.

15 THE COURT: ---and her statements concerning it.

16 MR. WILKES: Yes, sir, that's correct.

17 THE COURT: All right. I understand what you're  
18 saying.

19 MR. WILKES: Okay.

20 THE COURT: But I'm not following the argument.  
21 Go ahead.

22 MR. WILKES: I understand.

23 Now, on the chain paperwork, Your Honor, just from a  
24 legal standpoint, our position is that Rule 6 is clear.

25 Rule 6 has a form that's specific and in Section B of Rule 6

1 it says certified or sworn statement, and the certified or  
2 sworn statement means that it's certified and sworn by each  
3 successive person having it, and it has to be done  
4 contemporaneously if you look at the notarization statutes.

5 THE COURT: But isn't, isn't the certification process  
6 in Rule 6 intended to allow introduction of that evidence  
7 without requiring the chain witnesses to be present?

8 MR. WILKES: That is true. But it---

9 THE COURT: And in this case the chain witnesses were  
10 present.

11 MR. WILKES: That is true. But if they can not  
12 specifically identify the piece of evidence and rely on the  
13 chain documentations, then if the chain documentation is  
14 invalid, then their testimony is invalid because they're  
15 relying on the invalid documentation. If they want to get  
16 around by saying---

17 THE COURT: No, no, they don't---

18 MR. WILKES: ---they brought her in---

19 THE COURT: ---want to do anything. I just want to be  
20 specific---

21 MR. WILKES: Yes, sir.

22 THE COURT: ---as to what you're talking about.

23 MR. WILKES: Yes, sir.

24 THE COURT: Officer Duncan would not have signed a  
25 sworn statement in front of anyone. He would of just signed

1 on it that he took possession of it, dropped it in the box.

2 MR. WILKES: That's correct.

3 THE COURT: So, there was no sworn statement up to that  
4 point in time in the chain when he dropped it in the box.

5 MR. WILKES: There, there may of been. I think each  
6 one of them may have had a notary's place.

7 THE COURT: But you're not questioning---

8 MR WILKES: They do---

9 THE COURT: You're not questioning that.

10 MR. WILKES: I can't question his.

11 THE COURT: Okay. So---

12 MR. WILKES: But it's in-between there and getting to  
13 the lab that we have a document that is essentially a  
14 photocopied document that has, has that---

15 THE COURT: But, again, in Rule 6 when they refer to  
16 the certification that you're talking about, that's by the  
17 custodian of the evidence who that allows that evidence to  
18 come in without personal testimony if it is---

19 MR. WILKES: That, that's true.

20 THE COURT: ---a sworn certification.

21 MR. WILKES: That is true. But what we have now and,  
22 and they get around it if the witness comes and says I  
23 remember this particular document, I remember this piece of  
24 evidence right here, I don't need these documents. But what  
25 happens is, and I think Mrs. Millwood's testimony today is,

1 as well as what's in the record, is an indication that she  
2 can not remember each individual bag or piece of evidence  
3 that comes through, and what she has to rely on and what she  
4 said at trial and supported by what she says today is that  
5 she has to rely on the chain of all of these cases that she  
6 testifies to and of all of the people testified to. They  
7 have to testify just based on the documentation. If the  
8 documentation is complete and accurate, then that is their  
9 recollection. But when the documentation is flawed and  
10 unreliable, then the -- there's a, there's not a sufficient  
11 chain.

12 THE COURT: Is there a case that says that?

13 MR. WILKES: There is not a case on point on it.

14 THE COURT: Go ahead.

15 MR. WILKES: This is the case on point.

16 THE COURT: May be.

17 MR. WILKES: But the, but the point is, is, as she's  
18 testified to, and one of the reasons for introducing the  
19 large amount of, of, of documents for a pretty short period  
20 of time that I did, is so she could say and identify that  
21 there are a lot of documents, she can't remember all of  
22 those items that she does. They get processed continuously.  
23 So, the chain of custody is critical.

24 THE COURT: But now, now -- I just -- I didn't read it  
25 word-for-word, but I've been up here kind of reading through

1 this, this transcript, and I don't see anywhere where she  
2 indicated that what she filled out about the defendant, the  
3 information she would of filled out because the way I  
4 understood these forms were that there was a signature, a  
5 notary on it, nothing else was filled in until they got the  
6 evidence, and then they would fill it in. I'm not saying  
7 that's the proper procedure.

8 MR. WILKES: Right.

9 THE COURT: In fact, I think it's the improper  
10 procedure.

11 MR. WILKES: Right. Right.

12 THE COURT: But there was -- I didn't see anywhere in  
13 here where she said that's not my information that I filled  
14 in, that's not the document, stuff that I took, that I  
15 received in this case. I never heard or I'm not even sure,  
16 unsure. The only thing she pointed out the one place where  
17 she said she wasn't sure, but that was as to who put it in  
18 the box.

19 MR. WILKES: Right.

20 THE COURT: She wasn't present when they put it in the  
21 box. She would have to rely on whatever's on that paper  
22 that says that.

23 MR. WILKES: Right. But the chain remains critical and  
24 that's what she's recalling from. It's not from---

25 THE COURT: Well, again, was there any testimony that

1 says she doesn't, she wouldn't, she wouldn't have taken it  
2 from the box, she wouldn't have processed it, and put it in  
3 the locker?

4 MR. WILKES: No, but the---

5 THE COURT: Okay. That's what, that's what I'm trying  
6 to get to. There's no testimony---

7 MR. WILKES: I understand.

8 THE COURT: There's no testimony in this case that  
9 indicates that she didn't do what she would of normally done  
10 had the certification been correct.

11 MR. WILKES: That is the inference that comes from the  
12 volume of documents and the---

13 THE COURT: I'm trying to get to what prejudice---

14 MR. WILKES: I understand exactly---

15 THE COURT: ---what prejudice, what prejudice in this  
16 process would it have to your client concerning this  
17 evidence other than the fact that I agree that that's not  
18 the proper way to notarize a document.

19 MR. WILKES: I understand it. The answer is it comes  
20 from the reliability of those documents to start with.

21 THE COURT: But they didn't rely on the documents to  
22 introduce them. They used testimony.

23 MR. WILKES: She relied on the documentation.

24 THE COURT: For one thing and that was not what we're  
25 talking about.

1 MR. WILKES: But---

2 THE COURT: Okay. You and I have a difference.  
3 Go ahead.

4 MR. WILKES: I understand. The documentation indicates  
5 that they're using photocopied forms. They're filling in  
6 portions of it, but they're using photocopied forms, they're  
7 processing a large number of these forms, and all of those  
8 forms are merely duplicates of the other. They're using  
9 each other's forms on days that the other is not there,  
10 which---

11 THE COURT: No, that's not, not what they testified to.  
12 Now, let me, let me -- what I remember the testimony to be  
13 was they each signed their own forms, the other party  
14 notarized it, and they put their, the ones they signed as  
15 the custodian in their possession, and they took it out and  
16 used the form that they had signed, improperly notarized,  
17 when they checked stuff in. They didn't use each other's  
18 forms. That's not the way I understood the testimony.

19 MR. WILKES: That's -- I didn't mean to say it that  
20 way.

21 THE COURT: Well, that's what you, that's what you  
22 said.

23 MR. WILKES: They used the form with the other  
24 signature, their signature.

25 THE COURT: As notary.

1 MR. WILKES: They pulled one out of the stack and---

2 THE COURT: As notary.

3 MR. WILKES: And they used this document that has  
4 neither been signed contemporaneously nor sworn to.

5 THE COURT: Not disagreeing with that.

6 MR. WILKES: Okay. That, under Rule 6, is improper.  
7 It doesn't meet the criteria for Rule 6, and Rule 6 would  
8 apply in this case.

9 THE COURT: For the, for the certification to be used  
10 in place of live testimony.

11 MR. WILKES: If the live testimony---

12 THE COURT: Let me get Rule 6 up.

13 MR. WILKES: That's if live testimony were not -- if,  
14 if live testimony were not to rely on the chain, then that,  
15 that may be true, but she's---

16 THE COURT: Okay. Well, we're---

17 MR. WILKES: She's testified that she can not recall---

18 THE COURT: I'll look at it from that angle.

19 Go ahead.

20 MR. WILKES: All right. Also, Your Honor, the, the  
21 fact that -- and, and this is another critical point is it  
22 is not, in being a unsworn and unsigned document  
23 contemporaneously, it, it drives at the accuracy and it  
24 drives at the reliability, and the number of forms that are  
25 there that are used and the way they are used, including

1 showing that they used forms for two signatures when one  
2 person was not there, is something that should of been  
3 presented, and it should have been something for the jury to  
4 consider.

5 On the 150 and 140 issue that was raised by Mrs. Link  
6 in the appeal, the Court has the documentation on the  
7 appeal. The issue was, was one of preservation, which those  
8 things do happen. But obviously it was an issue that Mr.  
9 Boggs clearly intended to be preserved all the way through.  
10 It's evident that did not happen. Also we have briefed the  
11 cases, and we believe that if, if the Court will, I can  
12 highlight them, but, but---

13 THE COURT: I'll read over that.

14 MR. WILKES: Very good.

15 Mrs. Link argues well, the 150 issue and the failure to  
16 serve I believe also a signed copy, she covers those issues  
17 well, and to the extent that those are meritorious, then we  
18 believe that it was ineffective not to preserve those for  
19 the Court's review. The Court didn't actually reach them.

20 THE COURT: Well, I, I read the opinion. I agree.

21 MR. WILKES: Now, the other issue that, that was not  
22 raised for the suppression, there was an issue or two raised  
23 on suppression motion. The critical issue on the  
24 suppression motion would be the sufficiency, which I believe  
25 Mr. Boggs said obviously should of been raised if it exists.

1 The affidavit is on Page 208, and there's another affidavit  
2 which appears to be almost, almost identical on Page 213.  
3 They're also with the exhibit that I introduced.

4 THE COURT: 208 of the transcript?

5 MR. WILKES: I believe it's 208 of the, of the record  
6 on appeal, which you may not have.

7 THE COURT: I don't have the record on appeal.

8 MR. WILKES: Okay. Well, they are on the back of the  
9 exhibit if I can pass up the search warrant.

10 THE COURT: Yes, sir, that will be fine.

11 MR. WILKES: Thank you.

12 Your Honor, the, the issue that was not raised that  
13 should have been raised on the search warrant for  
14 suppression purposes we believe would be the sufficiency of  
15 the affidavit itself. The affidavit does not indicate --  
16 they're a couple of things. They're, there's two primary  
17 issues.

18 One, the information is given clearly by what would be  
19 a, either a tipster or a, or an informant. It's an unnamed  
20 person, and then the affidavit, the affidavit fails to  
21 identify how this informant or person would be aware of the  
22 facts---

23 MS. WHITE: Your Honor, I'm gonna object because Mr.  
24 Wilkes appears to be making an argument on, on the facts  
25 that actually were not presented today. I know that Mr.

1 Boggs testified as to what his arguments were before the  
2 Court on the motion to quash the search warrant, and I  
3 believe the record and the transcript reflects what those  
4 arguments are. But it appears to me he's making some  
5 conclusions or arguments that are not, are not or were not  
6 presented and should not be allowed now.

7 MR. WILKES: I -- if I may?

8 THE COURT: Yes, sir.

9 MR. WILKES: I asked him if, if sufficiency of the  
10 affidavit was raised.

11 THE COURT: He, he, he asked those questions of Mr.  
12 Boggs about whether or not, if the issue existed, should it  
13 have been raised.

14 MS. WHITE: Okay.

15 THE COURT: Mr. Boggs agreed it should of been.

16 MS. WHITE: All right.

17 THE COURT: If they existed.

18 Yes, sir.

19 MR. WILKES: Your Honor, in the affidavit, from the  
20 standpoint that the, that the person, which is referred to  
21 as a concerned citizen gives no specific information as to  
22 how they would be reliable, which is required, the general  
23 allegation or, or statement, I'll say, of the, of facts  
24 confirmed by police investigation does not indicate any  
25 facts which were confirmed and the facts, the essential

1 facts to the search warrant are no more than where he lives,  
2 he lives with his mother, and that his driver's license is  
3 under suspension. Other than, than the allegations of, of  
4 there being drug activity.

5 So, from the standpoint of the, the affidavit itself,  
6 it fails the reliability aspect required for the magistrate  
7 to make a decision of probable cause.

8 There's a bigger issue. The big issue is and the most  
9 important issue is the winberg issue because there's no  
10 reference to time for the search warrant. When, when the  
11 affiant puts all this down, there's -- you, you can't tell  
12 when it was that something was observed by the individual  
13 giving information to concerned citizens. There's no  
14 indication of where it was and the lapse of time between  
15 seeing it and getting the search warrant, and that is  
16 critical to the search warrant affidavit under State versus  
17 winberg.

18 The element of time is essential, and it -- I believe,  
19 if I can, I'll quote a part of winberg if I may, it says  
20 since there is no evidence from which a magistrate or this  
21 Court can determine how long ago the evidence was seen, the  
22 affidavit was defective and the evidence should of been  
23 suppressed. This affidavit clearly has no reference to  
24 time, which is the most critical element of a search warrant  
25 affidavit.

1 This issue was not raised and it should of been raised.  
2 And, again, I, I, I think this is also from winberg, but  
3 it's, it's from the Thompson case, but it says an affidavit  
4 which fails all together to state the time and the  
5 occurrence of the facts alleged is insufficient. In going  
6 through the different case law, there's, there's, there's a  
7 lot of case law that stretches out and, and it does an  
8 analysis of the times from observation of something to see  
9 if it's appropriate.

10 Now, there's some things that can be six months later  
11 and the search warrant may be valid, but the majority of the  
12 drug cases deal with 72 hours or very short period of time  
13 because of the nature of the drugs. In this case there is  
14 no time reference adequate to satisfy the constitutional  
15 provisions on the search warrant, either State or Federal.

16 So, the search warrant, we believe the suppression  
17 motion that would of been appropriate and obvious would of  
18 been the vagueness on the reliability, but even more  
19 importantly, the complete absence of an, of a adequate  
20 reference of time to make probable cause. I have a few  
21 other issues, but I don't, I don't want to -- may I go on?

22 THE COURT: Sure.

23 MR. WILKES: Okay.

24 THE COURT: That's what we're here for.

25 MR. WILKES: Your Honor, there is case law on the

1 impact of the jury seeing a defendant in a jumpsuit, in  
2 shackles, or in handcuffs. There, there is U.S. case law,  
3 Supreme Court case law on the inappropriateness of that.  
4 Particularly it, it links heavily on the going to trial, and  
5 it does an analysis on the actual impact on the jury.

6 But we believe, in this case, having a large portion,  
7 more than just a few members of the jury having viewed  
8 Mr. Gibson in a jumpsuit, a motion should have been made or  
9 at least some sort of curative instruction given, which was  
10 not done, which we believe would be error also. And if I've  
11 had the most impact on my search warrant issue, I, I would  
12 give the Court citations of winberg that I'm referring to.

13 THE COURT: Please do.

14 MR. WILKES: But the Winberg cite is State v. Winberg,  
15 273 S.C. 62 and it's cited often on the essentials of the  
16 affidavit from the search warrant, and, and, of course,  
17 State Law is even more constructive I think sometimes more  
18 than the federal law. But obviously this raises a, a, both  
19 federal and a state constitutional issue as well as the  
20 statutory issue for the search warrant.

21 Thank you, Your Honor.

22 THE COURT: Yes, sir, I'll hear from the State.

23 MS. WHITE: Thank you, Your Honor.

24 I'm gonna just address things obviously in the order in  
25 which Mr. Wilkes proceeded with. In regards to the proper

1 chain and the chain of custody, the State's gonna submit  
2 that the testimony of, at trial by each person in the chain  
3 of custody was sufficient. The question of whether or not  
4 the notary was done at a separate time and it was photocopy  
5 we do not believe is, is, you know, fatal to this position.  
6 In fact, we believe it's -- the forms would of been  
7 cumulative, and I think that Mr. Wilkes is, is attempting to  
8 expand Rule 6 because I do not believe that it requires  
9 testimony in addition to reliance on those forms in, in what  
10 it says. I believe that the testimony is used in place of  
11 or the forms are used in place of the testimony, and in that  
12 situation that may be another issue.

13 But in this case every person in the chain testified.  
14 We had testimony from Mrs. Millwood who did testify that she  
15 filled in the forms contemporaneously with receiving the  
16 evidence. We have testimony from her that she received the  
17 evidence, kept it in a locked box, filled in the form, put a  
18 label on the B.E.S.T. Bag, and continued on. She did  
19 testify that she had been an evidence custodian for 13  
20 years, and obviously, as Mr. Wilkes pointed out, they go  
21 through numerous forms.

22 So, you can not require -- she can not be required to,  
23 to, by memory, pull up information, but yet her testimony is  
24 built on her experience and the fact that she has a process  
25 and procedure that she follows regularly, and that is what

1 she did in this case as well.

2 The body of the actual search warrant is still  
3 accurate. Whether or not the notary was properly formed, we  
4 submit that it is still accurate, and, Your Honor, there is  
5 case law, State v. Governor, that says that even if someone  
6 fails to comply with the actual, the handling or the process  
7 of evidence that's proper, that that actually is gonna go to  
8 credibility and not admissible.

9 So, I believe the evidence would, even if this was an  
10 issue of the form being presented in place of testimony,  
11 that, that it still would of gone and that the over seven  
12 hundred and something grams of cocaine that were discovered  
13 would of still gone to the jury, and that could of been an  
14 issue for the jury to look at in regards to credibility. We  
15 do not believe that that's really even applicable though  
16 since we did have full testimony from the entire chain.

17 Additionally, there was no prejudice. The chemist  
18 testified, testified the evidence was entered. There was  
19 proper -- there was no question as to the chain when it came  
20 to the testing of the drugs as well, and it's never any  
21 allegation that the drugs and themselves had been tampered  
22 with or had actually even been switched, anything like that.

23 Your Honor, in regards to the argument about the  
24 unsigned warrants, unfortunately I'm kind of, I feel like,  
25 at a low end, because that, that was something that was just

1 brought up recently. That's nothing that was alleged  
2 actually in the application, and obviously not discussed  
3 very thoroughly in, in any kind of testimony.

4 We do believe and I do believe that the brief from the  
5 respondent, in our situation when we were the respondent in  
6 the actual appeal, sets forth an argument that is sufficient  
7 in this case in regards to the unsigned warrant. The fact  
8 that it is not required for a signed warrant, I do believe  
9 that Mr. Boggs actually, although the, the Court of Appeals  
10 found that he did not sufficiently preserve that argument,  
11 he did go into that as well and it was determined that, that  
12 the unsigned warrant was not, it was not required.

13 THE COURT: Maybe you can answer, maybe you can answer  
14 a question for me.

15 MS. WHITE: Yes, Your Honor.

16 THE COURT: The warrants that were introduced at trial  
17 were signed?

18 MS. WHITE: Yes, Your Honor.

19 THE COURT: So, the ones that were unsigned were copies  
20 that he found at his home after having been in jail for 30  
21 days?

22 MS. WHITE: Yes, Your Honor. To my understanding those  
23 were ones that they had left at the home or, or submitted to  
24 the people at the home I guess to give notice.

25 THE COURT: Okay.

1 MS. WHITE: We really, to be honest, don't know where  
2 they came from.

3 THE COURT: Well, I was just wondering if there was any  
4 real testimony or any evidence in the record that indicated  
5 where they did come from --

6 MS. WHITE: I don't believe---

7 THE COURT: -- other than he found them when he got to  
8 his home after having been in jail.

9 Is that a correct statement?

10 MR. WILKES: I, I believe---

11 THE COURT: I got a little confused because I know the  
12 ones that came in at trial appeared to have been signed.

13 MR. WILKES: I -- they were and this is my  
14 understanding of the record. I believe that it was clear  
15 below that they signed, that, that they served unsigned  
16 warrants, but the big argument became had the magistrate  
17 signed a copy or the original before the service of the  
18 unsigned warrants, which, according to -- I guess the State  
19 introduced the certified copies from the Magistrate's  
20 office. It was time dated before the execution of the  
21 unsigned warrants.

22 So, there's a lot of argument as to whether it could be  
23 nunc pro tunc or if it was really done at that time, but it,  
24 it appears the, the record indicates from the trial that, I  
25 don't know that all the testimony does, but there are

1 certified copies that are signed by the judge, I assume  
2 received from the judge's office, that are timed about 2:40  
3 or so. And the search warrants, whether signed or unsigned,  
4 were actually executed at 5:40, give or take.

5 So, I, I think the evidence may be fairly clear that  
6 they served an unsigned warrant. The battle was over  
7 whether or not one had been signed before they did that as I  
8 understand it.

9 THE COURT: Okay. All right.

10 MS. WHITE: And, Your Honor, I would just submit again  
11 that even if the Court had considered this issue, this was  
12 not gonna be a reversible error and would not have caused  
13 any, any prejudice to the applicant. In regards---

14 THE COURT: You're saying no change in the outcome?

15 MS. WHITE: We don't believe so, Your Honor.

16 THE COURT: Okay. That's your argument.

17 MS. WHITE: Yes, sir.

18 THE COURT: Okay.

19 MS. WHITE: And just finally, in regards to the, the  
20 affidavit, I know Mr. Wilkes, once again, that was not  
21 anything that I was aware of as an argument, so I don't have  
22 a great argument or response to it at this point. But if  
23 you do have further questions I'll be more than happy to  
24 submit a memorandum or a brief on that issue.

25 THE COURT: Well, I'll just -- I'll leave that in your,

1 your decision.

2 MS. WHITE: Okay.

3 THE COURT: If you choose to do so let me know.

4 MS. WHITE: Okay. Thank you, Your Honor.

5 THE COURT: All right. And, of course, let Mr. Wilkes  
6 know.

7 MR. WILKES: She would.

8 THE COURT: All right.

9 MR. WILKES: Of course.

10 THE COURT: Thank you very much.

11 MR. WILKES: Thank you, Your Honor.

12 MS. WHITE: Thank you, Your Honor.

13 THE COURT: I'll take the matter under advisement.

14

15 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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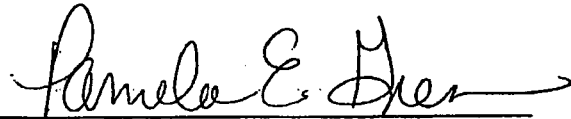
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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 14<sup>th</sup> day of September, 2010.

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

October 30<sup>th</sup>, 2010



PAMELA E. GREEN, Court Reporter





INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED  
**FORM C (RULE 6)**  
CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL  
CUSTODY OR CONTROL  
(Subsequent Change of Custody)

Handwritten initials and date: MFW, 10-1-04

This is to certify that I JANE MILLWOOD am employed by  
(Name) 09-16-2004 0042

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on  
(Name of Agency or Department) (Capacity of Employment)

11-1, 04, I received IN PERSON  
(Date) (Year) (Specify Whether by Mail or in Person)

from drop box of SPTBG CO SHERIFF'S OFFICE  
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

C. Raymond  
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 11-1, 04, I made delivery of the above described  
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of  
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition  
(Law Enforcement Agency)

as when I received it.

Jane W. Millwood  
(Signature)

Place: SPARTANBURG CO S.O.  
Date: 11-1-04

Sworn to me on this 1 day of 11, 04

Robert Rosenberg  
Notary Public for South Carolina

My Commission expires: 12.08.07

(THIS IS MR. GREEN'S)  
( FORM C )

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM C (RULE 6)

CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

(Subsequent Change of Custody)

*J.H.H.*

10-07-2004 *08-0971*

This is to certify that I ROBERT ROSENBERG am employed by  
(Name)

SPARTANBURG COUNTY SHERIFF'S OFFICE as EVIDENCE and that on  
(Name of Agency or Department) (Capacity of Employment)

Aug 13, 2004, I received IN PERSON  
(Date) (Year) (Specify Whether by Mail or in Person)

from DROP BOX of SPARTANBURG COUNTY SHERIFF'S OFFICE  
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by  
Glean  
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

1-BEST BAG

On Aug 13, 2004, I made delivery of the above described  
(Date) (Year)

substance(s) or container(s) to THE DRUG VAULT of  
(Name)

SPARTANBURG COUNTY SHERIFF'S OFFICE in substantially the same condition  
(Law Enforcement Agency)

as when I received it.

Robert Rosenberg  
(Signature)

Place: SPARTANBURG COUNTY

Date: \_\_\_\_\_

Sworn to me on this 13 day of Aug, 2004

Jane W. Millwood  
Notary Public for South Carolina

My Commission expires: 6-27-2013

### FORM C (RULE 6)

#### CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

(Subsequent Change of Custody)

*JMH*

10-07-2004 *10/7/04*

This is to certify that I JANE MILLWOOD am employed by \_\_\_\_\_  
(Name)

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on \_\_\_\_\_  
(Name of Agency or Department) (Capacity of Employment)

8-16, 04, I received IN PERSON  
(Date) (Year) (Specify Whether by Mail or in Person)

from Drop box of SPTBG CO SHERIFF'S OFFICE  
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

J Kelly  
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 8-16, 04, I made delivery of the above described  
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of \_\_\_\_\_  
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition  
(Law Enforcement Agency)

as when I received it.

*Jane Millwood*  
(Signature)

Place: SPTBG CO S.O.  
Date: 8-16-04

Sworn to me on this 16 day of 8, 04.

Robert Rosenberg  
Notary Public for South Carolina  
My Commission expires: 12 08 07

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

**FORM C (RULE 6)**  
**CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL**  
**CUSTODY OR CONTROL**  
(Subsequent Change of Custody)

*(Handwritten)*  
NEW  
10-1-04

11-22-2004 0027

This is to certify that I JANE MILLWOOD am employed by  
(Name)

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on  
(Name of Agency or Department) (Capacity of Employment)

10-1, 04, I received IN PERSON  
(Date) (Year) (Specify Whether by Mail or in Person)

from DROP BOX of SPTBG CO SHERIFF'S OFFICE  
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by  
Brian Duncan:  
(Name of Person making Original Seizure)  
(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 10-1, 04, I made delivery of the above described  
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of  
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition  
(Law Enforcement Agency)

as when I received it.

*(Handwritten Signature)*  
Jane Millwood  
(Signature)

Place: SPTBG CO S.O.  
Date: 10-1-04

Sworn to me on this 1 day of 10, 04

Robert Rosenberg  
Notary Public for South Carolina  
My Commission expires: 12-03-07

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

**FORM C (RULE 6)**  
**CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL**  
(Subsequent Change of Custody)

12-13-2004 0049

*(Handwritten initials and date)*

This is to certify that I JANE MILLWOOD am employed by  
(Name)

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on  
(Name of Agency or Department) (Capacity of Employment)

10-1, 04, I received IN PERSON  
(Date) (Year) (Specify Whether by Mail or in Person)

from DROP BOX of SPTBG CO SHERIFF'S OFFICE  
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

D. Glenn  
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 10-1, 04, I made delivery of the above described  
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of  
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition  
(Law Enforcement Agency)

as when I received it.

*(Handwritten signature of Jane Millwood)*  
(Signature)

Place: SPTBG CO S.O.  
Date: 10-1-04

Sworn to me on this 1 day of 10, 04

Robert Rosenberg  
Notary Public for South Carolina  
My Commission expires: 12 02 07

**FORM C (RULE 6)**  
**CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL**  
**CUSTODY OR CONTROL**  
(Subsequent Change of Custody)

(L)  
11/11/04  
12-13-2004 0053  
12-05-04

This is to certify that I JANE MILLWOOD am employed by  
(Name)

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on  
(Name of Agency or Department) (Capacity of Employment)

10-1, 04, I received IN PERSON  
(Date) (Year) (Specify Whether by Mail or in Person)

from DROP BOX of SPTBG CO SHERIFF'S OFFICE  
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by  
R MISWAIN  
(Name of Person making Original Seizure)  
(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 10-1, 04, I made delivery of the above described  
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of  
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition  
(Law Enforcement Agency)

as when I received it.

Jane W. Millwood  
(Signature)

Place: SPTBG CO S.O.  
Date: 10-1-04

Sworn to me on this 1 day of 10, 04  
Robert Rosenberg  
Notary Public for South Carolina  
My Commission expires: 12 05 07

**RECEIVED**

FEB 12 2015

**S.C. SUPREME COURT**

APPEAL FROM GREENVILLE COUNTY  
COMMON PLEAS COURT  
Mark, J. Hayes, II, Circuit Court Judge

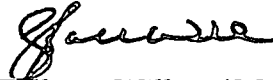
Case No. 08-CP-42-3298

Nathaniel Green, ..... Petitioner,  
v.  
State of South Carolina, ..... Respondent.

CERTIFICATE

I certify that the Supplemental Appendix has been redacted in accordance with the Supreme Court's Interim Order pertaining to the redaction of records.

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)  
114 Whitsett Street  
Greenville, SC 29601  
(864) 282-1292  
(864) 271-6035 (facsimile)  
*Counsel for Petitioner*

