

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Daniel D. Hall, Circuit Court Judge

RECEIVED

JUL 31 2015

S.C. Supreme Court

ANDREW DAVION BURNSIDE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000771

APPENDIX

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1 STATE OF SOUTH CAROLINA) GENERAL SESSION
2 COUNTY OF GREENVILLE) 2011-GS-23-1738, 1739, 1741
3) 2011-GS-23-1733, 1735, 1736
4)

4 State of South Carolina) TRANSCRIPT OF RECORD
5)

5 vs)
6)

6 Andrew Burnside)
7 Dominique Shumate)

8 May 15, 2012
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE C. VICTOR PYLE, Judge.

12 A P P E A R A N C E S

12 Lisa Bentley, Esquire & Kaycee McCall
13 Assistant Solicitor
14 Attorney for the State

15 Sussanah Ross, Esquire
16 Attorney for the Defendant Shumate

17 Scott Robinson, Esquire
18 Attorney for the Defendant Burnside

19 CAROLINE HISKELL
20 Thirteenth Circuit Court Reporter
21
22
23
24
25

I N D E X

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DIR

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REDR

RECR

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Jacob Walters

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Patrick Swift

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Brandon Brown

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Justin Lanford

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Jerry Drummond

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David Gambell

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P R O C E E D I N G S

1
2 THE BAILIFF: Please come to order, Court is
3 now in session, the Honorable C. Victor Pyle presiding.

4 THE COURT: Be seated, please.

5 Are we ready to start on State v. Burnside
6 and Shumate?

7 MS. BENTLEY: Yes, Your Honor.

8 MS. ROSS: Judge, I think we've had a
9 wardrobe issue. We're trying to find some pants for my
10 client. He doesn't fit in the pants we provided.

11 THE COURT: You got some motions we can
12 decide?

13 MS. ROSS: Yes, Your Honor.

14 THE COURT: We can go ahead and do those.
15 What are the motions?

16 MS. ROSS: Judge, my client is not here in
17 the courtroom, but I guess I can go ahead with them. I
18 first have a ~~motion to quash the indictment~~ based on Rule
19 3C on the Rules of Criminal Procedure in that it didn't go
20 before the grand jury within 30 days. That's a motion I
21 ask to put on the record.

22 THE COURT: I deny that motion.

23 MS. ROSS: Thank you, Your Honor. Secondly,
24 Judge, I move to suppress the drugs in this case based on
25 the search warrant. The State provided me with this copy

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1 and I will pass you up a copy of the search warrant that's
2 relevant in this case.

3 (Copy given to the Court.)

4 MS. BENTLEY: Your Honor, briefly, we have an
5 issue with Mr. Robertson's client. He is refusing to
6 enter to courtroom. I don't know if you would like to
7 address that on the record since we are in pretrial
8 motions. He is present and perhaps Mr. Robinson can shed
9 some light on that.

10 ~~MR. ROBINSON:~~ May it please the Court. Your
11 Honor, I've tried for a long time to get a hold of him.
12 I've sent him letters and so forth to come and see me and
13 he has not done that.

14 THE COURT: Do you want to talk with him?

15 MR. ROBINSON: The prosecutors and I have met
16 to try to work this out and he's had no contact with me
17 since then. I took the precaution of every other day
18 sending a letter out to him to come and so forth and he's
19 never come, never showed up. This is the first I've seen
20 him since the meeting we've had. He's been very
21 uncooperative with me in assisting me in the preparation
22 of this trial. When he comes in here, I would make a
23 motion to be relieved as counsel at this time. It is very
24 difficult to try a case when your client does not want to
25 cooperate with you.

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1 THE COURT: Do I need to take him into
2 custody? Why don't you go out there with him with
3 security and tell him that I need to talk with him about
4 his rights to stand trial here today and if refused to do
5 that, he will be tried in his absence.

6 MR. ROBINSON: Yes, sir.

7 THE COURT: Bring him in. If he doesn't want
8 to come in, bring him in.

9 (Defendant enters courtroom.)

10 Mr. Burnside.

11 DEFENDANT BURNSIDE: Yes, sir.

12 THE COURT: You are here today -- you can sit
13 back down, sir -- to be tried on some drug offenses. Now,
14 you have a right to a jury trial. Mr. Robinson is your
15 attorney and I understand a jury trial has been requested.
16 Do you understand that?

17 DEFENDANT BURNSIDE: Yes, sir.

18 THE COURT: You got a perfect right to be in
19 this courtroom and participate in this trial if you want
20 to. Do you understand that?

21 DEFENDANT BURNSIDE: Yes, sir.

22 THE COURT: If you do not wish to participate
23 in this matter, then you're going to be tried in your
24 absence, do you understand that?

25 DEFENDANT BURNSIDE: Yes, sir.

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1 THE COURT: Whether you're present here today
2 or not, there still is going to be a trial today on these
3 drug charges.

4 DEFENDANT BURNSIDE: Yes, sir.

5 THE COURT: Now, I understand earlier this
6 morning you refused to come into the courtroom.

7 DEFENDANT BURNSIDE: No, sir, I had got here
8 late.

9 THE COURT: When I came in this morning, just
10 a short while ago, you were walking down the hallway to
11 the corner looking out the window.

12 DEFENDANT BURNSIDE: Yes, sir.

13 THE COURT: When I got in my office, I looked
14 out the window and you were walking down the street. Now,
15 I don't understand that.

16 DEFENDANT BURNSIDE: I was talking to my
17 kids.

18 THE COURT: Now, do you wish to be present
19 with your lawyer today and try this case?

20 DEFENDANT BURNSIDE: Yes, sir.

21 THE COURT: Alright, that's good.

22 Ms. Ross, your motion.

23 MS. ROSS: Judge, I apologize. I don't know
24 where my client -- I know he's in jail but I guess they're
25 trying to get him dressed out.

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1 THE COURT: Do we know where he is?

2 THE DEPUTY: Yeah, we told the PD's office
3 that we need some clothes for him and they have yet to
4 bring them.

5 MS. ROSS: My investigator is upstairs trying
6 to handle my pleas and I just called the PD's office for a
7 second time. There's no answer right now. I don't know.
8 Maybe we can just bring him in, in the jump suit bottoms
9 just to hear these motions and then we'll dress him out.

10 THE COURT: Okay

11 THE DEPUTY: They tell me they got him some
12 now.

13 THE COURT: All right.

14 MS. ROSS: Thank you, Your Honor, may it
15 please the Court. I would like to pass up a copy of the
16 search warrant and I would refer you to Section 17.13.140
17 of the South Carolina Code of Laws as far as issuing,
18 execution and return of search warrants. I can hand up a
19 copy of that if you'd like.

20 THE COURT: Okay.

21 MS. ROSS: The relevant part in the body of
22 the statute it states that the return shall be made to the
23 issuing, municipal, judicial officer. That is a clear
24 statutory rule and that was not done in this case and we'd
25 move to dismiss first on that basis.

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1 THE COURT: What's the response, solicitor?

2 MS. BENTLEY: Your Honor, I'm not quite
3 certain -- I believe the return was made to Diane Cagle
4 who is the chief magistrate judge and it was issued by
5 Fisher. I would submit to you that Judge Cagle being the
6 chief magistrate judge would have the authority to accept
7 that return on Judge Fisher's behalf. I can offer the
8 testimony of Deputy Walters if you have any questions as
9 to why that was done.

10 THE COURT: The fact that she's the chief
11 judge the statute says that the return shall be made to
12 the issuing municipal issuing officer, the one who issued
13 it to begin with.

14 MS. BENTLEY: Your Honor, I had a briefly
15 consult with the deputy and he informs me the Judge Fisher
16 was not working the day it was returned and they do work
17 in the same office in the same work space. In addition,
18 Your Honor, the deputy states the return within 10 days
19 and since this is a time sensitive matter, the deputy
20 wanted to return to search warrant as quickly as possible.

21 The State would argue that it was proper for
22 him to return it to Judge Cagle; one as to the magistrate,
23 two as Judge Fisher's co-worker, three it was returned to
24 the same office, and four the time issue.

25 Additionally, I believe it was issued for

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1 probable cause, it was issued properly, and it was
2 returned to the chief magistrate who was the only one
3 working that day.

4 THE COURT: What would have happened if the
5 issuing judge issuing the warrant became deafly ill, was
6 in an automobile accident, was in an accident or near
7 death and it was returned to another judge in the office,
8 what's wrong with that?

9 MS. ROSS: Well, Judge, it goes against the
10 plain wording of the statute and the statute is
11 controlling on these type of cases.

12 THE COURT: So what would happen if the
13 issuing judge died?

14 MS. ROSS: Well, I would think that if the
15 issuing judge died, there would be some notation on there
16 to that fact, some kind of addressing to the statute
17 stating an attempt was made. They're allowed to do oral
18 affidavits and different affidavits involving statutes and
19 oral amendments in order to get warrants. Here they
20 clearly could have put something in but they did not.

21 And I believe the return was done quite soon
22 after the search warrant was it wasn't a matter of nine
23 days later they went in and Judge Fisher was not
24 available. This was a situation where they just did not
25 go by Section 17.13.140.

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1 THE COURT: Do you have any cases?

2 MS. ROSS: Judge, I will say in the State v.
3 Victor Missouri which was actually a search warrant trial
4 I had -- and this not actually the first trial -- this was
5 a trial where the search warrant was dismissed and it was
6 dismissed for this very reason because the warrant was not
7 followed and the return was not appropriately signed as
8 dictated by the statute.

9 THE COURT: What was the case?

10 MS. ROSS: I'm referring -- there is a hold
11 in the State v. Victor Missouri which found that the
12 search warrant was invalid. This was actually a later
13 trial where the search warrant was actually suppressed and
14 dismissed so there was no case law on point.

15 I did not print it out and I could find some
16 case law that talks about the statute being controlling in
17 search warrant cases. I believe that if you could hand me
18 the statute back on the next page I highlighted some
19 things. There is one State v. Covert where South
20 Carolina's general search warrant statute contains
21 requirements different from those mandated by the 4th
22 Amendment. That goes to our Article 1 Section 10 less
23 broad than the requirement of the US Constitution.

24 The primary benefit of 17.13.140 is to the
25 person (inaudible) search, the failure to return the

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1 search warrant did not require the suppression of the
2 evidence seized even though the State offered no
3 explanation for failure where the defendants did not argue
4 that they were prejudiced in any way by the defect. Here
5 clearly they were prejudiced. That's all I have on it. I
6 don't have a specific ---

7 THE COURT: Solicitor.

8 MS. BENTLEY: The defendant number one was
9 not prejudiced. According to State v. Weaver, if there is
10 a procedural error such as this one, suppression is not
11 required. State v. Weaver dealt with the search warrant
12 was returned after the 10 day period and the court found
13 that the defendant had to have a prejudice in order for
14 the evidence to be suppressed. In this case, we don't
15 have the 10 day error but we have the procedural error in
16 that it was not returned to the issuing magistrate. It
17 was issued to another magistrate who would have had
18 authority to issue the search warrant to begin with. It
19 was issued to the chief magistrate and we argue that this
20 is a situation somewhat to Weaver and I do have Weaver if
21 Your Honor would like to review that.

22 ~~THE COURT~~: I deny your motion to suppress.

23 MS. ROSS: Judge, I've got a second part of
24 that based on the CI. We'd argue that probable cause
25 wasn't established in the affidavit showing a fair

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1 probability that drugs would be found. We base that on
2 Illinois v. Gates and the 5th Amendment in the US
3 Constitution, Article 1 Section 10 of our State
4 Constitution.

5 Here was a situation from what I can tell a
6 CI went and made purchases somewhere in this trailer park
7 at Lane. I know that there is reference
8 somewhere in the discovery of a CI purchase and then you
9 can see from the affidavit what the officer responded in
10 that and four search warrants were issued for this trailer
11 park, four separate search warrants. Now here there's no
12 specific address, it is simply Road. There
13 are possibly nine trailers there. Here that lacks
14 specific factual detail as to which trailer they're
15 talking about.

16 I took some pictures of some of the trailers
17 out there and I will just show them to you and show how
18 similar all those trailers are out at this lot. In the
19 search warrant affidavit, there is no specificity as to
20 which lot was where. It simply said -- well you can read
21 it -- and we would argue without someone more specific,
22 that would lack probable cause to get a search warrant.
23 It would be an evasions of all rights of all people to
24 privacy because there was actually a number of trailers
25 out there. The question is which one is referred to in

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1 this warrant.

2 MS. BENTLEY: Your Honor, I would
3 respectfully disagree. The search warrant is specific and
4 it says that this is a single-wide mobile home with brown
5 wood siding with a lightly colored wood (inaudible) under
6 penny. The residence has no visible numbers. Entering
7 the trailer park from Street, the residence is the
8 on the . We do have a map to
9 demonstrate that Lot is the second mobile home on the
10 right from Street.

11 In addition, it goes the longitude and
12 latitude of this trailer and the confidential informant's
13 buy was from this particular trailer. So there were four
14 search warrants issued pursuant to four different CI buys.
15 This search warrant was for the CI buy from Lot which is
16 the home on the Street
17 and this specifically stated on the warrant.

18 MS. ROSS: And the problem Lot isn't put
19 anywhere on the warrant and I further say that there is
20 nothing saying that this is a reliable informant. These
21 are words that have to be present when a search is issued
22 pursuant to the CI buy and there's nothing about the
23 reliability of the CI in the wording.

24 THE-COURT: I disagree with you. I deny your
25 motion.

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1 MS. ROSS: Thank you, Judge. We move to
2 sequester the witnesses.

3 ~~THE COURT:~~ I grant that motion. Only the
4 investigating officer can stay.

5 MS. ROSS: I have a motion in limine. I
6 would wait until the end of the case to do a motion in
7 limine as to my client's record.

8 THE COURT: Sure. Anything else before I
9 bring the panel up.

10 MS. ROSS: I did request some voir dire.

11 THE COURT: I got them. The strikes are five
12 for each defendant, five for the State.

13 MR. ROBINSON: Your Honor, I have one motion
14 that I'd like to make.

15 THE COURT: Sure.

16 ~~MR. ROBINSON:~~ I'd like to make a motion to
17 relieved as counsel in this case. This is an appointed
18 case to me but Mr. Burnside has indicated at the meeting
19 that he wanted to seek paid counsel and I gave him an
20 opportunity to do that. I sent him three or four letters
21 to come in and to talk to me, to help me prepare for this
22 case going forward. I never heard any response from him
23 but based on this an his uncooperativeness, I would
24 respectfully asked to be relieve. It is very difficult to
25 try a case when your client is no very cooperative.

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1 THE COURT: I'm sorry, Mr. Robinson, I have
2 to deny that motion.

3 MR. ROBINSON: Thank you, Judge.

4 THE COURT: Mr. Robinson and Ms. Ross, do you
5 have any potential witnesses that you would like read to
6 the jury?

7 MS. ROSS: I don't, Your Honor.

8 MR. ROBINSON: I do, Your Honor, have one and
9 I'll read this to the Court. Sandra Burnside. That's
10 the mother.

11 (Whereupon, the jury was selected.)

12 Ladies and gentlemen, if I can have your
13 attention. At this time we will select a jury in the case
14 of the State against Andrew Burnside and Dominique
15 Shumate. Mr. Burnside, Mr. Shumate, would you stand up a
16 moment and face the jury panel for me a moment.

17 (Defendant's comply.)

18 Thank you. You can be seated.

19 They are each indicted on several offenses.
20 They are first indicted for possession of cocaine with
21 intent to distribute on or about November 18, 2010. The
22 second indictment alleges that on that same day, they
23 possessed a controlled substance with intent to
24 distribute. The next indictment alleges that on that same
25 date they distributed cocaine base that is crack cocaine

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1 and lastly they are indicted in count 1 for trafficking
2 cocaine base which is crack cocaine on the same date, and
3 count 2 alleges that on same date, they physically
4 displayed a handgun on an attempted commission of a
5 violent crime that alleged to be trafficking crack
6 cocaine.

7 Potential witnesses in this case will be
8 Jacob Walters, Brandon Brown, Justin Lanford, Dusty
9 Woodall, Patrick Swift, Tabitha Fricks, all of the
10 Greenville County Sheriff's Office. James Armstrong with
11 the Department of Safety, Kara Bennick, David Gambell,
12 Stephen Perron, Jonathan Bastoni, Jim Perry, Jerry
13 Drummond, Jr., and Sandrea Burnside.

14 I would inquire if any member of the jury
15 panel is related by blood or marriage or connected by
16 employment to either defendant in this case or any
17 potential witness in the case? Are you sensible or aware
18 of any bias or any prejudice with respect to the
19 defendants or to the State or to the subject matter of the
20 case, that being various drug charges or do you know any
21 reason why you could not give these defendants and the
22 State a fair and impartial trial based on the law and
23 evidence to be presented? If you so, would you please
24 stand and give me your name.

25 Yes, sir. Stand up and give me your name.

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1 JUROR PAGE: Ivan Page. I know them.

2 THE COURT: You know the defendant.

3 JUROR PAGE: Yes, sir.

4 THE COURT: Which one or both?

5 JUROR PAGE: Andrew.

6 THE COURT: Mr. Burnside. How do you know
7 him?

8 JUROR PAGE: From school.

9 THE COURT: How long ago was that?

10 JUROR PAGE: 2005.

11 THE COURT: Would that fact in any way
12 interfere with your ability to be a fair and impartial
13 juror on this case?

14 JUROR PAGE: No, sir.

15 THE COURT: Than you. You're qualified so
16 far.

17 Do I have any juror who has any connection,
18 family business, social or otherwise with Walt Wilkins,
19 the solicitor, or any member of his staff including Lisa
20 Bentley who is the assistant handling this case or with
21 law enforcement whether that be federal, state, county or
22 municipal? If so, would you please stand and give us your
23 name.

24 Please stand up and give us your name.

25 JUROR LAMBRECHT: It's Laura Lambrecht and my

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1 nephew is Michael Bryant and he's a deputy sheriff.

2 THE COURT: He's a deputy with Greenville
3 County.

4 JUROR LAMBRECHT: Yes.

5 THE COURT: Thank you, ma'am. I would not
6 put you on this jury because of that relationship since
7 the Sheriff's Office is handling the case.

8 JUROR LAMBRECHT: And my brother-in-law is
9 Ken Varner. I don't know if you need to know that too.

10 THE COURT: I appreciate that.

11 Yes, sir.

12 JUROR PATTERSON: Mark Patterson. I knew
13 Walt in high school. I don't know if that matters or not.

14 THE COURT: Would that fact in any way
15 interfere with your ability to be fair and an impartial
16 juror on this case?

17 JUROR PATTERSON: No, sir.

18 THE COURT: Thank you, sir.

19 Yes, sir.

20 JUROR GRUBBS: I would as a commission
21 workwell and on the sheriff's (inaudible) not well, but we
22 work ---

23 THE COURT: Your name?

24 JUROR GRUBBS: Scott Grubbs.

25 THE COURT: Would that fact in any way

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1 interfere with your ability to be a fair and impartial
2 juror on the case?

3 JUROR GRUBBS: No, sir.

4 THE COURT: Thank you, sir. You're qualified
5 so far.

6 Yes, ma'am, your name.

7 JUROR HARTMAN: Mary Francis Hartman. I was
8 previously employed by the Thirteenth Circuit Solicitor's
9 Office.

10 THE COURT: Would that fact, in any way,
11 interfere with your ability to be a fair and impartial
12 juror on this case?

13 JUROR HARTMAN: No, sir.

14 THE COURT: Thank you, ma'am.

15 Now, do I have any member of the jury panel
16 who belongs to or contributes money to MAD, SAD, or any
17 similar organization involved with alcohol and narcotics.
18 If so, would you please stand and give me your name.

19 Your name, ma'am.

20 JUROR BIONDO: Carolyn Biondo. I have
21 donated to MAD.

22 THE COURT: Would that, in any way, interfere
23 with your ability to be a fair and impartial juror on this
24 case?

25 JUROR BIONDO: Thank you.

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1 THE COURT: All right, strikes are five for
2 the defendant and five for the State.

3 Ladies and gentlemen, when your name is
4 called, I'll ask you to come forward up front to this
5 podium, turn around and face counsel, and await further
6 instructions. Thank you.

7 THE CLERK: Juror No. 71, Scott Grubbs.
8 What says the State?

9 MS. BENTLEY: Please present Mr. Grubbs.

10 THE CLERK: What says the defendant?

11 MS. ROSS: Please excuse Mr. Grubbs.

12 THE CLERK: Thank you. You may be seated.
13 You have been excused from the trial of this case.

14 Juror No. 161, Alwin Glen Pittman.
15 What says the State?

16 MS. BENTLEY: Please present the juror?

17 THE CLERK: What says the defendants?

18 MS. ROSS: Please seat the juror.

19 MR. ROBINSON: Your Honor, we agree that
20 Ms. Ross will do the jury selection.

21 MS. ROSS: In that case, please excuse the
22 juror.

23 THE CLERK: Thank you. You may be seated.
24 You have been excused from the trial of this case.

25 Juror No. 40, Kevin Crain.

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1 What says the State?

2 MS. BENTLEY: Please excuse Mr. Crain.

3 THE CLERK: Thank you. You may be seated.

4 You're excused from the trial of this case.

5 Juror No. 87, Amber Hodges.

6 What says the State?

7 MS. BENTLEY: Please present Ms. Hodge.

8 MS. ROSS: Please seat the juror.

9 THE CLERK: Thank you. You may be seated in
10 the jury box.

11 Juror No. 203, Van Smith.

12 What says the State?

13 MS. BENTLEY: Please present Mr. Smith.

14 MS. ROSS: Please seat the juror.

15 THE CLERK: Thank you. You may be seated in
16 the jury box.

17 Juror 159, Mark Patterson.

18 What says the State?

19 MS. BENTLEY: Please present the juror.

20 MS. ROSS: Please excuse the juror.

21 THE CLERK: Thank you. You may be seated.

22 You're excused from the trial of this case.

23 Juror 154, Pamela Atkison.

24 What says the State?

25 MS. BENTLEY: Please present the juror.

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1 MS. ROSS: Please excuse the juror.

2 THE CLERK: Thank you. You may be seated.

3 You're excused from the trial of this case.

4 Juror 136, Brian Mcclean.

5 What says the State?

6 MS. BENTLEY: Please excuse the juror from

7 the trial of this case.

8 THE CLERK: Thank you. You may be seated.

9 You're excused from the trial of this case.

10 Juror No. 123, Sarah Long.

11 What says the State?

12 MS. BENTLEY: Please present the juror.

13 MS. ROSS: Please seat Ms. Long.

14 THE COURT: Let's take a little short recess.

15 Thank you.

16 (Whereupon, there was a recess.)

17 THE COURT: What's your name, sir?

18 JUROR MILLER: Von Miller.

19 THE COURT: What's the ---

20 JUROR MILLER: Andrew, I went to high school

21 with him.

22 THE COURT: You went to high school with

23 Andrew.

24 JUROR MILLER: Yes, sir.

25 THE COURT: How long has that been?

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1 JUROR MILLER: I graduated in 2005, sir.

2 THE COURT: Would that fact, in any way,
3 interfere with your ability to be fair an impartial juror
4 on this case?

5 JUROR MILLER: No, sir.

6 MS. BENTLEY: Your Honor, may I be heard on
7 this. I would say that since he was not forthright at the
8 beginning when his seat mate stood up, it indicates that
9 he does have a bias for Mr. Burnside.

10 THE COURT: Alright, out of fairness since
11 you didn't respond at the appropriate time, I would not
12 put you in this case. Thank you.

13 Give me your name one more time, sir.

14 JUROR MILLER: Von Miller.

15 THE CLERK: Juror No. 182, Daniel Romes.

16 What says the State?

17 MS. BENTLEY: Please present the juror.

18 THE CLERK: What says the defendants?

19 MS. ROSS: Please swear the juror.

20 THE CLERK: Thank you. You may be seated in
21 the jury box.

22 Juror No. 138, Leonard McDowell.

23 What says the State?

24 MS. BENTLEY: Please excuse the juror.

25 THE CLERK: Thank you. You may be seated.

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1 You're excused from the trial of this case.

2 Juror No. 143, Jeffrey Meadors.

3 What says the State?

4 MS. BENTLEY: Please present the juror.

5 MS. ROSS: Please excuse the juror.

6 THE CLERK: Thank you. You may be seated.

7 You're excused from the trial of this case.

8 Juror No. 158, Ivan Page.

9 What says the State?

10 MS. BENTLEY: Please excuse Mr. Page.

11 THE CLERK: Thank you. You may be seated.

12 You're excused from the trial of this case.

13 Juror No. 74, Bobby Hames.

14 MS. BENTLEY: Please present the juror.

15 MS. ROSS: Please seat the juror.

16 THE CLERK: Thank you. You may be seated in
17 the jury box.

18 Juror NO. 25, Daniel Carey.

19 MS. BENTLEY: Please present the juror.

20 MS. ROSS: Please swear the juror.

21 THE CLERK: Thank you. You may be seated in
22 the jury box.

23 Juror No. 260, Kristin Vail.

24 MS. BENTLEY: Please present the juror.

25 MS. ROSS: Please seat the juror.

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1 THE CLERK: Thank you. You may be seated in
2 the jury box.

3 Juror No. 198, Hope Singh.

4 MS. BENTLEY: Please present the juror.

5 THE CLERK: What says the defendant?

6 MS. ROSS: Please excuse the juror.

7 THE CLERK: Thank you. You may be seated.
8 You have been excused from the trial of this case.

9 Juror No. 79, Mary Frances Hartman.

10 MS. BENTLEY: Please present the juror.

11 MS. ROSS: Please excuse the juror.

12 THE CLERK: Thank you. You may be seated.
13 You have been excused from the trial of this case.

14 Juror No. 11, Carolyn Biondo.

15 What says the State?

16 MS. BENTLEY: Please present Ms. Biondo.

17 MS. ROSS: Please excuse Ms. Biondo.

18 THE CLERK: Thank you. Please be seated.
19 You have been excused from the trial of this case.

20 Juror No. 72, Talia Guzman.

21 What says the State?

22 MS. BENTLEY: Please present Ms. Guzman.

23 MS. ROSS: Please seat the juror.

24 THE CLERK: Thank you. You may be seated in
25 the jury box.

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1 Juror No. 133, Michael Maston.

2 What says the State?

3 MS. BENTLEY: Please present the juror.

4 MS. ROSS: Please seat the juror.

5 THE CLERK: Thank you. Please be seated in
6 the jury box.

7 Juror No. 4, Jeffrey Apel.

8 What says the State?

9 MS. BENTLEY: Please present the juror.

10 MS. ROSS: Please seat the juror.

11 THE CLERK: Thank you. You may be seated in
12 the jury box.

13 Juror No. 256, Mark Pechin.

14 MS. BENTLEY: Please excuse this juror.

15 THE CLERK: Thank you. You may be seated.

16 You're excused from the trial of this case.

17 Juror No. 168, Doris Proffit.

18 What says the State?

19 MS. BENTLEY: Please present the juror.

20 MS. ROSS: Please excuse this juror.

21 THE CLERK: Thank you. You may be seated.

22 You've been excused from the trial of this case.

23 Juror No. 212, Virginia Sullivan.

24 What says the State?

25 MS. BENTLEY: Please present this juror.

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1 MS. ROSS: Please seat this juror.

2 THE CLERK: Thank you. Please have a seat in
3 the jury box.

4 THE COURT: Ms. Sullivan, take that first
5 seat and serve as foreperson for me, please, ma'am.

6 THE CLERK: Juror No. 248, Charles Winney.
7 What says the State?

8 MS. BENTLEY: Please present the juror.

9 MS. ROSS: Please excuse Mr. Winney.

10 THE CLERK: Thank you. You may be seated.
11 You're excused from the trial of this case.

12 Juror No. 199, Thomas Starski.

13 MS. BENTLEY: Please present the juror.

14 MS. ROSS: Please seat the juror.

15 THE CLERK: Thank you. You may be seated in
16 the jury box.

17 THE COURT: Give me one alternate, please.

18 THE CLERK: Yes, sir. Juror No. 1 Kerollos
19 Abd-El-Malak.

20 MS. BENTLEY: Please present the alternate.

21 MS. ROSS: Please seat the juror.

22 THE CLERK: Thank you. You may be seated in
23 the jury box.

24 THE COURT: At this time I need the balance
25 of the panel to report back downstairs to the jury

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1 assembly room. Thank you very much.

2 (Jury panel exits the courtroom.)

3 Please swear in the jury.

4 THE CLERK: Would you please stand to be
5 sworn in. The response to the oath is, I will. Please
6 raise your right hand. You shall well and truly try case
7 2011-GS-23-1733 State versus Dominique Gerard Shumate,
8 indicted for trafficking cocaine base and possession of a
9 weapon during the commission of a violent crime, 1734 for
10 possession with a controlled substance with intent to
11 distribute, 1735 for distribution of cocaine base and 1736
12 for possession of cocaine with intent to distribute.
13 Additionally you shall well and truly try case 2011-GS-
14 23-1738, State versus Andrew Davion Burnside, indicted for
15 trafficking cocaine base and possession of a weapon during
16 the commission of a violent crime, 1739 for possession of
17 a controlled substance with intent to distribute; 1740 for
18 distribution of cocaine base, crack cocaine, and 1741 for
19 possession of cocaine with intent to distribute and a true
20 verdict render according to the law and the evidence so
21 help you God.

22 JURY (COLLECTIVELY): I will.

23 THE CLERK: Thank you. You may be seated.

24 THE COURT: Ladies and gentlemen before we
25 start I will need to read to you an order issued by the

State versus Andrew Burnside-Dominique Shumate

1 Chief Justice of our Supreme Court. I need your attention
2 while I read this to you at this time. The order is
3 signed by Chief Justice Jean Toal relating to your service
4 as a juror on this case.

5 She says the use of personal communication
6 devices has continued to increase dramatically.
7 Accordingly, I find it necessary to supplement my order of
8 August 25, 2000 related to the use of pagers, cell phones,
9 and other personal communication devices in courtrooms to
10 include the following directions to the court.

11 The Court shall instruct jurors selected to
12 serve on a jury that until their jury service is
13 concluded, they shall not (a) discuss the case with others
14 including other jurors except as otherwise authorized by
15 the Court (b) read or listen to any news reports about the
16 case (c) use a computer, cellular phone, or other
17 electronic device with communication capabilities while in
18 attendance at trial while or during deliberations.

19 These devices may be used during lunch breaks
20 but may not be used to obtain or disclose information
21 prohibited in subsection (d) below and (d) reads: Use a
22 computer, cellular phone, or other electronic device with
23 communication capabilities or any other methods to obtain
24 or disclose information about the case when they're not in
25 court.

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1 Information about the case includes but is
2 not limited to the following: Information about a party,
3 witness, attorney or court officer, news accounts about
4 the case, information collected through juror research on
5 any topic raised or testimony offered by any witness,
6 information collected through juror research on any other
7 topic the juror might think would be helpful in deciding
8 the case.

9 Notice of the contents of this order shall be
10 given to jurors.

11 Alright, we'll take a short recess. Take the
12 jury out, please.

13 (Jury exits the courtroom.)

14 About a ten minute recess.

15 (There was a brief recess.)

16 THE BAILIFF: Remain seated. Court is in
17 order.

18 MR. ROBINSON: Your Honor, I have one motion.

19 THE COURT: Okay.

20 MS. BENTLEY: Your Honor, I believe that
21 defense will stipulate to the chain of custody in property
22 and evidence as far as the custodians are concerned in
23 this case.

24 THE COURT: Is that correct?

25 MS. ROSS: I'm fine with that.

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1 MR. ROBINSON: I've looked at the chain and
2 the chain is fine.

3 THE COURT: Thank you. You have a motion.

4 ~~MR. ROBINSON:~~ I do have a motion and it
5 concerns specifically the composition of this jury panel.
6 The panel itself I counted the number of blacks as opposed
7 the jurors of other races and there's only three black
8 jurors in this whole panel that the commissioner has
9 brought forth. Also, these are two young guys in their
10 early 20's and the jury panel is probably 90 or 85 percent
11 persons over the age of 35 or 40, I would make a motion at
12 this time for a mistrial to quash this jury panel and have
13 another jury panel drawn based on the composition of race
14 in Greenville County. I don't believe these fellows can
15 get a fair trial based on the composition of the jury
16 panel that is here.

17 I think the State is going to raise --
18 there's a standard that has to be met in this case and I
19 think there is a three-part standard that the Court goes
20 from. First, I think that the fact that there were so few
21 blacks on the jury panel, one of them was stricken on
22 motion of the prosecution based on the fact that he did
23 not come forward as far as acknowledgement. The struck
24 one of the blacks on the jury and I think there are three
25 of them on this jury panel.

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1 The struck one and I'm sure the reasoning is
2 going to be he went to school with Mr. Burnside. They're
3 going to argue that's a racially neutral stance on their
4 part, but it made the jury panel -- that was one person
5 that was a minority. The alternate I believe is either
6 Indian or Arabic person.

7 The second stance, Your Honor, is whether or
8 not it's a fair and reasonable panel based on the number
9 of persons in the community. Out of 500,000 people I
10 believe it's around 20, 25 percent black in the community
11 and this panel did not reflect the community at large.
12 Out of a large number of people in this ---

13 THE COURT: Mr. Robinson, it's selected by
14 random from a computer.

15 MR. ROBINSON: Yes, Your Honor, I don't
16 believe it selected a panel representative of the
17 community. These two gentlemen are in their 20's and the
18 jury is of very mature persons and it's only one or two
19 percent black on this panel and I don't believe they can
20 not get a fair trial as a result of that.

21 THE COURT: Well, the jury has been sworn.
22 How can I retry it after the jury has been sworn?

23 MR. ROBINSON: It's just a motion I'm making.

24 THE COURT: I understand that and I deny your
25 motion.

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1 Alright brief opening statements. Bring the
2 jury in.

3 (Jury re-enters the courtroom.)

4 Solicitor.

5 ~~MS. MCCALL:~~ If it please the Court, ladies
6 and gentlemen of the jury, Mr. Robinson and Ms. Ross. My
7 name is Kaycee McCall and this is Lisa Bentley and we are
8 prosecutors for the Thirteenth Circuit Solicitor's Office
9 here in Greenville County and our job is to prosecute
10 cases here.

11 First of all I want to thank you for being
12 here and your patience and I appreciate that. I want to
13 talk about three things this morning, very briefly, first,
14 what this case is about, second, what the State has a duty
15 and a requirement to prove and, third, intends to prove
16 it's case.

17 First what this case is about. This case is
18 about the defendants making and selling drugs from their
19 residence. Secondly, what the State has a duty and
20 requirement to prove. As prosecutors in this case we have
21 the entire burden of proof in today's trial. The State
22 has to prove to you beyond any reasonable doubt that on or
23 about November 17, 2010, these defendants, Andrew Burnside
24 and Dominique Shumate were engaged in the manufacturing or
25 attempt to manufacturing cocaine base, better known as

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1 crack cocaine. That they were trafficking crack, the
2 State must prove that they were in possession of 10 or
3 more grams of crack cocaine.

4 The State must also prove to you that the
5 defendants were in possession of cocaine with intent to
6 distribute, that they were in possession of pills with
7 intent to distribute, that they were in possession of a
8 weapon during the commission of a violent crime. The
9 violent crime today is trafficking crack cocaine.

10 Now how the State intends to prove its case.
11 The State would first call Deputy Walters from the
12 Greenville County Sheriff's Office. He will talk about
13 his investigation and his involvement and how his
14 investigation led to the search warrant at the defendant's
15 residence located at on Road in
16 Greenville County.

17 Then you will hear from Deputy Swift who is
18 also with the Greenville County Sheriff's Office. He will
19 go in detail about the actual execution of the search
20 warrant and how they entered the residence and how he
21 found the defendant, Dominique Shumate, in the bathroom
22 flushing pills down the toilet.

23 You will then hear from Investigator Brandon
24 Brown, a vice and narcotics officer with the Greenville
25 County Sheriff's Office. He will also talk about entering

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1 the residence when they were executing the search warrant
2 and how he found the defendant, Andrew Burnside in the
3 back bedroom hiding under the bed.

4 Then you will hear from Deputy Lanford, who
5 is also with the Greenville County Sheriff's Office. He
6 will go over in great detail about everything that was
7 found inside the defendant's residence and how they
8 determined the defendants were manufacturing crack
9 cocaine.

10 After this testimony, you will be firmly
11 convinced the defendants were found in possession of crack
12 cocaine, cocaine, pills and a weapon.

13 Next the State will call Jerry Drummond.

14 THE COURT: Ma'am, please don't -- we'll let
15 the witnesses tell what the facts are. Just. Please.
16 Just summarize.

17 MS. MCCALL: I'm almost done. I'm sorry. We
18 will call Jerry Drummond who lived with the defendants in
19 the residence and he will discuss about when he lived
20 there. And you'll talk about several other witnesses and
21 the additional law enforcement investigation done in this
22 case.

23 After you've heard all the testimony and
24 considered all the evidence, we are going to ask you to
25 find the defendants guilty and please hold them

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1 accountable for that. Thank you for your time.

2 THE COURT: Ms. Ross, are you going first?

3 ~~MS. ROSS:~~ Thank you, Your Honor. Counsel
4 and ladies and gentlemen of the jury, my name is Susannah
5 Ross and I represent Dominique Shumate, the man in the tan
6 shirt with the tie. You hear this all the time someone
7 being in the wrong place at the wrong time and at no time
8 is it more serious than when you are charged with a crime.
9 I've been doing criminal work for quite some time and I
10 call it being on the same planet with drugs. You see
11 drugs and pull out drugs and it's overwhelming seeing that
12 kind of drugs and not thinking someone that's around those
13 drugs is guilty of anything the state has charged them
14 with.

15 But that's making assumptions, ladies and
16 gentlemen, and I ask you not to do that. When someone is
17 charged with a crime, you as the jury are put in a very
18 difficult decision as to whether the State has proven them
19 guilty beyond a reasonable doubt. Whether they been
20 proven guilty is a hard determination because you've got
21 to decide not only whether you think they did it or not,
22 but whether the State jumped through the hoops that they
23 needed to jump through to prove someone guilty of that
24 charge.

25 Now, I sort of relate it to the dog ate my

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1 homework. That's something that everyone's heard and the
2 wrong place at the wrong time. I was coming home from the
3 mountains and my cat threw up on my child's homework. It
4 literally happened. I threw away the homework, my son was
5 crying and worried about what's he going to get when he
6 goes to school and has to essentially come up with the dog
7 ate my homework excuse. How is he going to get buy with
8 that? I told him to tell the truth and the teacher would
9 listen to what he had to say because sometimes the dog ate
10 my homework really happens and sometimes someone really is
11 in the wrong place at the wrong time.

12 Now, ladies and gentlemen, I will tell you a
13 little bit about drugs and drug houses. Drug houses are
14 places where people do drugs. It's not only a place where
15 people buy drugs, but it's places where people do drugs
16 and doing drugs is not trafficking in drugs.

17 The State has charged Dominique Shumate with
18 trafficking drugs and that is a very very serious charge
19 and it carries a very serious penalty, ladies and
20 gentlemen, and as you hear the witnesses from the State
21 and the defense, if there are any -- we have no duty to
22 put up any kind of defense and I tell you that because I
23 want you to know from the beginning how important it is as
24 a citizen of the United States that you are innocent until
25 you are proven guilty beyond a reasonable doubt.

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1 Now, when you hear from the witnesses from
2 the State I ask you not to make any assumptions. I ask
3 you to hold those witnesses to the task of them doing
4 their jobs correctly of having to prove guilt beyond a
5 reasonable doubt because unless and until they do, someone
6 is not guilty, and ladies and gentlemen Dominique Shumate
7 is not guilty and I ask you, ladies and gentlemen, to
8 listen and keep an open mind.

9 THE COURT: Mr. Robinson.

10 ~~MR. ROBINSON~~: May it please the Court. Good
11 morning, my name is Scott Robinson. I practice in
12 Greenville County and I don't have a lot to add to
13 Ms. Ross's statement but I will add this. There are a
14 couple of concepts you need to keep in your mind when
15 looking at this case because it's very tempting when you
16 come into a case like this -- you're coming off the street
17 and you don't know anything about it and you're going to
18 hear everything from the State and so forth -- but the
19 presumption of innocent is on these defendants.

20 They're considered innocent until the State
21 proves to you beyond a reasonable doubt each and every
22 element of their case. You may not like to way they look,
23 the way they act and they're up here being accused of
24 this, but you took the oath a few moments ago with the
25 Court. You took an oath to look at this case with

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1 presumption of innocence and putting the State to the test
2 to make sure they prove their case.

3 Everyone in this country, as it is eluded to,
4 deserves a fair trial and as the judge will tell you at
5 some point jury duty is one of the biggest things a person
6 can do in this country, one of the greatest honors.

7 When you come to court, you bring your common
8 sense, your life experiences, but understand that you have
9 a presumption in this case that the defendant's are
10 innocent.

11 The other idea that you need to keep in your
12 minds as you look at this and think about this and think
13 about what evidence the State is going to present, there's
14 a concept, and the Judge is going to talk about it, mere
15 presence. Mere presence. Two words, but it's very
16 important in this case because it really controls this
17 case because just because your some place does not mean
18 your guilty of something. Just because you're in a car,
19 just because you're in residence that belongs to somebody,
20 this residence did not belong to either of these
21 defendants, it belonged to a Mr. Drummond who is a witness
22 in this matter.

23 The idea is mere presence. Just because
24 someone is present some place, just because they're mere
25 present does not mean they are guilty of something. Keep

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1 that in your mind, mere presence, and two, beyond a
2 reasonable doubt. If you do so, you're going to find that
3 with all this evidence the State is going to put forward,
4 all the officers that are going to testify a few moments,
5 they can't establish their case. It looks all nice and
6 pretty all of these nice exhibits, all these physical
7 exhibits, but there's nothing in this case that the State
8 can prove that these defendants, my client and
9 Mr. Shumate, guilty of these offenses beyond a reasonable
10 doubt.

11 I'd ask you to think about it. Bring all
12 your life's experiences, your common sense, because you
13 don't check that at the door when you come into the
14 courtroom. If you do that, you're going to find both of
15 these guys -- and like I said you may not like what they
16 look like or like the fact they're accused of these crimes
17 -- but you'll find them not guilty based on the fact of
18 the concept of mere presence. Like I said mere presence
19 is not enough to convict someone of these charges.

20 THE COURT: Alright, solicitor.

21 MS. BENTLEY: If it please the Court, the
22 State calls Jacob Walters to the stand.

23 THE CLERK: Sir, if you would come forward to
24 be sworn in. Place your left hand on the Bible and raise
25 your right.

Walters - Direct

1 JACOB WALTERS, having been duly sworn,
2 testified as follows:

3 Thank you. You may be seated. Would you
4 state your name for the record.

5 THE WITNESS: My name is Jacob Walters.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MS. BENTLEY:)

9 Q. Deputy Walters, would you please tell us where
10 you are employed?

11 A. I work at the Greenville County Sheriff's Office.

12 Q. How long have you worked there?

13 A. A little over four years.

14 Q. Is there a specific unit to which you are
15 assigned?

16 A. I work with the directed patrol unit.

17 Q. What is the directed patrol unit?

18 A. It's a specialized unit to handle a lot of
19 different complaints that come in, specifically, crime
20 stoppers complaints.

21 Q. In the directed patrol unit, did you begin an
22 investigation into the trailer park that was on

23 Road?

24 A. I did.

25 Q. When did you begin this investigation?

Walters - Direct

1 A. I began in early November, 2010.

2 Q. Do you recall a date or approximate date?

3 A. Approximately November 10th.

4 Q. Can you tell us what sparked that investigation?

5 A. It was a crime stoppers complaint received.

6 Q. I'm going to show you what's been marked as
7 State's Exhibit 1. Do you recognize the depiction in
8 State's Exhibit 1?

9 A. I do.

10 Q. What is it?

11 A. That is the trailer park located at
12 Road?

13 Q. On this map, is this what the trailer park looked
14 like in 2010?

15 A. Yes, it is.

16 Q. Any changes, deletions been made to any of the
17 trailers in this park?

18 A. It appears to be a trailer park.

19 Q. And it fairly and accurately describes the park?

20 A. Yes.

21 MS. BENTLEY: At this time the State moves to
22 enter State's Exhibit 1.

23 THE COURT: Any objection?

24 MS. ROSS: No, Your Honor.

25 MR. ROBINSON: No objection.

Walters - Direct

1 THE COURT: It's in evidence.

2 (Map marked as State's Exhibit No. 1 for
3 identification was admitted into evidence.)

4 BY MS. BENTLEY:

5 Q. Deputy Walters, you say this investigation began
6 with a crime stoppers tip; is that correct?

7 A. Yes.

8 Q. And based on that tip, what did you do?

9 A. I began to do surveillance on this trailer park,
10 just observing traffic coming in and out of this trailer
11 park.

12 Q. How long did you observe it?

13 A. We spent a couple of days watching traffic come
14 in and out of this trailer park.

15 Q. What observations did you notice regarding the
16 action, activity in this park?

17 A. There was a lot of heavy traffic, vehicle
18 traffic, foot traffic, bicycle traffic, just nonstop in
19 and out of this trailer park.

20 Q. Was involved in this activity?

21 A. Yes, it was.

22 Q. Could you come down and show us where is?

23 A. Yes. Coming in from Street here, there
24 is (inaudible).

25 Q. Is it in the center.

Walters - Direct

1 A. In the center, yes, right here.

2 Q. Was that trailer marked with any numbers?

3 A. No, there were no numbers.

4 Q. Okay. You may have a seat. After observing all
5 the activity regarding in and out of this trailer park,
6 what did you decide to do? What was the next step in your
7 investigation?

8 A. A number of vehicles leaving this trailer park
9 are stopped for various traffic infractions. What we did
10 is me and another deputy would watch this trailer park and
11 as traffic left, there would be deputies around the
12 community on different streets and the deputies observed
13 vehicles making traffic infractions. We stop these
14 vehicles and either obtain consent to search these
15 vehicles or probable cause to search these vehicles or
16 inventory the vehicle.

17 Some of these stops yielded drugs out of the
18 vehicles and from that we were able to use those suspects
19 as confidential informants to go this trailer park to buy
20 drugs for us.

21 Q. So the people that you would stop from the
22 trailer park turned into informants?

23 A. Yes.

24 Q. Did you send a confidential informant to Lot ?

25 A. I did.

Walters - Direct

1 Q. What day was that?

2 A. That was on November 10th.

3 Q. Was that event recorded on audio?

4 A. Yes, it was an audio recording.

5 Q. Did you observe the transaction there?

6 A. M***9:32 - 4:50

7 Q. What happened at Lot on November 10th.

8 A. The informant ---

9 MS. ROSS: I would object. If he didn't
10 witness any of that, how can he testify to it.

11 THE COURT: I sustain the objection.

12 BY MS. BENTLEY:

13 Q. What was your roll in that confidential informant
14 activity?

15 A. I took a statement from the informant and I also
16 wrote the report for what we did that day.

17 Q. So you are aware of what happened based on your
18 dealings with the informant himself?

19 A. Yes.

20 Q. Did he purchase drugs from Lot ?

21 A. Yes.

22 MS. ROSS: Again, I would object.

23 THE COURT: I sustain the objection and
24 instruct the jury to disregard that question.

25 BY MS. BENTLEY:

Walters - Direct

1 Q. Based on the CI activity on November 10, were you
2 able to obtain a search warrant?

3 A. I was.

4 Q. For which trailer?

5 A. For Lot No. .

6 Q. Where is Road located?

7 A. It's in Greenville County.

8 MS. ROSS: Your Honor, I would renew my
9 objection to the search warrant in general. This officer
10 has testified that he did not actually witness this
11 purchase and ---

12 THE COURT: Subject to your objection.
13 Proceed.

14 BY MS. BENTLEY.

15 Q. You obtained a search warrant, Deputy?

16 A. Yes, ma'am.

17 Q. And what date was that executed?

18 A. It was November -- I'm sorry, I can't remember
19 the exact date. I wrote it down on my report. If I could
20 see that.

21 Q. Okay. Just the date. Please don't read anything
22 else.

23 A. The date was November 19th.

24 Q. Was report written on the 19th?

25 A. The report was written on the 19th. The search

Walters - Direct

1 was done on the 17th?

2 Q. The search warrant was executed on

3 Road, correct?

4 A. Yes.

5 Q. What was your roll in the execution of the search
6 warrant?

7 A. In the execution of the search warrant at this
8 lot, what I did I went and I took the search warrant to
9 the lot once entry had been made and I read the search
10 warrant and I left it there as other team members served
11 that search warrant. I went to a different trailer and
12 assisted with a different search warrant.

13 Q. Was there more than one search active in November
14 of 2010?

15 A. Yes, there were actually four search warrants at
16 this trailer park being served simultaneously. So some
17 team members went to Lot and some team members went to
18 different lots.

19 Q. You served the search warrant on Lot .

20 A. I served the search warrant.

21 Q. But you did not participate in the search?

22 A. Did not participate in the search.

23 Q. What is your roll in this investigation overall?

24 A. I obtained all the search warrants. I
25 essentially was the case and I would go with the

Walters - Direct

1 informants and explained to them what needed to be done,
2 sign them up, take statements from them, write reports and
3 obtained all the search warrants for every single trailer
4 here.

5 Q. As a case agent, did you have other
6 responsibility regarding evidence that was collected.

7 A. Yes.

8 Q. Would you talk about those duties?

9 A. Once the evidence was collected, I would go
10 discuss with people who had located it, what had been
11 found, where it was at, what people were involved in it,
12 what they should be charged with, and then taking it down
13 to property and evidence and turning it there.

14 Q. Did you submit any evidence for analysis?

15 A. Yes, several items were admitted.

16 Q. And that was your responsibility to make the
17 requests?

18 A. Yes.

19 Q. I'm going to show you what has been marked as
20 State's Exhibit No. 41. Without telling us what it is, do
21 you recognize State's Exhibit No. 41?

22 A. Yes, I do?

23 Q. How do you recognize it?

24 A. It was seized from Lot No. .

25 Q. Has it been altered in any way.

Walters - Direct

1 A. No.

2 Q. Can you determine whether testing has been done
3 to it?

4 A. Testing has been done to it.

5 Q. Did you request that testing be done?

6 A. Yes.

7 Q. What tests did you request on No. 41?

8 A. I requested latent fingerprint testing on that.

9 Q. Okay. Do you recognize what's been marked
10 State's Exhibits -- and again don't tell us what they are
11 -- Exhibits 26 and 28?

12 A. Yes, I do.

13 Q. How do you recognize those?

14 A. Those were also seized from Lot No. .

15 Q. Did you request any testing be done to these?

16 A. I did.

17 Q. What request did you make regarding State's
18 Exhibit's 26 and 28?

19 A. I requested analysis off of that electronic
20 evidence.

21 Q. You did not do the testing yourself?

22 A. I did not do the testing myself, no.

23 Q. As the case agent, were you the person that
24 received the results of the test?

25 A. Yes.

Walters - Cross

1 Q. Was anything pertinent to your investigation
2 found on either 26 or 27?

3 A. No, it's not.

4 MS. BENTLEY: I have no further questions for
5 Deputy Walters.

6 THE COURT: Ms. Ross.

7 ~~CROSS EXAMINATION~~

8 BY MS. ROSS:)

9 Q. Deputy Walters, do you recognize these pictures?

10 A. They appear to be trailers. This one is Lot No.
11 it appears.

12 Q. Were any of these other trailers search
13 warranted?

14 A. That's hard for me to determine, they are so
15 close. I can't see the lot numbers or anything so I can't
16 say.

17 Q. But these are trailers -- a number of trailers of
18 the Lane?

19 A. It would appear to be, yes.

20 Q. And how many trailers were there total did there
21 appear to be on Lane?

22 A. I don't know the exact number of total trailers
23 there.

24 Q. More than six?

25 A. More than six, yeah.

Walters - Cross

1 Q. On that day, I believe, the 18th of November 2010
2 four search warrants were issued at Lane?

3 A. Four search warrants were executed that day.

4 Q. And were they all -- and you stated that you
5 didn't actually use the battering ram or execute the
6 search warrant at Lot that day?

7 A. No, I didn't make an entrance.

8 Q. But you had run the CI that led to that search
9 warrant?

10 A. Yes.

11 Q. And did you also run CI's that led to the search
12 warrants on the three other trailers that day?

13 A. Yes.

14 Q. And were those the same CI?

15 A.. No.

16 Q. And these were all CI's that you made traffic
17 stops that were leaving?

18 A. I didn't make them, other deputies did.

19 Q. So y'all had been sort of collecting the product
20 of traffic stops to trap CI's to set up these search
21 warrants?

22 A. Yes.

23 Q. Now, you stated that you got a statement from the
24 CI in this case.

25 A.. Yes.

Walters - Cross

1 Q. Do you have that statement?

2 A. I don't have it with me, no?

3 Q. But that statement was part of this case?

4 A. Yes.

5 Q. Now, as a result of that CI buy at Lot was
6 Mr. Shumate or Burnside, were either of them charged with
7 distributing crack from that CI buy?

8 A. No. Typically when I make a CI buy, we don't use
9 that by the substantiate a distribution charge because
10 that burns your informant. You have to reveal them and so
11 it ---

12 Q. I'm just asking ---

13 A. I'm trying to explain my answer. The short
14 answer is no.

15 Q. So neither of these two gentlemen were charged
16 with distribution from that CI buy?

17 A. No, not from the CI buy.

18 Q. Is there a video of that CI buy, any kind of
19 video?

20 A. There's an audio recording of it.

21 Q. But no video?

22 A. Correct.

23 Q. Did the CI ever pick Mr. Shumate out of a line up
24 and say that's the person I purchased from?

25 A. Again, we don't use the informant to make a

Walters - Cross

1 distribution charge, so, no, they weren't shown a line up.

2 Q. Was the answer yes or no?

3 A. The answer is no.

4 Q. The CI never said I went to this house and made a
5 purchase from this man?

6 A. No.

7 Q. Or this man?

8 A. No.

9 Q. But someone was selling drugs out of Lot that
10 wasn't either of them?

11 A. Our informant was able to make a purchase out of
12 Lot , yes.

13 Q. Now, eventually you go out and get a search
14 warrant based on that. Do you have any way of knowing
15 when your informant made a purchase Mr. Shumate was in
16 that trailer?

17 A. No.

18 Q. And, in fact, that trailer was not in
19 Mr. Shumate's name, was it?

20 A. I don't know if his name was on it.

21 Q. And there was no evidence that he lived at that
22 trailer, was there?

23 A. No, not in particular.

24 Q. Was it rented to him in his name?

25 A. I don't know if it was rented to him or not.

Walters - Cross

1 Q. Were his clothes in there?

2 A. There was clothing in there.

3 Q. Was it matched to him in any way with
4 fingerprints or DNA or anything like that?

5 A. No, it was just general clothing.

6 Q. You said before you didn't see, personally, any
7 kind of drug purchase at all from that particular trailer,
8 Lot ?

9 A. Right.

10 Q. Now, when you initially got the search warrant,
11 and I'll show it to you, you didn't write in at all
12 on the search warrant? You just simply said
13 Lane, is that what you did on the other ones as well?

14 A. In this particular case when we made the buy and
15 when I went to the trailer park, Lot No. wasn't
16 displayed on the trailer so rather than put that in the
17 search warrant not knowing, I described the trailer and
18 gave the GPS co-ordinance for it.

19 Q. When you gave those GPS co-ordinance, was that
20 based on GPS maps or your phone or did you take a picture
21 or anything to get those co-ordinance?

22 A. It was obtained from Google Maps.

23 Q. And would it surprise you if that wasn't the
24 co-ordinance when you ran -- the exact co-ordinance when
25 you put in Lane on Google Maps?

Walters - Cross

1 A. That would surprise me.

2 Q. Now, how many times had you used this particular
3 confidential informant before this incident, before this
4 time?

5 A. He was used a number of different times. I don't
6 know the exact number before this buy.

7 Q. So you used this CI before?

8 A. Yes.

9 Q. Now, when you went and got the search warrant,
10 was the CI, the confidential informant, there with the
11 magistrate?

12 A. No, he was not.

13 Q. And had he pointed out the trailer on a map or
14 anything to the magistrate?

15 A. No, he pointed it out to me.

16 Q. And isn't it true that you only wrote that
17 incident report that he pointed out to you days after
18 you'd gotten the search warrant?

19 A. That's when I wrote that supplement.

20 Q. But you didn't write that supplement mentioning
21 that he pointed it out to you until after the search
22 warrant, the day after it was searched, correct?

23 A. Right.

24 Q. Is that the point you realized that you hadn't
25 put any of that information in the actual warrant?

Walters - Cross

1 A. No.

2 Q. Just to go back, the CI in this case never met
3 Dominique Shumate, correct?

4 A. Not to my knowledge.

5 Q. And he didn't identify Mr. Shumate either?

6 A. No.

7 Q. And there was money exchanged and drugs exchanged
8 in that buy?

9 A. Yes.

10 Q. And was that money ever connected to Mr. Shumate?

11 A. No.

12 Q. And, in fact, you get the serial number off the
13 money and put it in to evidence?

14 A. Yes.

15 Q. And that was never connected to Mr. Shumate?

16 A. Correct.

17 Q. So you're saying there's no evidence what so ever
18 that Mr. Shumate sold drugs to this CI in question that
19 led to this search warrant?

20 A. Right.

21 MS. ROSS: I've not no further questions.

22 ~~CROSS-EXAMINATION~~

23 ~~BY MR. ROBINSON:~~

24 Q. Officer, to go a little bit more as to
25 Mr. Burnside. The CI never identified Mr. Burnside as

Walters - Cross

1 being the person he sold to, correct?

2 A. That's correct.

3 Q. Never identified him in a line up either, did he?

4 A. No, he wasn't shown a line up.

5 Q. Now, you testified a few moments ago to Ms. Ross
6 that you were the officer in charge; is that correct?

7 A. Correct.

8 Q. Investigating officer?

9 A. Correct.

10 Q. As the investigating officer or the person in
11 charge, it's your responsibility to kind of corral all the
12 sheriffs's resources and get information and do research
13 and so forth, right?

14 A. Sure.

15 Q. And that way you can kind of give information to
16 your assistants and the new deputies that are working on
17 the case as far as what's going on in a particular case,
18 right?

19 A. That's right.

20 Q. Now, you testified a moment ago to Ms. Ross on
21 cross-examination that you don't know who owned this
22 particular trailer, Lot , or owned Lot ; is that
23 correct?

24 A. That's right.

25 Q. You never went to the Greenville County Registrar

Walters - Redirect

1 of Deeds to find out who owned this trailer?

2 A. You can check tax records and it will show you a
3 property owner.

4 Q. And the property owner was neither of these two
5 gentlemen?

6 A. No, because that land get's leased out to someone
7 who then owns the trailer who then rents to someone else.

8 Q. Let's talk about that then, since we've
9 determined that that trailer or Lot on that map over
10 there was not owned by either of these two gentlemen,
11 Mr. Shumate or Mr. Burnside, let's talk about rental or
12 lease agreements that you're talking about here. You
13 don't have any rental or lease agreements with either of
14 their names on it, do you?

15 A. No, I don't have the rental agreement.

16 Q. So, in fact, the person who rented or was leasing
17 this trailer was Mr. Drummond, isn't that correct?

18 A. I believe so, yes.

19 Q. Mr. Drummond actually is a State witness, isn't
20 he?

21 A. Yes.

22 Q. Again, I want to make sure the jury understands
23 this, when the solicitor a moment ago talked about in the
24 opening talking about Mr. Burnside or Mr. Shumate owning
25 this property, they owned this property, that wasn't true,

Walters - Redirect

1 was it? They don't own this property nor do they rent or
2 lease this property, Lot , do they?

3 A. No. It's not necessarily in writing.

4 Q. So you have nothing in writing or from the RMC or
5 anyone they can say that either Mr. Shumate or
6 Mr. Burnside either owned or leased this property,
7 correct?

8 A. I don't have a specific document, no.

9 MR. ROBINSON: That's all I have, thank you.

10 REDIRECT EXAMINATION

11 BY MS. BENTLEY:

12 Q. Did you do any investigation into who made the
13 sale of drugs on November 10, 2010?

14 A. We tried to obtain a name or a nickname and the
15 informant didn't know the names of anything. All he could
16 give was a vague description of a black male suspect.

17 MS. BENTLEY: Thank you.

18 THE COURT: Alright, step down.

19 MS. BENTLEY: The State would call

20 THE CLERK: Please come forward to be sworn
21 in. Place your left on the Bible and raise your right.

22 PATRICK SWIFT} having been duly sworn,
23 testified as follows:

24 Thank you. You can be seated. Would you
25 please state your name for the record.

Swift - Direct

1 THE WITNESS: Patrick Swift.

2 THE CLERK: Thank you.

3 ~~DIRECT EXAMINATION~~

4 BY MS. MCCALL:

5 Q. Would you please tell the jury where you work?

6 A. I work at the Greenville County Sheriff's Office.

7 Q. How long have you worked there?

8 A. For approximately nine years.

9 Q. And had you worked at any other law enforcement
10 agencies before the Sheriff's Office?

11 A. No, ma'am.

12 Q. What's your current duty with the Greenville
13 County Sheriff's Office?

14 A. I'm a master duty with the directed patrol unit.

15 Q. Can you tell the Court how long you worked for
16 the patrol unit?

17 A. I worked for the directed patrol unit for almost
18 four years now.

19 Q. Are you also a member of the SWAT team?

20 A. I am.

21 Q. And how long have you been a member?

22 A. Since '06 -- I'm sorry -- almost five years.

23 Q. Have you received any special training with
24 either of these units?

25 A. Yes.

Swift - Direct

1 Q. What are your duties as officer of SWAT and
2 directed patrol unit?

3 A. SWAT team we respond to several different types
4 of calls. It could be a high risk search warrant, it
5 could be a hostage type call. It could be a manhunt type
6 situation or an armed subject or a barricaded subject.
7 With the directed patrol unit, our primary job is about 80
8 percent narcotics and 20 percent gambling and illegal
9 prostitution.

10 Q. How did you become involved in the investigation
11 of Road?

12 A. Direct patrol unit we had -- I believe we first
13 got some crime stopper tips saying there was illegal drug
14 activity that was going on in several of the trailers in
15 the trailer park. We were able to develop a couple of
16 CI's which is confidential informants. They went inside,
17 made controlled purchases of narcotics from four different
18 trailers in this mobile home park. Lot No. was one of
19 them.

20 Once we got the search warrant signed by a
21 judge, the SWAT team was called for extra unit power and
22 because of the high risk nature of the search warrants.

23 Q. What was your roll specifically on November 17?

24 A. I had two different rolls. My first roll was
25 being on the SWAT team. My team, I'm assistant team

Swift - Direct

1 leader for the SWAT team on one of the teams, and I was
2 assigned to conduct the initial clearing of Lot No. and
3 after that was done I was going to take off my SWAT hat
4 and put on my BPU hat and assist in the searching and all
5 the different paperwork that goes on with the search
6 warrant. And if we found anybody inside of the trailer,
7 to charge indictments and that type of thing.

8 Q. On this State's Exhibit 1, the map, could you
9 step down and show exactly where you departed your vehicle
10 and where you pulled up to enter the trailer at Lot and
11 what happened?

12 A. We were in a U-Haul truck and we pulled up to
13 this intersection right here. When we got out of the
14 back, we went in between these two trailers. I deployed a
15 noise distraction device which is what we call a flash
16 bang. I deployed it at the back of this trailer.

17 Q. Can you tell the jury why you deployed this flash
18 bank?

19 A. We were going to come in through one side and we
20 wanted them distracted to the back side so that's when I
21 -- they make a very loud noise. I threw it at the back of
22 the trailer and we made entry in the front side.

23 Q. Can you described exactly what happened when you
24 and the SWAT team arrived at the front door of Lot ?

25 A. The door was initially it was barricade by a 2X4

Swift - Direct

1 that had been placed over the door from the inside so it
2 took us approximately 30 seconds. The guy was trying to
3 breach the door it took him probably about 30 seconds to
4 get inside the door. He had to strike it numerous times
5 with the breaching ram and basically the door just kind of
6 came apart around the 2X4. We started coming into the
7 house ---

8 Q. Before you go any further, I'd like to have you
9 look at what's marked State's 2, 3 and 4.

10 MR. ROBINSON: I would object on relevance,
11 Your Honor, in this case.

12 MS. MCCALL: This just shows the front
13 entrance of the trailer and the barricade and what
14 happened.

15 THE COURT: Subject to objection. Go ahead.

16 BY MS. MCCALL:

17 Q. If you would just take a look at that. Do you
18 recognize what's depicted in these photos?

19 A. Yes, ma'am.

20 Q. How are you able to do that?

21 A. How am I able to recognize them?

22 Q. Yes.

23 A. This is the door that we broke apart that we were
24 trying to breach to get in the trailer.

25 Q. Did you take those pictures.

Swift - Direct

1 A. Yes.

2 Q. Are they fair and accurate representations of the
3 different aspects of the incident location back on
4 November 17th or 18th?

5 A. Yes, ma'am.

6 Q. Have they been altered in any way?

7 A. No, ma'am.

8 MS. MCCALL: Your Honor, I'd move in State's
9 Exhibit 2, 3 and 4.

10 THE COURT: Subject to his objection, they're
11 in.

12 (Photographs marked as State's Exhibit Nos 2,
13 3 and 4 for identification were admitted into evidence.)

14 BY MS. MCCALL:

15 Q. Could you hold up the picture and tell the jury
16 what State's 2, 3 and 4 depict?

17 A. This is the outside view of the trailer. There's
18 a front porch that kind of went up and this is the screen
19 door on the front door of the trailer. This is a photo of
20 the actual door of the trailer after we had to strike it
21 numerous times with the breaching ram to get it to fall
22 apart. And this is another picture of the same door?

23 Q. Does that picture show the 2X4?

24 A. I this is part of the door frame that came out
25 with the door. It's got a lock on it so I think that's

Swift - Direct

1 part of the door frame.

2 Q. Getting back to the clearing of the house, where
3 did you go first? How did y'all enter?

4 A. I guess I was third, maybe fourth inside the
5 trailer. The living room was being cleared and there was
6 another little small room off the kitchen off to the right
7 that was being cleared. I went left down the hallway and
8 there is a bathroom there and I came to that bathroom door
9 and encountered Mr. Shumate inside the bathroom. He was
10 standing over the toilet and the toilet was running. It
11 appeared to me that he had just flushed something.

12 I grabbed him and put him on the ground and
13 handcuffed him without any further incident from him. At
14 that point I could hear deputies going pass the bathroom
15 going down the hall. I can hear they had encountered
16 somebody else and giving them demands in another room. I
17 never actually encountered him myself while clearing the
18 trailer.

19 I did do a brief protective pat down of
20 Mr. Shumate and then I brought him outside the trailer in
21 handcuffs and he was sitting out in a place where a deputy
22 could watch both the two people that had been found inside
23 the trailer.

24 Q. How were you able to determine the identity of
25 Mr. Shumate?

Swift - Direct

1 A. It might have been ID but I'm not sure.

2 Q. After you took Mr. Shumate outside, what did you
3 do next?

4 A. At that point once the trailer was secured, I
5 took some photographs of the trailer before we started
6 searching. We also lettered the rooms in the different
7 trailer to help us keep track of what room was what and
8 then I took photographs of the trailer.

9 Q. I'm going to show you all at one time Exhibits 5
10 through 26.

11 ~~MR. ROBINSON:~~ Your Honor, I have an
12 objection, one, as to relevance to these pictures that
13 they have, and the second is the foundation. They haven't
14 set up a foundation as to the Exhibits 18, 15, 14, 13, 12,
15 11, 9 and 6. I would object as far as foundation.

16 MS. MCCALL: Your Honor, we are about to lay
17 the foundation of who took these pictures.

18 ~~THE COURT:~~ I think he's already testified
19 that he did take them. Overruled. Move on.

20 BY MS. MCCALL:

21 Q. I just want you to look through 5 through 26 and
22 I just want you to tell me how you recognize those -- 5
23 through 25.

24 A. Yes, ma'am.

25 Q. Are you able to recognize them?

Swift - Direct

1 A. Yes, ma'am.

2 Q. And how are you able to recognize them?

3 A. These are the photos from the trailer that I took
4 that night when we served the search warrant.

5 Q. Are these a fair and accurate representation of
6 different items found within the trailer?

7 A. Yes, ma'am.

8 Q. And have they been altered in any way?

9 A. No, ma'am.

10 MS. MCCALL: Your Honor, I'd like to move
11 State's Exhibit Nos. 5 through 25 admitted into evidence.

12 THE COURT: They're admitted.

13 (Photographs marked as State's Exhibit Nos. 5
14 through 25 for identification was admitted into evidence.)

15 BY MS. MCCALL:

16 Q. Could you tell the jury what Exhibit 5 depicts,
17 that picture?

18 A. This is a bathroom of the trailer, that's the
19 toilet.

20 Q. Is there anything you can see in the bathroom on
21 the sink?

22 A. Cell phone, some Listerine.

23 Q. And did you go back to the bathroom after
24 securing the defendant, Shumate?

25 A. Yes, I did?

Swift - Direct

1 Q. And what did you observe?

2 A. Particularly I was looking inside the toilet.
3 The toilet was running when I encountered Mr. Shumate the
4 first time. Just based on numerous search warrants that
5 I've done with the Sheriff's Office sometimes people try
6 to ---

7 MR. ROBINSON: Objection, Your Honor.

8 THE COURT: I'll sustain that objection to
9 the last comment. Go ahead.

10 THE WITNESS: I went back to the bathroom to
11 see if there was anything in there. When I went back to
12 the bathroom, I looked inside the toilet, there was a Uno
13 playing card, like you play Uno. It was floating in the
14 toilet inside the water. At the time I didn't really
15 think that much of the Uno card until later in the search.

16 BY MS. MCCALL:

17 Q. I'd like to show you what's been marked as
18 State's Exhibit 26. Could you tell the jury what that is?

19 A. This is a cell phone.

20 Q. Did you find that cell phone in the residence?

21 A. Yes, ma'am.

22 Q. Is that the one that's in the picture?

23 A. Yes, ma'am.

24 Q. Once you found that cell phone, what did you do
25 with that cell phone?

Swift - Direct

1 A. I secured it. The photograph was taken after I
2 secured it and it was taken to the scribe for the warrant
3 which was Debbie Lanton.

4 Q. And after it was scribed, what did you do at that
5 time?

6 A. After it was scribed -- well, I took all of the
7 evidence that was collected that night and took it down to
8 property and evidence.

9 Q. And is it in substantially the same condition as
10 when you put it in property and evidence?

11 A. Yes, ma'am.

12 Q. And where has it been kept until today?

13 A. In property and evidence in the basement of the
14 Law Enforcement Center.

15 MS. MCCALL: Your Honor, I'd like to move
16 State's Exhibit 26 into evidence.

17 THE COURT: It's in evidence.

18 (Cell phone marked as State's Exhibit No. 26
19 for identification was admitted into evidence.)

20 BY MS. MCCALL:

21 Q. Going to the search of the residence, did any
22 other deputies help you with the search of the residence?

23 A. There were other deputies.

24 Q. Who was that?

25 A. Deputy Landrum was there, there were a couple of

Swift - Direct

1 other deputies from vice and narcotics. Deputy Wells was
2 there to help Deputy Landrum with the scribe.

3 Q. And when you searched the residence, can you tell
4 us what the plan was to search this particular residence?

5 A. Whenever we do a search warrant when we do it is
6 we try to keep track of what we find we will letter the
7 rooms up. Depending on how large the rooms is, there may
8 be two deputies assigned to a room. There may be one
9 deputy assigned to a room depending on the size of the
10 room. We'll start searching the room. Once we get done
11 searching -- if we find anything during the search, we'll
12 take photographs of it, where it is, the best that we can
13 while it's in the place that we found it. Then we'll take
14 it to the scribe for the warrant and we'll give it to the
15 scribe and let him write it down in the search warrant,
16 where we found it, what room it was in, and who found it.
17 That's typically how we do it.

18 Q. Tell the jury just briefly what a scribe is so
19 they understand that?

20 A. Scribe is the person that logs into evidence on
21 the search warrant itself everything that we find inside
22 the place to be searched. They sit down and they got the
23 actual piece of paper, the actual search warrant in front
24 of them. There is a return page on the search warrant and
25 they scribe out everything that's found there in the

Swift - Direct

1 house.

2 Q. Now, after you went in the bathroom, when did you
3 start back search?

4 A. Do you have a copy of my supplement? Do you mind
5 if I refresh my memory with a copy of the supplement?
6 Thank you. After the bathroom, I went to room A which was
7 the kitchen in this trailer. I stood in a chair and got
8 up on top of the kitchen counter which there was space on
9 top of the kitchen counter. I got up on top of there and
10 found a tupperware container which contained two more of
11 the Uno playing cards kind of like the one I found in the
12 bathroom floating in the toilet.

13 On top of these cards, I counted it out, it
14 was eight pieces of white rock like substance.

15 Q. I'm going to show you what's been marked as
16 Exhibit 6, does that picture depict what you found on top
17 of the kitchen counter?

18 A. Yes, ma'am.

19 Q. This is State's Exhibit 27. I'll show you what's
20 been marked as Exhibit 27, without saying what it is, do
21 you recognize what that is?

22 A. Yes, ma'am.

23 Q. How do you recognize that?

24 A. It is the substance that was found on top of the
25 Uno playing cards in the photograph.

Swift - Direct

1 Q. And based on your training and experience what
2 did these Uno cards appear to be used for?

3 MS. ROSS: I object.

4 THE COURT: I'm sorry. I didn't hear the
5 question.

6 MS. MCCALL: I asked based on his training
7 and experience what did these Uno cards appear to be used
8 for.

9 THE COURT: If he knows.

10 THE WITNESS: Yes, sir. It could be Uno
11 cards or it could be any kind of surface that you can
12 contain this type of substance in. Also, sometimes,
13 they'll have a surface like this where they can contain it
14 in an cut it at the same time. It's folded as to carry
15 that type of substance.

16 BY MS. MCCALL:

17 Q. Thank you. And Exhibit 27, which I just brought
18 up to you, does it appear as it did back on February 18,
19 2010?

20 A. It's older, but, yes, it's cut up in the same
21 manner. One piece is blue, where in the picture it's not
22 blue. The reason for that is we have a field test kit to
23 field test for cocaine, cocaine base and when it turns
24 blue that let's us know that we have probable cause to say
25 that it's cocaine.

Swift - Direct

1 Q. While it was in your possession other than field
2 testing it, did you alter this substance in any way?

3 A. No, ma'am.

4 Q. What did you do with that substance after you
5 field tested it?

6 A. It was photographed and taken to Deputy Lanford,
7 the scribe.

8 Q. And then you also took it back to property and
9 evidence?

10 A. I also took it back to property and evidence,
11 yes, ma'am.

12 Q. Now, after searching the kitchen, what was the
13 next room that you searched?

14 A. Room B which is the living room and there was
15 \$172.00 in US, United States currency.

16 Q. In State's Exhibit No. 7, does that picture
17 depict what you found in Room B?

18 A. Yes, ma'am, it was ground floor and that's where
19 it was collected.

20 Q. After that living room, what was the next room
21 that you searched?

22 A. I went on to Room C and that was a bedroom, I
23 found a black Android cell phone that was on the floor
24 beside a bed in the room. It's photographs and taken to
25 the scribe.

Swift - Direct

1 Q. So this Exhibit 28 -- do you recognize Exhibit
2 28?

3 A. Yes, ma'am. That was the cell phone I found on
4 the floor in C.

5 Q. And is that in substantially the same condition
6 as you found it?

7 A. Yes, ma'am.

8 Q. After you got it, what did you do with that cell
9 phone?

10 A. The same thing, I took it to Deputy Lanford, the
11 scribe for the warrant requested?

12 Q. And where has that been held until today?

13 A. Property and evidence.

14 MS. MCCALL: Your Honor, I would move Exhibit
15 28 into evidence.

16 THE COURT: Any objection?

17 MS. ROSS: No objection.

18 MR. ROBINSON: No objection.

19 THE COURT: Without objection, it is in
20 evidence.

21 (Cell phone marked as State's Exhibit No. 28
22 for identification was admitted into evidence.)

23 BY MS. MCCALL:

24 Q. You find anything else in this bedroom?

25 A. I did. I found a coat in this room. I searched

Swift - Direct

1 the coat.

2 Q. Exhibit's 8 and 9, does that depict the coat that
3 you're talking about you found?

4 A. Yes.

5 Q. What does that depict?

6 A. The black coat that was found in this room. I
7 searched the coat pockets and found this substance here,
8 white rock-like substance in a plastic bag.

9 Q. And this is Exhibit 29 do you recognize this as
10 the substance that was found in that coat?

11 A. Yes, ma'am.

12 Q. Based on your training and experience, is it
13 typical to find when looking through your clothes to find
14 any drugs?

15 A. Yes, ma'am.

16 MR. ROBINSON: Objection, Your Honor,
17 foundation in this case.

18 THE COURT: Subject to your objection, go
19 ahead.

20 MS. MCCALL: It was a very thorough search
21 and I was inquiring as to why ---

22 THE COURT: I understand, go ahead.

23 BY MS. MCCALL:

24 Q. Does that Exhibit No. 29 appear to be altered in
25 any way?

Swift - Direct

1 A. It doesn't look the same as it did in the picture
2 because it's old, yes, ma'am.

3 Q. Did you field test that also.

4 A. Yes, ma'am.

5 Q. What were the results of that field test?

6 A. It was positive for cocaine and cocaine base.

7 Q. After finding that, the same thing, you took it
8 to the scribe?

9 A. Yes, ma'am.

10 Q. Where did you go next?

11 A. Room D which is actually not a room, it's a
12 hallway in the trailer.

13 Q. Does that depict the hallway and how you found
14 it?

15 A. Yes, ma'am, it's the hallway as if you were
16 looking at it from the living room. It goes down the
17 hallway and there's a room down at the end of the hall.

18 Q. Okay. And do you recognize what's been depicted
19 in Exhibit 30?

20 A. Yes, ma'am.

21 Q. And what is it?

22 A. It's a digital scale, gray in color, and it was
23 found in the hallway of a small room in the hallway
24 itself. I think it was like a water heater in this small
25 room and there was a shelf in that room and digital scale

Swift - Direct

1 was sitting on top of that shelf?

2 Q. And after you found the scale, took a picture,
3 what did you do with that?

4 A. Took it to Deputy Lanford, he entered it into the
5 search warrant and then I took it to property and
6 evidence.

7 Q. And does it appear to be altered in any way?

8 A. No, ma'am.

9 Q. And it stayed in property and evidence until
10 today?

11 A. Yes, ma'am.

12 Q. Now, based on your experience and training, what
13 do these digital scales appear to be used for?

14 A. To weigh illegal narcotics.

15 MS. MCCALL: Your Honor, we ask that Exhibit
16 30 be admitted into evidence.

17 THE COURT: Any objection? Without objection
18 it's in evidence.

19 (Scales marked as State's Exhibit No. 30
20 marked for identification was admitted into evidence.)

21 BY MS. MCCALL:

22 Q. I'd like to show you Exhibit No. 31 and ask you
23 if you recognize that?

24 A. Yes, ma'am.

25 Q. Now, could you tell the jury where you found

Swift - Direct

1 that?

2 A. Yes, ma'am. It was found in Room F which is the
3 last bedroom. This is a view to this other photograph
4 which shows hallway. You go all the way down to the end
5 of that hallway and there's a bedroom there. It is also
6 where the other subject was found inside the house.

7 Q. 12 and 13, do those pictures depict (inaudible)?

8 A. Yes, ma'am.

9 Q. What did you say Exhibit 31 was?

10 A. This is ammunition, it's 7.76 ammunition for an
11 assault riffle.

12 Q. Now, does it appear to be in the same condition
13 as you did when you placed it in P&E?

14 A. Yes, ma'am.

15 MS. MCCALL: Your Honor, I'd move that
16 Exhibit 31 be admitted into evidence.

17 THE COURT: Without objection.

18 (Bullets marked as State's Exhibit No. 31 for
19 identification was admitted into evidence.)

20 BY MS. MCCALL:

21 Q. Just briefly since we've been referring to
22 property and evidence all the time, would you please
23 describe to the jury what property and evidence is?

24 A. Yes, ma'am. Property and evidence is where we
25 keep all the either property or evidence that we seize on

Swift - Direct

1 the case. In this case, we had a lot of stuff to go down
2 to property and evidence that night.

3 Generally the procedure is we fill out the
4 paperwork saying what time we got it, where we got it from
5 and we put it in. There's a locker down at property and
6 evidence and we can put all the evidence from one case
7 into one specific locker and once we put it in there and
8 we hit the little lock button, the lock button is locked
9 and the only people that can open it up from that point
10 are the people that work in property and evidence itself.
11 We can't go back and try to open it up after we lock it.

12 MS. MCCALL: This is State's Exhibits 34
13 through 38 that is marked for identification purposes.

14 MR. ROBINSON: No objection for
15 identification purposes only.

16 MS. MCCALL: I'd like to mark Exhibit Nos. 44
17 through 48.

18 (P&E forms marked as State's Exhibit Nos. 44
19 through 48 for identification.)

20 BY MS. MCCALL:

21 Q. Could you tell me what those are and do you
22 recognize those?

23 A. Yes, ma'am. This is the paperwork that we
24 complete when we put anything into property and evidence.
25 This is the actual paperwork from the night that we seized

Swift - Cross

1 all this evidence that you have here in this case and when
2 it was placed in property and evidence. It has my name
3 down here. I put PW Swift down here and my signature. I
4 put locker I put it in. In this case it was No. 2 and put
5 the date which is 11/18/2010 and the time which was 23:04
6 which is 11:04. That's how all of them are filled out.

7 Q. Now, are there items that you log into P&E that
8 you did not find in the search that maybe some other
9 officer found?

10 A. Yes.

11 Q. Why is that the case?

12 A. Simply because I wasn't the only one searching
13 the trailer that night. There were other deputies that
14 were assisting in the search. Once they found an item,
15 they would bring it to Deputy Lanford just like I did. He
16 would write it down in the scribe. The paperwork is
17 filled out for it and once all the evidence was compiled,
18 I took possession of all the evidence and I took it down
19 to P&E that night.

20 Q. Did you bring all the collected evidence today
21 from property and evidence?

22 A. Yes, we did. Yes.

23 Q. Now, you went over everything you found pursuant
24 to this search. Did you find any drug paraphernalia that
25 would indicate drug use like crack pipes or rolling

Swift - Cross

1 papers?

2 A. No, ma'am, I didn't.

3 Q. After securing the evidence, did that conclude
4 your investigation in this case?

5 A. After we secured it, like I said, I took it down
6 to property and evidence, logged it in properly, and then
7 I completed a drug analysis request to be done for all the
8 narcotics that we seized for them to be actually tested in
9 the lab by the technicians and then after that was
10 completed, I put all that stuff in the box. Then I went
11 over to the jail where Deputy Walters was and we just kind
12 of assisted in some booking paperwork.

13 MS. MCCALL: No further questions. Would you
14 please answer any questions that counsel may have.

15 THE COURT: Cross.

16 MS. ROSS: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. ROSS:

19 Q. Deputy, let me just start with I seem to recall
20 looking through these pictures a number of lighters.
21 Weren't there lighters throughout the trailer sprue about?

22 A. I don't recall off the top of my head. There may
23 have been.

24 Q. So there may have been some lighters around that
25 trailer?

Swift - Cross

1 A. I don't recall see any. I know we don't recall
2 taking any into evidence.

3 Q. And just -- I'm going back over some notes I
4 wrote. On those scales, were there any fingerprints or
5 residue on the scales that were found up in the closet
6 cabinet?

7 A. I can't recall. I'm not sure.

8 Q. When you talked about -- you did something like
9 this when you were talking about finding Uno cards in the
10 cabinet so it was up high?

11 A. Yes, ma'am.

12 Q. It wasn't out just one the counter top?

13 A. No.

14 Q. I think you testified that when you go through to
15 take these pictures, did you take a video as well or did
16 anyone take a video camera in?

17 A. No, ma'am.

18 Q. So when you went through you took the pictures,
19 right?

20 A. Right.

21 Q. And this was after you had gotten the drugs and
22 you'd given them all to Officer Lanford, but you had
23 already turned over all the evidence to be scribed at that
24 point when you took the pictures, right?

25 A. No, originally, I took photographs before we

Swift - Cross

1 started searching. And then as items were found, they
2 were photographs.

3 Q. So you took photographs of anything relevant to
4 the case?

5 A. Right, just trying to get the layout of the
6 trailer.

7 Q. And that's to prove the case to the jury and
8 that's why you're taking these photographs. Now, where in
9 those photographs is a picture of the Uno card floating in
10 the toilet?

11 A. There wasn't.

12 Q. And you were with SWAT team at that point when
13 you went in?

14 A. Yes.

15 Q. And also there was a canine team and vice and
16 narcotics and directed patrol also there?

17 A. Yes, ma'am.

18 Q. Would you estimate there were at least 20
19 officers serving those four search warrants there at the
20 same time?

21 A. On the low side, yes, ma'am.

22 Q. And you said that you came in and you shot off
23 sort of a blast -- sound blast and then on the front they
24 started ramming the door?

25 A. Right. We don't shoot it but we employ the NFDD

Swift - Cross

1 on the backside of the house.

2 Q. Is that kind of like fireworks, loud noise?

3 A. You could equate it like that. It's like a large
4 fire -- it doesn't shoot up in the air like a roman cannon
5 would but ---

6 Q. But it's loud enough to make enough noise that in
7 a trailer you'd run to the back to try to figure out what
8 it was.

9 A. Right, you would trying to figure out what it was
10 to, there's no doubt.

11 Q. And after you did that someone is going in with a
12 battering ram on the front?

13 A. Yes, ma'am.

14 Q. And this is happening simultaneously, I guess, at
15 the three other trailers as well?

16 A. Yes, ma'am.

17 Q. And this was coordinated between SWAT and canine
18 and all these different officers were all out there.
19 These are all at different trailers. Can you point out
20 which trailers there were?

21 A. I'll do my best. I know the one that we did and
22 I was responsible for is this one here. This one was also
23 a part of the search warrant and I think this one was.
24 I'm not sure of the other ones.

25 Q. But essentially four warrants were coming out at

Swift - Cross

1 the same time?

2 A. That's correct.

3 Q. This started -- the search warrant came after the
4 CI went and made a purchase at Road,
5 right?

6 A. Yes, ma'am.

7 Q. And you actually issued the \$20 to that CI; is
8 that correct?

9 A. I did.

10 Q. Now, you wrote down the serial number on that
11 bill, right?

12 A. We took a photograph of the bill that has the
13 serial number on it.

14 Q. Would it surprise you that you noted that serial
15 number in your incident report?

16 A. No. Typically I'll do that.

17 Q. And that particular bill was not found in Lot
18 when y'all went in with the search warrant, was it?

19 A. No, ma'am.

20 Q. Now, you issued the \$20, but you didn't see that
21 CI make a purchase from Lot , did you?

22 A. No, I was working that night and the CI was also
23 -- no, I didn't.

24 Q. Okay, so you didn't see either of these two
25 gentlemen ---

Swift - Cross

1 A. No.

2 Q. That night. Now, just one thing, these were put
3 into evidence but there was no shotgun that was found at
4 the scene was there?

5 A. No riffle.

6 Q. When you took Mr. Shumate into custody, you
7 patted him down and did a full search, pulled his pants
8 down and everything and no drugs were found on this
9 person, were they?

10 A. No.

11 Q. And no cash or money found on this person?

12 A. No.

13 MS. ROSS: I got no further questions.

14 THE COURT: Mr. Robinson.

15 MR. ROBINSON: May it please the Court.

16 BY MR. ROBINSON:

17 Q. Deputy, let's start with the restroom that's in
18 that picture. You said that Mr. Shumate was standing by
19 the toilet; is that correct?

20 A. Yes, sir.

21 Q. And it appeared that the toilet had just been
22 flushed; is that right?

23 A. The water was running and the toilet.

24 Q. Now, you would agree with me that it's pretty
25 natural for human beings to flush the toilet after they

Swift - Cross

1 use the restroom? Would you agree with that?

2 A. Yes, sir.

3 Q. Now, when you searched the toilet, you didn't
4 find any drugs in that toilet, did you?

5 A. No, sir.

6 Q. You play cards, officer?

7 A. Not typically, no.

8 Q. Isn't Uno a pretty common game for card players?
9 It's a pretty popular game, isn't it?

10 A. (No response.)

11 Q. You don't know? You've never played Uno before.

12 A. I have played it.

13 Q. How many cards are in a Uno deck?

14 A. I have no idea.

15 Q. In your experience do a lot of people play Uno?

16 A. I don't hang out with a lot of people that play
17 Uno.

18 Q. You don't.

19 A. No.

20 Q. Would it surprise you that Uno is one of the most
21 popular games in the United States to play? Would it
22 surprise you?

23 A. I don't guess it would.

24 Q. Now, as far as Mr. Burnside goes, you've got a
25 bunch of pictures there. He was obviously found in the

Swift - Cross

1 back of the trailer; is that right? He was in the back of
2 the trailer; is that right?

3 A. That's right.

4 Q. And you would agree with me there were no drugs
5 found around or near Mr. Burnside; is that correct?

6 A. I didn't find any.

7 Q. And as far as any gun, I think that you testified
8 a moment ago on cross-examination regarding these bullets
9 that were found in this residence, these bullets belonged
10 to an assault riffle, don't they?

11 A. Yes, sir.

12 Q. And there was no assault riffle ever found either
13 around or on Mr. Burnside?

14 A. No, sir.

15 Q. In fact Mr. Shumate also did not have that kind
16 of gun or riffle near him at all, did he?

17 A. There was no riffle in the house. There was a
18 gun in the house.

19 Q. But the gun that you're talking about was not the
20 gun that belonged to these bullets, correct?

21 A. No.

22 Q. And the gun that was found, I believe, up in the
23 top of the -- in the kitchen of this trailer and not the
24 back of the trailer, correct?

25 A. I'm not sure where the gun was found. I'm not

Swift - Cross

1 sure.

2 Q. Now, the door that we're talking about here,
3 isn't it pretty common for doors to be closed in
4 residences? Isn't that pretty common? Places normally
5 have doors that are closed, don't they?

6 A. Yes, sir.

7 Q. Now, in terms of -- I believe that the solicitor
8 may have eluded to this, the money that was found in this
9 home, this trailer, you don't know who that belongs to, do
10 you?

11 A. No, it was thrown on the floor.

12 Q. Now, isn't it pretty common for people to carry
13 cash with them? Isn't that pretty common for people to
14 carry cash?

15 A. Yes, sir.

16 Q. And you have really no idea as far as where this
17 money came from and who it belonged to, do you?

18 A. No, sir.

19 Q. Now, as far as the scales in this case that
20 you're talking about, I believe the scales were not found
21 near either Mr. Burnside nor Mr. Shumate, were they?

22 A. The scales were found in the closet. Neither one
23 of them were found in the small room where the scales
24 were.

25 Q. So neither of them either had dominion and

Swift - Cross

1 control or found near these scales, correct?

2 A. No, they were not found near the scale.

3 Q. And I think you testified a few moments ago
4 either on cross-examination or direct examination that
5 your CI or the CI that was involved in this case never
6 purchased any drugs from either Mr. Burnside or
7 Mr. Shumate; isn't that correct?

8 A. I'm not sure. They very well could have
9 purchased it from them, but I didn't know who they were at
10 the time that they purchased them.

11 Q. And you mentioned a coat a few minutes ago. You
12 don't know who that coat belonged to you, do you?

13 A. No, sir. It was found in the closet in the
14 trailer.

15 Q. And neither Mr. Shumate or Mr. Burnside were near
16 the coat, were they?

17 A. They were not in the room -- neither one of them
18 were found in the room where the coat was located.

19 Q. Okay. And, also, no drugs or paraphernalia were
20 found near Mr. Burnside or Mr. Shumate, correct?

21 A. Correct.

22 Q. And as far as this door goes, you got some
23 pictures in a couple of the exhibits that indicate the
24 door was busted in but you didn't find anything to
25 indicate that the door was barricaded, did you?

Swift - Cross

1 A. Yes, sir, it was barricaded.

2 Q. How so?

3 A. There was a 2X4 that was across the door. There
4 was a door that opened in and a screen door that opened
5 out and there was a 2X4 across that door. Typically a
6 door won't last more than one or two hits on a breaching
7 ram and it took us probably 30 seconds to get inside this
8 trailer.

9 Q. You didn't never check to see whether or not the
10 lock to this door was broken, did you?

11 A. Yes, it was broken.

12 Q. So it was broken?

13 A. Uh-hum.

14 Q. So it wouldn't be unusual for a stick or a 2X4 to
15 be placed in that door as a locking mechanism?

16 A. The lock was broken after we broke the door down.

17 Q. So you have no information to present to this
18 jury that the door was no broken before you decided to
19 bust in, correct?

20 A. Yes, sir. I have no information of the condition
21 of the lock before the search warrant or after the search
22 warrant.

23 Q. And you would agree with me that it's not
24 uncommon if a door doesn't lock that 2X4 put across it
25 just to secure it and make sure it closes? You would

Swift - Redirect

1 agree with me, wouldn't you?

2 A. Repeat that.

3 Q. You don't know whether the lock was broken.

4 Let's assume it was a broken lock. It would not be
5 unusual for someone to have the -- the owner or whoever
6 owned the property to have a 2X4 put across it just to
7 make sure the door closes. That would not be usual, would
8 it.

9 A. I don't know. I would have my door fixed if the
10 lock were broken.

11 Q. When you say barricaded, you have no information
12 you can present to this jury that this door was actually
13 barricaded, do you?

14 A. No, it was barricaded with a 2X4. That's not
15 common because usually doors are secured by a lock and not
16 a 2X4 inside of a door. That's what we call a barricaded
17 door and the reason -- a lot of times the reason it's done
18 that way is to make it harder for us to get inside of the
19 house.

20 Q. But you don't know whether it was barricaded or
21 not. You think it was barricaded ---

22 MS. MCCALL: Your Honor.

23 THE COURT: That's been asked and answered.

24 MR. ROBINSON: I have no further questions.

25 MS. MCCALL: I just have a couple of

Swift - Redirect

1 questions.

2 REDIRECT EXAMINATION

3 BY MS. MCCALL:

4 Q. Was the door to the bathroom open when you
5 entered the residence, do you remember?

6 A. Yes.

7 Q. And when you encountered Mr. Shumate, were his
8 pants up?

9 A. Yes.

10 Q. So it did not appear that he was using the
11 restroom.

12 A. No.

13 Q. And about how many searches have you conducted
14 with a search warrant?

15 A. Five hundred -- a lot. I've done a lot of search
16 warrants.

17 Q. And have you encountered a 2X4? Is that common
18 to see that?

19 A. Yes, we've encountered that several times.

20 MS. MCCALL: Thank you.

21 THE COURT: Thank you. Step down.

22 (Witness leaves the witness stand.)

23 Counsel, approach.

24 (Whereupon, there was a bench conference.)

25 Ladies and gentlemen, I have some matters I

Swift - Redirect

1 need to take up that doesn't involve you. Insofar as
2 you're concerned, we'll suspend at this time for lunch and
3 pick back up with after lunch. Please remember the order
4 that I read from Chief Justice Toal and I'll ask that you
5 please keep your badges on during the lunch recess. I ask
6 that you do that so that everyone involved with this case
7 will not that you're a juror and that it would be improper
8 for them to discuss or talk about this case in your
9 presence so please keep your badges on.

10 I'd ask you to be back in your jury room at
11 2:00 p.m. Thank you.

12 Take the jury out.

13 (Whereupon, the jury was dismissed for
14 lunch.)

15 See everyone back at 2:00.

16 MS. ROSS: Can Mr. Burnside remain out on
17 bond for lunch?

18 THE COURT: No, he's in the custody of the
19 sheriff.

20 (Court returns to session after lunch.)

21 THE BAILIFF: All rise, court is now in
22 session.

23 THE COURT: Please be seated. Anything
24 before I bring the jury back.

25 MS. BENTLEY: Your Honor, may Deputy Swift be

Swift - Redirect

1 excused?

2 THE COURT: Any objection?

3 MR. ROBINSON: No objection.

4 MS. ROSS: No objection. Your Honor, one
5 thing that I had noticed during Investigator Walters's
6 testimony. He talked about getting a statement from the
7 CI. I was never provided a statement and neither was
8 Mr. Robinson in discovery from CI. I would be asked that
9 we be allowed to review that statement.

10 MS. BENTLEY: The State would only reply that
11 was no charged made in the CI buy and therefore the
12 statement of the CI is irrelevant.

13 MS. ROSS: In the prior motion to suppress
14 based on the search warrant, the search warrant was
15 completely based on the word of the CI. There was nothing
16 about the CI being reliable and if in fact there is
17 anything in that statement based on the CI's reliability
18 or the search being anywhere besides
19 Road, it certainly would be relevant to the basis of this
20 entire search warrant and goes to our case.

21 THE COURT: Can you redact the name and let
22 her read it?

23 MS. BENTLEY: Yes, sir, I can do that.

24 THE COURT: You do that. You have a copy.

25 MS. BENTLEY: I have a copy with the CI's

Swift - Redirect

1 name on it.

2 THE COURT: Well, can you just run it
3 through?

4 MS. BENTLEY: Yes, Your Honor.

5 THE COURT: Then you can make a copy and give
6 it to her.

7 MS. ROSS: Judge, this is my only copy but I
8 would hand it up to be a State's Exhibit. I would point
9 out and get you a copy of the search warrant as well, but
10 just briefly reading through it, and this is the first
11 time I've had a chance to look at it, this states that the
12 CI went and knocked on the door of the first trailer on
13 the left. He knocked on the door and I told him needed
14 \$20 and he handed me crack rocks, I told him thanks and I
15 got in the vehicle and he drove me to a secured area, this
16 is the second trailer he went to but it says on the left
17 which is not what was written for the trailer in the
18 search warrant.

19 Again, I just looked at it so I'll hand up
20 the search warrant for review as well, but in the search
21 warrant, the CI, the description of the premises to be
22 searched is the mobile home on the .

23 THE COURT: I'll make this a part of the
24 record for purposes of appeal. I'm not going any further
25 with it.

Brown - Direct

1 MS. BENTLEY: Do you not want argument from
2 the State, Your Honor?

3 THE COURT: Bring the jury.

4 MS. ROSS: Your Honor, I would just renew my
5 motion about the search warrant. Here the search warrant
6 was based on the information provided to the CI and if
7 that information was a different trailer in that trailer
8 park, this is an absence in the search warrant in such
9 that it would require it to be suppressed especially -- I
10 don't have the case right in front of me -- but Victor
11 Missouri is the defendant in that case and if information
12 is known to the officer is not presented to the judge that
13 gives the warrant and is, in fact, omitted and
14 misinformation is given to that magistrate than the search
15 warrant must be suppressed. So I renew my motion to
16 suppressed that.

17 THE COURT: Solicitor.

18 MS. BENTLEY: Your Honor, I would comment
19 that pursuant to what the statement says and what Deputy
20 Walters testified, they first went to the trailer
21 on the when coming off of Street. He was
22 turned down by the occupant of that trailer pursuant to
23 what Deputy Walter says. He then says that Investigator
24 Woodall moved the vehicle, it does not describe where the
25 vehicle was moved to, he went to the first trailer on the

Brown - Direct

1 left. This trailer is in the middle of the complex and as
2 Deputy Walters pointed out, this trailer is in the middle
3 of complex. It is identified with specificity.

4 THE COURT: Alright. Bring the jury.

5 (Jury re-enters the courtroom.)

6 (Witness statement and search warrant marked
7 as Court Exhibit Nos. 1 and 2 for identification.)

8 Alright, solicitor, you may proceed.

9 MS. BENTLEY: The State calls Master Deputy
10 Brandon Brown.

11 THE CLERK: Please come forward to be sworn
12 in.

13 ~~BRANDON BROWN~~, having been duly sworn,
14 testified as follows:

15 Thank you. You may be seated.

16 Please state your name for the record.

17 THE WITNESS: Brandon Brown.

18 DIRECT EXAMINATION ;

19 BY MS. BENTLEY:)

20 Q. Do you prefer investigator or master deputy?

21 A. Any way is fine.

22 Q. Where are you employed?

23 A. I am currently employed with the Greenville
24 County Sheriff's Office assigned to vice and narcotics and
25 task force.

Brown - Direct

1 Q. How long have you worked for the Sheriff's
2 Office?

3 A. Right at 10 years.

4 Q. What positions have you held in the Sheriff's
5 Office during that 10 years?

6 A. When anyone get's in law enforcement, you start
7 out in uniform patrol. I was in uniform patrol for about
8 three years and went to work in gang investigation about
9 eight years ago. Gangs was moved inside of narcotics
10 which I've been at right at four years now.

11 Q. In vice and narcotics, was there a specialty that
12 you have in vice and narcotics or is everybody just
13 working for the same?

14 A. My special within vice and narcotics, as I said,
15 was gang investigation at the federal level which I am
16 assigned to the FBI task force.

17 Q. What kind of training do you have in drug
18 identification?

19 A. I've been qualified previously in the Thirteen
20 Circuit Court in 11 different categories of expert
21 qualifications between the gangs and narcotics;
22 identification on cocaine and crack cocaine, heroine,
23 methamphetamine, as well as our basic qualifications and
24 training that we get throughout the year; our regular
25 updates that we get on a lot of cases that are daily as

Brown - Direct

1 well as the street interviews that we do on a regular
2 basis with anything from a dealer to an average casual
3 user to an addict.

4 Q. Have you worked in an undercover capacity before?

5 A. Yes, ma'am.

6 Q. How many times have you worked in an undercover
7 capacity as an investigator?

8 A. No less than 20 times.

9 Q. In what types of activities do you participate in
10 when you're undercover?

11 A. In the undercover capacity it's basically from
12 basic intelligence to purchase of various different kinds
13 of narcotics to purchasing of firearms as well as dealing
14 with various different gang aspects while undercover.

15 Q. Can you describe any specific training or
16 experience you might have been giving in the field of
17 narcotic sales?

18 A. In narcotic sales? Like I say we deal with
19 varying and a wide range of classes we attend as well as
20 annual certifications primarily such as methamphetamine
21 tech which is something we have to maintain an annual
22 certification to be able to break down meth labs as well
23 as any kind of updates that come out of the federal
24 government and in a lot of cases that come across the
25 border because a lot of stuff is going on in our bordering

Brown - Direct

1 states.

2 Q. Do you continuously take classes and read
3 literature on drugs and narcotics?

4 A. Yes, ma'am. Pretty much on a daily basis some
5 kind of update is going on and things that we have to do
6 to maintain our knowledge of everything that's going on in
7 the streets.

8 Q. Would you consider your experiences undercover as
9 additional forms of education?

10 A. Yes, ma'am, absolutely.

11 Q. How many drug investigations have you been a part
12 of in your eight years of vice and narcotics?

13 A. In my time of narcotics, I conducted no less than
14 about 320 search warrants. Each search warrant you can
15 add in between five and ten purchases of narcotics so it's
16 well in the thousands as to how many cases I've been
17 involved in, in my time in narcotics.

18 Q. Have you ever taught other law enforcement
19 officers about narcotics to gain experiences?

20 A. Yes, ma'am. On a quite regular basis I do
21 teaching on narcotics and gangs no only throughout the
22 county but throughout the state and the country.

23 Q. And you mentioned previously that you've been
24 qualified as an expert in this circuit?

25 A. Yes, ma'am, I have.

Brown - Direct

1 Q. How many times?

2 A. I've got a total of 11 different qualifications
3 totally and most of those qualifications are two and three
4 times within the same court.

5 Q. When was the last time you were qualified as an
6 expert?

7 A. Yesterday.

8 MS. BENTLEY: Your Honor, at this time, the
9 State would offer Brandon Brown as an expert in street
10 level narcotic sales and gang recognition.

11 THE COURT: Any voir dire as to his expertise
12 in that area?

13 VOIR DIRE

14 BY MS. ROSS:

15 Q. Well, as far as narcotics, are you a scientist?
16 In other words, do you do any kind of scientific tests on
17 things to determine whether they are narcotics or not?

18 A. Other than field test kits, no.

19 Q. So you're not a chemical analyzer or anything
20 like that?

21 A. No, ma'am, I am not.

22 Q. And as far as the experience that you've gleamed
23 in your years working in law enforcement and on the
24 streets, this is common sense things, common sense
25 observations that you're making?

Brown - Direct

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

2 Q. Are there any kind of scientific observations.

3 A. Not scientific, no.

4 Q. Any kind of training as far as using a dog in any
5 kind of search skills or scientific training or that sort?

6 A. I'm not a K9 handler, no, ma'am.

7 MS. ROSS: I got no further questions on
8 that.

9 ~~MR. ROBINSON:~~ Your Honor, I have an issue
10 that I would like to take up outside of the jury.

11 THE COURT: Take the jury out, please.

12 (Jury exits the courtroom.)

13 Mr. Robinson.

14 MR. ROBINSON: Your Honor, as far as his
15 qualifications I think they set the (inaudible) as far as
16 an expert in investigation of drug crimes. I have no
17 problem with that, but I think the next analysis I would
18 make as far as the prejudice to my client if he's going to
19 start testifying that this particular case is indication
20 that this is some kind of drug operation that's going
21 down. That's what I am concerned about because they
22 testified already that either of these folks in this
23 trailer did not have any kind of rental agreement or lease
24 agreement. It's a purely circumstantial mere presence
25 case and if this officer gets up and testifies that as far

Brown - Direct

1 as this door allegedly being barricaded and these guys
2 doing a drug operation I think is extremely prejudicial to
3 these clients.

4 THE COURT: Alright.

5 MS. BENTLEY: Your Honor, Investigator Brown
6 was present the day -- he was part of this investigation
7 so we would offer his testimony as his personal experience
8 inside this trailer and as an expert in street level
9 narcotic sales. If you would like me to proper some of
10 his testimony ---

11 THE COURT: No. You understand that,
12 Mr. Robinson?

13 MR. ROBINSON: I understand that. She's
14 qualified as an expert in this case as far as that goes.
15 I think she's going to ask about what he saw in the
16 trailer and I was just wondering if she's going to get
17 some sort of conclusion from him that because they were in
18 this trailer they were involved in a drug operation.

19 MS. BENTLEY: I would be asking him regarding
20 the evidence, the trailer, and his personal experience and
21 the hundreds of thousands of search warrants that he's
22 been a part of whether this trailer does appear to be a
23 drug house.

24 THE COURT: That's proper.

25 MS. ROBINSON: The objection as I stated the

Brown - Direct

1 prejudicial value far outweighs any sort of probative
2 value.

3 THE COURT: I disagree with that.

4 MS. ROSS: Judge, just on that I will add
5 that this officer's name is no where is discovery. The CI
6 statement that I put in and made an exhibit is no where in
7 the discovery that I received.

8 As far as testimony by experts, well, I
9 understand that there's recently greater leniency as to
10 what makes an expert in law enforcement. On 702 it's
11 scientific, technical or specialized knowledge to assist
12 the tryer of fact, that's the basis for an expert opinion.
13 Here there are plenty of police officers who can give an
14 opinion --- I misstated. Mr. Robinson has a piece of
15 testimony that was signed Investigator Brown so I'm wrong
16 on the discovery at least for him, but I would again
17 object to him testifying as an expert. While if he wants
18 to give testimony about what he saw, that's certainly
19 proper.

20 THE COURT: Subject to your objection, he's
21 qualified.

22 MS. BENTLEY: He may testify regarding his
23 opinion as an expert.

24 THE COURT: Yes. Bring the jury.

25 (Jury re-enters the courtroom.)

Brown - Direct

1 BY MS. BENTLEY:

2 Q. Investigator Brown, you were just qualified as an
3 expert in street level crimes and drug recognition,
4 correct?

5 A. Yes, ma'am.

6 Q. Please tell us, as an investigator, did you
7 become involved with the search warrant execution at
8 Road in November 2010?

9 A. Yes, ma'am, I did.

10 Q. Tell us how you became involved in that
11 investigation?

12 A. I am an entry operator on a SWAT team and the
13 SWAT team was asked to assist in the execution of a couple
14 of the trailers during the search warrant.

15 Q. And you were assigned to Lot ?

16 A. Yes, ma'am, I was.

17 Q. Please tell us at what point or how you entered
18 the trailer?

19 A. When we first approached, Master Deputy Swift
20 deployed what's called a flash bang or a flash distraction
21 device and it was deployed on the side of the trailer to
22 where we could make a safe enough approach to the front
23 door. When we made the front door, my primary
24 responsibility was to maintain the cover of our breacher,
25 the individual who was responsible for the big rounds that

Brown - Direct

1 you see on tv and everything. He then proceeded to
2 attempt to breach the door. After three hit, the door was
3 not opening which is extremely rare for our breacher;
4 however, the door would not open but a panel fell out of
5 the door. I then removed the breacher from the area
6 because it becomes extremely dangerous whenever someone is
7 banging outside of the house. There is also a possibility
8 of fire or something of that nature coming from within.

9 I removed the breacher from the area that I
10 was covering, got to where I could visually see inside the
11 trailer and actually point my weapon inside the trailer
12 and actually point my weapon inside the trailer to verify
13 that it was safe enough for our breacher to continue to
14 try to open the door.

15 Q. How long did it take him to breach that door, do
16 you recall?

17 A. As I explained, it probably happened over about
18 30 seconds or so. At 30 seconds, that's a time frame that
19 you don't know if someone is going to shoot back at you
20 and that seems like an eternity standing on the front
21 porch of the door.

22 Q. The breacher did eventually make it through the
23 residence, is that correct?

24 A. Yes, ma'am, he did.

25 Q. Please tell me where you went?

Brown - Direct

1 A. As soon as I went in, I moved right to left
2 clearing -- as soon as I went into the trailer immediately
3 I could visualize the kitchen area to my right. It was an
4 extremely open area so it was real easy for me to clear
5 it. As I moved from right to left just inside the right
6 of the trailer, other members of our team including Master
7 Deputy Swift and Investigator Aires cleared towards to
8 rear of the residence which is where the bedroom area was.

9 Q. Who was in the bedroom area?

10 A. It was later found to be Andrew Burnside.

11 Q. And is Mr. Burnside in the courtroom today?

12 A. Yes, ma'am, he is.

13 Q. Where is he seated?

14 A. Sitting right there.

15 Q. Where was Mr. Burnside when you entered that back
16 bedroom?

17 A. As I began my approach down the rear of the hall,
18 we got a code that we use simply "man-up," which basically
19 means that one of the operators inside the house need
20 additional manpower to help them assist with whatever task
21 it may be. In this case it ended up being that
22 Investigator Aires could visually see what later was
23 identified as Andrew Burnside, however, could not gain
24 control of him due to him being partially under the bed.
25 That's when I moved into the back bedroom area assisted

Brown - Direct

1 Investigator Aires with handcuffing and making sure that
2 Andrew Burnside was safe as well as all operators inside
3 of the house was safe.

4 Q. Did you pat down Mr. Burnside?

5 A. Yes, ma'am, I did.

6 Q. Was anything found on his person?

7 A. I don't recall that there was. I know later on
8 we ended up finding an identification with his name on it,
9 but I can't recall whether it was on his person or just
10 sitting close to him.

11 Q. Did you participate in the physical search of the
12 residence -- of the dwelling?

13 A. No, ma'am, I did not.

14 Q. Are you familiar with what was found pursuant to
15 the search?

16 A. Approximate weights, yes, ma'am.

17 Q. Do you know the approximate quantity of crack
18 cocaine that was found in total in Lot ?

19 A. Approximate weights of crack cocaine found was
20 around 18 grams.

21 Q. Do you know the approximate weight of cocaine
22 powder that was found?

23 A. It was right around three grams.

24 Q. And were there any other drugs found at the home?

25 A. There were various prescription type pills found

Brown - Direct

1 throughout the house. I couldn't give you a good account
2 of how many of them though.

3 Q. Could you please tell me the street value of one
4 gram of crack cocaine?

5 A. One gram we average out based on various
6 undercover operations as well as our day to day dealings
7 in narcotics to estimate right around \$100 per gram in the
8 Greenville County area.

9 Q. And what about cocaine powder, what's the
10 approximate value of one gram of that on the street?

11 A. Typically right around the same thing.

12 Q. And what about assorted prescription pills, for
13 example, a hydrocodone?

14 A. Hydrocodones range depending on the amount of
15 quantities being purchased anywhere from \$6 to \$8 a pill.

16 Q. What about alprazolam?

17 A. I couldn't tell you.

18 Q. Are you familiar with the amount of crack or
19 cocaine that's typically sold in one transaction?

20 A. Yes, ma'am. It's easier to describe it to you or
21 kind of explain to you the process of how that's actually
22 formed to give the gravity of what each weight is.

23 Q. Okay.

24 A. When cocaine is cooked into crack cocaine, which
25 is by far one of the more addictive drugs in the Upstate

Brown - Direct

1 area, it is cooked down typically in ounce type of
2 quantity weight, 28 grams. 28 grams of cocaine is then
3 cooked in a very very simple process and made into crack
4 cocaine. When it is made, it is typically cooked in a
5 Pyrex dish which is used in most cooking type
6 applications. Because most Pyrex dishes are round in the
7 base of them, once it's cooked the finished product is
8 called a cookie simply because it looks like an off-white
9 color light brownish cookie in the bottom of the jar.

10 That is then cut into tenth of a gram rocks
11 and anywhere between tenth of a gram to twentieth of a
12 gram is typically what sold on the street as what you've
13 heard commonly as crack rock as you've heard in the movies
14 and everywhere else.

15 Q. What's the average value of tenth of a gram or a
16 rock of crack?

17 A. A crack rock ever since the 80s when it was first
18 introduced has been \$20. It has not changed or varied at
19 all. It has stayed the same continuously.

20 Q. Okay. When you entered the trailer and you were
21 sweeping through, did you make observations regarding the
22 contents?

23 A. Not as much as sweeping through as much as when
24 we were ex-spilling out of the trailer. We always do what
25 we call secondary searches which is just to make sure

Brown - Direct

1 there are no other individuals hiding throughout the
2 residents. When we first make entry, we kind of look for
3 our immediate threats in front of us. Afterwards we look
4 in closets, cabinets and so forth just to make sure there
5 isn't anybody that's hiding that could pose a possible
6 risk to law enforcement.

7 During those observations, we always notice
8 the living arrangements, what kind of clothing food and
9 stuff that's in there to let us know if this is actually a
10 liveable residence or if it's a house that's just used for
11 other type of activity.

12 Q. Based on your training and experience and your
13 observations on November 18th, did you form an opinion on
14 what Lot was used for?

15 A. Inside the residence, there was furniture, some
16 clothing, small food items, so on and so forth, but the
17 primary thing that really came to our attention was this
18 door being barricaded signifies that someone has something
19 to protect inside. That's not typically something that's
20 done by anyone. That says to us that trailer is used
21 primarily for the distribution of narcotics.

22 Q. In your training and experience, is it common for
23 people that deal in narcotics to have a dwelling that they
24 do not necessarily live in?

25 A. Absolutely. There is people that deal, whether

Brown - Direct

1 it's on the street level or high level, do not deal out of
2 their own residences. They distance themselves as much as
3 they can from their actual business, from their lives, if
4 you will.

5 Q. Why is that?

6 A. Typically because a lot of people get the
7 impression that law enforcement can take anything that's
8 attached to narcotics and it simply doesn't work that way;
9 however, we try to do that with vehicles and some property
10 whenever we can show that they own it. But if they don't
11 own it, simply renting it, that's kind of the perception
12 on the street and that's why that's done that way.

13 Q. You mentioned earlier that turning cocaine powder
14 into crack cocaine is not a difficult process.

15 A. No, ma'am, it's not.

16 Q. What are some of the advantages to cooking your
17 own crack?

18 A. Typically it's a more addictive drug than what
19 cocaine is and it involves a whole different clientele.
20 Typically your crack cocaine will sell quicker as to where
21 you can break it down into tenth and twentieth gram rocks
22 and sell it literally quicker than you can make it. It
23 just goes that quick on the streets because it's such an
24 addictive drug. Cocaine, itself, is not as an addictive
25 drug. It's not as street savvy of a drug. It's not, you

Brown - Direct

1 know, everybody on the street wants to get their hands on.

2 Q. I'm going to show you what's been admitted as
3 State's Exhibit 6 and 14. Could you look at those for me?

4 A. State's Exhibit 6 looks to be like -- No. 5 and
5 No. 6, white rock like substance sitting on the hood of
6 the car.

7 Q. And based on your training and experience, are
8 those any conclusions you can make based on the size or
9 the quantities of those white rock lock substances?

10 A. That's extremely common size of what you might
11 get out of what I just described to be as a crack rock;
12 however, just looking at it I can't make that judgment of
13 what it is. By size and appearance, that's what it
14 appears to be.

15 Q. And what about in the next exhibit?

16 A. State's Exhibit 14 appears to be plastic hotel
17 key card that's used for entering a hotel room with the
18 same type of rock that was found on the Uno cards, also
19 sitting beside it is a cellophane wrapper possibly from a
20 cigarette pack sitting beside it with a razor blade
21 sitting beside it which is commonly used in the cutting of
22 crack cocaine.

23 Q. Are weapons typically found in these drug houses
24 that you spoke of?

25 A. I can't say typically but on a lot of occasions,

Brown - Direct

1 yes, they are. They have product that they need to
2 protect and it is a dangerous world from both law
3 enforcement making entries in their house as well as other
4 dealers or robbers making entries into their drug houses.
5 So, yes, on a lot of occasions they are found in the
6 residences.

7 Q. Looking at State's 16 and 17, can you tell me
8 what you see in there?

9 A. State's Exhibit 17 looks to be a cabinet,
10 probably a kitchen, and it looks to be possibly some
11 prescription type pills in plastic sandwich bag.

12 Q. The next exhibit as well.

13 A. The next exhibit is 16 appears to be the same
14 thing, possibly tupperware with some change in it with
15 possibly some unknown prescription type pills in a
16 sandwich bag. There are some more unknown prescription
17 type pills in a sandwich bag not in a prescription pill
18 bottle. They're separated in a sandwich bag?

19 Q. Based on your training and experience, what is
20 the presence of assorted pills and baggies indicate?

21 A. Again, typically, ready for sale.

22 Q. Tell me about your training and experience with
23 surveillance equipment on street level narcotic sales?

24 A. As far as our end?

25 Q. Is it common to find those in these drug houses?

Brown - Cross

1 A. Oh, yeah, absolutely. It's to where and I would
2 say within the past two years probably almost every house
3 that we get a search warrant on has some kind of detection
4 equipment in it. We're finding anything from small 17
5 inch box tv's up to 55 inch flat screen tv's that has
6 nothing but the pictures of their cameras there
7 surrounding their house and that's not a common thing for
8 the general public to be that paranoid as to who is coming
9 around their house.

10 Q. Looking at State's Exhibits 24 and 25, is that
11 equipment typical to what you expect to find?

12 A. State's Exhibit 24 shows just that a surveillance
13 camera sitting, I believe, it's the front door pointing
14 down at the stair step section. And State's Exhibit 25 is
15 showing an actual box style tv that has the cameras and
16 monitors on it.

17 Q. One last question Investigator Brown, in these
18 drug houses, do street level narcotic dealers typically
19 leave their drugs unattended.

20 A. As far as different parts of the house?

21 Q. Would they allow someone to purchase drugs and
22 remain in the residence unattended?

23 A. Typically not. Whenever there's a street level
24 transaction it is the user will come in purchase what they
25 want and immediately leave. There's typically not a whole

Brown - Cross

1 lot of hanging around time or anything like that. The
2 dealer wants to be able to have as little time with these
3 individuals as they can. Again for paranoia which is the
4 same reason they put them in a separate part of the house,
5 much as the same reason they put surveillance cameras
6 throughout the residence.

7 Q. At the end of the day, do they typically leave
8 thousands of dollars of drugs behind?

9 A. No, ma'am, they do not.

10 MS. BENTLEY: I have no further questions.
11 Please answer any questions either attorney may have.

12 THE COURT: Ms. Ross or Mr. Robinson.

13 MS. ROSS: I have no questions.

14 **CROSS-EXAMINATION**

15 **BY MR. ROBINSON:**

16 Q. Officer Brown, when you went into this residence,
17 this home, it's a trailer; isn't that correct?

18 A. Yes, sir, it is.

19 Q. And when you first went in, could you explain to
20 the jury there's a living room on your right; isn't that
21 correct?

22 A. If I recall correctly, when I first made entry,
23 there was a kitchen immediately to my right.

24 Q. Okay.

25 A. And you almost came directly into the living

Brown - Cross

1 room.

2 Q. And is it a double wide or a single wide trailer?

3 A. I believe it was a single wide.

4 Q. And length wise, it's probably around eight feet
5 or so, just typical?

6 A. I couldn't be accurate about size.

7 Q. You actually went in with the other officers to
8 secure the area and look at the scene, correct? You went
9 in the trailer, correct?

10 A. Correct. I was on the entry team.

11 Q. And when you went in the trailer, Mr. Burnside
12 was in the back of the trailer, right?

13 A. Yes, sir, he was.

14 Q. The room that he was in, there were no drugs or
15 anything found in his room, were there?

16 A. I don't recall.

17 Q. Now, did you do any -- you didn't do any
18 background to find out whether this property was owned by
19 either Mr. Burnside or Mr. Shumate, did you?

20 A. Me, personally, no, sir.

21 Q. So you have no actual that this actual drug
22 house, as you call it, was owned by these folks, do you?

23 A. Not personally, no, sir.

24 Q. In terms of these different items that were found
25 in the location, you don't have anything that ties these

Brown - Cross

1 items to either Mr. Burnside or Mr. Shumate, do you?

2 A. Not personally, no, sir.

3 Q. They were not in possession of any of these items
4 nor were they in any sort of -- they didn't really have
5 access to these items either nearby or anything, did they?

6 A. They had access to all the drugs inside the house
7 because it was barricaded inside.

8 Q. Okay. Let's talk about this barricade that we're
9 talking about here. You say based on your experience
10 these houses are barricaded, but correct me if I'm wrong
11 but did you ever determine whether or not this lock was
12 broken on this door to see if it needed some sort of prop
13 to keep it shut?

14 A. Typically whenever is door is hit by a breacher,
15 the door or knob are busted in general anyway, but that's
16 not something we would look at as far as the barricade.
17 The barricade is a specific device that is specifically
18 made to keep people out of the residence.

19 Q. So you're saying this 2X4 is a special piece of
20 wood that is especially made to keep people out of houses?

21 A. No, sir. The device that is made is especially
22 made to keep people out of the house.

23 Q. You're saying this device is a 2X4 is that what
24 you're saying?

25 A. Anything that is made other than the common door

Brown - Cross

1 frame of a door is a device that is made to keep people
2 out, therefore, it being a 2X4 poses a great danger and
3 great risk to being able to successfully get into a door
4 and to protect both the suspects as well as law
5 enforcement.

6 Q. But the thing is you're painting this with a
7 broad brush. You're saying based on your experience that
8 this must be a drug house because there is a 2X4 keeping
9 the door shut, but isn't it true there are other people
10 put -- in your personal experience -- they live in a
11 certain area and they make sure that the door is locked so
12 the people can't get in?

13 A. I can honestly say that in my eight years of
14 experience, I have never executed a search warrant that
15 was not a search warrant where there was a barricade on
16 the door. It's just not found. Every single execution
17 that we have done where we have found a barricade has been
18 a narcotic search warrant.

19 Q. When you say barricade, you're talking about a
20 2X4 and not a bunch of wood or a bunch of products propped
21 against this door? You're talking about a 2X4 put across
22 the door, right?

23 A. Not every time, no, but on this specific
24 occasion, yes.

25 Q. There was nobody that was pressing up against the

Brown - Cross

1 door? You can't say that Mr. Shumate nor Mr. Burnside was
2 keeping the door shut? You can't say that, can you?

3 A. No, sir, I'm not saying that at all.

4 Q. And when you came in, Mr. Shumate was in the
5 bathroom and Mr. Burnside was in the back in the bedroom,
6 right?

7 A. Yes, sir.

8 Q. So they were no where near the door when they
9 came in, were they?

10 A. No, sir, they were not.

11 Q. It's a simple question but did anyone knock
12 before they decided to come in?

13 A. We always knock and announce.

14 Q. Knock and announce?

15 A. Yes. We announce loudly Sheriff's Office and
16 there's multiple distraction, lights is going off and it
17 is extremely obviously who is executing the search
18 warrant. It's primarily for our safety and the safety of
19 the patrons around?

20 Q. How loud is it? Is it really like sirens going,
21 flash bang going and so forth? It's pretty loud; isn't
22 that correct?

23 A. Yes, sir, it is.

24 MR. ROBINSON: That's all I have, Your Honor.

25 MS. BENTLEY: No redirect.

Lanford - Direct

1 May Investigator Brown be excused?

2 THE COURT: Any objection?

3 MS. ROSS: No objection.

4 MR. ROBINSON: No objection.

5 THE WITNESS: Thank you, Your Honor.

6 MS. BENTLEY: The State calls Deputy Lanford.

7 THE COURT: Deputy Lanford, please come
8 forward to be sworn. Please place your left hand on the
9 Bible and raise your right.

10 ~~JUSTIN LANFORD~~ having been duly sworn,
11 testified as follows:

12 You can be seated. State your name for the
13 record.

14 THE WITNESS: Justin Lanford.

15 ~~DIRECT EXAMINATION~~

16 ~~BY MS. MCCALL:~~

17 Q. Deputy Lanford, could you tell us where do you
18 work?

19 A. Greenville County Sheriff's Office, directed
20 patrol unit.

21 Q. And how long have you worked at the Sheriff's
22 Office?

23 A. Five years.

24 Q. And you said you are currently with the directed
25 patrol unit?

Lanford - Direct

1 A. Yes, ma'am.

2 Q. How long have you been with that unit?

3 A. Two years.

4 Q. On November 18th, did you respond to
5 Road in Greenville County?

6 A. Yes.

7 Q. And could you please tell us why you did respond
8 to that location?

9 A. I responded to that location after we conducted
10 several warrants in the trailer park. I went to that
11 trailer to (inaudible) Deputy Swift where we conducted the
12 search warrant, finding evidence, placing it into property
13 and evidence, taking subjects into custody.

14 Q. What was your specific roll in that search
15 warrant?

16 A. Scribing the search warrant as items were brought
17 to me throughout the house. I also searched the kitchen
18 of the trailer.

19 Q. What was your procedure for scribing these items?

20 A. What we normally do for the houses once they are
21 secured and cleared, we go through the house and label
22 each room a,b,c and throughout. Once that's done a person
23 starts in a particular room and then moves from one corner
24 of the room around in a complete circle that way nothing
25 is missed and we are very thorough throughout the house.

Lanford - Direct

1 Once that's done, if items are found, they bring it to the
2 person that's scribing the search warrant to be placed
3 onto the search warrant itself.

4 Q. And after you took inventory of all the collected
5 items, did you turn it over to another officer and why did
6 you do that?

7 A. I turned it back over to Master Deputy Swift who
8 then took it back to property and evidence. Who ever
9 takes over the items that are seized, it just makes it
10 easier when it comes to court.

11 Q. I'm going to show you briefly what's already been
12 introduced as 14 through 25. If you would look at those
13 and I ask if you recognize those photos.

14 A. Yes.

15 Q. Are these photos of items that were found at the
16 residence?

17 A. Yes.

18 Q. Also, I'm showing you what's been marked as 32
19 and 32a. Do you recognize that?

20 A. Yes.

21 Q. How are you able to recognize those exhibits?

22 A. These are items that were found in the kitchen
23 on, I guess, the counter top where they eat at. There was
24 no kitchen table. These were sitting in plain view on top
25 of the counter once the search warrant was executes.

Lanford - Direct

1 Q. Do those exhibits appear to be in the same
2 condition as they did back November 18, 2010?

3 A. Yes.

4 Q. Did you alter the substance in any way when it
5 was in your possession?

6 A. All we did was go test it to see if it tested
7 positive for cocaine, cocaine base, in which it did. It
8 turns blue at the time of the test. That's the only thing
9 we did to the items.

10 Q. And after you conducted that field test, what did
11 you do with the substance?

12 A. We seal them in the containers that they're in
13 and place them into property and evidence.

14 MS. MCCALL: Your Honor, I would move for
15 State's Exhibit 32a, which is the ---

16 BY MS. MCCALL:

17 Q. Did you tell the jury what that was, 32a?

18 A. 32a is a hotel room key. That's basically it.

19 Q. And 32 was the substance that was found ---

20 A. This is the crack cocaine that was found on top
21 of the hotel room key on the counter.

22 MS. MCCALL: Your Honor, I'd move to
23 introduce 32a, the actual card.

24 THE COURT: Any objection?

25 MR. ROBINSON: No objection.

Lanford - Direct

1 MS. ROSS: No objection.

2 THE COURT: Without objection, it's in.

3 (Room key marked as State's Exhibit No. 32a
4 for identification and admitted into evidence.)

5 BY MS. MCCALL:

6 Q. Deputy Lanford, I'm showing you what's been
7 marked as Exhibit 33. Do you recognize that?

8 A. Yes.

9 Q. Can you tell the jury what it is?

10 A. It is a Glock 40 caliber handgun.

11 Q. Where did you find that?

12 A. This items was found behind the crack cocaine on
13 the same counter probably a hands width away from where
14 the drugs were readily accessible to get a hold of it.

15 Q. What did you do with that gun once you found it
16 and retrieved it?

17 A. We cleared the gun and checked the serial number
18 on NCIC to see if it's stolen. Once it's clear with that
19 we place it into property and evidence. Usually, due to
20 the circumstances with the drugs, we charge the defendant
21 if necessary.

22 Q. Is the gun appeared to be altered in any way
23 since it was put back in P&E?

24 A. No.

25 MS. MCCALL: Your Honor, I would move State's

Lanford - Direct

1 Exhibit 33 admitted into evidence.

2 THE COURT: Without objection.

3 (Gun marked as State's Exhibit No. 33 for
4 identification was admitted into evidence.)

5 BY MS. MCCALL:

6 Q. After you searched the counter tops, did you
7 search anywhere else in the kitchen?

8 A. Yes. Once this was done I began searching the
9 cabinets where I found several pills which once we
10 searched the rest of the house we did not find a
11 prescription for. They are controlled substances. We
12 also located another bag of crack cocaine in a bag of --
13 or powdered cocaine inside an oven mitt above the stove.
14 After those items were found, I field tested the microwave
15 which did test positive for cocaine base.

16 Q. Let me stop you just for a second so I can get
17 some of this stuff into evidence.

18 Exhibit 34 and 35, do you recognize these
19 exhibits?

20 A. Yes.

21 Q. How are you able to recognize that?

22 A. These pills were found together in one of the
23 counters and these were found on a different counter as
24 well.

25 Q. And they appear to look substantially the same as

Lanford - Direct

1 they looked back on 2010?

2 A. Yes.

3 Q. And once you retrieved these pills what did you
4 do with those once you found these pills?

5 A. Those were listed on the search warrant where I
6 found them and placed into property and evidence.

7 Q. Can you explain the significance of these pills
8 as far as, based on your training and experience, the
9 packaging and how they were found?

10 A. Normally whenever they're found, when they are
11 divided up like that, a doctor has not prescribed someone
12 to take a pill, you know, cut in half or packaged in a
13 baggie. You know you always get your pills prescribed to
14 you with your name, address, how to take them properly and
15 what not to do and when they're found like this they're
16 usually illicit or sold for other reasons besides the
17 prescribed way usually to get high on.

18 Q. Your Honor, I'm going to show 36, 37 and 38. Do
19 you recognize these exhibits?

20 A. Yes.

21 Q. Can you please tell the jury what Exhibit 36 is?

22 A. This is an Altoids container. When I found it it
23 contained several razors in it and those razors are
24 usually used to cut up crack cocaine manufactured in the
25 microwave.

Lanford - Direct

1 Q. How about Exhibit 37?

2 A. 37 is a digital scale to weigh out your product
3 so you'll know how much you're giving a person you're
4 selling drugs to.

5 Q. And where did you locate that scale?

6 A. I believe it was above the stove as well in the
7 top counter of the stove.

8 Q. Did you field tested that?

9 A. No, ma'am. I don't believe so.

10 Q. Now, Exhibit 38, what is that?

11 A. 38 is a magazine usually for AK-47. It was empty
12 at the time we found it and there was no other parts to a
13 riffle that we found in the residence.

14 Q. Where did you locate that?

15 A. That was found in the kitchen as well.

16 Q. After you found all three of these things, what
17 did you do with them at that time?

18 A. Again listed them on the search warrant and put
19 them in property and evidence.

20 Q. And do they all appear to be essentially in the
21 same condition as they were back in 2010?

22 A. Yes.

23 MS. MCCALL: Your Honor, I would move Exhibit
24 36, 37, 38 into evidence.

25 THE COURT: Any objection?

Lanford - Direct

1 MS. ROSS: No objection.

2 MR. ROBINSON: No objection.

3 (Altoids container marked as Exhibit 36 for
4 identification was admitted into evidence.)

5 (Scale marked as Exhibit 37 for
6 identification was admitted into evidence.)

7 (Magazine clip marked as Exhibit 38 for
8 identification was admitted into evidence.)

9 BY MS. MCCALL:

10 Q. I'm going to show you Exhibit 39. Do you
11 recognize that?

12 A. Yes.

13 Q. Now, when you were searching the kitchen, did you
14 locate those two items?

15 A. These were the items I said I found in the oven
16 mitt above the stove, the powdered cocaine and crack
17 cocaine. This shows when we test them it turns blue.
18 They both were tested.

19 Q. What were the results of that?

20 A. They both turned blue.

21 Q. And other than it turning blue, is the substance
22 still in the same condition as it was back in November
23 2010?

24 A. Yes.

25 Q. And this is Exhibit 41 and 42. Do you recognize

Lanford - Direct

1 Exhibit 41 and 42?

2 A. Yes.

3 Q. Where did you find these? I'm assuming you found
4 them in the kitchen?

5 A. Yes, in the kitchen. I guess the importance of
6 this is when we find this much cocaine and crack we always
7 field test the microwave because that is where they make
8 crack cocaine. We'll, again, test it with those swabs and
9 if the inside turn blue, it turns immediate because
10 whenever you're manufacturing, it pops. Cocaine spays
11 throughout your microwave and that's the reason we made
12 that charge for manufacturing was due to the the substance
13 we found inside of it.

14 Q. And after you field tested it, what did you then
15 do the plate and the microwave?

16 A. This again was taken into property and evidence
17 and placed on the search warrant.

18 MS. MCCALL: Your Honor, we would move for
19 the microwave Exhibit 42 be admitted as evidence.

20 THE COURT: Any objection?

21 MS. ROSS: No objection.

22 MR. ROBINSON: No objection.

23 THE COURT: Without objection.

24 (Microwave marked as State's Exhibit No. 42
25 for identification was admitted into evidence.)

Lanford - Direct

1 BY MS. MCCALL:

2 Q. Did you find anything else in the kitchen that
3 would indicating the manufacturing of cocaine base?

4 A. Nothing that we placed into property and
5 evidence.

6 Q. Did you personally find anything else in the
7 residence when you conducted your search?

8 A. Whenever you're checking the dishes, you usually
9 have plates. I know it's hard to see but this is an item
10 they use as well as the tupperware to cook off the water,
11 the access water, that's on the items. But, again, you
12 can use anything that's in your kitchen, whisk, bowls,
13 spoons. Anything will working the manufacturing of this.

14 Q. Now, after you searched the kitchen, did you find
15 anything else in the residence?

16 A. I noticed that whenever we were going through the
17 search warrant the television was on. In this picture,
18 you can see right here there was a surveillance camera
19 above the front door pointing on to the porch and that's
20 when I went outside and took the security camera that they
21 had down which was hooked up to the tv.

22 Q. Exhibit 43a, b and c, do you recognize that?

23 A. That's it right there.

24 Q. So what is that?

25 A. This is the security camera as well as the

Lanford - Direct

1 transmitter and power cords.

2 Q. Could you determine if the camera was working?

3 A. Oh, yes, it's blatantly obvious on the television
4 -- the picture, I'm sorry.

5 Q. And that camera was that also taken down to
6 property and evidence?

7 A. Yes, that camera was taken down.

8 Q. And is it in the same condition it was back in
9 November of 2010?

10 A. Yes.

11 MS. MCCALL: Your Honor, we would move to
12 admit 43a, b and c.

13 THE COURT: Any objection?

14 MS. ROSS: No objection.

15 MR. ROBINSON: No objection.

16 THE COURT: Without objection.

17 (Surveillance equipment marked as State's
18 Exhibit No. 43a, b and c for identification was admitted
19 into evidence.)

20 BY MS. MCCALL:

21 Q. Did you find any money throughout the residence
22 during your search?

23 A. No, ma'am. I believe there was some found on one
24 of the defendants, but I'm not quite sure which one it
25 was.

Lanford - Cross

1 Q. We went over everything that you did find. Did
2 you find any kind of paraphernalia that indicated personal
3 drug use throughout the residence like crack pipes,
4 rolling papers or anything like that?

5 A. No, nothing like that was found.

6 Q. After collecting and scribing all of the
7 evidence, did that complete your investigation?

8 A. Yes.

9 Q. That's all I have for you. Please answer any
10 questions counsel may have.

11 THE COURT: Ms. Ross.

12 CROSS-EXAMINATION

13 BY MS. ROSS:

14 Q. Deputy Lanford, you did find lighters in the
15 house. There were lighters around in the trailer, weren't
16 there?

17 A. Not to my knowledge, I didn't find any lighters
18 personally.

19 Q. You're saying you didn't see any at all?

20 A. I just don't remember.

21 Q. Now, when you went through stuff, things that
22 were found on the counter -- you weren't the first in
23 there, were you?

24 A. No.

25 Q. So those things on the counter, do you know if

Lanford - Cross

1 they had been on the counter and remained there, or had
2 they been moved from somewhere else in the house to the
3 counter in the kitchen?

4 A. What I had been told from SWAT members nothing
5 had been touched in the room accept for the defendants who
6 had been brought outside. Nothing else had been touched
7 -- I'm sorry -- as well as the door they went into.

8 Q. So when you came in, on the counter you saw the
9 hotel keys with crack rocks on it? That was out on that
10 counter in the kitchen?

11 A. Yes, ma'am.

12 Q. Now, as far as who was charged with what, you
13 simply you were the scribe, right, and you filled out the
14 return which is this and the return is everything that's
15 found in the house and it's all written down and signed by
16 a magistrate.

17 A. Yes.

18 Q. When you did all that you charged both these
19 gentlemen with everything found in the trailer, right?

20 A. Correct.

21 Q. Yet you didn't personally see either of them with
22 anything, touching anything or any fingerprints or
23 anything in your personal experience linking directly to
24 these two gentlemen?

25 A. Correct.

Drummond - Direct

1 Q. In other words, nothing was found on them?

2 A. Right.

3 Q. On that camera was there a recording, could you
4 go back and find out what it had shown over time or did
5 you.

6 A. No, ma'am.

7 MS. ROSS: Thank you.

8 THE COURT: Mr. Robinson.

9 ~~MR. ROBINSON: I have no questions, Your~~

10 ~~Honor.~~

11 THE COURT: Okay. Step down.

12 MS. MCCALL: The State calls Jerry Drummond,
13 Jr., to the stand.

14 THE CLERK: Mr. Drummond, please come forward
15 to be sworn.

16 JERRY DRUMMOND, JR., having been duly sworn,
17 testified as follows:

18 Thank you. You may be seated. State your
19 name for the record, please.

20 THE WITNESS: Jerry Drummond.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MS. BENTLEY:

24 Q. Mr. Drummond, where are you from?

25 A. Greenville.

Drummond - Direct

1 Q. How long have you lived here?

2 A. All my life.

3 Q. Where did you go to high school?

4 A. JL Mann.

5 Q. When did you graduate?

6 A. I didn't.

7 Q. When did you quit?

8 A. '98.

9 Q. And how old are you today?

10 A. Thirty.

11 Q. Are you employed?

12 A. No, ma'am.

13 Q. You're not employed?

14 A. Not right now.

15 Q. When was the last time you were employed?

16 A. About a month and a half ago.

17 Q. Where were you employed?

18 A. Hills Janitorial.

19 Q. Mr. Drummond, do you know the two defendants in
20 this case?

21 A. Yes.

22 Q. How do you know them? How do you know Andrew
23 Burnside?

24 A. We are close friends.

25 Q. And how do you know Mr. Shumate?

Drummond - Direct

- 1 A. We're like cousins.
- 2 Q. And your testifying because I called you here?
- 3 A. Yes.
- 4 Q. Did you want to come in today?
- 5 A. No.
- 6 Q. How did you meet Mr. Burnside?
- 7 A. Through family members.
- 8 Q. When did you meet him?
- 9 A. I would say around '99.
- 10 Q. And what about Mr. Shumate?
- 11 A. Been knowing him all my life.
- 12 Q. And you said you're like cousins?
- 13 A. Yeah.
- 14 Q. Before this happened, how often did y'all spend
- 15 time together?
- 16 A. I mean who? Which one?
- 17 Q. Mr. Burnside.
- 18 A. We hung.
- 19 Q. You hung how?
- 20 A. We might hang out at the club and at home.
- 21 Q. What about Mr. Shumate?
- 22 A. Never at home but he came around a few times.
- 23 Q. Did you ever live with these two gentlemen?
- 24 A. No, we never lived together.
- 25 Q. Did you live at Road?

Drummond - Direct

1 A. Yes.

2 Q. Tell me what you mean when you say you lived
3 there?

4 A. No one has ever lived there, it was just like a
5 bachelor pad.

6 Q. I'm going to show you what's marked as State's
7 Exhibit 50, do you recognize this?

8 A. Yes.

9 Q. What is it?

10 A. Water bill.

11 Q. To whom is that water bill addressed?

12 A. My name.

13 Q. What is the address on that water bill?

14 A.

15 Q. So you had water?

16 A. Yes, and lights.

17 MS. BENTLEY: Your Honor, at this time I
18 would submit Exhibit 50 into evidence.

19 THE COURT: Any objection?

20 MS. ROSS: No objection.

21 MR. ROBINSON: No objection.

22 THE COURT: Without objection.

23 (Water bill marked as State's Exhibit No. 50
24 for identification was admitted into evidence.)

25 BY MS. BENTLEY:

Drummond - Direct

1 Q. So Mr. Drummond, you had utilities at Lot .

2 A. Uh-hum.

3 Q. And lights, too, you said.

4 A. Uh-hum.

5 Q. Now, you said you really didn't live there. It
6 was a bachelor's pad.

7 A. Yes.

8 Q. At what point did you obtain -- did you lease it,
9 did you own it?

10 A. It was rented.

11 Q. From whom did you rent it?

12 A. Our landlord was Billy Rhodes.

13 Q. And when did you rent this trailer from Mr. Billy
14 Rhodes?

15 A. I would say 2009, somewhere around November 2009.

16 Q. And when did you leave that trailer?

17 A. Like two week or a week before November 3rd.

18 Q. And we'll get to that in a minute. Did
19 Mr. Burnside ever stay with you at that trailer?

20 A. I wouldn't call it staying there. I mean he had
21 spent the night but I couldn't call it staying there.

22 Q. What did he do there?

23 A. What did he do there? We just might have company
24 over, females, and that sort of things.

25 Q. What about Mr. Shumate, did he ever stay there?

Drummond - Direct

1 A. I would say, no, he never stayed there.

2 Q. Did he visit you there?

3 A. Yeah, he has visited.

4 Q. And did Mr. Burnside visit you there?

5 A. Yes.

6 Q. How often had they visited you there?

7 A. I would say on a scale of 1 to 10 probably twice
8 or three times out the week.

9 Q. Can you tell me the date on this bill, please?

10 A. 11/12.

11 Q. November 12, 2010?

12 A. Yes.

13 Q. How much is this bill for?

14 A. \$193.

15 Q. Did you pay this whole bill yourself?

16 A. Actually I didn't pay that bill.

17 Q. What was your average water bill, do you
18 remember?

19 A. No, ma'am.

20 Q. Did you pay all the bills yourself?

21 A. No, ma'am.

22 Q. Who helped you pay the bills?

23 A. It was a party thing where we all would chip in
24 on bills.

25 Q. We all meaning who?

Drummond - Direct

1 A. Me, Andrew, Shumate, a few more people.

2 Q. And why would they help you pay the bills?

3 A. Because everybody came and chilled.

4 Q. You just chilled there. You seem pretty specific
5 about the date you moved out of that trailer. You said it
6 was when?

7 A. Like two weeks before November 3rd.

8 Q. What happened on November 3rd?

9 A. I was incarcerated.

10 Q. And for what were you incarcerated?

11 A. Habitual offender act.

12 Q. Did you know you were going to prison on November
13 3rd?

14 A. Yes.

15 Q. At what point did you know you were going to be
16 going to prison?

17 A. Actually I knew what I was facing was a mandatory
18 sentence so my lawyer told me around -- actually when I
19 first got my lawyer he told me I would have to do some
20 time.

21 Q. And had you agreed to plead guilty on November
22 3rd?

23 A. Yes, ma'am.

24 Q. So you knew that that date was your end date?

25 A. Yes, ma'am.

Drummond - Direct

1 Q. Did you have things at Lot , did you keep
2 furniture there?

3 A. Yes, I had my things there. Before -- well,
4 after I went to court, I had my wife take everything from
5 the house.

6 Q. Did you make arrangements to have your bills
7 paid?

8 A. No, ma'am.

9 Q. Did you ask anyone to pay your bills for you?

10 A. No, ma'am.

11 Q. I want to show you some pictures, Mr. Drummond.
12 Do you recognize what's been marked as State's Exhibit 23?

13 A. As what.

14 Q. It's on the back. What is it?

15 A. It's the kitchen area.

16 Q. Of?

17 A. Lot .

18 Q. And is it the same way as it was when you left
19 it?

20 A. No, ma'am.

21 Q. What's different?

22 A. I see chairs, I see a different table.

23 Q. Are you appliances the same?

24 A. No, ma'am.

25 Q. What's different?

Drummond - Direct

1 A. Microwave.

2 Q. What's different about the microwave?

3 A. I had a black microwave.

4 Q. Did you take that with you?

5 A. I don't know what happened to it. I didn't take
6 it with me because I was incarcerated.

7 Q. You didn't take it to your wife's house?

8 A. She took it but I didn't take it.

9 Q. I'm show you what's been marked as State's
10 Exhibit 25. Do you recognize what's in there?

11 A. A television.

12 Q. Was that your television there when you left?

13 A. No, ma'am.

14 Q. What about the second television under the lamp?

15 A. I can't see it. I don't know what that is.

16 Q. Do you recognize State's Exhibit 24?

17 A. No, ma'am.

18 Q. You don't know what that is?

19 A. I mean I see it, it's a camera.

20 Q. Was that there when you left?

21 A. No.

22 Q. Do you recognize the clothes in State's Exhibit
23 No. 8?

24 A. No, ma'am.

25 Q. Were those clothes there when you left?

Drummond - Direct

1 A. No.

2 Q. And do you recognize the money in State's Exhibit
3 7?

4 A. No, ma'am.

5 Q. Did you leave any money behind?

6 A. No, ma'am.

7 Q. Did you leave anything of value behind?

8 A. No, ma'am.

9 Q. Mr. Drummond, are you familiar with crack
10 cocaine?

11 A. Yes, ma'am.

12 Q. How are you familiar with it?

13 A. I have sold before.

14 Q. You have. Have you ever sold from
15 Road?

16 A. No, ma'am.

17 Q. You never sold out of there?

18 A. Well, actually, I have had sales come there but
19 not inside the house.

20 Q. Why not inside the house?

21 A. Because I didn't do that.

22 Q. You didn't do what?

23 A. I wouldn't sell where I hanged at, just a regular
24 sale where I hang at?

25 Q. Do you have any personal knowledge regarding

Drummond - Direct

1 either Mr. Burnside or Mr. Shumate possessing crack
2 cocaine?

3 A. No, ma'am.

4 Q. You have no personal knowledge?

5 A. What you mean personal knowledge? You mean what
6 they do?

7 Q. Yes.

8 A. I can't say what they were doing when I was gone,
9 but when I was there, no.

10 Q. I'm sorry you're going to need to clarify what
11 you just said.

12 A. I don't understand. What you saying?

13 Q. I'm asking you have you ever observed either
14 Mr. Burnside or Mr. Shumate possessing crack cocaine?

15 A. No, ma'am.

16 Q. Have you ever sold it to them?

17 A. I have sold it -- you asking me have I seen them
18 get it or in their possession? I'd have to say, no,
19 because I have sold it to them myself but you saying --
20 the way you put it like have I seen it get it from anyone
21 else?

22 Q. Let me clarify, if I may, what I think you just
23 said. You have sold crack cocaine to Mr. Burnside in the
24 past.

25 A. Yes.

Drummond - Direct

1 Q. And to Mr. Shumate in the past.

2 A. Yes.

3 Q. Did they possess that crack cocaine after you
4 sold it to them?

5 A. Okay, yes.

6 Q. Mr. Drummond, you were incarcerated beginning in
7 November, 2010.

8 A. Yes, ma'am.

9 Q. Do you have any personal knowledge about what
10 happened to your trailer after that?

11 A. No, ma'am.

12 Q. You have no idea who stated there.

13 A. No, ma'am.

14 Q. You have no idea what went on there?

15 A. No, ma'am.

16 Q. You just let the bill remain in your name?

17 A. There was supposed to have been out of my name.

18 Q. And whose name were they supposed to be in?

19 A. The trailer was supposed to have been given up.

20 Q. Was Mr. Burnside still visiting seven out of ten
21 days in November 2010?

22 A. I wasn't even there seven out of ten days.

23 Q. In October of 2010?

24 A. Yes.

25 Q. And Mr. Shumate?

Drummond - Cross

1 A. Yes.

2 Q. One last question, looking at State's Exhibit No.
3 23, do you recognize the hat in that picture?

4 A. No, I don't.

5 Q. Can you read name on that picture?

6 A. It says, "Precloop" (ph).

7 Q. Whose name is on the back.

8 A. It say Shumate.

9 Q. I have no further questions. Please answer any
10 questions Mr. Robinson or Ms. Ross may have.

11 THE COURT: Ms. Ross.

12 CROSS-EXAMINATION /

13 BY MS. ROSS:

14 Q. You've got a crack charge in the past?

15 A. Yes.

16 Q. You've got a conviction there?

17 A. Yes.

18 Q. And a strong armed robbery, too?

19 A. Yes.

20 Q. And when you were arrested you said that was on
21 November 3rd?

22 A. Yes, ma'am.

23 Q. You said your wife went and took all the stuff
24 out of there?

25 A. Yes.

Drummond - Cross

1 Q. You don't know when she took it out, exactly what
2 date?

3 A. No.

4 Q. So you can't say when she changed the name on the
5 rental agreement or anything?

6 A. No.

7 Q. Did she have keys to what you call your party
8 place?

9 A. No.

10 Q. She didn't have keys to that?

11 A. No.

12 Q. Yet you're saying she was the one who went and
13 cleaned out all your stuff and you don't know anything
14 about when?

15 A. No. The door was open. Someone was always
16 there.

17 Q. Someone was always there. People came and went
18 from that place?

19 A. Yes.

20 Q. On a regular basis. And you said before
21 Dominique Shumate was related to you and he's your cousin?

22 A. Yes.

23 Q. And you said when you first testified that he
24 never stayed there, he would come visit, right?

25 A. Yes.

Drummond - Cross

1 Q. And you sold him drugs before, right? And when
2 he would come visit and you talked about Mr. Burnside
3 coming to visit too, when they came to visit, they'd come
4 into the place, right?

5 A. Yeah.

6 Q. And hang in there with you and it was a place
7 where people hung out. You'd say it was a guys pad where
8 guys and girls would come hang out and that's what you
9 kept it for?

10 A. Yes.

11 MS. ROSS: I've got no further questions.

12 THE COURT: Mr. Robinson.

13 CROSS-EXAMINATION

14 BY MR. ROBINSON:

15 Q. Mr. Drummond, you called this a bachelor's pad,
16 right?

17 A. Yes, sir.

18 Q. So that would mean there were a lot of men that
19 came in and out of there; is that right?

20 A. Men and women.

21 Q. Men and women. So it was a pretty popular place?

22 A. If that's what you want to say. No, I wouldn't
23 say it was a pretty popular place because it wasn't a lot
24 of people, just a selected few.

25 Q. How many people?

Drummond - Redirect

1 A. I couldn't say. It's like if I meet someone and
2 want to bring them there, that's what I would do.

3 Q. Now, after you left, you don't know how many
4 people came and went from there, do you?

5 A. No.

6 Q. So it could be many people, correct?

7 A. Yeah.

8 Q. And to your personal knowledge, people knew that
9 as a bachelor's pad where you could come and hang out; is
10 that right?

11 A. Yeah.

12 MR. ROBINSON: That's all I have.

13 MS. BENTLEY: One last question.

14 REDIRECT EXAMINATION

15 BY MS. BENTLEY:

16 Q. Did you leave any narcotics there when you went
17 to prison?

18 A. No, ma'am.

19 MS. BENTLEY: That's all I have.

20 THE COURT: Thank you. Step down.

21 (Witness leaves the witness stand.)

22 Let's give the jury a short recess. Take the
23 jury out, please.

24 MS. BENTLEY: May Mr. Drummond be excused?

25 THE COURT: Any objection?

Armstrong - Direct

1 MS. ROSS: No.

2 (Witness excused.)

3 (Jury out for recess.)

4 THE COURT: Are we ready to go?

5 MS. BENTLEY: May Deputy Lanford be excused?

6 MS. ROSS: No objection.

7 MR. ROBINSON: No objection.

8 THE COURT: He's excused.

9 Bring back the jury.

10 (Jury re-enters the courtroom.)

11 MS. MCCALL: The State calls James

12 Armstrong.

13 THE CLERK: Mr. Armstrong, would you please
14 come up to be sworn in.

15 JAMES ARMSTRONG, having been duly sworn,
16 testified as follows:

17 Thank you. You may be seated. Please state
18 your full name for the record.

19 THE WITNESS: James Armstrong.

20 DIRECT EXAMINATION

21 BY MS. MCCALL:

22 Q. Mr. Armstrong, where are you employed?

23 A. I'm employed with the Greenville County
24 Department of Public Safety, Forensic's Division Crime
25 Laboratory.

Armstrong - Direct

1 Q. And how long have you worked for Greenville
2 County?

3 A. A little over 16 years.

4 Q. And what position do you currently hold with
5 Greenville County?

6 A. I am a criminalist. I have a dual responsibility
7 as a firearm examiner and a forensic drug chemist.

8 Q. How long have you held that position?

9 A. Sixteen years.

10 Q. What training and education did you receive to
11 become a forensic drug chemist?

12 A. I have a bachelor of science degree in chemistry.
13 I trained in the area of drug identification approximately
14 one year under the direction of our lab supervisor. I
15 attended numerous instrumental analysis schools concerning
16 the instruments I use in my analysis. I attended the
17 forensic chemist seminar sponsored by the Drug Enforcement
18 Administration in Washington, DC and I have testified in
19 federal, state, and local courts 149 times as an expert in
20 the field of forensic drug chemistry.

21 Q. Do you still receive training on occasion?

22 A. Yes, ma'am, I do.

23 Q. What tasks do you perform as a forensic chemists?

24 A. I analyze any suspected controlled substance such
25 as plant materials, tablets, powders, liquids and report

Armstrong - Direct

1 my findings on that.

2 Q. About how many cases have you been asked to
3 analyze chemical substances?

4 A. Thousands.

5 Q. And how many cases have you analyzed chemical
6 substances that turned out to be crack cocaine or cocaine
7 or pills?

8 A. Thousands.

9 Q. And how many times have you testified in court
10 about the results of your chemical analysis?

11 A. 149 times.

12 Q. Have you ever been qualified as an expert in the
13 drug analysis?

14 A. Yes, ma'am.

15 Q. How many times?

16 A. 149.

17 MS. MCCALL: Your Honor, at this time, the
18 State moves to have Mr. Armstrong qualified as an expert.

19 THE COURT: Any voir dire regarding his
20 expertise in that area?

21 MS. ROSS: No, Your Honor.

22 MR. ROBINSON: No, sir.

23 THE COURT: Thank you. He's qualified 150
24 times.

25 BY MS. MCCALL:

Armstrong - Direct

1 Q. Mr. Armstrong, were you asked to analyze any
2 chemical substances in this case?

3 A. Yes, ma'am, I was.

4 Q. And what were you asked to analyze?

5 A. I have to see my report.

6 Q. Okay. I'm handing you what's been marked as
7 Exhibit 49.

8 A. A variety of different items, Item PS1, a rock
9 substance; Item PS5 a bag containing a rock substance,
10 PS9, plant material, PS12a four green tablets, PS12b two
11 blue table, PS12c one white table, PS13 bag containing
12 four yellow tablets and portions of other, PS14 a bag
13 containing rock substance, PS15, bag containing powder
14 substance, PS16 is a bag with plant material, PS17a a
15 plate with residue and PS18 was rock substance.

16 Q. How did you obtain all those chemical substances
17 that you just mentioned?

18 A. Received from our property and evidence room
19 which is in the basement of the Law Enforcement Center.

20 Q. And how did you check these out?

21 A. In order to receive the items, we have to go to
22 our property and evidence room and ask for cases that are
23 in our locker or our vault to be worked. They bring them
24 out to me on our counter top and I sign the evidence out
25 with the property and evidence sheet and then I take them

Armstrong - Direct

1 back to my office for analysis.

2 Q. And I'm going to show you what's been marked as
3 Exhibit 27, 29, 32, 39 and 40. Do you recognize that?

4 A. Yes, ma'am, I do.

5 Q. Are these items that you checked out of property
6 and evidence?

7 A. Yes, ma'am, they are.

8 Q. How do you know that?

9 A. All of them except for this particular bag here,
10 my initials and the date which I sealed them in a double
11 heat seal as well as the bag which I opened the items and
12 have my initials and the date and my initials and our
13 number also written on the bags that actually contain the
14 substances.

15 This other item has my initials and date if I
16 open it, there's another seal and there's another outside
17 bag contained in there.

18 Q. I'm showing you Exhibit 29a, is that the outside
19 bag that your initials would have been on?

20 A. Yes, ma'am, this does contain my initials.

21 Q. Now, were these bags all sealed when you checked
22 them out of property and evidence?

23 A. Yes, ma'am, they were.

24 Q. Now, I turn your attention to the chemical
25 testing of the chemical substances, what did you do with

Armstrong - Direct

1 those exhibits?

2 A. First then when I received the items I make sure
3 everything is sealed. I then cut the bag open, initial
4 and date it and then inventory the contents, make notes,
5 then do a chemical spot test and an instrumental analysis
6 to confirm the presence of or absence of controlled
7 substance. Once I complete that part, I generate a report
8 of the findings.

9 Q. How do you analyze the substance? What type of
10 tests?

11 A. In this particular case, I performed chemical
12 analysis, microscopic analysis on the plant material, an
13 infrared spectroscopy, another called a GC MasSpect to
14 confirm the presence of controlled substances.

15 Q. And from these tests, were you able to form an
16 expert opinion as to what these exhibits contained?

17 A. Yes, ma'am, I was.

18 Q. And after you analyzed the material, did you
19 document your examination that you conducted and your
20 results?

21 A. Yes, ma'am, I did.

22 Q. At that Exhibit 49, kept in the course of the
23 regular course of business in the lab?

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

25 Q. Is it your regular practice to use and document

Armstrong - Direct

1 the findings in your drug analysis?

2 A. Yes, ma'am.

3 Q. As far as Exhibit 49, can you tell the jury what
4 that is?

5 A. This is a copy of my lab report generated for
6 this case. It has all the items listed. At the very top
7 it has the case number. It has the officer name provided
8 by the officer and subject information, the incident date,
9 the date I received it and it also has a spot for me to
10 check what type of testing I performed and a place for me
11 to write the results of my findings.

12 MS. MCCALL: Your Honor, I would ask that
13 Exhibit 49 be entered into evidence.

14 THE COURT: Any objection?

15 MR. ROBINSON: No objection.

16 MS. ROSS: Your Honor, I'd object based on my
17 earlier objection to the search warrant.

18 THE COURT: Subject to your objection, it's
19 in evidence.

20 (Report marked as State's Exhibit No. 49 for
21 identification was admitted into evidence.)

22 BY MS. MCCALL:

23 Q. What did you reveal the substances to be?

24 A. State's Exhibit 27 corresponds with my item PS18,
25 the rock substance was found to be cocaine base, a weight

Armstrong - Direct

1 of 0.90 grams.

2 THE COURT: That would be crack cocaine?

3 THE WITNESS: Yes, Your Honor, Exhibit 27.

4 THE COURT: And it weighed what?

5 THE WITNESS: 0.90 grams. State's Exhibit 40
6 corresponds with my item PS14, found to be a bag
7 containing powder substance found it to contain cocaine in
8 the weight of 2.92 grams. State's Exhibit 32 corresponds
9 with item PS1 which is rock substance found it to contain
10 cocaine base with a weight of 0.68 grams. State's Exhibit
11 39 corresponds with item PS14 a bag containing rock
12 substance found it to contain cocaine base with a weight
13 of 6.39 grams. State's Exhibit 29 corresponds with PS5
14 that would be a bag containing rock substance, cocaine
15 base with a weight of 10.42 grams.

16 BY MS. MCCALL:

17 Q. Thank you. After you analyzed these substances,
18 what did you do with them at that time?

19 A. Once my analysis was completed, I heat sealed all
20 -- the containers were heat sealed individually once I
21 complete that item and then they were taken back to our
22 property and evidence room for storage.

23 Q. Are those exhibits that you just mentioned, are
24 they the same evidence that you returned to Greenville
25 property and evidence?

Armstrong - Direct

1 A. Yes, ma'am, they are.

2 Q. You said you resealed the baggies before you
3 returned them?

4 A. Yes, ma'am, I did.

5 Q. And what day did you return them to property and
6 evidence?

7 A. I returned them on February 9, 2011.

8 Q. And are these essentially in the same condition
9 today as when you returned them?

10 A. Yes, ma'am.

11 Q. You have the picture but the substance looks a
12 little different like some blue and some discoloration, is
13 there any explanation as to why the coloring may have
14 changed?

15 A. State's Exhibit 39, some of the blue which is on
16 the outside actually is where the ink I had written on the
17 item, the weight and my initials actually smeared off
18 some, and the milky or watery type substance on the inside
19 could be some type of chemical reaction that's taken place
20 inside this heat sealed bag.

21 MS. MCCALL: Your Honor, I would now move
22 that State's Exhibit 27, 29, 32, 39 and 40 be admitted
23 into evidence.

24 THE COURT: Any objection?

25 MS. ROSS: I renew my prior objection.

Armstrong - Direct

1 THE COURT: Subject to that objection,
2 they're in.

3 (Drugs previously marked as State's Exhibit
4 No. 27 for identification was admitted into evidence.)

5 (Drugs previously marked as State's Exhibit
6 No. 29 for identification was admitted into evidence.)

7 (Drugs previously marked as State's Exhibit
8 No. 32 for identification was admitted into evidence.)

9 (Drugs previously marked as State's Exhibit
10 No. 39 for identification was admitted into evidence.)

11 (Drugs previously marked as State's Exhibit
12 No. 40 for identification was admitted into evidence.)

13 BY MS. MCCALL:

14 Q. Mr. Armstrong, were you asked to analyze pills in
15 this case.

16 A. Yes, ma'am, I was.

17 Q. I'm going to show you what's marked as Exhibit 34
18 and 35, do you recognize that?

19 A. Yes, ma'am, I do.

20 Q. Are these items that you checked out of property
21 and evidence?

22 A. Yes, ma'am, I did.

23 Q. And how do you know that?

24 A. Property and evidence is the only location that I
25 receive evidence.

Armstrong - Direct

1 Q. When you take out the pills from Exhibit 34 and
2 35, was that sealed?

3 A. Yes, ma'am, they were.

4 Q. And how do you know that they were sealed?

5 A. If they were not sealed, I would have made
6 notations on the bags but the way that I put my initials
7 and the date on the cut line indicates that the bag was
8 sealed.

9 Q. Now, let's turn your attention to the testing of
10 those pills, what did you do with Exhibits 34 and 35?

11 A. With these items, they are pharmacuetical
12 products, I looked at the markings on the tablets and
13 indicative based on the markings the potential contents of
14 the tablets.

15 Q. And from that analysis, were you able to form an
16 opinion as to what these exhibits are?

17 A. Yes, ma'am, I was.

18 Q. Could you tell us that opinion?

19 A. State Exhibit 34 actually has three different
20 types of tablets inside that corresponds with my PS12a,
21 12b and 12c. There are four green tablets which they are
22 indicated to be Diazepam which is a scheduled 4 controlled
23 substance. Item 12b was two blue tablets indicated to be
24 Alprazolam, which is a scheduled 4 controlled substance,
25 12c, one white tablet indicated to be Hydrocodone, a

Armstrong - Direct

1 schedule 3 controlled substance.

2 State's Exhibit 35 corresponded with my PS13
3 was found to be a baggie containing four yellow tablets
4 and portions of other and they indicated to be Alprazolam,
5 which is another schedule 4 controlled substance.

6 BY MS. MCCALL:

7 Q. Exhibit 34 and 35, is that the same evidence that
8 you returned to property and evidence?

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

10 Q. And how can you be certain of that?

11 A. They are still in the original condition that I
12 seal them and took them back.

13 Q. And they are essentially in the same condition
14 today as when you took them back to property and evidence?

15 A. Yes, ma'am, they are.

16 MS. MCCALL: Your Honor, I move to admit
17 State's Exhibit 34 and 35 into evidence.

18 THE COURT: Any objection?

19 MR. ROBINSON: No objection.

20 MS. ROSS: Same objection.

21 THE COURT: Subject to your objection.

22 (Pills marked as State's Exhibit No. 34 for
23 identification and admitted into evidence.)

24 (Pills marked as State's Exhibit No. 35 for
25 identification and admitted into evidence.)

Armstrong - Cross

1 BY MS. MCCALL:

2 Q. Mr. Armstrong, I'd also like you to look at
3 Exhibit 42, this microwave plate. Do you recognize that?

4 A. Yes, ma'am, I do.

5 Q. Were you asked to analyze that microwave plate?

6 A. Yes, ma'am, I was.

7 Q. And how did you obtain that microwave plate?

8 A. I received it from property and evidence.

9 Q. How do you know that you checked that out of
10 property and evidence?

11 A. The red tape has my initials and the date on the
12 tape as well as on the bag and also has my initials and
13 item number on the plate.

14 Q. And when you picked that up, was the bag sealed?

15 A. Yes, ma'am, it was.

16 Q. I now turn your attention to the testing of that
17 chemical substance. How did you analyze State's Exhibit
18 42?

19 A. The plate did have some residue and I scrapped
20 some of the off and did a chemical analysis and I found
21 that the residue on the plate contained cocaine base.

22 Q. And after you finished analyzing Exhibit 42, did
23 you return it to property and evidence?

24 A. Yes, ma'am, I did.

25 Q. Is that exhibit the same as you when you returned

Armstrong - Cross

1 to property and evidence?

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

3 Q. And you resealed the item?

4 A. Yes, ma'am, I did.

5 MS. MCCALL: Your Honor, I move that Exhibit
6 42 be admitted into evidence.

7 THE COURT: Subject to your objection. It's
8 in evidence.

9 (Plate marked as Exhibit 42 for
10 identification was admitted into evidence.)

11 MS. MCCALL: That is all the questions that I
12 have.

13 THE COURT: Ms. Ross.

14 ~~CROSS-EXAMINATION~~

15 BY MS. ROSS:)

16 Q. Mr. Armstrong, just one thing, Hydrocodone, is
17 that Avicidin or what is Hydrocodone?

18 A. Hydrocodone is also known as Loritab.

19 Q. So that's Loritab? Alprazolam is Xanax.

20 A. That's correct.

21 Q. And what's Diazepam?

22 A. That is Valium.

23 Q. So these were 11 pills plus portions of Valium,
24 Xanax and Loritab that were in two different baggies,
25 correct?

Armstrong - Cross

1 A. Yes, ma'am.

2 Q. And as far as all these drugs you analyzed, you
3 don't know who they belonged to, do you? You don't see
4 them any farther than what you analyzed?

5 A. That's correct.

6 Q. And as far as the pills, your analysis is based
7 on looking up this pill and seeing what it looks like and
8 seeing if it matches?

9 A. Based on a database.

10 Q. So you can't tell whether it was some sort of
11 clever imitation pill or not?

12 A. That's correct.

13 Q. Thank you.

14 ~~BY MR. ROBINSON:~~

15 Q. Mr. Armstrong, in looking at the microwave plate,
16 you don't know when anything was made in there, do you?

17 A. I have no idea.

18 MR. ROBINSON: That's all I have.

19 THE COURT: You may step down.

20 MS. MCCALL: Your Honor, may Mr. Armstrong be
21 excused?

22 THE COURT: Any objection?

23 MS. ROSS: No objection.

24 MR. ROBINSON: No objection.

25 MS. BENTLEY: The State call David Gambell.

Gambell - Direct

1 THE CLERK: Mr. Gambell, please come forward
2 to be sworn in. Place your left hand on the Bible and
3 raise your right.

4 DAVID GAMBELL, having been duly sworn,
5 testified as follows:

6 Thank you. You may be seated. Please state
7 your name for the record.

8 THE WITNESS: David Gambell.

9 DIRECT EXAMINATION

10 BY MS. BENTLEY:

11 Q. Officer Gambell, where are you employed and in
12 what capacity?

13 A. Forensics investigator for the Greenville County
14 Forensics Division and the Department of Public Safety.

15 Q. And how long have you been a forensics
16 investigator?

17 A. For a little over three years now.

18 Q. What are some of the duties that you have as part
19 of your job?

20 A. I respond to any type of crime scene requested
21 for any type of processing or pick up cases for in house
22 processing at my office.

23 Q. Do you test for fingerprints as part of your
24 daily job duties?

25 A. That is correct.

Gambell - Direct

1 Q. Were you asked to analyze items for fingerprints
2 in this case?

3 A. Yes, ma'am, I was.

4 Q. What items were you asked to process for
5 fingerprints?

6 A. I was asked two different times to process three
7 items of evidence. The first item of evidence was item
8 PS6 which is a Glock Model .22 semi-automatic handgun.

9 Q. I'm show you what's been marked and admitted as
10 State's Exhibit 33. Can you tell us if this is the same
11 gun you analyzed?

12 A. It appears to be so.

13 Q. And how did you test this handgun for
14 fingerprints?

15 A. That specific handgun I tested it using fuming
16 and latent powder, the fuming being super glue based
17 fuming, put it in a chamber with the super glue and the
18 gases and the fumes that it creates stick to the gun which
19 leaves any fingerprints that are on the gun in a more
20 permanent state so you would be able to lift them or
21 manipulate them, taking them off the gun as many times as
22 you need; and then latent print powder which is basic
23 graphite powder that sticks to any foreign substance on
24 most substances.

25 Q. Were any prints developed from State's Exhibit

Gambell - Direct

1 33?

2 A. On that item there were non comparable results.

3 Q. What does that mean?

4 A. It means that there was no enough ridge detail or
5 points enough to run through CODIS to be able to identify
6 it.

7 Q. You examined State's Exhibit 33, was there
8 anything regarding that gun that would make it difficult
9 to hold on to a print?

10 A. Most firearms are difficult to get prints off of
11 especially glocks. The whole receiver meaning the handle
12 and trigger mechanism are a textured plastic which does
13 not hold latent prints and the receiver which is the slide
14 and the barrel of the gun given the condition is just not
15 suitable for latent processing.

16 Q. What else did you process for prints in this
17 case?

18 A. I also processed an item PS17 which was a white
19 Sharp microwave.

20 Q. I'm just going to point out State's Exhibit 41.
21 Does that look like the microwave?

22 A. It does look like the microwave I processed.

23 Q. This black ---

24 A. That would be my latent fingerprint powder.

25 Q. Could you tell us how you processed this giant

Gambell - Direct

1 microwave for prints?

2 A. The microwave I just used latent print powder and
3 a brush and processed the entire surface area.

4 Q. Were there comparable prints obtained from this
5 microwave?

6 A. There did appear to be comparable prints off of
7 the microwave of which I lifted using basic tape and I
8 stuck it on a white fingerprint card and forwarded to the
9 latent print division so they could compare.

10 Q. Were you made aware if the fingerprints matched
11 either defendant?

12 A. I do not believe they matched either defendant.

13 Q. With a surface such as a microwave, would there
14 be any reason why someone could touch this microwave and
15 not leave a print?

16 A. There could be a number of reasons. Microwaves
17 are we call high traffic items meaning they're touched
18 numerous times so depending on the amount of oil that is
19 already on the microwave makes it difficult to leave a new
20 oil print on it. What leaves your fingerprints is oil
21 from your hands in most cases. Also I don't believe the
22 item was originally requested to be processed, so anytime
23 it is handled anytime from when it is originally collected
24 and given to me, even time it's been moved, boxed, bagged,
25 or anything like that can rub off a fingerprint from the

Gambell - Cross

1 exterior surface.

2 Q. And what else were you asked to analyze?

3 A. I was also asked to analyze item PS5a which was a
4 plastic bag.

5 Q. I'm going to show you 29a. Do you recognize
6 State's Exhibit 29a?

7 A. That does appear to be the item I processed.

8 Q. How do you recognize that you've processed this?

9 A. Because of the fingerprint powder that I used and
10 the initials.

11 MS. BENTLEY: I'd like to admit Exhibit 29a
12 into evidence.

13 THE COURT: Any objection

14 MS. ROSS: No objection.

15 MR. ROBINSON: No objection.

16 THE COURT: Admitted.

17 (Plastic bag marked as State's Exhibit No.
18 29a for identification was admitted into evidence.)

19 BY MS. BENTLEY:

20 Q. Were any comparable prints removed from this
21 baggie?

22 A. They were not.

23 Q. Do you know why?

24 A. Most baggies that are that thin usually we have
25 negative or non comparable results on them just because of

Gambell - Cross

1 how thin the actual material is. It just does not hold
2 fingerprints.

3 Q. I have no further questions for you. Please
4 answer any questions counsel may have.

5 THE COURT: Any questions?

6 MS. ROSS: Just a few, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. ROSS:

9 Q. Officer Campbell, the microwave, there were
10 comparable prints and you ran those prints against these
11 two gentlemen, correct?

12 A. That's correct.

13 Q. And they didn't match either of them?

14 A. That is correct, to my knowledge.

15 Q. Did the process stop or did you run it through
16 AFIS, the print database.

17 A. That I'm not sure. I forward it to the latent
18 division and I'm not sure the extent of what they do with
19 them.

20 Q. So you can't say the prints on there matched
21 Jerry Drummond or any other person known to the AFIS
22 database?

23 A. No, ma'am.

24 Q. Thank you.

25 A. Yes, ma'am.

Perron - Direct

1 MS. ROSS: I have no questions.

2 THE COURT: Step down.

3 MS. BENTLEY: May Officer Campbell please be
4 excused.

5 THE COURT: Any objection?

6 MS. ROSS: No objection.

7 MR. ROBINSON: No objection.

8 MS. BENTLEY: The State calls Investigator
9 to the stand.

10 THE CLERK: Investigator, could you come
11 around to be sworn. Please place your left on the Bible
12 and raise your right hand.

13 STEVEN PERRON, having been duly sworn,
14 testified as follows:

15 Thank you. Would you please State your name
16 for the record.

17 THE WITNESS: Steven Perron.

18 DIRECT EXAMINATION

19 BY MS. BENTLEY:

20 Q. Investigator, where are you employed and in what
21 capacity?

22 A. I'm an investigator with the Greenville County
23 Sheriff's Office.

24 Q. Is there a particular division in which you are
25 assigned?

Perron - Direct

1 A. I work in the Department of Crimes Division.

2 Q. As a crimes investigator, do you ever deal in
3 seized money?

4 A. Yes, I do from being -- I'm a seizure officer in
5 the Sheriff's Office.

6 Q. Please tell us what a seizure officer does?

7 A. I'm responsible for all the paperwork that's
8 maintained for seizures, vehicles, traffic, anything that
9 has to do with the seizure I take care of the paperwork.

10 Q. How does seizure money come into your work
11 possession?

12 A. When the officer comes in the case he winds up
13 seizing the money and then I get notified that the money
14 had been seized. I then forward the money -- I'm sorry --
15 the paperwork to the Solicitor's Office who will go ahead
16 and start the civil process of seizing the money.

17 Q. Is every dollar that is seized kept?

18 A. No. It's decided by the lieutenant or captain of
19 that division to go ahead and seize the money. There's
20 threshold. Typically we have a threshold of a \$1000 to go
21 ahead and seize.

22 Q. Do you know why that is?

23 A. Because of the money it takes to go ahead and
24 seize money, obviously there's a cost to seizing money and
25 in order for us to gain from seizing money, we would have

Perron - Direct

1 to make a certain amount of money in order to do that.

2 Q. It takes money to make money?

3 A. That's right.

4 Q. Did you deal with seized money in this case?

5 A. Yes, I did.

6 Q. Andrew Burnside and Dominique Shumate. Would you
7 please tell us how much money was seized from Andrew
8 Burnside?

9 A. According to the currency report the total amount
10 was \$314 and that was a combination between Shumate and
11 Burnside?

12 Q. Did the Sheriff's Office decide to go through the
13 procedure to keep that \$314?

14 A. No, ma'am, they didn't.

15 Q. Do you know why?

16 A. Because it didn't meet our threshold.

17 Q. What did you do with the money when you decided
18 not to --

19 A. It was decided by the lieutenant to go ahead and
20 return the money back to the two suspects?

21 Q. Did either man have any problems accepting that
22 money?

23 A. No.

24 Q. And did they accept the money?

25 A. Yes, they did.

Perron - Cross

1 Q. How much money did Dominique Shumate accept?

2 A. He received \$172 for Dominique Shumate and the
3 remaining amount was given to Mr. Burnside \$142.

4 Q. Did either man have any problems accepting that
5 money.

6 A. I didn't have a chance to talk to Mr. Burnside.
7 He was already in the detention ---

8 Q. Did you deliver the money in person to
9 Mr. Shumate?

10 A. Yes, I did.

11 Q. Did he accept it?

12 A. Yes, he did.

13 Q. And to your knowledge did Mr. Burnside reject the
14 money that was given to him?

15 A. No.

16 MS. BENTLEY: No further questions.

17 THE COURT: Any questions on cross?

18 MS. ROSS: Just briefly.

19 ~~CROSS-EXAMINATION~~

20 BY MS. ROSS: }

21 Q. The context of this you simply went to
22 Mr. Shumate and said would you sign for this \$172 and he
23 did, correct?

24 A. I don't think it was quite like that. I
25 explained to him that the money was being returned to him

Perron - Cross

1 because it didn't meet our threshold and I'm returning the
2 money to him, correct.

3 Q. And you said here is the \$172 ---

4 A. Would you like to take it, yes.

5 MS. ROSS: Thank you.

6 ~~MR. ROBINSON: No questions. I have a matter~~
7 ~~to take up.~~

8 THE COURT: Can we excuse this witness?

9 MS. ROSS: Yes, Your Honor.

10 MR. ROBINSON: Yes, Your Honor.

11 THE COURT: Witness excused.

12 Take the jury out, please.

13 (Jury exits the courtroom.)

14 ~~MR. ROBINSON:~~ Your Honor, we make a motion
15 for a mistrial at this time based on the testimony she
16 just elicited from the officer. He mentioned Mr. Burnside
17 was in jail at the time. I think that's prejudicial to my
18 client in this case for the jury this officer blurting out
19 jail.

20 MS. BENTLEY: Your Honor, first would like to
21 hear it. I thought I cut him off before he said detention
22 center, but Mr. Burnside for this very crime, he had not
23 made bond yet.

24 THE COURT: I don't think that's a sufficient
25 basis for a mistrial and I will deny the motion.

Perron - Cross

1 Who is your next witness.

2 MS. BENTLEY: Your Honor, for one question,
3 the State will recalls Deputy Walters to the stand.

4 THE COURT: Bring the jury.

5 (Jury re-enters the courtroom.)

6 Deputy Walters, come back around. You're
7 still under oath.

8 (Deputy Walters recalled by State.)

9 BY MR. BENTLEY:

10 Q. Deputy Walters, now that all the evidence is in,
11 I just have one question. As the case agent, were you
12 made aware of the latent fingerprint report?

13 A. I was made aware of that report.

14 Q. Did you review the report?

15 A. Yes, I did.

16 Q. Were the prints through AFIS?

17 A. They were run through AFIS, yeah.

18 Q. Were any matches obtained from the fingerprints
19 that were obtained?

20 A. No matches were obtained, no.

21 THE COURT: Any questions from Ms. Ross or
22 Mr. Robinson.

23 MS. ROSS: No.

24 MR. ROBINSON: No, Your Honor.

25 THE COURT: You can step down.

State versus Burnside - Shumate

1 MS. BENTLEY: Your Honor, that concludes the
2 State's case.

3 THE COURT: Take the jury out again, please.

4 (Jury exits the courtroom.)

5 Any motions?

6 MS. BENTLEY: None from the State, Your
7 Honor.

8 MS. ROSS: At this time I would renew all my
9 motions especially this motion regarding the search
10 warrant in light of the statement put into evidence. I
11 would also move for a directed verdict at this time. Mere
12 suspicion is not enough. The charges here are trafficking
13 with intent to distribute. What you've heard is evidence
14 that these young men were in a house where drugs also
15 were. There is evidence that they were actually
16 distributing or selling drugs or manufacturing.
17 Therefore, we would move to dismiss at this time.

18 THE COURT: Motion is denied. I think that's
19 an issue for the jury.

20 MR. ROBINSON: Your Honor, I'd make the same
21 motion based on the fact that, as I said the jury in the
22 beginning, I think mere presence because they were there
23 just raises suspicion. There has been no indication that
24 any of these drugs or property was linked, either actually
25 or constructive, in anything the State presented, as a

State versus Burnside - Shumate

1 result of that I would move for a directed verdict.

2 THE COURT: That makes a good argument for
3 the jury, Mr. Robinson I will deny your motion.

4 You'll have some testimony?

5 MS. ROSS: I discussed with my client and I'm
6 asking him to stand up and be instructed by you about this
7 very issue.

8 THE COURT: How about you, Mr. Robinson?

9 MR. ROBINSON: I just touched on it with him
10 but I'd like to talk to him first, and his sister is here
11 and I'd like to talk to her real fast.

12 THE COURT: Take them out and let them talk
13 to their lawyers.

14 Ms. Ross, did you not ask me if your client
15 took the stand what would they use? Was it you, Ms. Ross?

16 MS. ROSS: It was me. It's my understanding
17 and it might help him make his determination, my
18 understanding is Mr. Shumate's prior record is he has
19 simple possession of second and I'm not even sure about
20 that. He does have a possession of cocaine which I think
21 would come in. There would an issue I would look at that
22 marijuana doesn't carry over a year and it shouldn't come
23 in, but that one drug conviction would.

24 I think we decided that we would not put a
25 defense for Mr. Shumate.

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1 THE COURT: Alright. Mr. Robinson, do you
2 need any more time?

3 MR. ROBINSON: A little bit more time, Your
4 Honor. I think he wants to talk to his mother, if that
5 would be okay. I don't want to take any more of the
6 Court's time.

7 THE COURT: That's fine.

8 MR. ROBINSON: Your Honor, after consultation
9 with his family has decided not to testify so I will ask
10 the Court to question him.

11 THE COURT: I will. Will you put each of
12 these gentlemen under oath, please.

13 THE CLERK: Would you please stand and raise
14 your right hand.

15 ~~ANDREW BURNSIDE~~ and ~~DOMINIQUE SHUMATE~~, after
16 having been sworn, testified as follows:

17 Thank you.

18 THE COURT: Be seated. Now, Mr. Burnside and
19 Mr. Shumate, we have reached a point in your trial where
20 you will make a decision as to whether or not to take the
21 stand and testify or present other testimony, do you
22 understand that?

23 DEFENDANT BURNSIDE: Yes, sir.

24 DEFENDANT SHUMATE: Yes, sir.

25 THE COURT: Now, I've just been told by your

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1 lawyers that you decide that either of you will take the
2 stand and testify, is that correct?

3 DEFENDANT BURNSIDE: Yes, sir.

4 DEFENDANT SHUMATE: Yes, sir.

5 THE COURT: That's your constitutional right.
6 You have absolutely no burden in this case. You don't
7 have to take the stand and testify or present evidence
8 because the burden is on the State to prove you guilty
9 beyond a reasonable doubt. Do you understand that
10 important right?

11 DEFENDANT BURNSIDE: Yes, sir.

12 DEFENDANT SHUMATE: Yes, sir.

13 THE COURT: Now, since you have a right not
14 to take the stand and testify or present evidence, I will
15 advise the jury that is a right that you have and they
16 can't hold that against you. I need to tell you now that
17 you have a perfect right to take the stand and testify.
18 Do you understand that?

19 DEFENDANT BURNSIDE: Yes, sir.

20 DEFENDANT SHUMATE: Yes, sir.

21 THE COURT: If you take the stand and testify
22 then you become like any other witness in the case. You
23 become subjected to cross-examination by the solicitors,
24 do you understand that?

25 DEFENDANT BURNSIDE: Yes, sir..

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1 DEFENDANT SHUMATE: Yes, sir.

2 THE COURT: I don't know if you have any
3 record for which you can impeached by the State, but if
4 you do, then they can use that on cross-examination. Do
5 you understand that?

6 DEFENDANT BURNSIDE: Yes, sir.

7 DEFENDANT SHUMATE: Yes, sir.

8 THE COURT: With that understanding that you
9 told me that you've decided that neither of you will
10 testify; is that right?

11 DEFENDANT BURNSIDE: Yes, sir.

12 DEFENDANT SHUMATE: Yes, sir.

13 THE COURT: Now, is this a decision that you,
14 yourselves, have made?

15 DEFENDANT BURNSIDE: Yes, sir.

16 DEFENDANT SHUMATE: Yes, sir.

17 THE COURT: Your lawyers have not put any
18 pressure on you not to take the stand and testify; is that
19 correct? This is your decision?

20 DEFENDANT BURNSIDE: Yes, sir.

21 DEFENDANT SHUMATE: Yes, sir.

22 THE COURT: Are either of you under the
23 influence of any alcohol or drug or any other substance
24 right at this moment?

25 DEFENDANT BURNSIDE: No, sir.

State versus Burnside - Shumate

1 DEFENDANT SHUMATE: No, sir.

2 THE COURT: You sober?

3 DEFENDANT BURNSIDE: Yes, sir.

4 DEFENDANT SHUMATE: Yes, sir.

5 THE COURT: You know what you doing?

6 DEFENDANT BURNSIDE: Yes, sir.

7 DEFENDANT SHUMATE: Yes, sir.

8 THE COURT: And you each of your own decision
9 have decided that you will not testify; is that correct?

10 DEFENDANT BURNSIDE: Yes, sir.

11 DEFENDANT SHUMATE: Yes, sir.

12 THE COURT: Alright. That will conclude the
13 testimony. We will argue and charge in the morning.

14 Bring the jury.

15 (Jury re-enters the courtroom.)

16 Ladies and gentlemen, in the trial of a
17 criminal case, the defendant has absolutely no burden. He
18 or she does not have to take the stand and testify or
19 present evidence because that's the defendant's
20 constitutional right. The burden is always on the State
21 to prove a defendant guilty beyond a reasonable doubt.
22 The defendants in this case have exercised their
23 constitutional right not to testify or present evidence.
24 So the testimony in this case is complete and what we have
25 remaining is the final arguments by the attorneys and my

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1 charge on the law. We'll do that tomorrow morning.

2 I'll ask that you be back in your jury room
3 at 9:00 in the morning.

4 Now, please remember the admonitions from our
5 Chief Justice that I read to you this morning. If anybody
6 tries to contact you and talk to you about this case, get
7 their names and addresses and report that to me.

8 Please keep your badges on and have them on
9 when you come back in the morning. Again, I ask that you
10 do that so that everyone involved in this case will know
11 that you are a juror and it would be highly improper and
12 wrong for you to hear them talking about the case. So
13 please keep your badges on.

14 With that I will excuse you and ask that you
15 be back promptly at 9:00 in the morning.

16 Thank you. You're excused.

17 (Jury exits the courtroom for the evening.)

18 Now, I have tried to total up the weight in
19 this case and with respect to the crack cocaine I've come
20 up with 20.63 grams.

21 MS. BENTLEY: I had 18.39 grams, Your Honor.

22 THE COURT: I got .9 and then I got 2.92.

23 MS. BENTLEY: That is cocaine, Your Honor.

24 THE COURT: Okay. And 2.92 of plain cocaine.

25 MS. BENTLEY: Yes, sir.

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1 THE COURT: I can't remember -- so the
2 inference of intent applies in both cases?

3 MS. BENTLEY: Yes, Your Honor. The intent to
4 distribute level is 1 gram and in trafficking is 10 grams.

5 THE COURT: Okay. I'll charge each criminal
6 offense and we'll cover mere presence. I'll charge the
7 law on expert witnesses. I will charge circumstantial
8 evidence.

9 MS. ROSS: Judge, on circumstantial, we would
10 ask for the State v. Edwards which is each circumstantial
11 relied on by the State must be proven beyond a reasonable
12 doubt. It must be consistent with each other and point
13 conclusively to the element of guilt.

14 THE COURT: I've got my charge I've been
15 using for 30 years and I will use that Ms. Ross.

16 MS. ROSS: Is reasonable doubt and hesitate
17 to act in your instruction?

18 THE COURT: No, I charge V. Nebraska.

19 MS. ROSS: And we'd respectfully request
20 hesitation. And you said mere presence would not be
21 enough ---

22 THE COURT: I'll charge that.

23 MS. BENTLEY: Would you charge constructive
24 possession, Your Honor?

25 THE COURT: Yes.

State versus Burnside - Shumate

1 MS. ROSS: I would ask pursuant to State v.
2 Cherry which is 577 SE 2nd 719 just the amount of drugs
3 creates a permissive inference of intent to distribute
4 which the jury ---

5 THE COURT: That's what I charge. If you
6 want to attach that request to make it part of the record
7 for appeal --

8 MS. ROSS: Sure.

9 THE COURT: Mr. Robinson, anything you want
10 to add?

11 MR. ROBINSON: No, Your Honor.

12 THE COURT: Please be back promptly at 9:00
13 in the morning.

14 ---END OF TRANSCRIPT FOR DAY 1---

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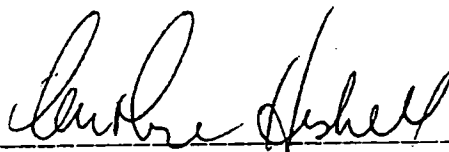
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State versus Burnside - Shumate

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Court of General Sessions, Greenville, South Carolina
8 on the 15th day of May 2012.

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

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13 

14 Caroline Hiskell
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1 STATE OF SOUTH CAROLINA) GENERAL SESSION
2 COUNTY OF GREENVILLE) 2011-GS-23-1738, 1739, 1741
3) 2011-GS-23-1733, 1735, 1736
4)
4 State of South Carolina) TRANSCRIPT OF RECORD
5)
5 -vs-)
6)
6 Andrew Burnside)
7 Dominique Shumate)

8 May 16, 2012 - Day 2
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE C. VICTOR PYLE, Judge.

12 A P P E A R A N C E S

13 Lisa Bentley, Esquire
14 Assistant Solicitor
15 Attorney for the State

16 Susannah Ross, Esquire
17 Attorney for the Defendant Shumate

18 Scott Robinson, Esquire
19 Attorney for the Defendant Burnside

20 CAROLINE HISKELL
21 Thirteenth Circuit Court Reporter
22
23
24
25

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WITNESSES	DIR	CR	REDR	RECR
(No witnesses presented on this day)				

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(No exhibits presented on this day)		

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P R O C E E D I N G S

THE BAILIFF: All rise, Court will come to order, the Honorable C. Victor Pyle presiding.

THE COURT: Thank you. Please be seated.
Good morning.

Solicitor.

MS. BENTLEY: Thank you. Good morning, ladies and gentlemen and welcome back. Thank you for your attention during this trial and the presentation of the evidence. You've seen all the evidence there is to see and heard all the testimony there is to hear and now the decision is yours. You are the finders of fact in this case and you determine whether Dominique Shumate and Andrew Burnside are guilty of the crimes charged.

They are each charged with a number of offenses, they are each charged with the same offenses. They have been charged with trafficking crack cocaine, cocaine base. The find them guilty of trafficking you must find that they possessed at least or over 10 grams of crack cocaine. The evidence presented shows they possessed approximately 18.4 grams of crack cocaine.

They've been charged with possession with the intent to distribute powder cocaine. To find them guilty of possession with intent to distribute, you must find either evidence of distribution such as scales, money, or

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1 that they possessed at least one gram of cocaine. You'll
2 find in the lab report that they possessed almost three
3 grams of cocaine.

4 They have been charged with the intent to
5 distribute controlled substances; controlled substances or
6 prescription pills. You heard they possessed a number of
7 prescription pills with no prescription no prescription
8 bottles in small baggies used to distribute drugs, along
9 with the crack cocaine, the powdered cocaine, the scales.

10 Additionally, they have been charged with
11 distribution of manufacturing crack cocaine. We brought
12 you in this microwave and plate that both tested positive
13 for the presence of cocaine base. The only way to get
14 cocaine base at the top of the microwave is by cooking it.
15 It explodes and pops inside.

16 You also find that because they were
17 manufacturing that cocaine base, they were aiding,
18 abetting, conspire to distribute that crack cocaine. And
19 as you can see some of these samples of crack are still
20 precisely cut just as they were when they were found open
21 on the counter and hidden throughout the house.

22 Finally, they've been charged with possession
23 of a weapon during the commission of a violent crime.
24 You'll have the gun and you can take it back with you or I
25 can show it to you right here. To find them guilty of

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1 possessing a weapon during the commission of a violent
2 crime you first have to find them guilty of a violent
3 crime which is trafficking in crack. Second, you must
4 determine that the reason that they possessed that gun was
5 because of that trafficking activity.

6 How do we prove that? That gun was in the
7 kitchen. In the kitchen was the microwave where they were
8 making the crack with many of the pieces of crack cocaine,
9 with the pills, with the scales, with the ammunition. The
10 gun we've proven was there as a deterrent, a deterrent to
11 a drug related robbery. As you've heard and I'll tell you
12 again, this might look like trash to you and I but this is
13 almost \$700 worth of crack cocaine and they had that gun
14 to protect their inventory.

15 There are a lot of pieces of evidence for you
16 to consider. There's a lot of testimony for you to
17 consider, but there are two things that you do not need to
18 deliberate about; first, whether the search warrant was
19 valid, whether they were lawfully allowed in Lot . That
20 was a matter of law decided on by the Judge.

21 The second is whether they were the men that
22 sold drugs to the CI that led to the search warrant. They
23 are not accused of that. They are not standing trial for
24 that, that is not a matter at issue today.

25 What you do have to determine with whether

State versus Burnside - Shumate

1 Dominique Shumate and Andrew Burnside possessed and had
2 control over these items in Lot . You must find they
3 knew about them and they possessed them beyond a
4 reasonable doubt.

5 There are very few things in life you can
6 know with absolute certainty, very few. We could not and
7 do not have to provide you with a brain scan of these
8 defendant on November 18th to show their knowledge and
9 intent. We do have to present to you evidence and
10 testimony that leaves you convinced, firmly convinced of
11 their knowledge and guilt and we submit we have done that.

12 There is no reasonable way, no reasonable
13 explanation for these defendants to be barricaded inside
14 that single wide trailer and not know about it and not be
15 involved. Look at this evidence, look at almost \$2000
16 worth of drugs all over the house. Look at the gun in the
17 kitchen on the counter in plain view. Look at the scales
18 hidden in and around the house. These men had active
19 knowledge of what was going on in Lot .

20 You heard they helped pay the bills in Lot
21 along with Jerry Drummond. They were there three or four
22 times a week. I'll tell you more about Mr. Drummond's
23 testimony and why he came on the stand in a minute.

24 The Judge is going to instruct you on
25 something called constructive possession. Neither man was

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1 found with any drugs on their person and that's what
2 actual possession is that they actually had the drugs in
3 their pocket, in their hand. They didn't have it here.

4 Constructive possession is no less a crime
5 than actual possession. The prove constructive
6 possession, like I said, I have to prove they knew what
7 was going on, they knew about these drugs, and they
8 exercised control over these drugs. How did they exercise
9 control? Well, no only are they in the home where they
10 pay bills, they are barricaded inside. They have
11 surveillance cameras on and working and displaying exactly
12 what's happening outside. You can look at that for
13 yourself. They knew who was coming in and they took the
14 30 seconds it took to breach that door and did whatever
15 they could. A reasonable conclusion from the placement of
16 evidence and placement of the defendants is they took that
17 30 seconds, they stashed what they could where they could
18 and they ran as far away as they could. They couldn't run
19 far because it's a small space. But isn't it convenient
20 that these two men are in the only two rooms in this whole
21 residence where there's nothing at. Is reasonable to
22 conclude that they just mere appeared there? They just
23 lucked out? No.

24 They knew where everything was. They're
25 trying to flush some of it down the toilet when the police

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1 arrive, and they did what they could to distance
2 themselves.

3 Ladies and gentlemen, I would say that actual
4 physical evidence, the physical placement of the
5 defendants, the physical barricade on the door, the
6 surveillance camera, the quantity of drugs, the lab
7 analysis of the microwave, I would say that that is more
8 than enough to leave you firmly convinced of the
9 defendants's guilty.

10 But the State presented more than that. In
11 addition to this actual evidence, we presented the
12 testimony of Investigator Brandon Brown, an expert in
13 street level narcotic sales, and Jerry Drummond.

14 First, Investigator Brown, you have heard
15 that he has executed hundreds of search warrants,
16 personally, and he's been involved in over thousand. He's
17 been doing this for eight years. He told you that Lot
18 is not a residence like you or I or the average person
19 thinks of a residence. It's a typical drug house.
20 There's some furniture, there's some clothes, there's a
21 little bit of food, but primarily it's a place where
22 people can go and deal drugs.

23 They can make them and deal them. They can
24 hang out there if they want to and wait for customers, but
25 it's not a residence. And that's important because we do

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1 not have to prove that either Mr. Burnside or Mr. Shumate
2 lived at . Living in the residence is not an element
3 of possession, it is not an element of any crime charged.
4 You merely have to find that they had knowledge and
5 control of what was in that place.

6 Investigator Brown also told you that in
7 every search when he has encountered a door barricaded, it
8 was narcotics related and it is now almost common place to
9 have surveillance equipment in drug houses. They are
10 inexpensive and easy to apply.

11 The Judge is going to tell you and this is
12 true that as finders of fact you determine who to listen
13 for. You determine who and what to believe. You can
14 believe one witness above all the witnesses. You can
15 believe a little bit of what everyone tells you and that
16 is important because you also heard from Jerry Drummond.
17 Mr. Drummond is admittedly not an ideal witness.
18 Mr. Drummond was the man who since November 2009
19 officially rented that trailer and what did he tell you.
20 He told you a few things.

21 One, he told you Mr. Burnside and Mr. Shumate
22 are good friends with him and he considers Mr. Shumate a
23 cousin. He did not want to be here. He did not want to
24 say anything that would hurt either of those two men and
25 that's understandable. But he also told you that, yeah --

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1 well, when I asked the question correctly he told that,
2 yes, he had sold them crack. Yes, that house had been
3 used to make crack sales before. Yes, Mr. Burnside and
4 Mr. Shumate helped pay the bills and he also told you why
5 he is not sitting at that table with them. And that is
6 because he was incarcerated. He was incarcerated on
7 November 3rd of 2010 before the CI buy was made, before
8 the search warrant was issued, and he could not have had
9 constructive possession of what was in that house. That's
10 the only reason he's not sitting there. He was in prison
11 already.

12 Ladies and gentlemen, at the end of the day,
13 at the end of this trial, this is a straight forward case.
14 No, there's not a fingerprint on the microwave. No,
15 there's not text messages saying anything regarding drug
16 sales. What is there? There are two men, two cell phone,
17 two piles of cash, \$2000 worth of drugs, barricaded inside
18 a trailer, with a gun, a 2X4 and surveillance equipment.
19 Those defendants knew exactly what was going on and there
20 is not a reasonable explanation aside from the fact that
21 they are guilty.

22 They are guilty in trafficking crack cocaine.
23 They are guilty with possession with intent to distribute
24 cocaine, they are guilty with possession with into to
25 distribute prescription pills. They are guilty of

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1 distribution and manufacturing crack cocaine and they are
2 guilty of possession a weapon during the commission of a
3 violent crime.

4 I ask that you deliberate, review the
5 evidence, and you return a verdict that speaks the truth;
6 guilty on all charges for Andrew Burnside and Dominique
7 Shumate. Thank you.

8 THE COURT: Ms. Ross.

9 MS. ROSS: Thank you. Ladies and gentlemen
10 of the jury, in my opening I told you they were in a drug
11 house, a crack house. These two young men were in the
12 house and there's no denying that, but they were in the
13 wrong place at the wrong time.

14 At the beginning I talked about that and I
15 gave you an example of sometimes it does happen where you
16 are in the wrong place at the wrong time and you don't
17 know all of what's in that trailer.

18 Now, I'm just going to go back to Jerry
19 Drummond. The solicitor was talking about him a little
20 earlier. This was his place, his pad. He let people come
21 and spend the night. I have to tell you when I heard that
22 testimony I heard him say that Dominique Shumate was a
23 cousin. He never would have spent the night. He wasn't
24 the one coming over all the time. He'd come over a couple
25 of times. He bought crack, he used crack.

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1 Now, you had an officer come and say there
2 was no paraphernalia, no one was using drugs in this
3 house. Just look at the pictures. They were. I kept
4 asking about lighters. I didn't see any lighters. Right
5 next to the gun was a lighter. There's another picture in
6 here of a red lighter sitting on the table. There were
7 lighters. There were people coming and going from this
8 trailer all the time using drugs, hanging out using drugs.

9 Dominique Shumate didn't live there. He went
10 to high school, graduated, had a little baby, had a job.
11 He didn't live in that house. His job was not doing and
12 selling drugs. He had \$150 on him, I think. That was in
13 his pocket. When he was searched and thrown down on the
14 ground, \$150 does not a drug trafficker make. Dominique
15 Shumate is not a drug trafficker.

16 Now, I know he's guilty of some charges.
17 It's one of those things when you're charged with a bunch
18 of crimes, you either plead guilty or you go to trial.
19 He's not guilty of trafficking. He's not guilty of half
20 these things. He's guilty of possessing and doing crack
21 cocaine. He was user. He's not a trafficker.

22 Now, let's look at the fingerprints about
23 this place. His fingerprints were not found on this
24 microwave. They weren't on there at all. They weren't on
25 the plate. They weren't on the gun. They weren't on

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1 anything connected to manufacturing drugs. These guys
2 were not traffickers. There's not evidence they were the
3 ones bringing in and taking out drugs and drug
4 trafficking. There's no evidence of that.

5 Let's talk about the gun that was right here.
6 Now, there's a explosion outside this trailer near the
7 back and I will add I did take pictures of this, trailers
8 you have to have two entrances. You can't just have one.
9 There's a fire code. There's always a back door to run
10 out if you want. When you have bombs going on and
11 someone's ramming the front door, they could have run out
12 the back door. Or if they're big time traffickers, they
13 could have got the gun and threatened someone with it.
14 They didn't do anything like that.

15 Let's talk about Mr. Shumate. He ran in the
16 bathroom. You'll see there was an UNO card with crack on
17 it. There was a card like that the officer testified was
18 hidden up in a cabinet, a card with crack. There was also
19 a card out on the counter that had some crack on it. I'll
20 submit to you that what Dominique Shumate was doing was
21 taking his crack, what he had bought, what he had intended
22 to smoke, what he had knew about and had control of, and
23 flushing it down the toilet. Getting rid of the evidence
24 against him.

25 Yes, that makes him guilty of knowing about

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1 some crack, possession of crack, but that does not make
2 him guilty of trafficking crack or manufacturing crack or
3 possession with intent to distribute these pills that were
4 hidden up in a cabinet. Loritabs, there's no evidence
5 that Dominique Shumate ever sold these pills or came into
6 any kind of contact with these pills. You heard Jerry
7 Drummond talk about this place and what it was.

8 It was house, a bachelor pad, all the guys
9 coming and going on this place.

10 Now, the solicitor said that it's not
11 important about the search warrant or the CI, I submit to
12 you that it is important because here a drug buy is done
13 at this house on November 10th. Based on that police
14 officers went and got a search warrant and searched this
15 house on November 18th, over a week later. Now, this is a
16 bachelor pad. These are not the guys who did that sell.
17 If they were, they would have been charged with it.
18 Someone else did the sale, and, ladies and gentlemen, to
19 prove guilt of trafficking, to prove guilty beyond a
20 reasonable doubt, the State has to do more than say these
21 guys were in the house. Essentially you're hearing from
22 the officers, they don't care whose selling drugs. They
23 just want to get the search warrant so they can run in and
24 bust whoever is unlucky enough to be in that trailer at
25 the time.

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1 It's 8:00 at night, party time, whoever
2 happens to be in there get's busted. There is not
3 evidence that someone went and purchased from there and
4 they run in with their search warrant and say we know
5 you're the one selling because somebody just purchased
6 there. They had the CI. They're saying someone is
7 purchasing there and they said it's not these guys.

8 Ladies and gentlemen, I would ask for more
9 before you convict someone of manufacturing drugs or
10 distributing drugs than they were in a house with drugs.
11 Because we know someone was distributing out of this house
12 unless police lied about the CI. We know someone was and
13 we know it wasn't either of these two guys. So don't
14 convict him because someone else was selling out of the
15 bachelor pad. It's like evidence of a frat house, if
16 someone sold out of a frat house and they found drugs in a
17 coat. This is a huge amount of drugs, 10 grams, that's
18 where we get the trafficking, this big amount.

19 That was found in the pocket of a coat in a
20 closet in the bedroom of this house. A house that doesn't
21 belong to these two guys, a house that belongs the Jerry
22 Drummond. There is no evidence that was either one of
23 these guys house. And, ladies and gentlemen, they would
24 have said it's his coat, look it's his size. They can't
25 prove to you it's his coat. There is no offer of evidence

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1 that the main amount of drugs were found in the room where
2 there was no other stuff. It was just hidden in a coat.

3 Everything was hidden away. All of the drugs
4 were hidden away except what was on, I think, one of the
5 drugs that was on the counter.

6 You heard about that that stuff was all
7 hidden away in oven mitts, hidden away and not in plain
8 view. The reason it was hidden it was no for public use
9 for everybody who goes and comes in that house. Everybody
10 uses lighters and smokes crack in this house.

11 And that's something about plain fairness,
12 ladies and gentlemen. I would ask you to be fair to
13 Mr. Shumate. Now, we know someone was dealing out of that
14 house. We know it wasn't him. We know Jerry Drummond
15 that Jerry Drummond had all this stuff going on in this
16 house, yet, he's walking. He gets to testify and the
17 State is asking you to put these two young men away for
18 trafficking for this and they're not guilty.

19 Now, against these are just points that I
20 want to make sure -- they talked about the \$300. They
21 weren't willing to bother with that for a forfeiture.
22 That wasn't even enough money to care about, but they're
23 saying \$1600 is enough to be trafficking, to convince
24 someone of trafficking. It's not, ladies and gentlemen,
25 and I'd ask you to find Dominique Shumate not guilty of

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1 trafficking crack.

2 Now, on other stuff, I don't think there's
3 evidence beyond a reasonable doubt that he knew about
4 these pills or he was distributing them. He didn't have
5 any idea about these pills, none. There is no evidence
6 that he knew about drugs hidden away in someone's pocket
7 or in oven mitts.

8 The State did not prove these charges beyond
9 a reasonable doubt so I'd ask you to find Dominique
10 Shumate not guilty of those charges. Thank you.

11 THE COURT: Mr. Robinson.

12 (MR. ROBINSON:) You know I waited and waited
13 and waited and waited for the prosecutor to come clean on
14 this piece of property. I was really hoping they would
15 finally admit to you that either of these two people owned
16 the property or rented the property or leased the property
17 or anything. And in the beginning, the opening statement,
18 you remember the one assistant solicitor said they owned
19 the property, this lot, and I was hoping at the end of
20 this thing, in the closing statement, saying, no, they
21 didn't own it, but they didn't. They even go a step
22 further since they don't have that they said, well, they
23 didn't own it, rent it, or lease it, but the bills in this
24 case.

25 No one testified that these folks, either

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1 Shumate or Burnside, ever paid any bills in this place.
2 None of those witnesses, even Mr, Drummond, their key
3 witness in this case who leased this property never
4 testified they paid bills, nothing.

5 If you notice in Exhibit 50, and you'll see
6 this when you go back there, this is a heating bills for
7 Jerry Drummond, but again, if they're not going to be
8 forward about who owned it, leased it, rented it, at least
9 be forward about who was not paying the bills. And,
10 again, in their closing, they said, paid the bills. They
11 never paid the bills.

12 Let's go back on other stuff, too, this
13 microwave. This is a white microwave with lots of prints
14 on it and not one print was related to either of these two
15 guys. A lot of other people, maybe, but they bring in a
16 witness, a forensic person that says -- doesn't say, yeah,
17 one of the fingerprints was theirs, he says we don't know
18 who these prints were.

19 And then we have this, Exhibit 32a, this is a
20 Dominos Pizza cart. Now, figure out when you deliberate
21 how important this is.

22 The cell phones which are Exhibits 28 and 26.
23 The cell phones were found in this trailer, but there's no
24 evidence that either of these fellas owned this. There's
25 no one from either Altell, Verizon or AT&T that said

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1 either of these guys owned these phones. And not only
2 that, there's no fingerprints.

3 The Altoids container, no one came in here
4 and testified that this was theirs, there's not prints on
5 this thing. The automatic weapon, this was Exhibit 38,
6 that was never tied to these folks. This gun that they
7 say was found on the property was found near neither of
8 these guys and she failed to mention it wasn't loaded.

9 There are a couple of things that really
10 stick out in this case, the lack of any person who came in
11 here to corroborate anything regarding these two folks.
12 They didn't have any CI's and say, oh, yeah, I saw them
13 doing something from this residence. Neither of these
14 police officers who testified said anything about any
15 information or evidence that these guys had anything from
16 this residence.

17 Y'all watch tv and so forth, you watch Cops
18 or those kind of programs. There's no video of this, but
19 they got no one that could say either the CI or the cops,
20 no one could say that anything was ever sold through this
21 trailer by these two folks.

22 They try to say, well, because these two guys
23 were in this trailer, they must be guilty. These guys,
24 two young men, we're doing a big sting and these guys are
25 in this trailer. Oh, my gosh, but I told you in the

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1 beginning the main ideas in this case, mere presence does
2 not mean that you're guilty. Just because you are
3 someplace that doesn't belong to you that has no record of
4 you ever having done anything in this place, has no
5 fingerprints, nothing, just because you're in there or in
6 this piece of property that doesn't mean you're guilty of
7 the crimes. Mere presence does is not enough to convict
8 in this case.

9 Now, let's talk about this idea of a
10 barricade. That was a big notion in this case. They make
11 it sound, and if you listen to the officers in this case,
12 this barricade was put up. Look at the picture. See if
13 you see any 2X4, because there's not one. There was not a
14 2X4. Think about this, y'all know what a 2X4 looks like,
15 they had the batter ram this place without going to the
16 back door or some other door and there is no evidence that
17 they presented that they barricaded themselves in there.
18 They have no 2X4, they got no evidence.

19 Think about it, barricade, what do you think
20 a barricade is. These folks, interestingly, were no found
21 near the barricade. Now, the solicitor talks about the 30
22 seconds that they had to get away. These guys didn't go
23 out the back door, they didn't go any place. The one guy,
24 Mr. Shumate, was in the bathroom to take a pee or whatever
25 he does, but I asked the officer on the stand, did you

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1 find any drugs in that commode. And what did he say, no.
2 Mr. Burnside, they found him under the bed. So what?
3 Does that mean he's guilty of this when it's not his
4 trailer? It's not rented to him and he doesn't pay the
5 bills. Merely because he's present is not enough in this
6 case to convict these two guys of these charges.

7 Now, this is one of the things you're going
8 to take back with you and it should be interesting. You
9 notice you make a big issue of this tv that's monitoring
10 something outside. Well, it's been incontroverted that
11 they didn't own the place, they didn't own this stuff, no
12 one came forward and said, yeah, we have records
13 indicating that Mr. Shumate and Mr. Burnside purchased
14 this tv system or this tv. It would be very good to have
15 someone from one of these companies come in and say, oh,
16 yeah, Mr. Shumate and Mr. Burnside went out to shop and
17 they purchased this closed circuit tv and this camera, but
18 they didn't do that.

19 They didn't own this place, they didn't rent
20 this place, they didn't lease this place. They didn't
21 even pay the bills in this place. And they weren't found
22 near any drugs, nothing. They weren't found near the
23 microwave, they weren't found near the little table here,
24 this little thing that they have, nothing, or pills,
25 nothing.

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1 So ask yourself, ladies and gentlemen, based
2 on merely being present in a place, merely being in this
3 place, are these guys guilty?

4 If you think about it and as I told you in
5 the beginning, being a member of a jury is one of the
6 greatest things you can do in peace time outside of being
7 in the military and it's a big honor, but the reason you
8 were chosen is for your common sense and your collective
9 thoughts and your experiences in your life.

10 You have a hard job, there's no doubt. You
11 have a hard job. There's a lot of information, but look
12 at everything. We got a lot of stuff that has nothing to
13 do with these folks. Nothing. Wouldn't you like to have
14 one piece of information, one person come forward and say
15 we bought stuff from Mr. Shumate and Mr. Burnside?
16 There's no one. And they put evidence up, the officer,
17 there's no evidence that the person bought from the, the
18 CI, nothing.

19 Ladies and gentlemen, I want to conclude this
20 by figuring out a quote or something that will put this in
21 perspective. You know when you wake up in the morning and
22 you read the newspaper and you go on the Internet and you
23 see things, you see police or law enforcement arrest
24 somebody. It's natural to think they've got the person,
25 but when you came in here and took that oath yesterday,

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1 you came in here to presume these two folks innocent and
2 the State has to prove to you beyond a reasonable doubt
3 each and every element of this case; that they actually or
4 constructively possessed those drugs. They are not guilty
5 of these charges.

6 They're guilty of being in the wrong place at
7 the wrong time, not listening to their mom or maybe
8 something like that to go over to a place to hang out, but
9 that's it.

10 There's a quote injustice anywhere is
11 injustice everywhere. I ask you in this case to do
12 justice. Use your common sense, use all your experiences
13 and find these folks not guilty of these charges, a
14 verdict that speaks the truth. These folks are not
15 guilty.

16 On behalf of my client, thank you.

17 THE COURT: I'll give you a very short recess
18 before I charge. Take the jury out, please.

19 (Jury exits the courtroom.)

20 Five minutes.

21 (Whereupon, there was a brief break.)

22 Bring the jury.

23 (Jury re-enters the courtroom.)

24 I don't want anyone in or out during my
25 charge so if anyone needs to leave, please do it now.

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1 Ladies and gentlemen, as you know these
2 defendants are charged with offenses dealing with drugs,
3 the first is possession of cocaine with intent to
4 distribute, the next is possession Diazepam and Xanax with
5 intent to distribute, distribution of crack cocaine,
6 trafficking, and possession of a weapon during the
7 commission of a violent crime.

8 Now, with respect to possession of cocaine
9 and controlled substances with intent to distribute, I
10 charge you that these indictments allege that the
11 defendants knowingly and intentionally possessed a
12 quantity of these drugs which is a controlled substance
13 within the meaning of the statute and that they possessed
14 these items with intent to distribute them.

15 Ladies and gentlemen, in this connection I
16 charge you that our statutory law provides that any person
17 possessing less than one gram of crack cocaine is guilty
18 of a felony. The statute also provides that any person
19 who distributes or possess with intent to distribute crack
20 cocaine is guilty of a felony. It further provides that
21 possession of one or more grams of cocaine or 10 grams of
22 crack cocaine, that, in fact, gives rise to an inference
23 of a violation of the law.

24 I charge you that this inference provided by
25 the statute is one of law, you may consider and it's only

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1 an inference of the violation of the law.

2 Now, with respect to these charges the State
3 must first prove that the drugs in question is or are
4 crack cocaine and then the pills are Xanax or Diazepam.
5 Now, further the State must prove that they knowingly and
6 intentionally possessed these items. Knowingly, ladies
7 and gentlemen, is something that is consciously done,
8 intentional means willful and that is not accidental.

9 I charge you that possession of drugs may be
10 either actual or constructive. It requires more than
11 proof of mere presence at the scene and the State must
12 prove that these defendants had dominion and control over
13 the substances in question or that they had the right to
14 exercise dominion and control over those substances.
15 However, ladies and gentlemen, I charge you that a person
16 has possession of a substance within the meaning of our
17 law when he has both the power and the intent to control
18 its disposition or its use.

19 Now, when a substance is found on the
20 premises or the place or the property under the control of
21 a person, that fact gives rise to an inference of
22 knowledge and possession of that substance or substances,
23 therefore, possession of drugs may be inferred from the
24 circumstances. The drug may be said to be in the
25 constructive possession of a person controlling the

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1 premises or the property or the place where it was found.

2 However, ladies and gentlemen, I tell you
3 again this inference is on of fact and not of law. It may
4 authorize a conviction but that result is not required.
5 It is an evidentiary in nature and is not conclusive and
6 therefore should be taken into consideration by you along
7 with all of the evidence in this case and it is to be
8 given such weight as you may determine it should receive.

9 Stated some what differently, ladies and
10 gentlemen, actual possession of a drug is when a substance
11 is found to be in the actual possession of a person
12 charged with possession. That's actual possession. On
13 the other hand constructive possession occurs when a
14 person has dominion and control over either the substance
15 itself or the premises the property or the place upon
16 which it was found or he was a joint participant in
17 committing the offense.

18 Now, as I've told you these defendants are
19 charges with the possession of these substances with the
20 intent to distribute them. Distribute, ladies and
21 gentlemen, means to deliver a controlled substance, in
22 this instance, the crack cocaine and the controlled
23 substances, the pills. It means to deliver from one
24 person to another a controlled substance whether it be
25 done gratuitously or for money or for profit.

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1 Now, ladies and gentlemen, with respect to
2 these indictments, I charge you as I told you that the
3 State alleges it must be done with intent to distributed a
4 less included offense with respect to these indictments
5 and that is simple possession. If you find that the
6 defendants possessed these substances but has failed to
7 prove that they possess it with intent to distribute them,
8 then you may find them guilty of simple possession.

9 These defendants are next indicted for
10 trafficking in crack cocaine. This too is a statutory
11 offense and our statutory law provides in part a person
12 who knowingly sell, manufactures, cultivates, delivers,
13 purchases or brings into this state or provides financial
14 assistance or otherwise aids, abets, attempts or conspires
15 to sell, manufacture, cultivate, deliver or purchase or
16 bring into this state or who is knowingly in actual or
17 constructive possession or who knowingly attempts to
18 become in actual or constructive possession of more than
19 10 grams or more of crack cocaine is guilty of a felony
20 which is known as trafficking in crack cocaine.

21 Now, ladies and gentlemen, it is the amount
22 of crack cocaine rather than a criminal act that triggers
23 the trafficking statute and it distinguishes trafficking
24 from distribution and simple possession. If the amount of
25 crack cocaine or mixture of crack cocaine is 10 grams or

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1 more, then the trafficking statute I read to you is
2 applied.

3 So what then are the elements of this offense
4 which the state must prove to your satisfaction beyond a
5 reasonable doubt? First of all, the state must prove that
6 the substance in question was crack cocaine. Secondly,
7 the state must prove that these defendants knowingly
8 possessed this crack cocaine. Again, I tell you that
9 knowing means with knowledge, that is, something that is
10 consciously done, and third, the state must prove that 10
11 or more grams of crack cocaine was possessed.

12 Again, ladies and gentlemen, I need to charge
13 you that possession may be actual or constructive. I want
14 to tell you again because it's important that the person
15 has possession of the substance within the meaning of our
16 law when he or she has the power and the intent to
17 control its disposition or its use.

18 Again, I remind you, ladies and gentlemen,
19 where a substance is found on the property or the premises
20 or the place under control of the person, this fact in and
21 of itself to give rise to an inference of knowledge and
22 possession on the part of that person. Therefore,
23 possession of a substance may be inferred from the
24 circumstances and the substance is deemed to be in
25 constructive possession of a person controlling the

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1 property, the premises or place where it is located.

2 Possession of drugs may be imputed to anyone
3 who has the power and intent to control the distribution
4 or use of the controlled substance.

5 Again, I charge you, ladies and gentlemen,
6 that proof of possession requires more than proof of mere
7 presence at the scene of a crime. Again, the state must
8 prove that these defendants had dominion and control of
9 the substances allegedly possessed, that is crack cocaine,
10 or that they had the right to exercise dominion and
11 control over it.

12 Also, in determining whether or not a
13 substance is possessed you may consider the amount of the
14 substance alleged to have been possessed, the manner in
15 which it was allegedly possessed, the place in which it was
16 allegedly possessed and any other factor you consider to
17 be important provided, of course, that the factor is
18 supported by the evidence.

19 Now, these defendants are also indicted for
20 possession of a weapon during the commission of a violent
21 crime. This, too, is a statutory offense and Section
22 16-23-490 of our Code of Laws makes it illegal to possess
23 or visible display what appears to be a handgun during the
24 commission of a violent crime or the attempted commission
25 of a violent crime and in this case trafficking of crack

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1 cocaine.

2 Now, before you can convict these defendants
3 of this offense, you must first have convicted them of
4 trafficking crack cocaine which is defined as a violent
5 crime.

6 Ladies and gentlemen, in the trial of a case
7 the state can rely on direct evidence on circumstantial
8 evidence or on a combination of the two. Direct evidence,
9 ladies and gentlemen, proves the existence of a disputed
10 fact using one or more of our five senses without the aide
11 of any inferences. For example, the testimony of a person
12 who claims to have actual knowledge of a fact, in other
13 words, an eyewitness. That is direct evidence.

14 Circumstantial evidence, on the other hand,
15 is where certain facts known through using one or more of
16 our five senses produces a logical inference that other
17 facts exist without directly proving those facts.
18 Circumstantial evidence is the proof of a chain of facts
19 and circumstances indicating the existence of a fact.
20 Now, as I told you the state may rely on either or both of
21 this type of evidence, direct or circumstantial, and
22 neither is inferior to the other. One is the good as the
23 other is equally convincing to you and they are both
24 entitled to the same weight.

25 Now, you should weigh all of the evidence in

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1 this case and after doing so you are not convinced beyond
2 a reasonable doubt of these defendants guilt, then you
3 must find them not guilty.

4 Ladies and gentlemen, as jurors you have a
5 function or responsibility that is entirely separate and
6 distinct from my function as the trial judge. The
7 constitution of our state does not allow me to charge you
8 on the facts of this case or to discuss the facts with you
9 or in any way I'm going to let you know what my personal
10 feelings are about this case. Therefore, if during the
11 course of this trial or during my charge you have a
12 feeling or impression I have a personal feeling about this
13 case one way or the other, then you disregard that feeling
14 or that impression.

15 Now, it is your duty and your duty alone to
16 weigh the testimony and the evidence presented in this
17 case and to pass upon the credibility or believability of
18 the witnesses you heard testify. In this connection, you
19 may believe all that a witness tells you or you may
20 disbelieve all of a witness tells you. You can one
21 witness against several or believe several against one.
22 You also have the right to take into consideration any
23 bias or prejudice or sympathy they may have in this case.

24 Now, as a trial judge I am required to charge
25 you the law which applies to the facts. It is not a

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1 question of what you feel the law might be or what it
2 should be, it is not necessarily what the lawyers say it
3 is, because under your oath, you are to take the law as I
4 give it to you and apply it to the facts as you determine
5 those facts to be and to right your verdict accordingly.

6 It is also my duty to see that this trial is
7 conducted in accordance with the facts and rules of
8 evidence applicable to the fact, therefore, I charge you
9 not to consider any evidence or testimony that was ruled
10 out by me as being not admissible.

11 Ladies and gentlemen, in this case as in all
12 criminal cases, these defendants come into this courtroom
13 presumed to be innocent and this presumption continues to
14 carry throughout the entire trial until and unless it is
15 removed by evidence that satisfies you of their guilt
16 beyond a reasonable doubt.

17 The burden is on the state in this case to
18 prove these defendants guilty and to prove each and every
19 element of the offenses for which they are charged beyond
20 a reasonable doubt. Some of you may have in the past
21 served as jurors on civil cases and if so you were most
22 likely told that it was only necessary to prove that a
23 fact was more likely true than not true. But in criminal
24 cases the state's proof must be more powerful. As I've
25 told you it must be beyond a reasonable doubt. Proof

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1 beyond a reasonable doubt is proof that leaves you firmly
2 convinced of these defendants guilt.

3 There are very few things that we know with
4 absolute certainty and in criminal our law does not
5 require proof that overcomes every possible doubt. If
6 based on your consideration of the evidence in this case
7 you are firmly convinced that these defendants are guilty,
8 then you must find them guilty. If on the other hand
9 there is a real possibility that they are not guilty, then
10 you must give them the benefit of that doubt and find them
11 not guilty.

12 Ladies and gentlemen, our law does not compel
13 a defendant in a criminal case to take the witness stand
14 and testify or present evidence, and no presumption of
15 guilt may be raised or no inference of any kind may be
16 drawn from these defendants decision not to testify. Our
17 law never imposes upon a defendant in a criminal case the
18 burden of calling any witnesses or producing any evidence
19 or even testifying. Therefore, the decisions of these
20 defendants not to take the stand and testify can not be
21 taken, held, discussed, against them in any manner
22 whatsoever.

23 Ladies and gentlemen, under the oath you took
24 in this case you swore to try the case based solely on the
25 testimony and evidence and the law presented and heard in

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1 this courtroom. I told you that it is your duty to lay
2 aside all outside opinions, bias or prejudice or sympathy
3 you may have in reaching your verdict. The word verdict
4 is taken from the latin word veredicto and it means to
5 speak the truth. You have no friends to reward or enemies
6 to punish. I charge you to abide by your oath and return
7 a verdict that speaks the truth.

8 Now, you will have in the jury room with you
9 these indictments. These indictments do not constitute
10 evidence. They simply sets forth the allegations by the
11 state and they are the legal documents that bring this
12 case into the courtroom and present to you for your
13 consideration.

14 Ladies and gentlemen, with respect to your
15 verdicts with respect to the indictment for possession of
16 cocaine with intent to distribute and possession of
17 controlled substance with intent to distribute and that is
18 the pills, you have three choices, that is guilty, not
19 guilty or guilty of simple possession.

20 With respect to the indictment for possession
21 with intent to distribute crack cocaine, again, there are
22 three possible verdicts and that is guilty, not guilty or
23 guilty of possession.

24 With respect to the indictment of
25 distribution of crack cocaine, there are two possible

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1 verdicts, guilty or not guilty. With respect to the
2 trafficking crack cocaine, guilty or not guilty and with
3 respect to count 2 of that indictment, possession of a
4 weapon during the commission of a violent crime. Again, I
5 must tell you that to find them guilty of possession of a
6 weapon, you must find them guilty of trafficking crack
7 cocaine.

8 Madam fore person, you will find on the back
9 of each indictment a space where it says verdict.
10 Whatever the verdict of the jury is must be unanimous on
11 each indictment and whatever that is please write it out
12 on the space provided and then sign where it says
13 fore person of the jury.

14 Please at this time, ladies and gentlemen,
15 retire to your jury room but please don't begin
16 deliberating until I send word in for you to do so.

17 (Jury exits courtroom.)

18 Anything further?

19 MS. BENTLEY: Nothing from the State.

20 MR. ROBINSON: On behalf of Mr. Burnside, no
21 exceptions.

22 MS. ROSS: Nothing from the defense.

23 THE COURT: Send the exhibits back and tell
24 them to begin deliberating.

25 (Jury began deliberations.)

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1 Okay, ladies and gentlemen, we have a verdict
2 in this case. Of course, we don't know what that verdict
3 is but I need everyone in that courtroom to understand
4 that regardless of what that verdict is there will be no
5 outbursts of any kind, no displays of emotions, and should
6 there be any, that would constitute contempt of court and
7 I will punish accordingly. If anyone in the courtroom not
8 understand what I said, please stand up.

9 (No response.)

10 Bring the jury.

11 Madam Fore lady, you reached a verdict, could
12 you hand it to the bailiff, please.

13 Please publish the verdict.

14 ~~THE CLERK:~~ Your Honor, this is case no.
15 2011-GS-23-1733, the State versus Dominique Shumate,
16 indictment for trafficking cocaine base and possession of
17 a weapon during the commission of a violent crime, we the
18 jury find the defendant as to count 1, guilty, county 2,
19 guilty. Signed fore person.

20 ~~2011-GS-23-1738,~~ State versus Andrew
21 Burnside, indictment for ~~trafficking cocaine base and~~
22 ~~possession of a weapon during the commission of a violent~~
23 ~~crime,~~ we the jury find the defendant guilty of count 1,
24 count 2, ~~guilty~~. Signed fore person, Virginia Sullivan.

25 ~~2011-GS-23-1740,~~ Andrew Burnside indictment

State versus Burnside - Shumate

1 for distribution of cocaine base, verdict guilty, signed
2 fore person, Virginia Sullivan.

3 2011-GS-23-1735, Dominique Shumate,
4 indictment for distribution of cocaine base, verdict is
5 guilty, signed fore person Virginia Sullivan.

6 2011-GS-23-1731, Andrew Burnside, indictment
7 for possession of cocaine with intent to distribute,
8 verdict guilty of possession, signed fore person, Virginia
9 Sullivan.

10 2011-GS-23-1736, Dominique Shumate,
11 indictment of possession of cocaine with intent to
12 distribute, verdict guilty of possession, signed Virginia
13 Sullivan, fore person.

14 2011-GS-23-1739, Andrew Burnside, possession
15 of a controlled substance with intent to distribute,
16 verdict, guilty of possession, signed fore person,
17 Virginia Sullivan.

18 2011-GS-23-1734, Dominique Shumate indictment
19 for possession of a controlled substance with intent to
20 distribute, verdict guilty of possession, signed
21 fore person, Virginia Sullivan.

22 If this is your verdict, please raise your
23 right hand.

24 (Jury complies.)

25 Thank you.

State versus Burnside - Shumate

1 THE COURT: Thank you, ladies and gentlemen,
2 for your service on this case. This will conclude your
3 service for this date. This afternoon call the number and
4 they will tell you when to report back. Thank you very
5 much for your service on this case.

6 (Jury dismissed.)

7 Any motions?

8 MS. ROSS: Judge, I will renew my motion for
9 directed verdict and all my prior motions and objections.
10 And I will also ask for a judgment notwithstanding the
11 verdict in this case on the trafficking charge.
12 Mr. Shumate was charged with felony trafficking and also
13 possession with intent to distribute crack cocaine, I
14 would argue those charges were redundant and encompass the
15 same action, and therefore, I will particular make a
16 motion for those charges.

17 THE COURT: Mr. Robinson?

18 MR. ROBINSON: I have no motions at this
19 time, Your Honor.

20 THE COURT: Solicitor, how about the
21 indictments for trafficking crack and then the indictments
22 for possession of crack with intent to distribute?

23 MS. BENTLEY: Your Honor, the indictment for
24 trafficking crack was a separate charge from distribution.
25 There was not a PWID crack. I believe there was a PWID

State versus Burnside - Shumate

1 cocaine and PWID controlled substance which are totally
2 different from the crack cocaine. The distribution
3 manufacturing charge of crack cocaine stems from the
4 evidence regarding their manufacturing the crack cocaine
5 in the microwave, the tupperware, the razor blades with
6 the intent to therefore distribute.

7 THE COURT: And the total was over 10 grams?

8 MS. BENTLEY: Yes, sir.

9 THE COURT: Motion is denied.

10 Come on around.

11 MS. BENTLEY: These are enhanced convictions,
12 Your Honor, and there are priors, if you would like to
13 know about that.

14 THE COURT: Tell me about that.

15 MS. BENTLEY: For Mr. Burnside, these are all
16 third offenses, he has prior possessions of cocaine base
17 in 2009 and 2007. And for Mr. Shumate, this is a
18 trafficking second. He has one prior possession of crack
19 cocaine and he has one prior possession of marijuana with
20 intent to distribute. Under the new law the marijuana
21 would not enhance from what we know.

22 MS. ROSS: Judge, that's what I understand as
23 well.

24 THE COURT: Solicitor, tell me with respect
25 to Mr. Burnside on the possession with intent to

State versus Burnside - Shumate

1 distribute the pills, third offense, the range is?

2 MS. BENTLEY: Zero to one year, Your Honor,
3 and that's just possession.

4 THE COURT: Okay. I got it. The
5 trafficking, third offense, for Mr. Burnside?

6 MS. BENTLEY: 25 to 30.

7 THE COURT: And a mandatory \$50,000.

8 Mr. Burnside, you exercised your
9 constitutional right not to testify. I tell you now that
10 you have a perfect right to address the court concerning
11 your sentence. Now, is there anything you would like to
12 say before I sentence you?

13 ~~DEFENDANT BURNSTIDE~~: I don't have too much to
14 say only that I was at the wrong place at the wrong time
15 at somebody else's house and I just caught there and I
16 wasn't supposed to be there. They went in there and found
17 the stuff in there and they found me guilty for the stuff
18 I didn't know was there.

19 THE COURT: Thank you. Mr. Shumate, anything
20 you would like to say with respect to sentence?

21 ~~DEFENDANT SHUMATE~~: I just want to say the
22 same thing that I was in the wrong place at the wrong time
23 that I shouldn't be doing drugs and being in a house that
24 was not mine and I just apologize.

25 THE COURT: Ms. Ross.

State versus Burnside - Shumate

1 MS. ROSS: Thank you, Your Honor, may it
2 please the Court. I was appointed to represent
3 Mr. Shumate on November 19, 2010 when he was arrested for
4 this. Since then I've had contact with his mother who is
5 in the courtroom today. If you could stand up, please,
6 Michele Epps. And his sisters are here and there are
7 other family members here on Dominique's behalf. I am
8 truly sorry that he's looking at the time of mandatory
9 minimums that he and the co-defendant are looking at.

10 I will tell you the solicitor was very
11 cooperative and made a plea offer of four years for
12 Mr. Shumate. His mother advised him to take it and he
13 knew he needed to -- he simply was too frightened to go to
14 jail. He had a job, he had a newborn, and just would not
15 plead guilty to it.

16 He had signed up, signed sentencing sheets to
17 plead guilty, but just missed his opportunity to do that
18 and that's how we ended up on the trial docket today.

19 I would just ask you to consider closer to
20 the minimums on these charges he's looking at. He know
21 he's done the wrong thing and punish for that is simply
22 punishment for not thinking and kind of frankly being an
23 idiot about the whole thing. I would ask you to limit the
24 damage because he knew he needed to plead guilty but we
25 got here today.

State versus Burnside - Shumate

1 I'd ask you to consider all these things. He
2 is a high school graduate and I believe he has a job.

3 THE COURT: Mr. Robinson.

4 ~~MR. ROBINSON:~~ May it please the Court. Your
5 Honor, about three weeks ago we met with the prosecutors
6 in this case and they had made us a plea as well and we
7 didn't take it and I think it's really difficult when kids
8 like this don't listen to their families and they think
9 they can make decisions because parents and families know
10 best some times, but he's very remorseful and sorry.

11 You know, it's a sad commentary sometimes
12 when young men get in situations like this or put
13 themselves in situations and have to pay these harsh
14 consequences. His mother is a very nice lady and his
15 family is a very nice family. We ask for the minimum in
16 this case. Thank you.

17 THE COURT: I'm having difficulty with you
18 telling me you were in the wrong place at the wrong time
19 and that you're not guilty of anything and Mr. Burnside
20 this is your third offense for trafficking and Mr. Shumate
21 this is your second offense for trafficking.

22 MR. ROBINSON: Your Honor, he just wanted to
23 say something if he could.

24 THE COURT: Sure.

25 DEFENDANT BURNSIDE: Your Honor, they say

State versus Burnside - Shumate

1 it's my third offense for trafficking but they had charged
2 me because I had got caught using and that's how I got
3 charged. I was just never that and I had got caught using
4 and certain times.

5 THE COURT: Thank you.

6 On a third offense trafficking, it says 25
7 years.

8 MS. BENTLEY: Yes, Your Honor.

9 THE COURT: Mr. Burnside on the indictment
10 for trafficking crack cocaine third offense the sentence
11 of the Court is you be committed to the Department of
12 Correction for a period of ~~25 years~~ and pay the mandatory
13 fine of \$50,000. On the indictment for possession of
14 cocaine second, the sentence is you be confined for a
15 period of ~~five years concurrent~~. On the indictment for
16 distribution of cocaine third, the sentence is you be
17 committed to the Department of Correction for a period of
18 ~~15 years concurrent~~ with a fine of \$2000, and on the
19 indictment for possession of a controlled substance third
20 offense ~~one year concurrent~~.

21 Mr. Shumate, on the trafficking second
22 offense the sentence is you be committed to the Department
23 of Correction for a period of 15 years and pay the
24 mandatory fine of \$50,000. The indictment for possession
25 of schedule 4 controlled substance one year concurrent.

State versus Burnside - Shumate

1 Distribution of cocaine, crack cocaine, five years
2 concurrent and on the indictment for possession of cocaine
3 one year concurrent.

4 PROBATION CLERK: Your Honor, may it please
5 the Court, they are currently on probation and we would
6 ask that you go ahead and revoke their probation.

7 THE COURT: Okay.

8 MS. BENTLEY: Your Honor, pardon but I didn't
9 hear the sentence on the weapon charges, possession of
10 weapon during the commission of a violent crime.

11 THE COURT: Do I have a sentencing sheet on
12 that? Okay. I've got it.

13 On the indictments for possession of a weapon
14 ~~five years concurrent.~~

15 MS. BENTLEY: Thank you, Your Honor.

16 ---END OF TRANSCRIPT RECORD---

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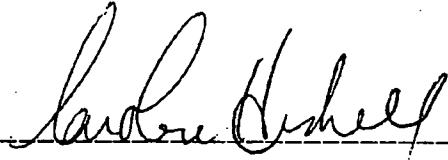
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State versus Burnside - Shumate

1
2 I, the undersigned Caroline Hiskell, Official
3 Court Reporter for the Thirteenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript of
6 record of all the proceedings had and evidence introduced
7 in the trial of the captioned case, relative to appeal, in
8 the Court of General Sessions, Greenville, South Carolina
9 on the 16th day of May 2012.

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

12
13 
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15 Caroline Hiskell
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FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

IN THE COURT OF COMMON PLEAS

Andrew Davion Burnside)

Full name and prison number (if any) of Applicant)

328129)

v.)

State of South Carolina)

2013-CP-23-0684

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENMER
2013 DEC 30 PM 1:05INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
Bidgeville, S.C. 29472, P.O. Box 205
2. Name and location of Court which imposed sentence 13th Judicial Circuit
305 East North St. Greenville, South Carolina 29601
3. Name(s) of co-defendant(s) (if any) Dominique J. Shumate
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011-GS-2301738 (Trafficking Cocaine)

- (b) 2011-GS-2301739 (Intent to distribute)
- (c) 2011-GS-2301740, 2011-GS-2301741

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) May 16, 2012 (25 years)
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty Not guilty
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. ~~Affirmed~~ Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 12, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) _____

- (b) _____
 (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
 (b) Search warrant and Search and Seizures
 (c) Suppression of Evidence / Warrants are Invalid

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Mr. Robinson want to be relieved as Counsel
 (b) The search warrant was based on the CT Buy
 (c) Victim Witness Statement based on Suppression

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

~~First PCA filing~~

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Not the proper procedure to present these issue's
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Scott D. Robinson, Esquire
Greenville County Public Defender
 ii. _____
Robert M. Pachak, Esquire
 iii. South Carolina Court of Appeals

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing
 ii. _____
 iii. direct Appeal

19. State clearly the relief you seek in filing this application:

Release from prison
Time cut

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Andrew D. Burnside, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Andrew D Burnside

SWORN to and subscribed before me this 25th
 day of November, 2013.

Luchean Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Andrew D Burnside, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Andrew Burnside

Applicant

SWORN or affirmed to and subscribed before me this
25th day of November, 2013.

Luduan Bryant
Notary Public

My Commission Expires: May 26, 2020

Page 242. 3 of 1 11/ State concisely and in the same order the facts which support each of the grounds set out in (10)

Number (10) state concisely the ground on which you base your allegation that you are being held in custody unlawfully:

- A.) Ineffective Assistance of counsel
- B.) Search warrant and search and seizures
- C.) suppression of Evidence/Warrants are Invalid
- D.) Victim/Witness/Statement
- E.) Affidavit
- F.) A witness that take the stand during trial / Jerry Drummond Jr.

4 At the First part of ~~the~~ trial Mr. Robinson 2431 of the Judge he dont want to be my Counsel at this trial. And Mr. Robinson didn't do any investigation on my case.

The search warrant was Based on the CI buy and statement. That means the the warrant was no good Cause he said in went in the trailer on the left and warrant say's the trailer on the right. U.S.C.A. Const. Amend. 4.

In the prior motion to suppress based on the search warrant In the statement the CI ~~he~~ he went to the second trailer in the left but that not what's on the Affidavit.

IF the witness statement is how you got the warrant to enter the trailer then your in violation of my U.S.C. Const Amend. 4

On my Affidavit and search ~~warrant~~ warrant have two diffarnt signatures so that could only mean that the warrants and Affidavit went to inther Judge.

Mr. Jerry Drummond Jr. took the stand during trial and way not eliable to take the stand during trial never new Nothing about what happen at his trailer he was in prison and He told the Jury that he sold me Mr. Burnside and Mr. Shumate Crack Cocaine out his house.

Andrew Burnside 328124
L.C.I. Cooper A-60
P.O. Box 205
Ridgeville S.C. 29472

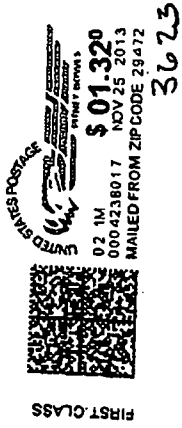
RECEIVED

NOV 25 2013
MAIL ROOM
LIEBER C.J.

2013-CP-23-06846

Greenville County Clerk of Court [Esq.]
305 East North Street
Greenville S.C. 29601

[Legal Mail]



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-23-6846
COUNTY OF GREENVILLE	)	
	)	
Andrew Davion Burnside,	)	
S.C.D.C. No. 328129,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed December 30, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the February 2012 term of General Sessions for trafficking cocaine base (crack cocaine) (2011-GS-23-1738, count 1), possession of a weapon during the commission of a violent crime (2011-GS-23-1738, count 2), possession with intent to distribute (PWID) a controlled substance (2011-GS-23-1739), distribution of cocaine base (crack cocaine) (2011-GS-23-1740), and PWID cocaine (2011-GS-23-1741). Scott D. Robinson, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On May 16, 2012, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of twenty-five years for trafficking crack cocaine (10-28 grams), third offense, five years for possession of a weapon during the commission of a violent crime, one year for possession of a controlled

substance, fifteen years for distribution of crack cocaine, third offense, and five years for possession of cocaine, second offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Burnside, Op. No. 2013-UP-409 (S.C. Ct. App. filed November 6, 2013). The Remittitur was sent on November 22, 2013.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Counsel did not want to represent him.
 - b. Counsel failed to investigate.
2. "Search warrant and search and seizures."
 - a. "The search warrant was based on the CI buy and statement. That means the the warrant was no good because he said in went in the trailer on the left and warrant say's the trailer on the right."
3. "Suppression [sic] of evidence/warrants are invalid."
4. "Vitim/witness/statement."
5. Affidavit.
 - a. "On my affidavit and search warrant have two diffarnt [sic] signatures so that could only mean that the warrant(s) and affidavit went to another judge."
6. "A witness that toke the stand during trail/Jerry Drummond, Jr."
 - a. Witness "way not reliable to take the stand during trial never new nothing about what happen at his trailer he was in prison."

In a document captioned "Motion to Amend P.C.R." and filed December 31, 2013, the

Applicant lists the following issues without argument or supporting authority:

1. Mere presence, dominion and control.
2. Actual and constructive possession.
3. "U.S. Const. 4, 14th Amendment, S.C. Const. Art. 1 section 10, and 3, Title 14-17-140, Title 22-3-110."
4. Search warrants and arrest warrants.

In two separate documents captioned "Motion to Amend P.C.R." and filed January 30, 2014 and April 2, 2014, the Applicant lists the following issues without argument or supporting authority:

1. Plain error.
2. Substantial rights.
3. Harmless error.
4. Subject matter jurisdiction.
5. Confrontation clause

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.

Respectfully submitted,

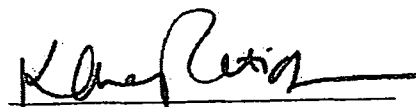
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

May 14, 2014

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

ANDREW DAVION BURNSIDE, 328129

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

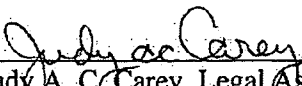
2013-CP-23-6846

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Andrew Davion Burnside, 328129
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

DATED this 14th day of May, 2014.


 Judy A. C. Carey, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

3
4 ANDREW D. BURNSIDE)
5 APPLICANT,) TRANSCRIPT OF RECORD
6 -vs-) 2013-CP-23-06846
7 STATE OF SOUTH) FEBRUARY 17, 2015
8 CAROLINA,) GREENVILLE, SOUTH CAROLINA
9 RESPONDENT.

10
11 B E F O R E:

12 THE HONORABLE DANIEL HALL, JUDGE.

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

16 R. MILLS ARIAIL, JR., ESQUIRE
17 ATTORNEY FOR THE APPLICANT

18 KAREN C. RATIGAN, ASSISTANT ATTORNEY GENERAL
19 ATTORNEY FOR THE RESPONDENT

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
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23
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EXHIBITS

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NO. DESCRIPTION

ID. EV.

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(NO EXHIBITS MARKED)

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1 (PROCEEDINGS, FEBRUARY 17, 2015)

2 THE COURT: Are we ready?

3 MS. RATIGAN: Yes, Your Honor.

4 May it please the court, this is the case of
5 Andrew Burnside versus the State of South Carolina. The
6 docket number is 2013-CP-23-6846.

7 Mr. Burnside was indicted for trafficking cocaine
8 base, possession of a weapon during the commission of a
9 violent crime, possession with intent to distribute a
10 controlled substance, distribution of cocaine base, and
11 possession with intent to distribute cocaine.

12 He was represented on these charges by Mr.
13 Robinson.

14 The case was brought to trial with a co-defendant.
15 The co-defendant's name was Dominique Shumate. It was a
16 joint trial with Mr. Robinson representing Mr. Burnside and
17 Ms. Ross representing the co-defendant.

18 Mr. Burnside was found guilty as indicted on May
19 16th of 2012. Judge Pyle levied concurrent sentences of 25
20 years for trafficking crack cocaine third offense, five
21 years for the weapons charge, one year for PWID of
22 controlled substance, 15 years for distribution of crack
23 cocaine third offense, and five years for possession of
24 cocaine second offense. Again, those would be concurrent.

25 The case was appealed. The Court of Appeals

1 affirmed in November of 2013. This application was filed
2 the next month, and the State is ready to proceed.

3 THE COURT: All right. Thank you.

4 Mr. Ariail, you have had plenty of opportunity to
5 talk to your client?

6 MR. ARIAIL: Yes, Your Honor.

7 THE COURT: Are you ready to proceed?

8 MR. ARIAIL: Yes, Your Honor.

9 THE COURT: All right, call your witness.

10 MR. ARIAIL: I call him to the stand right now.
11 Mr. Burnside.

12 ANDREW D. BURNSIDE, having been first duly sworn,
13 testified as follows:

14 THE CLERK: Please state your full name for the
15 record.

16 THE WITNESS: Andrew Davian Burnside.

17 THE CLERK: Thank you. You may have a seat.

18 DIRECT EXAMINATION BY MR. ARIAIL:

19 Q. Mr. Burnside, how are you doing today?

20 A. I'm all right.

21 Q. Good.

22 I want to go through a little bit of the background in
23 this case so Judge Hall can understand exactly kind of where
24 you stand.

25 You filed a PCR alleging ineffective assistance of

1 counsel by Mr. Robinson, is that correct?

2 A. Yes, sir.

3 Q. And after you were, I guess, arrested on these charges,
4 was Mr. Robinson appointed to represent you?

5 A. Really I was appointed by -- I was appointed Mr. Brian
6 Smith at first, and like probably about a year -- about 18
7 months on down the line they appointed -- Scott Robinson had
8 told me and said that he was going to be my attorney. He
9 was going to be my new attorney. My case got turned over by
10 Brian Smith to him.

11 Q. Okay. So how long after that, after you were
12 incarcerated was that?

13 A. About -- I would say about -- I got locked up in 2010.
14 Around 2012 sometime.

15 Q. Okay. So before you went to trial, how long had Mr.
16 Robinson been on your case?

17 A. I would say probably about some 60 to 90 days, or
18 something like that.

19 Q. Okay. During that period of time were you ever given
20 or did he ever relay to you that there was a plea offer on
21 the table?

22 A. I had got one from Brian Smith for like -- he said like
23 a 15 year plea, or something like that.

24 Q. So did Mr. Robinson ever give you a -- say "hey, the
25 State is willing to offer you a plea to this?"

1 A. A 10 year plea.

2 Q. 10 years?

3 A. Yes.

4 Q. Was there anything less than 10 years? Did you ever
5 get a three year plea?

6 A. No, I never got a three year plea.

7 Q. Okay. At no point in time -- and when you -- did you
8 ever have a meeting with Mr. Robinson and anybody at the
9 solicitor's office?

10 A. Yes. Yes, sir. When I had -- when I had -- when I had
11 a guy from probation violation in March, March the 30th,
12 that next day we had me and my mother went to Scott
13 Robinson's office. We had went to Scott Robinson's office.

14 Q. Okay. So you met with him?

15 A. Yes.

16 Q. And did you meet with the solicitor in the case?

17 A. That was like a couple weeks down the line after that.

18 Q. Okay. But when you met -- so you met with Mr. Robinson
19 one time at his office?

20 A. Uh-huh.

21 Q. Did y'all discuss the case, elements of the crime?

22 A. Yeah, he was telling me that really they didn't have
23 nothing on me, that the only thing they had was I was just
24 in the trailer.

25 Q. Okay. You were in the trailer.

1 Did y'all discuss a confidential informant at that
2 time?

3 A. No, he never told me about a confidential informant.
4 He acted like he never knew nothing about no confidential
5 informant. He just said I was in the trailer at that time.

6 Q. When did you find out about a confidential informant?

7 A. During the trial.

8 Q. So at no time prior to trial did Mr. Robinson or
9 anybody tell you there was a confidential informant --

10 A. No, sir.

11 Q. -- in this case?

12 A. No, sir.

13 Q. Did anybody tell you there was an audiotape or any type
14 of --

15 A. No, sir, we found that out during the trial when we had
16 got -- when the -- I supposed -- I think the solicitor asked
17 him how he knows. He was like, well, it was an audio. It
18 was audio recording of the whole thing.

19 Q. Okay. And you have shown me a statement from I think
20 the confidential informant in this case. Were you ever
21 given a copy of that or knew that?

22 A. No, my co-defendant's mother had got it from Susannah
23 Ross and she made a copy of it and sent it to me.

24 Q. Okay. Have you -- did Mr. Robinson ever tell you about
25 that statement or any audio?

1 A. No, sir.

2 Q. So the first time that you ever learned there was a
3 confidential informant was at trial?

4 A. Yes, sir.

5 Q. And it was from the other attorney representing
6 Dominique?

7 A. Yes, sir.

8 Q. Okay. After you -- after that was put forth at trial,
9 did you say "Mr. Robinson, I mean, did you know about this,"
10 or did y'all have a discussion about that?

11 A. No, we didn't have no discussion about it or anything
12 like that.

13 Q. Okay. So -- I mean, did you -- did you say "hold on.
14 I don't want to go forward. I didn't know about this," or
15 say anything on the record, or --

16 A. I didn't say nothing on the record about it. I thought
17 everything was all right. He was like -- he asked me "Mr.
18 Burnside, do you think I did a good job?"

19 And I was like "I really don't know."

20 Q. Okay. But I'm trying to understand. You didn't know
21 there was a confidential informant and the confidential
22 informant was one of the key pieces in this case, correct?

23 A. Yes, sir.

24 Q. I mean, the confidential informant said you were in
25 this trailer home, is that correct?

1 A. He -- well, in this statement he never said -- he said
2 that -- he said my nickname that I was up in the trailer,
3 but he said that I had turned him -- he said that I turned
4 him down.

5 Q. Okay.

6 A. That's what he said.

7 Q. Okay. So what -- what happened at trial in regards to
8 this confidential informant?

9 A. Really -- well, Susannah Ross tried to get the
10 statement suppressed from the confidential informant,
11 because the confidential informant said that he went to the
12 left side of the street and purchased cocaine off the left
13 side of the street out of a trailer, and the trailer that I
14 was in was on the right side of the street.

15 Q. Okay. But Ms. Ross made that.

16 Did Mr. Robinson and you discuss that or did he make
17 those objections at trial for you?

18 A. No, sir. No, sir, he never made an objection on my
19 behalf in that.

20 Q. Okay. Did you ask him to make those objections or have
21 any discussions with him about that?

22 A. No, we never discussed anything about that.

23 Q. And what -- okay.

24 And what is your, I guess, understanding or what are
25 you thinking that he did that was ineffective in regards to

1 that confidential informant?

2 A. Basically because if he would have got this statement
3 suppressed from this confidential informant, it would have
4 proved that this confidential informant had went and
5 purchased drugs from the left side of the street and not the
6 right side of the street, like the police had put in their
7 affidavit, and they would have got it suppressed and he
8 would have proved that he never purchased drugs out of this
9 trailer that I was in.

10 Q. Okay. And there is also a part of that that says
11 something about Blue --

12 A. Yes.

13 Q. -- is that correct?

14 What does it say about Blue?

15 A. It said that Blue -- he said that he had knocked on the
16 door and a black male named Blue came and answered the door
17 and turned him down.

18 Q. Okay. Turned him down from buying drug?

19 A. Yes, sir.

20 Q. Okay.

21 A. And the black male, Blue, that would be me, if I could
22 have got that motion of discovery from Scott Robinson, like
23 I had been writing him, I could prove that to put that
24 evidence in as an exhibit that what I am talking about it
25 proved my innocence.

1 Q. Okay. And the information that you are saying it would
2 you need to put it as part of the evidence would establish
3 that your nickname is Blue?

4 A. Yes, sir.

5 Q. Okay. And how would that information be able to
6 establish your nickname is Blue?

7 A. Because -- because that information would have showed
8 that a picture of my -- that I have had this name in my file
9 before up under Blue, and it would have showed that my
10 picture right there, once you pulled my name up, it would
11 have a picture of me, Andrew Burnside, as Blue.

12 Q. Okay. So if the court agrees that your nickname is
13 Blue, then you are saying that there is a part of that
14 statement that says that you didn't by drugs, or didn't --

15 A. He didn't purchase drugs from me.

16 Q. Didn't purchase drugs from you?

17 A. Yes.

18 Q. And he said there was a specific location where the
19 drugs were purchased was the wrong trailer?

20 A. Right, he said on the left side of the street --

21 Q. Okay.

22 A. -- twice. He said he went to the first trailer on the
23 left and the second trailer on the left.

24 Q. So the key piece is that this motion was not made or
25 there was nothing done in court by Mr. Robinson in regards

1 to that?

2 A. Yes, sir.

3 Q. Okay. Did you have a discussion with him after -- I
4 mean during the trial, make this motion?

5 A. I asked him to -- you know, not to -- not to that
6 motion, because I really wasn't up on the law really like
7 that until I had got to where I was at and read up on it,
8 but I asked him that when Mr. Jerry Drummond get on the
9 stand, could he ask Mr. Jerry Drummond, because he was
10 telling us that it was like it was a -- a -- something -- a
11 something case -- he was saying some kind of case. And I
12 was like "well, if you asked Mr. Jerry Drummond if he left
13 his trailer to meet a Mr. Dominique Shumate," he was like he
14 would do that. And when he got up and started questioning
15 Mr. Jerry Drummond, it was like that just went all the way
16 around the way and he never even asked the question.

17 Q. And what question are you saying he didn't ask?

18 A. I told him to ask Mr. Jerry Drummond did he leave the
19 trailer to meet -- to meet a Mr. Dominique Shumate.

20 He was saying it was like a constructive possession
21 case. That's what he was saying.

22 Q. Okay. And basically you were in somebody else's
23 trailer?

24 A. Yes, sir.

25 Q. And knew -- and there were drugs in there and that's

1 when you had constructive possession of them?

2 A. Yes, sir.

3 Q. Rather than having them in your pocket, or something
4 like that?

5 A. Yes, sir.

6 Q. Okay. So what are you saying Mr. Drummond would have
7 said if he would have asked him that question?

8 A. He would have told Scott Robinson that he never left
9 the trailer, that he would have left it to his sister's
10 boyfriend.

11 Q. Okay. When you say would have left it to him, are you
12 saying that you were never allowed to be in the trailer
13 without Mr. Drummond being there?

14 A. No, he had left it to his sister, to his sister's
15 boyfriend, and his sister's boyfriend was letting us come
16 over there to bring women over there then. I had his
17 sister's boyfriend drive my car. When he left, that's when
18 the police came and kicked the door in.

19 Q. Okay. Did he -- at any time did Mr. Robinson explain
20 to you the difference between constructive possession and
21 actual possession?

22 A. No, sir.

23 Q. Okay. Did he at any time ask you or say "I'm going to
24 go find the CI or get this person to come testify?"

25 A. No, sir.

1 Q. So the first time that you knew about this CI was at
2 trial?

3 A. Yes, sir.

4 Q. Did he ever tell you about listening to an audiotape
5 that was done by the CI?

6 A. He told me about a tape and I asked him to listen to
7 the tape. He was like "oh, well, it's really nothing. It's
8 like a couple of pictures and stuff like that." That's all
9 he said was "a couple of pictures out your cell phone and
10 stuff like that," and we never went no farther with it.

11 He texted my phone one night and was telling me he was
12 going over the case and it was looking pretty all right.

13 And then he texted me again and said that he had to go
14 to get on another case and he was going to push my court
15 date back again.

16 Q. Okay. Now, at some point in time he told you and y'all
17 had a discussion about you testifying, is that correct?

18 A. Yes, sir.

19 Q. And what would you remember about those discussions
20 about testifying?

21 A. Well, he told me it wouldn't be good for me to testify
22 because it would bring up my past.

23 Q. Okay. What do you mean by bring up your past?

24 A. Like bring up the little possession of -- possession of
25 crack cocaine that I had, and a little marijuana, and there

1 was a CDV charge that I had.

2 Q. Okay. And so y'all discussed that, but I think at some
3 point during our discussion you said you wanted to testify?

4 A. Yes, sir.

5 Q. Okay. But then he talked you out of it?

6 A. Yes, sir.

7 Q. So were you questioned at court as to you could testify
8 and that you can go forward and that's one of your
9 Constitutional Rights?

10 A. The judge told me that I could go ahead and testify,
11 but Mr. Robinson had already discussed it between me and my
12 co-defendant that it wouldn't be good for us to testify,
13 because they would bring up our past and it would look bad
14 on our behalf.

15 Q. Okay. So the main items in your case and what I
16 understand is that you believe he should have objected to
17 the search warrant?

18 A. Yes, sir.

19 Q. Should have filed a motion to suppress on that?

20 A. And on the street name.

21 Q. Should have found the CI or didn't tell you about the
22 CI?

23 A. Yes, sir.

24 Q. And if you had known about the CI, you might have
25 reconsidered?

1 A. Yeah. I would have reconsidered and to probably taken
2 a plea, because I wouldn't have to put my family and me
3 through the situation that I'm in right now.

4 Q. Okay.

5 MR. ARIAIL: Your Honor, I have no further
6 questions.

7 THE COURT: All right. Thank you.

8 Answer any questions Mr. Ratigan may have for you.

9 CROSS EXAMINATION BY MS. RATIGAN:

10 Q. So when Mr. Robinson was appointed, were you already on
11 bond, or were you at the detention center?

12 A. I was already out on bond. I had went back down the
13 road for violation of probation. I had went to Kirkland for
14 violation of probation.

15 Q. And you testified you had one meeting with Mr. Robinson
16 in his office?

17 A. Yes, ma'am.

18 Q. And that's the only meeting you had with him before the
19 trial?

20 A. We had one at the solicitor's office.

21 Q. Did you review with Mr. Robinson the State's evidence,
22 the discovery?

23 A. No, ma'am.

24 Q. Did you tell him your version of what had happened at
25 the trailer that day?

1 A. Yes, ma'am.

2 Q. Basically that you were in the wrong place at the wrong
3 time?

4 A. Yes, ma'am.

5 Q. All right. But you never looked over any of the police
6 reports, any of the statements, anything like that?

7 A. No, I never looked over the stuff until I got to where
8 I was at and I got to look over just a little bit what he
9 had sent me. Just a little.

10 Q. Okay. Now, there was a 15 year offer. That was from
11 your first lawyer?

12 A. Yes, ma'am.

13 Q. And you turned that down?

14 A. Yes, ma'am.

15 Q. And Mr. Robinson said there was a 10 year offer?

16 A. Yes, ma'am.

17 Q. And you turned that down as well?

18 A. Yes, ma'am.

19 Q. And why did you do that?

20 A. Because I had been -- because he tells me that they
21 really didn't have nothing on me, except I was in the
22 premises at the time. I was in the trailer at the time.

23 Q. So when the police came to the trailer that night, they
24 basically knocked down the door to come in?

25 A. Yes, ma'am.

1 Q. Because there had been a two-by-four like placed up
2 against the door?

3 A. Yeah, the door had -- the doorknob on the door had been
4 broke, so we had been using the back -- they had been using
5 the back door to go in and out of.

6 Q. But at trial the State said that it had been barricaded
7 shut, is that right?

8 A. Yeah, that's what they said.

9 Q. And when the police came in, they found cocaine, crack
10 cocaine, pills, a scale, a gun, all that stuff they found in
11 the trailer, correct?

12 A. Yes, ma'am.

13 Q. And your testimony is that none of this was yours?

14 A. No, ma'am.

15 Q. And didn't Mr. Robinson point out at trial that nobody
16 placed any of these items near you?

17 A. Yes, ma'am.

18 Q. And the CI did not testify at trial, is that correct?

19 A. No, ma'am.

20 Q. And his statement wasn't put into evidence, right?

21 A. Yes, ma'am, it was.

22 Q. Where?

23 A. In -- it was the -- I got to get my paperwork on it.

24 Q. It was made an exhibit at the actual trial?

25 A. Yeah.

1 Q. Okay.

2 A. The judge had put it on for the purpose of appeal.

3 Q. Are you talking about a court exhibit?

4 A. Yeah, I think so, because when Susannah Ross had
5 objected to it, tried to get the judge to suppress it --

6 Q. Uh-huh.

7 A. -- and she put it in as an exhibit, and the judge said
8 he was not going any farther with it. He would let it be in
9 for purpose for appeal.

10 Q. Okay. So it came in as a court exhibit?

11 A. Uh-huh.

12 Q. Okay. And are you saying that Mr. Robinson should have
13 objected to it being made a court exhibit?

14 A. Yes, ma'am, for purposes of appeal, too, because in the
15 statement it said that the confidential informant, when
16 coming off of Street, he went to two trailers on the
17 left side of the street coming off street. And when
18 coming off Street, the trailer that they kicked --
19 that they kicked in was on the right side of the street.

20 Q. And when Ms. Ross tried to suppress the search warrant,
21 one of the things she said was there wasn't enough
22 specificity about which trailer, right?

23 A. Yes, ma'am.

24 Q. Okay. So she made that argument to the judge and the
25 judge -- for your co-defendant, but the judge denied it?

1 A. Denied it. Yeah, he made it for my co-defendant, but
2 never for me.

3 Q. Okay. So your testimony is that even though Ms. Ross
4 made this argument for her co-defendant and it was denied,
5 that Mr. Robinson should have made the same argument for
6 you?

7 A. Yes, ma'am, might have been brought up on me for
8 purposes of appeal. I probably could have got some relief
9 on it during appeal.

10 Q. Okay. And your testimony is that Mr. Robinson kind of
11 convinced you not to testify at your own trial?

12 A. Yes, ma'am.

13 Q. But didn't the judge ask you if it was your decision
14 not to testify?

15 A. Yes, ma'am, and I told him that it was.

16 Q. So are you saying now that that was not true?

17 A. No, I just -- I was just going by what my lawyer --
18 what my attorney was telling me to do.

19 Q. So it was your decision based on what Mr. Robinson told
20 you?

21 A. Yes, ma'am.

22 MS. RATIGAN: I have nothing further, Your Honor.

23 THE COURT: All right.

24 Anything else, Mr. Ariail?

25 MR. ARIAIL: Nothing on redirect, Your Honor.

1 THE COURT: All right. Mr. Burnside, you can step
2 down.

3 MR. ARIAIL: That's our case, Your Honor.

4 THE COURT: All right. Ms. Ratigan?

5 MS. RATIGAN: Thank you, Your Honor.

6 The State would call Mr. Robinson.

7 SCOTT D. ROBINSON, having been first duly sworn,
8 testified as follows:

9 THE CLERK: Thank you. Please state your full
10 name for the record.

11 THE WITNESS: Scott David Robinson.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION BY MS. RATIGAN:

14 Q. Mr. Robinson, do you recall representing Mr. Burnside
15 on these charges?

16 A. I do.

17 Q. And were you appointed or were you retained?

18 A. I believe I was appointed.

19 Q. Okay. And were you the first attorney in the case?

20 A. I think I may have been the second. I think Brian
21 Johnson was the first attorney.

22 Q. Had there already been discovery provided in this case,
23 or did you file your own discovery motion?

24 A. I would have filed my own -- excuse me, I would have
25 normally filed my own discovery motions and given him a copy

1 of it.

2 Q. Okay. So part of your practice would have been to send
3 him a copy?

4 A. Yes, that's also the practice of Mr. Johnson as well.

5 Q. Okay. Do you recall the State having made a 10 year
6 offer in this case?

7 A. I think it was actually a three year offer.

8 We actually met Mr. Burnside. I believe it was his
9 uncle and myself met with the prosecutor's office, their
10 office up here, and they made this offer. It was a three
11 year offer, not a 10 year offer. A three year offer, and
12 that was -- they stormed out of the office.

13 Q. When you say they, you mean?

14 A. The uncle, Mr. Burnside, and somebody else that was
15 with him.

16 Q. Okay. Did you ever have an opportunity to discuss that
17 offer with him after that time?

18 A. We tried to get him in. He was out on bond at that
19 time, but he wouldn't come in. I -- I'm not for sure why.

20 Q. Okay. Did you have any meetings with Mr. Burnside at
21 your office?

22 A. Yes, I recall at least one or two meetings we met. He
23 had the option -- we were always open. I mean, he knew
24 where the office was and so forth, and I would encourage him
25 to come and meet with me.

1 Q. Okay. Did he ever come in to review discovery
2 materials with you?

3 A. I'm not sure if he reviewed discovery materials, but he
4 would have come in to go over his case and so forth.

5 Q. Do you recall Mr. Burnside telling you his version of
6 what had happened at the trailer that day?

7 A. Yes.

8 Q. And that was?

9 A. It was all about being at the wrong place at the wrong
10 trial. The trailer didn't belong to him. It was a bachelor
11 pad.

12 They were in the trailer and the police came in at the
13 time they did and unfortunately there were just drugs all
14 over the place; drugs, paraphernalia, guns, and so forth.

15 I think his position was the wrong place at the wrong
16 time.

17 Q. And you have heard Mr. Burnside's testimony this
18 morning -- or this afternoon?

19 A. Yes, I have.

20 Q. And do you recall this whole issue -- well, the whole
21 case coming about because of a confidential informant?

22 A. That was regarding the warrant. He never -- there was
23 no -- there was never a buy from Mr. Burnside and the CI.
24 It was a -- it was a -- that's -- they said that he was a
25 reliable informant and that's what the warrant was based on

1 and that's when everything occurred. I guess it's number 7,
2 which is in this trailer park, was the place that people had
3 been before and that's I think was the basis for the warrant
4 in the case.

5 Q. Okay. After Ms. Ross made her motion to suppress the
6 search warrant based on a lack of specificity, why at that
7 point did you not make your own motion?

8 A. Because the motion had already been made in that case
9 and Judge Pyle was not going to change his ruling with the
10 same motion, the exact same motion in this case.

11 Q. Can you think of any other basis upon which you could
12 have moved to suppress the search warrant?

13 A. I couldn't, no.

14 Q. Okay.

15 A. I could not.

16 Q. As part of the your discovery materials, did you
17 receive a rap sheet of your client?

18 A. Yes.

19 Q. Did you review that with him?

20 A. I did, and that was the biggest issue that he had in
21 this case, because he had -- he actually -- if he was
22 convicted, he would have -- he was going to get a
23 trafficking third offense, which is a mandatory minimum of
24 25 years. And despite that, he turned down any offers that
25 came in to him.

1 Q. Did you explain to him that he would be eligible for a
2 trafficking third?

3 A. Yes, absolutely.

4 Q. Did you explain to him the minimum and maximum
5 sentences he could receive on a trafficking third?

6 A. Yes. That's why -- that's why it was very
7 disappointing when he has left the solicitor's office in
8 such a huff over what was a very generous offer. I mean, it
9 was very, very -- it was very good offer.

10 Q. Did he explain to you why he was so -- why he stormed
11 off, why he was so upset?

12 A. I have no idea. I have no idea. I -- I can't really
13 know what people are thinking, but a lot of times -- and I
14 think Judge Pyle may have asked him about this at the trial,
15 because he was walking around outside, walking different
16 places, and I think he told Judge Pyle that he was seeing
17 his kids and so forth, doing something like that. That's
18 what I can conclude.

19 Q. Did you review with Mr. Burnside his right to testify
20 in his own defense?

21 A. Yes.

22 Q. Did you make a recommendation to him one way or the
23 other?

24 A. It's -- it's hard to -- you can give choices. You can
25 give choices you can look at. And the judge does the same

1 thing when he discusses the benefits and the pitfalls, the
2 pitfalls being prior record, the fact that the prosecutor
3 can cross-examine you, different things. Those are the
4 issues that I would have said.

5 As far as recommendations go, I would encourage him to
6 think about that, based on his prior record, but I can't
7 make the call for him.

8 Q. If he had told you that he wanted to testify, would you
9 have put him up on the stand?

10 A. Yes, because that's his decision.

11 MS. RATIGAN: That's all I have, Your Honor.

12 THE COURT: Okay. Thank you.

13 Mr. Ariail?

14 MR. ARIAIL: Yes, Your Honor.

15 CROSS EXAMINATION BY MR. ARIAIL:

16 Q. Mr. Robinson, in regards to, I guess, the offense that
17 he was going to trial, did he know it was a second or a
18 third --

19 A. Yes.

20 Q. -- offense?

21 A. Yes.

22 Q. Okay. I know there was a notation on one of the plea
23 sentencing sheets where it was scratched out from second to
24 third. Do you know why it was initially a second and went
25 to a third?

1 A. I wouldn't scratch that. It would be a solicitor that
2 would have scratched that out.

3 Q. Okay. But he was -- he clearly knew he was looking
4 at --

5 A. Yes, all he had to do -- not only in our discussions we
6 had, but also when we went and met with the solicitor's
7 office, the two prosecutors, that was something that was
8 important to think about, and we went over that at that time
9 as well.

10 Q. Okay. So that was all laid out to him?

11 A. Yes.

12 Q. And you are saying he had a three year plea --

13 A. Yes.

14 Q. -- that he walked out on?

15 A. Yes.

16 Q. Did he say at any point in time "hey, this is the
17 reason I walked out," or what his --

18 A. No, he never -- he never came back. He never -- until
19 the trial he never had any contact with us.

20 Q. Okay. And the CI issue, you are saying you didn't
21 object to it because it had already been ruled on by Judge
22 Pyle, is that correct?

23 A. Yes.

24 Q. Okay. You had discussions --

25 So there is no question that he understood the elements

1 of each of the crimes?

2 A. There is no question that I explained it to him.

3 Q. Yes.

4 A. As far as whether it -- I don't know that. I can just
5 tell you I would have explained it to him numerous times.

6 Q. Right.

7 So it was explained to him and he understood the
8 minimum and maximums on these charges?

9 A. Yes.

10 Q. Okay.

11 A. And he also -- he also, too, knew -- he knew his
12 record.

13 Q. Yeah.

14 A. The discovery and all that stuff showed his record. It
15 wasn't -- these weren't just -- it wasn't just something
16 that we made up. It was his record. He had a record that
17 would have enhanced him to a third offense.

18 Q. Right.

19 A. And he was looking at third offense. It wasn't
20 anything -- it wasn't anything that --

21 Q. Right.

22 And I'm just trying to figure out if you knew why -- I
23 mean, he went with potentially -- I mean, a three year
24 sentence --

25 A. I don't know that.

1 Q. -- to now he's looking at -- he's got 25.

2 A. I don't know that, no.

3 Q. Okay.

4 A. All I know is that the prosecutor made the decision
5 based on his record. It may have been that. I'm not sure
6 exactly why they did it, but that's what we were left with
7 was a third offense.

8 Q. But there is nothing that he told you as to hey, this
9 is why -- I mean, he's gone from three years to 25 years.
10 Is there anything that you recall saying, I mean, "I don't
11 want this," or, "I'm going to trial. It doesn't matter what
12 they offer me." Any --

13 A. No, never.

14 Q. I mean, that's a substantial amount more time -- --

15 A. Sure.

16 Q. -- when he had three years?

17 A. Absolutely. But, you know, sometimes people -- you
18 never know why people do certain things. But as the
19 attorney, all you can do is go through it with them and the
20 client has to make the decision later on.

21 Q. Okay.

22 A. And, you know, his decision was his decision in this
23 case.

24 Q. Okay. And you are not saying anything about this CI?
25 You are saying it didn't have any impact on this, because it

1 was a search warrant? It only dealt with the search warrant
2 and not the buy -- the distribution, I guess?

3 A. The CI never bought from him. Never bought. It was
4 not an issue in this case, the CI. He wasn't brought into
5 the case to say "oh, yeah, that's Andrew Burnside and Mr.
6 Shumate, I bought from them and that's why we knew about
7 this site," whatever it was. You are talking about --
8 that's what the search -- the supposed reliable informant in
9 this case.

10 Q. Right.

11 A. That's what the search warrant was based on.

12 Q. In this case, too, there was a position or something in
13 one of the statements that he had that showed that the CI
14 had said he did not buy from Blue?

15 A. Okay.

16 Q. Did his name -- did he go by Blue, from your
17 understanding or recollection?

18 A. I don't recall. I really don't recall that.

19 Q. Okay. And I guess the decision -- did you make -- you
20 know, at that point in time if he's Blue, the CI is saying
21 he didn't buy from him --

22 A. Right. Right.

23 Q. -- what was your view of using that at trial or trying
24 to get some --

25 A. I don't think -- I don't think I would have wanted to

1 use that at trial, because that brings in the whole prior
2 bad act thing coming up and not's really something that I
3 would do.

4 Q. Okay.

5 A. You know, Judge Pyle thought that everything was good
6 the way it was.

7 Q. Uh-huh.

8 A. He thought -- I don't think it would have made a
9 difference of him being Blue, or him being yellow, it didn't
10 make any difference.

11 Q. All right. And I guess -- did you go over with him
12 constructive versus actual possession?

13 A. Of course, yes.

14 Q. Okay. So he knew, hey, even though it wasn't a buy,
15 the drugs were in the house, that's going to be an issue?

16 A. It was just a -- it was just a -- bad luck is what it
17 was.

18 Whatever it was, Judge Pyle didn't believe it. He
19 didn't believe it was the wrong place at the wrong time, as
20 in the end of the transcript, but that was Mr. Burnside's
21 position, that it was a bachelor pad, he didn't own the
22 place, went in there with his buddy Mr. Shumate. They --
23 whatever they were doing.

24 Q. Uh-huh.

25 A. And they put that thing in the door, the two-by-four in

1 the door. The cops said is was a barricade, but I didn't --
2 I didn't -- I tried to bring that up at the trial, but it --

3 MR. ARIAIL: I have no further questions, Your
4 Honor.

5 MS. RATIGAN: I have nothing further from Mr.
6 Robinson. We ask him be released.

7 THE COURT: Mr. Robinson, you can step down.

8 THE WITNESS: Thank you, judge.

9 MS. RATIGAN: And the State would rest, Your
10 Honor.

11 THE COURT: Okay. Anything else?

12 MR. ARIAIL: Nothing further, Your Honor.

13 THE COURT: We will take it under advisement.

14 MS. RATIGAN: Thank you, Your Honor.

15 MR. ARIAIL: Thank you.

16 (END OF REQUESTED TRANSCRIPT OF RECORD)

17

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CERTIFICATE

I, the undersigned, Michael R. Watts, 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for GREENVILLE County, South Carolina, on the 17TH day of FEBRUARY, 2015.

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

MAY 31, 2015

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
	)	C.A. No. 2013-CP-23-6846	
COUNTY OF GREENVILLE	)		
	)		
Andrew Davion Burnside,	)		
S.C.D.C. No. 328129,	)		
	)		
Applicant,	)	ORDER OF DISMISSAL	
	)		
v.	)		
	)		
State of South Carolina,	)	ENTERED COMPUTER	
	)		
Respondent.	)		

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAR 19 PM 1 36

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 30, 2013. The Respondent made its return on May 14, 2014. An evidentiary hearing was held on February 17, 2015 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Scott D. Robinson, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the February 2012 term of the Greenville County Grand Jury for trafficking cocaine base (crack cocaine) (2011-GS-23-1738, count 1), possession of a weapon during the commission of a violent crime (2011-GS-23-1738, count 2), possession with intent to distribute (PWID) a

controlled substance (2011-GS-23-1739), distribution of cocaine base (crack cocaine) (2011-GS-23-1740), and PWID cocaine (2011-GS-23-1741). He was represented by Scott D. Robinson, Esquire.

After the State brought the case to trial,¹ the Applicant was found guilty. On May 16, 2012, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of 25 years for trafficking crack cocaine (10-28 grams), third offense, 5 years for possession of a weapon during the commission of a violent crime, 1 year for possession of a controlled substance, 15 years for distribution of crack cocaine, third offense, and 5 years for possession of cocaine, second offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Burnside, Op. No. 2013-UP-409 (S.C. Ct. App. filed November 6, 2013). The remittitur was sent on November 22, 2013.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Counsel did not want to represent him.
 - b. Counsel failed to investigate.
2. "Search warrant and search and seizures."
 - a. "The search warrant was based on the CI buy and statement. That means the the warrant was no good because he said in went in the trailer on the left and warrant say's the trailer on the right."
3. "Suppression [sic] of evidence/warrants are invalid."
4. "Vitim/witness/statement."
5. Affidavit.

¹ The Applicant was jointly tried with his co-defendant, Dominique Shumate.

- a. "On my affidavit and search warrant have two diffarnt [sic] signatures so that could only mean that the warrant(s) and affidavit went to another judge."
- 6. "A witness that took the stand during trial/Jerry Drummond, Jr."
 - a. Witness "way not reliable to take the stand during trial never new nothing about what happen at his trailer he was in prison."

In a document captioned "Motion to Amend P.C.R." and filed December 31, 2013, the

Applicant lists the following issues without argument or supporting authority:

- 1. Mere presence, dominion and control.
- 2. Actual and constructive possession.
- 3. "U.S. Const. 4, 14th Amendment, S.C. Const. Art. 1 section 10, and 3, Title 14-17-140, Title 22-3-110."
- 4. Search warrants and arrest warrants.

In two separate documents captioned "Motion to Amend P.C.R." and filed January 30, 2014 and April 2, 2014, the Applicant lists the following issues without argument or supporting authority:

- 1. Plain error.
- 2. Substantial rights.
- 3. Harmless error.
- 4. Subject matter jurisdiction.
- 5. Confrontation clause.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Trial Counsel

The Applicant alleges he received ineffective assistance of trial counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated trial counsel was his second attorney. The Applicant stated he had two meetings with trial counsel and that, while they reviewed his version of events, they did not review the discovery materials. The Applicant stated trial counsel did not explain the difference between actual and constructive possession. The Applicant stated he turned down both a 10- and 15-year plea offer because trial counsel said the State did not have a strong case. The Applicant stated he was unaware of a confidential informant in this case until the trial and that trial counsel should have moved to have the informant’s statement suppressed. The Applicant stated trial counsel should have made a motion to suppress the evidence. The Applicant stated he wanted to testify at trial but trial counsel told him it was not a good idea because of his prior record.

Trial counsel confirmed he was the Applicant's second attorney. Trial counsel testified he filed discovery materials and received those materials. Trial counsel testified his practice is to then send a copy of the discovery materials to his client. Trial counsel testified he met with the Applicant once or twice in his office and that his general practice would have been to review the case at that time. Trial counsel testified he and the Applicant did review his prior record, the sentence ranges for his charges, and the difference between actual and constructive possession. Trial counsel testified the Applicant's story was always that he was not involved in the drug activity and was merely in the wrong place at the wrong time. Trial counsel testified the plea offer in this case was actually for three years and was discussed in the solicitor's office with the Applicant and his uncle. Trial counsel testified the Applicant rejected this offer and stormed out of the solicitor's office. Trial counsel testified the confidential informant in this case was used to obtain a search warrant. Trial counsel testified the co-defendant's attorney filed a motion to suppress the evidence and he did not make his own motion because it would have been unnecessary. Trial counsel testified he had no other grounds upon which to move to suppress the evidence. Trial counsel testified he reviewed the right to testify with the Applicant and that the Applicant would have testified at trial if he had wished to do so.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately meet with him and prepare for trial. Trial counsel testified he sent a copy of the discovery materials to the Applicant and also reviewed those materials with him. Trial counsel

testified they also discussed the Applicant's version of events, the sentence ranges of the charges, and the concepts of actual and constructive possession. Trial counsel indicated the Applicant would not meet with him after the meeting at the solicitor's office. This Court finds trial counsel's testimony is credible. This Court further finds the Applicant failed to articulate what more he wanted trial counsel to do in order to prepare his case for trial. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel misadvised him about a plea offer. The Applicant stated he was unaware of a 3-year plea offer and refused 10- and 15-year offers because trial counsel indicated the State's case was weak. Trial counsel testified the sole plea offer in this case was a 3-year offer. Trial counsel testified he discussed this offer with the Applicant and his uncle at a meeting at the solicitor's office and that the Applicant and his uncle rejected the offer and stormed out. This Court finds trial counsel's testimony is credible. This Court finds trial counsel fulfilled his obligation to convey and explain the plea offer and that the Applicant chose not to accept. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have moved to suppress both the confidential informant's statement and the evidence. Regarding the statement, this Court notes its use at trial was merely during the suppression hearing and was entered only as a Court's Exhibit. The Applicant argues trial counsel should have moved to suppress this statement but has failed to present a legally sound basis upon which trial counsel

could have made such a motion. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding a PCR applicant bears the burden of proving the allegations in their application). Regarding the motion to suppress, trial counsel testified he did not make a separate motion to suppress because the co-defendant's attorney made and argued such a motion and it was denied. Trial counsel testified there were no other arguments to be made in favor of suppression and there was no way the trial judge would have granted his motion. This Court finds trial counsel provided a sound basis for not filing a separate suppression motion. Regardless, this Court notes the State had a strong case against the Applicant and finds he cannot prove he was prejudiced by the lack of a suppression motion because such a motion would have been unsuccessful. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.") (citation omitted).

This Court finds the Applicant failed to meet his burden of proving trial counsel failed to advise or misadvised him about the right to testify at his trial. Trial counsel testified they reviewed the right to testify, as well as the Applicant's prior record. Trial counsel testified the Applicant would have testified if he wished to do so. This Court finds trial counsel's testimony is credible. This Court notes the trial judge advised the Applicant of the right to testify in his own defense and the Applicant stated it was his choice not to do so. (Trial transcript, pp.182-85). The Applicant's decision not to testify was both informed and voluntary. See Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (holding a defendant's decision to testify or not must be made with knowledge of the consequences of either choice).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4th day of March, 2015.



Daniel D. Hall
Presiding Judge
Thirteenth Judicial Circuit

York, South Carolina.

001738

DOCKET NO. 2011-GS-23-
LAB
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

2012
TERM 2011

THE STATE

vs.

ANDREW DAVION BURNSIDE

WITNESSES

J A Walters

Greenville County Sheriffs Office

11/18/2010

ARREST WARRANT NUMBER
1484266 and 1484274

Count I and II

ACTION OF GRAND JURY

TRUE BILL

Joseph P. Spear
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Count one: Guilty

Count two: Guilty

Virginia J. Sullivan
Foreperson of Petit Jury
Date:

Indictment for

045010549

TRAFFICKING COCAINE BASE (CRACK
COCAINE) AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME

VIOLATION § 44-53-0375 and § 16-23-0490

RECEIVED

MAR 16 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
**TRAFFICKING COCAINE BASE (CRACK COCAINE) AND
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME**

FEB 21 2012

At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Greenville

COUNT I - TRAFFICKING COCAINE BASE (CRACK COCAINE)

That ANDREW DAVION BURNSIDE did in Greenville County, on or about the 18th day of November, 2010, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 10 grams of Cocaine Base (Crack Cocaine). This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

COUNT II - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That ANDREW DAVION BURNSIDE did in Greenville County on or about the 18th day of November, 2010 possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Trafficking Cocaine Base (Crack Cocaine). This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Shirley Bentley
SOLICITOR

DOCKET NO. 2011-GS-23-
LAB 001739

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February 2012

TERM 2011

THE STATE

vs.

ANDREW DAVION BURNSIDE

ARREST WARRANT NUMBER

1484280

ACTION OF GRAND JURY

TRIE BIL

Joseph P. Spurr

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty of possession

Indictment for

0186

POSSESSION OF A CONTROLLED
SUBSTANCE WINTENT TO DISTRIBUTE

VIOLATION § 44-53-0370

RECEIVED

MAR 16 2011

Clerk of Court
Greenville County

Virginia J. Sulliver
Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A CONTROLLED SUBSTANCE W/INTENT TO
DISTRIBUTE

FEB 21 2012

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That ANDREW DAVION BURNSIDE did in Greenville County, on or about the 18th day of November, 2010, possess with intent to distribute or aid, abet, conspire to possess with the intent to distribute a quantity of a controlled substance, Hydrocodone, such possession not having been authorized by law. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Lisa R Bentley
SOLICITOR

DOCKET NO. 2011-GS-23-
LAB 001740

The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS

February 2012 TERM 2011

THE STATE

vs.

ANDREW DAVION BURNSIDE

WITNESSES

J A Walters

Greenville County Sheriffs Office

11/18/2010

ARREST WARRANT NUMBER
1484289

ACTION OF GRAND JURY

TRIEB BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Virginia J. Sullivan
Foreperson of Petit Jury
Date:

Indictment for

3014

DISTRIBUTION OF COCAINE BASE (CRACK
COCAINE)

VIOLATION § 44-53-0375

RECEIVED

MAR 16 2011

Clerk of Court
Greenville County

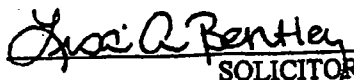
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on FEB 21 2012 the Grand Jurors of Greenville
County present upon their oath:

That ANDREW DAVION BURNSIDE did in Greenville County, on or about the 18th day of November, 2010,
distribute, dispense, deliver, or aid, abet, or conspire to distribute, dispense or deliver to an undercover operative a
quantity of Cocaine Base (Crack Cocaine), a controlled substance, such distribution not having been authorized
by law. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

DOCKET NO. 2011-GS-23-
LAB 001741

The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS 2012
February TERM 2011

THE STATE

vs.

ANDREW DAVON BURNSIDE

ARREST WARRANT NUMBER
1484276

ACTION OF GRAND JURY

TRUE BILL

John H. P. Spear
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty of possession

Virginia J. Sullivan
Foreperson of Petit Jury
Date

Indictment for

0183

POSSESSION OF COCAINE WITH INTENT TO
DISTRIBUTE

VIOLATION § 44-53-0370

RECEIVED

MAR 16 2011

Clerk of Court
Greenville County

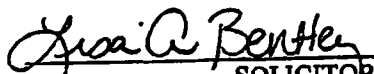
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on FEB 21 2012 the Grand Jurors of Greenville County present upon their oath:

That ANDREW DAVION BURNSIDE did in Greenville County, on or about the 18th day of November, 2010, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Cocaine, a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR