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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

JAMES R. EUBANKS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000784

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 James R. Eubanks,) 2009-GS-42-1852
6 Defendant.) February 23, 2010
7 Spartanburg, South Carolina

8
9
10 B E F O R E:

11 HONORABLE ROGER L. COUCH, JUDGE; and a jury
12
13

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

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23
24 **COPY**
25

Margaret A. Woods
Circuit Court Reporter

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MOTIONS AND MATTERS

1 (State's Exhibit Nos. 2 through 10 premarked for
2 identification.)

3 THE COURT: All right, Mr. Hunter, are we ready to go
4 forward in the case?

5 MR. HUNTER: Yes, Your Honor.

6 THE COURT: Ms. Manigault, we ready to go forward?

7 MS. MANIGAULT: No, sir.

8 THE COURT: Tell me the situation.

9 MS. MANIGAULT: Your Honor, we have several motions that
10 we would like the Court to hear before impaneling the jury.

11 THE COURT: All right. Let's let's get started. What
12 what are the motions first?

13 MS. MANIGAULT: One motion has to do with continuing with
14 discovery. We filed a motion to get information on the
15 confidential informant which was relied on to execute a search
16 warrant. We have not received that information. This -- the
17 second motion, let me hand this up to the Court -- sorry.

18 MR. HUNTER: I have received copies of these motions,
19 Your Honor.

20 THE COURT: Pass it up.

21 MS. MANIGAULT: Okay.

22 THE COURT: Clerk, pass it to us.

23 (Whereupon, the documents were handed to the Court.)

24 MS. MANIGAULT: First motion, Your Honor, is the the
25 continuing a supplemental notice of motion to produce pursuant

MOTIONS AND MATTERS

1 to Rule 5 and we'd ask for information concerning the
2 confidential informant cases, identity and benefits that she
3 may have received as a result of working for the sheriff's
4 office.

5 THE COURT: So you do know it's a she.

6 MS. MANIGAULT: I did get to view the video last
7 week ---

8 THE COURT: Okay.

9 MS. MANIGAULT: --- and but but my client the second
10 part of that motion for -- is this: that my client has not
11 been allowed to review the video to protect the CI and so he
12 needs to review the video before we proceed at trial.

13 THE COURT: All right well so far the -- these are things
14 I can take up between selecting the jury and actually
15 impaneling the jury, impaneling the jury ---

16 MS. MANIGAULT: Yes, sir.

17 THE COURT: --- so I've got another judge waiting on the
18 jury panel after I finish so I'm tryin' to make a decision
19 right now as to whether we go ahead and draw the jury and then
20 take up the motions or whether I can do these before we do
21 that so any others that you think I need to consider I think
22 you need to -- you're wanting the identity of the CI, CI or
23 also a -- the right for your client to view the video ---

24 MS. MANIGAULT: Correct.

25 THE COURT: --- which would reveal the identity of the

MOTIONS AND MATTERS

1 CI.

2 MS. MANIGAULT: Correct.

3 THE COURT: Anything else?

4 MS. MANIGAULT: And also the information regarding the
5 CI benefits that she may have received as a result of her work
6 for for the department.

7 The second motion, Your Honor, involves we filed a motion
8 to receive the disciplinary records for all officers involved
9 in the search warrant and that I think that needs to be, um, I
10 don't know if you can address that after the jury's
11 impaneled ---

12 THE COURT: Um-hum.

13 MS. MANIGAULT: --- and of course the last motion is,
14 can be addressed after the jury's impaneled, is a motion to
15 suppress.

16 THE COURT: All right. We may take those up at that
17 time. Any of those we can resolve by any type of an agreement
18 or we could all -- we have to take argument on all of these?

19 MR. HUNTER: I I believe we're gonna have to argue all of
20 those, Your Honor.

21 THE COURT: Okay. All right. We can do that.

22 Ms. Manigault, is your client present?

23 MS. MANIGAULT: He's here, Your Honor.

24 THE COURT: Oh, okay. Well he wasn't seated up here.

25 MS. MANIGAULT: No, sir, we waited for him.

MOTIONS AND MATTERS

1 THE COURT: We thought that was a witness. He can come
2 forward. All right I'll need to get from the attorneys,
3 before we select a jury, any voir dire that you wish for me to
4 ask as well as a list of witnesses if any.

5 MR. HUNTER: May I approach? It's the State's witness
6 list as well as post voir dire. It has been presented to the
7 defense attorney as well.

8 (Whereupon, counsel handed the documents to the Court.)

9 THE COURT: All right. Any objections to those,
10 Ms. Manigault, and I'll give you a chance to read 'em if you
11 haven't seen 'em but just let me know when you're ready.

12 MS. MANIGAULT: Yes.

13 (Pause.)

14 MS. MANIGAULT: Your Honor, ---

15 THE COURT: Yes, ma'am.

16 MS. MANIGAULT: --- in addition to the State's question
17 No. 5, ---

18 THE COURT: Yes, ma'am.

19 MS. MANIGAULT: --- we'd ask the Court to add to that
20 whether any of the jurors are friends or acquaintances with
21 any members of the solicitor's staff or the law
22 enforcements ---

23 THE COURT: All right. Well I I I will ask that in a
24 standard question that I ask.

25 MS. MANIGAULT: All right.

MOTIONS AND MATTERS

1 THE COURT: I can do that.

2 MS. MANIGAULT: That's it, Your Honor.

3 THE COURT: Okay. All right. Do you have any other
4 witnesses other than our -- what is on the State's list?

5 MS. MANIGAULT: Your Honor, I do have witnesses but I
6 need to verify one witness is a possible agent.

7 THE COURT: Well, I mean, this this is -- this our
8 potential witnesses, you don't have to call 'em, but if it's
9 somebody you think might be a witness I'd like to be able to
10 ask the jury if anybody's related or has a ---

11 MS. MANIGAULT: All right.

12 THE COURT: --- social relationship ---

13 MS. MANIGAULT: Okay.

14 THE COURT: --- so if you can give me the names of any
15 potential witnesses. You're not required to call 'em.

16 (Pause.)

17 (Whereupon, counsel handed a document to the Court.)

18 THE COURT: Thank you, ma'am. Turley, pass that up. All
19 right. Anything further before I bring the jury around?

20 MR. HUNTER: Your Honor, I would request to be able to
21 see that list.

22 THE COURT: Oh, sure sure sure. C'mon up.

23 MR. HUNTER: Thank you.

24 THE COURT: Well I'll just read it to ya.

25 MR. HUNTER: Okay.

MOTIONS AND MATTERS

1 THE COURT: Tina Pace, Michael Wiles, Agent Tom Dona ---
2 Donahoo and James Eubanks, of course that's the defendant.
3 Did you get those, Mr. Hunter?

4 MR. HUNTER: I did, Your Honor.

5 THE COURT: All right. Bring the jury around.

6 (Whereupon, a discussion was held off the record.)

7 THE COURT: Ms. Manigault, I assume your client has been
8 arraigned on the indictments. Is that correct?

9 MS. MANIGAULT: No, sir.

10 THE COURT: Hold the jury out for just one second.
11 Mr. Eubanks, if you would, please stand.

12 MR. HUNTER: Your Honor, I believe this is a -- I believe
13 he was a arraigned by the magistrate.

14 MS. MANIGAULT: He was? On the indictment?

15 MR. HUNTER: On the indict -- well on the warrant. The
16 warrant is is it the warrant of the two hundred (200) grams?

17 THE COURT: Has he gone through an agreement on this?
18 Have they read the charge to ya and asked ya how you plead?

19 THE DEFENDANT: No, sir.

20 THE COURT: Well I'm gonna do that right now. Let's just
21 do it right now. Mr. Eubanks, this is Case No. 09-GS-42-1852,
22 the charge is trafficking in cocaine. The indictment states
23 that you did in Spartanburg County on or about
24 June 18, 2008 -- 8th knowingly sell, manufacturer, cultivate,
25 deliver purchase or bring into the state or did provide

JURY QUALIFICATION

1 financial assistance to or did otherwise aid, abet, attempt or
2 conspire to sell, manufacture, cultivate, deliver, purchase or
3 bring into the state or did knowingly, actually or
4 constructively possess or did knowingly attempt or to become
5 in actual or constructive possession of more than two
6 hundred (200) grams of cocaine, a Schedule II controlled
7 substance in violation of Section 44-53-370 of the Code of
8 Laws of South Carolina 1976 as amended against the peace and
9 dignity of the state and contrary to the statute in such a
10 case made and provided. Now, Mr. Eubanks, did you understand
11 that indictment?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You have the right to plead either guilty or
14 not guilty to the indictment. How do you wish to plead?

15 THE DEFENDANT: Not guilty.

16 THE COURT: Do you wish to be tried by a jury?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. God grant you a speedy delivery.
19 You can be seated. All right. You can bring 'em in.

20 (The following takes place in the presence of the jury
21 panel.)

22 THE COURT: All right, ladies and gentlemen, we're we're
23 about to begin the trial of the State of South Carolina vs.
24 James R. Eubanks. I began the week doin' doing civil case and
25 of course now I have exhausted that docket and so I have moved

JURY QUALIFICATION

1 over to the criminal side of the court so I'm now sitting in
2 general sessions court which is the situation where a citizen
3 has been charged with the commission of a crime. The
4 particular case that's before us at this time is the State of
5 South Carolina vs. James R. Eubanks. The case is
6 No. 09-GS-42-1852. Now, ladies and gentlemen of the jury, I'm
7 going to at this time read over to you the indictment in this
8 case. The purpose of my doing so is to give you some
9 information as to what this case is about so that you can more
10 fully answer some questions that I'm about to ask you that
11 apply specifically to this case. I will advise you that an
12 indictment is simply the document that brings the case before
13 this court, it represents the charges that have been lodged in
14 this matter, it cannot be used by jury in -- as evidence in
15 reaching a decision of guilt or innocence, it simply informs
16 the Court of the charge to be tried and informs the defendant
17 of the charge that has been lodged against him. The
18 indictment in this case states that James R. Eubanks did in
19 Spartanburg County on or about June 18th of 2008 knowingly
20 sell, manufacturer, cultivate, deliver, purchase or bring into
21 this state or did provide financial assistance or did
22 otherwise aid, abet, attempt, or conspire to sell,
23 manufacturer, cultivate, deliver, purchase or bring into this
24 state or did knowingly, actually, or constructively possess or
25 did knowingly attempt to become in actual or constructive --

JURY QUALIFICATION

1 of possession of more than two hundred (200) grams of cocaine
2 a Schedule II controlled substance in violation of Section
3 44-53-370 of the Code of Laws of South Carolina 1976 as
4 amended against the peace and dignity of the state and
5 contrary to the statute in such case made and provided, that
6 is the body of the indictment that's before the Court and
7 again, I give you that information so that you can more fully
8 answer some questions that I'm going to have. As usual it is
9 necessary that we deter -- we assure ourselves or determine
10 that the information that you're about to give in response to
11 my questions is truthful, honest and complete and so it's
12 necessary that you take an oath at this time concerning your
13 responses that you're about to give to the Court. Madam
14 clerk, please swear the perspective jury panel.

15 (Whereupon, the perspective jury panel was sworn.)

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

17 THE COURT: Now if any member of the jury panel failed or
18 refused to take the oath just administered by the clerk, I'd
19 ask that you now please stand.

20 (No response.)

21 THE COURT: The Court record will review -- veal that all
22 perspective jurors have been sworn for purposes of my
23 questioning. Before I begin the questioning again, I'm going
24 to ask that the attorneys introduce themselves that are
25 involved in this case first of all for the State if you'll

JURY QUALIFICATION

1 please introduce yourselves.

2 MR. HUNTER: I'm Eddie Hunter assistant solicitor with
3 the Seventh Circuit Solicitor's Office.

4 MR. MCCARTY: Good afternoon. Ryan McCarty, I also work
5 as an assistant solicitor here in Spartanburg County.

6 THE COURT: Thank you, gentlemen, and for the defense.

7 MS. MANIGAULT: I'm Dorothy Manigault an attorney.

8 THE COURT: And, Ms. Manigault, if you would please
9 introduce the defendant to the jury panel. Sir, please stand
10 and face the jury panel.

11 (Whereupon, the defendant complied.)

12 THE COURT: Thank you, sir.

13 MS. MANIGAULT: This (indicating) is James R. Eubanks.

14 THE COURT: Thank you, sir. Now we'll go through the
15 process that we've gone through in the past. If you have a
16 response to my questions, I'll ask that you stand. I'll need
17 to get your name and juror number on the record before I
18 receive your response.

19 Now, has any member of the jury panel ever been related
20 by marriage or are you related by blood to the defendant James
21 Eubanks, if that's true, please stand?

22 (No response.)

23 THE COURT: Has any member of the jury panel ever had a
24 close personal or a social relationship with the defendant
25 James R. Eubanks, if that's true, please stand?

JURY QUALIFICATION

1 (No response.)

2 THE COURT: Has any member of the jury panel ever been
3 represented by any of the attorneys that are involved in this
4 case or in the case of the solicitor's office, any attorney,
5 involved with the Seventh Circuit Solicitor's office or do you
6 have a close personal or a social relationship with any of
7 those individuals, if that's true, please stand?

8 (No response.)

9 THE COURT: Have any of these attorneys ever been on the
10 other side of a legal matter from you, if that's true, please
11 stand?

12 (No response.)

13 THE COURT: Are you related either by blood or marriage
14 or ever been related by marriage to any of the attorneys
15 involved in the case, if that's true, please stand?

16 (No response.)

17 THE COURT: Next I'm going to go over a list of potential
18 witnesses in this case, listen carefully as I call the names.
19 If any of the individuals are present in the courtroom, I'd
20 ask that you stand and please face the jury panel so that they
21 can put a face with the name. First of all, Mr. Matt Hutchins
22 with the Spartanburg County Sheriff's Office (stood), thank
23 you sir; Mr. Joe Pharis with the Spartanburg County Sheriff's
24 Office (stood), thank you; Beth Stuart with the Spartanburg
25 County Sheriff's Office; Jack Westmoreland with the

JURY QUALIFICATION

1 Spartanburg County Sheriff's office; Paul Norris with the
2 Spartanburg County Sheriff's office; Dustin Eubanks, a witness
3 from Inman, South Carolina; Sherri Collins, a witness from
4 Inman, South Carolina; Tina Pace (stood), thank you, ma'am;
5 Michael Wiles; Agent Tom Donahoo. Now, ladies and gentlemen,
6 that completes my list. Has any member of the jury panel ever
7 been related by marriage or are you related by blood to any of
8 the individuals that I just called as potential witnesses in
9 this case, if that's true, please stand?

10 (No response.)

11 THE COURT: Has any other member of the jury panel ever
12 had a close personal or a social relationship with any of the
13 individuals I just named as potential witnesses in the case,
14 if that is true, please stand?

15 (No response.)

16 THE COURT: Has any member of the jury panel or a member
17 of your immediate family or a close friend of yours ever been
18 prosecuted by the Seventh Circuit Solicitor's Office, if that
19 is true, please stand?

20 (No response.)

21 THE COURT: Has any member of the jury panel or a member
22 of your immediate family ever been arrested arrested for,
23 charged with, or convicted of any crime involving or relating
24 to illegal drugs, if that's true, please stand?

25 THE COURT: Ma'am, your name and number.

JURY QUALIFICATION

1 JUROR NUMBER 141: 141 Tamala Shive Randolph.

2 THE COURT: Yes, ma'am.

3 JUROR NUMBER 141: My ex-husband has been many different
4 charges.

5 THE COURT: All right. Now, ma'am, but he's your
6 ex-husband, would that affect your ability to be fair and
7 impartial in this case?

8 JUROR NUMBER 141: I'm in the middle of a custody battle
9 with him so I would say yes.

10 THE COURT: Okay so it would affect your impartiality in
11 the case?

12 JUROR NUMBER 141: I'm afraid it would.

13 THE COURT: I'm gonna excuse you then from service in
14 this case. Sir, your name and number.

15 JUROR NUMBER 144: Dantrail Smith No. 144.

16 THE COURT: Yes, sir.

17 JUROR NUMBER 144: My two older brothers both very high
18 drug charge.

19 THE COURT: All right. Are those still going on?

20 JUROR NUMBER 144: No -- well one a his charges, one a my
21 brother's charges is pending right now.

22 THE COURT: All right. Would that affect your
23 impartiality in the trial of this case?

24 JUROR NUMBER 144: No, sir.

25 THE COURT: All right. You can be seated. Thank you

JURY QUALIFICATION

1 very much. Anyone else?

2 (No response.)

3 THE COURT: Has any member of the jury panel ever had any
4 kind of experience involving a police officer, a state
5 trooper, a federal agent or a state or federal law enforcement
6 agency that might affect your ability to be fair in the trial
7 of this matter, if that's true, please stand?

8 (No response.)

9 THE COURT: Does any member of the jury panel have an
10 opinion concerning the use of marijuana, cocaine,
11 methamphetamine, heroin or other illegal drugs such that it
12 would affect your ability to be fair and impartial in the
13 trial of this case, if that is true, please stand?

14 (No response.)

15 THE COURT: Has any member of the jury panel ever visited
16 or do you know the management of an establishu --
17 establishment known as Papa Crip's Bar located in Inman, South
18 Carolina, if that is true, please stand?

19 THE COURT: Yes, sir, I need your name and number.

20 JUROR NUMBER 113: 113, Perry Nodine.

21 THE COURT: Yes, sir? You know ---

22 JUROR NUMBER 113: Yeah, I know that bar.

23 THE COURT: You -- you've gone to that bar?

24 JUROR NUMBER 113: Yes, sir.

25 THE COURT: All right. Do you know people that run the

JURY QUALIFICATION

1 bar?

2 JUROR NUMBER 113: Yes, sir.

3 THE COURT: Now would that fact affect your, assuming
4 that bar has some connection with this case, would that affect
5 your ability to be fair and impartial in the matter?

6 JUROR NUMBER 113: Yes, sir, I ---

7 THE COURT: All right ---

8 JUROR NUMBER 113: --- believe it would.

9 THE COURT: --- then I'm gonna excuse you from service in
10 this case. You can be seated. Did you get his name and
11 number, Tanya?

12 THE CLERK: Yes, sir.

13 THE COURT: Okay. Anyone else?

14 (No response.)

15 THE COURT: Has any member of the jury panel gathered any
16 information outside of this courtroom such that you have
17 formed or expressed an opinion about any matter or issue that
18 might be involved in the trial of this case, if that's true,
19 please stand?

20 (No response.)

21 THE COURT: Is there any member of the jury panel who is
22 aware of any bias or prejudice either for or against the State
23 or the defendant in this case, if that's true, please stand?

24 (No response.)

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

JURY QUALIFICATION

1 may have been a member of the grand jury that issued the
2 indictment in this case, that indictment was issued in this
3 case, let's see, it's been issued since April the 1st of 2009,
4 if that's true, please stand?

5 (No response.)

6 THE COURT: Is there any member of the jury panel who is
7 a member of or a contributor to any group that has as its
8 primary concern the promotion of law enforcement or victims
9 rights, these groups would include but not be limited to such
10 groups as Mothers Against Drunk Driving, Students Against
11 Drunk Driving, Citizens Against Violent Crime, the South
12 Carolina Sheriff's Association or the South Carolina Trooper's
13 Association or similarly oriented organizations, if that's
14 true, please stand?

15 (No response.)

16 THE COURT: Does any member of the jury panel know of any
17 reason whatsoever why he or she should not serve as a juror in
18 this case with particular emphasis being placed on your
19 ability to be both fair and impartial to both the State and
20 the defendant, if that's true, please stand?

21 THE COURT: Yes, sir, I need your name and number.

22 JUROR NUMBER 74: Robert Hooper 74.

23 THE COURT: Yes, sir, your situation.

24 JUROR NUMBER 74: Well he owned the auto parts store that
25 I bought stuff from, Auto Mufflers, and I know people that

JURY QUALIFICATION

1 work today ---

2 THE COURT: Okay. So you knew this gentleman previously
3 involved in business affair?

4 JUROR NUMBER 74: Yes.

5 THE COURT: Would that affect your impartiality?

6 JUROR NUMBER 74: Yes, sir, it might.

7 THE COURT: I'm excusing you from the trial of the case.
8 Thank you, sir. Anyone else?

9 (No response.)

10 THE COURT: Any further questions from the State?

11 MR. HUNTER: None, Your Honor.

12 THE COURT: Any further from the defense?

13 MS. MANIGAULT: Nothing further, Your Honor.

14 THE COURT: I declare the remaining jury panel as being
15 qualified to serve in the trial of this case. Now, ladies and
16 gentlemen, what we're doing at this point in time the clerk is
17 going through a process of allowing the computer to select a
18 list of names, once that list is produced she'll share that
19 with me and the court reporter and my law clerk and from that
20 list in the order in which your name has been selected by the
21 computer we'll be calling individuals, you've been through
22 this before, you'll come forward to the center of the room,
23 the attorneys will be in a position to exercise their strikes
24 at that time. In this particular case, each side will have
25 five strikes, will pick one alternate with the State having

JURY QUALIFICATION

1 one strike, the defense having two. I will share with you
2 back when I first started practicing law we selected juries by
3 putting names in capsules in a wooden barrel and we would turn
4 'em over and we had to have a blind person by law pick those
5 capsules outta the box and so we always had a lady who came up
6 here and was legally blind to do that. Now that we have
7 commuters we let those creatures pick the juries but at any
8 rate it used to be a very interesting process that we went
9 through, a little different from what we do now.

10 All right. Now when your name is called, again, come
11 forward to the center where Mr. Humphrey, the bailiff, is
12 standing, the juro -- the attorneys will be in a position to
13 exercise their strikes at that time. Bring with you any
14 personal belongings that you brought into the courtroom.
15 Madam clerk.

16 THE CLERK: Juror No. 96, Laurie Mahaffey. What says the
17 State?

18 MR. HUNTER: Please present this juror.

19 THE CLERK: What says defense?

20 MS. MANIGAULT: Please seat Ms. Mahaffey.

21 THE BAILIFF: Have a seat in the jury box.

22 THE CLERK: Number 54, Christopher Gates. What says the
23 State?

24 MR. HUNTER: Please present this juror.

25 THE COURT: What says defense?

JURY QUALIFICATION

1 MS. MANIGAULT: Please seat Mr. Gates.

2 THE BAILIFF: Have a seat in the jury box.

3 THE CLERK: Juror No. 19, Mr. Bruster. What says the
4 State?

5 MR. HUNTER: Please dismiss or -- this juror. Excuse
6 this juror.

7 THE CLERK: Number 144, Dantrail Smith. What says the
8 State?

9 MR. HUNTER: Please excuse this juror.

10 THE CLERK: Number 158, Walter J. Werner the third. What
11 says the State?

12 MR. HUNTER: Please present this juror.

13 THE CLERK: What says defense?

14 MS. MANIGAULT: Please seat Mr. Werner.

15 THE CLERK: 1 -- 118, Donald G. Patterson. What says the
16 State?

17 MR. HUNTER: Please present this juror.

18 THE CLERK: What says defense?

19 MS. MANIGAULT: Please seat Mr. Patterson.

20 THE CLERK: Number 75, Doris S. Horton. What says the
21 State?

22 MR. HUNTER: Please present this juror.

23 THE CLERK: What says defense?

24 MS. MANIGAULT: Please excuse Ms. Horton for this case.

25 THE CLERK: Number 10, Karri L. Bradley. What says the

JURY QUALIFICATION

1 State?

2 MR. HUNTER: Please present this juror.

3 THE CLERK: What says defense?

4 MS. MANIGAULT: Please excuse Ms. Bradley for this case.

5 THE CLERK: Number 28, Bobby R. Cody. What says the
6 State?

7 MR. HUNTER: Please excuse this juror.

8 THE CLERK: Number 152, Delonda Uldrick. What says the
9 State?

10 MR. HUNTER: Please present this juror.

11 THE CLERK: What says defense?

12 MS. MANIGAULT: Please excuse Ms. Uldrick for this
13 case.

14 THE CLERK: Number 65, Bryan S. Hannon. What says the
15 State?

16 MR. MCCARTY: Could you repeat the number, please.

17 THE CLERK: Sixty-five.

18 MR. MCCARTY: Thank you.

19 MR. HUNTER: Please present the juror.

20 THE CLERK: What says defense?

21 MS. MANIGAULT: Please seat Mr. Hannon.

22 THE CLERK: Number 90, Jamie L. Lawter. What says the
23 State?

24 MR. HUNTER: Please present this juror.

25 THE CLERK: What says defense?

JURY QUALIFICATION

1 MS. MANIGAULT: Please excuse Ms. Lawter for this case.

2 THE CLERK: Number 119, John B. Patterson. What says the
3 State?

4 MR. HUNTER: Please present this juror.

5 THE CLERK: What says defense?

6 MS. MANIGAULT: Please seat Mr. Patterson.

7 THE CLERK: Number 177, Joanne T. Bergen. What says the
8 State?

9 MR. HUNTER: Please excuse this juror.

10 THE CLERK: Number 25, Derrick K. Casey. What says the
11 State?

12 MR. HUNTER: Please present this juror.

13 THE CLERK: What says defense?

14 MS. MANIGAULT: Please seat Mr. Casey.

15 THE CLERK: Number 13, Linda K. Brewer. What says the
16 State?

17 MR. HUNTER: Please present this juror.

18 THE CLERK: What says defense?

19 MS. MANIGAULT: Please excuse Ms. Brewer for this case.

20 THE CLERK: Number 62, Rodney G. Grobe -- I'm Sorry,
21 Rodney W. Grobe.

22 MS. MANIGAULT: Number again, please.

23 THE CLERK: Sixty-two. What says the State?

24 MR. HUNTER: Please present this juror.

25 THE CLERK: What says defense?

JURY QUALIFICATION

1 MS. MANIGAULT: Please seat Mr. Grobes.

2 THE CLERK: Number 123, Tammy F. Powell. What says the
3 State? 123.

4 MR. HUNTER: 123? Please present this juror.

5 THE CLERK: What says defense?

6 MS. MANIGAULT: Please seat Ms. Powell.

7 THE CLERK: Number 147, Jonathan L. Stribble. What says
8 the State?

9 MR. HUNTER: Please present this juror.

10 THE CLERK: What says defense?

11 MS. MANIGAULT: Please seat Mr. Stribble.

12 THE CLERK: Number 126, George -- thank you. What says
13 the State?

14 MR. HUNTER: Please present this juror.

15 THE CLERK: What says defense?

16 MS. MANIGAULT: What's his number again, please.

17 THE CLERK: 126.

18 JUROR NUMBER 126: 126.

19 MS. MANIGAULT: Please seat Mr. George.

20 THE CLERK: Number 101, Alberto G. Me ---

21 JUROR NUMBER 101: Meloncelli.

22 THE CLERK: What says the State?

23 MR. HUNTER: Please present this juror.

24 THE CLERK: What says defense?

25 MS. MANIGAULT: Please seat the juror.

MOTIONS AND MATTERS

1 THE CLERK: Your Honor, ---

2 THE COURT: You're now ---

3 THE CLERK: --- this ---

4 THE COURT: --- picking the alternate. Again, State one
5 strike, defense two.

6 THE CLERK: Number 85, Blake D. Kirby. What says the
7 State?

8 MR. HUNTER: Please present this juror.

9 THE CLERK: What says defense?

10 MS. MANIGAULT: Please seat Mr. Kirby.

11 THE CLERK: Your Honor, jury selection is complete.

12 THE COURT: Thank you, ma'am. All right. Any objection
13 to the jury selection process from the State?

14 MR. HUNTER: Nothing from the State, Your Honor.

15 THE COURT: Any from the defense?

16 MS. MANIGAULT: None from the defense, Your Honor.

17 (Whereupon, the remaining members of the jury panel were
18 released.)

19 THE COURT: All right, ladies and gentlemen, you've been
20 selected to serve as jurors in this case. At this time there
21 are some pretrial matters that I need to go over with the
22 attorneys and this could take a a few minutes so we'll take a
23 fairly lengthy break at this point in time. The bailiffs will
24 show you into the jury room. Of course if you need some
25 refreshments or you need to step outside to get some fresh air

MOTIONS AND MATTERS

1 or somethin', just let the bailiffs know, they'll be happy to
2 let you do that as long as they accompany you. I am going to
3 ask you, as I will throughout the trial, once we get the trial
4 started not to discuss the case among yourselves at any time
5 until such time as I've advised you to begin your
6 deliberation. Of course you've been selected as fair and
7 open-minded jurors in connection with this case and hope you
8 realize that if you begin to discuss even what the case is
9 about those discussions might color your open-mindedness or
10 change your mind or make you start making decisions about
11 issues that could be involved in this case without having
12 heard directions. When you come back into the courtroom and
13 we begin the trial, you'll be taking an oath to decide the
14 case solely on the evidence and the law as given to you during
15 the trial so it'd be improper for you to begin to make up your
16 mind or make decisions or even begin that process until such
17 time as you've heard all the arguments of counsel, the facts
18 or the evidence as testified to by witnesses and of course the
19 charge concerning the law. So again, don't discuss anything
20 about the case during our break. We'll be bringing you back
21 in as soon as possible to get the trial started. At this time
22 I'll ask that you step back to the jury room with the
23 bailiffs, they'll see that you're comfortable.

24 (The following takes place outside the presence of the
25 jury.)

MOTIONS AND MATTERS

1 THE COURT: All right, Ms. Manigault, it's your motions,
2 I'll allow you to take them up in whichever order you think
3 that would be, would be best to do that.

4 MS. MANIGAULT: Thank you, Your Honor. Excuse me.

5 THE COURT: Yes, ma'am.

6 MS. MANIGAULT: Your Honor, the first motion we would
7 like to for the Court to consider is a follow-up to our
8 motion. We filed a discovery Rule 5 and Brady back on
9 June 11, 2009 with the clerk of court for Spartanburg County
10 on this case and we filed a supplemental and continuing motion
11 for Rule 5 and Brady again on February 17th 2010. We'd ask
12 the State to disclose the identify of the confidential
13 informant and information regarding the confidential informant
14 services to the department. They have labeled her as
15 confidential reliable informant and we're trying to seek
16 information that would verify or dispute whether she is
17 reliable or not. The confidential informant we discovered on
18 last week was -- is a female regarding this case and we
19 believe that our client is entitled to know her identity and
20 also to view the tape in this ---

21 THE COURT: All right. What I gathered from your earlier
22 comments, Ms. Manigault, that this particulars confidential
23 reliable informant, as that person's been called, was an
24 actual participant in the drug transaction?

25 MS. MANIGAULT: It's an actu -- participant in a drug

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1 transaction ---

2 THE COURT: The alleged drug transaction I guess I should
3 call it.

4 MS. MANIGAULT: --- in a drug transaction dated June the
5 12th of 2008. Search warrant was subsequently executed on
6 June 13th.

7 THE COURT: Based on information obtained in the prior
8 drug transaction?

9 MS. MANIGAULT: Correct.

10 THE COURT: Okay. All right. I'll hear from the State.

11 MS. MANIGAULT: Your Honor, ---

12 THE COURT: Yes ---

13 MS. MANIGAULT: ---, let me rephrase that. The the search
14 warrant has that information and other information
15 involves ---

16 THE COURT: Oh, I understand that but part part of the
17 information upon which the search warrant was based would have
18 been the transaction that occurred a couple days prior to that
19 time.

20 MS. MANIGAULT: Yes, sir.

21 THE COURT: Mr. Hunter, you gonna take this one?

22 MR. HUNTER: Yes, Your Honor.

23 THE COURT: Yes, sir.

24 MR. HUNTER: Your Honor, it's the State's position that
25 the confidential informant acted as a mere tipster for

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1 probable cause in the search warrant, this is not the
2 confidential informant lied, that is not what we're trying
3 here, it's just the buy that was the probable cause along with
4 other information from the informant that is certainly
5 probable cause for the search informant. I have here a copy
6 of *State v. Humphries*.

7 THE COURT: You pass it up.

8 (Whereupon, counsel handed the document to the Court.)

9 MR. HUNTER: Your Honor, this is a case that as long as
10 the confidential informant is not an active participant in the
11 crime alleged, she was an active participant in the
12 confidential informant buy; however, this crime is the
13 trafficking of cocaine found in the search warrant. She was
14 not at the search warrant, she did not participate in the
15 search warrant, she wasn't even there there that day, she was
16 only a mere tipster which allowed the officers
17 Mr. Hutchin [sic] to get the search warrant and *Humphries* rule
18 is that the CI is a mere tipster for probable cause of a
19 search warrant, we're privileged to withhold her identify from
20 the defendant.

21 THE COURT: Ms. Manigault, wait just one second. Let me
22 get this door closed. Yes, ma'am.

23 MS. MANIGAULT: Your Honor, for the State to claim that
24 their confidential is a mere tipster in in this case, in
25 reviewing the video this -- the buy was set up by the

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1 department so she is not a mere tipster. The department
2 themselves set set the alleged buy up and according to the
3 tape followed her so she is, she is not considered a mere
4 tipster and I do not believe that this case would apply and
5 we'd ask the Court not to rule that she's a mere tipster. She
6 was involved instrumentally and rev -- relevantly in in this
7 case. The alleged buy was set up by the department and then
8 they issued -- procured a search warrant because of that buy.

9 THE COURT: All right. Just one second.

10 MR. HUNTER: Your Honor, may I offer another case that's
11 on this ---

12 THE COURT: Certainly.

13 MR. HUNTER: --- point?

14 THE COURT: Yes, sir.

15 MR. HUNTER: A copy has been provided to the defense
16 attorney, it's *State v. Jenkins*.

17 (Whereupon, counsel handed the document to the Court.)

18 THE COURT: Is this more factually aligned with this
19 case?

20 MR. HUNTER: I believe so, Your Honor.

21 (Pause.)

22 THE COURT: There was some mention that there was other
23 information contained in the the affidavit other than the
24 prior buy ---

25 MR. HUNTER: Yes, Your Honor, the ---

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1 THE COURT: --- and that ---

2 MR. HUNTER: --- affidavit ----

3 THE COURT: --- I don't believe that was ever entered. I
4 haven't seen the search warrant so I'm not sure what we're
5 talking about.

6 MR. HUNTER: Your Honor, I can pass you up a copy of the
7 certified copy of the search warrant.

8 THE COURT: That'd be a good idea and let's see what else
9 is in there.

10 MR. HUNTER: And a copy has been provided to the defense.

11 THE COURT: Okay.

12 (Whereupon, counsel handed the document to the Court.)

13 MS. MANIGAULT: And at the appropriate time we're gonna
14 object to that other information as insufficient for probable
15 cause.

16 (Pause.)

17 THE COURT: Mr. Hunter, let me be sure I understand. Now
18 the the actual search of the residence and the contraband that
19 was located on that side is the basis for this charge.

20 MR. HUNTER: As well as the information that she provided
21 concerning ---

22 THE COURT: Well now is she providing evidence on guilt
23 or innocence of the defendant or does she just provide
24 evidence that is the basis for the search warrant?

25 MR. HUNTER: For the search warrant.

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1 THE COURT: Okay, well I'm tryin' to -- that's what I'm
2 saying the the charge, the the charge in the indictment is
3 based solely upon ---

4 MR. HUNTER: Is based solely upon the search warrant.

5 THE COURT: --- the search warrant, what was found at the
6 residence.

7 MR. HUNTER: Yes.

8 THE COURT: Okay. Anything further, Ms. Manigault, that
9 you want to ---

10 MS. MANIGAULT: The the point you're gonna rule on at
11 this point is the revealing the confidential informant?

12 THE COURT: Well my reading of the cases thus far is the
13 State is required to give you the identity of the confidential
14 reliable informant if that person's testimony goes directly to
15 the question of guilt or innocence; in other words, if if that
16 person was a witness on the charges that are contained in the
17 indictment. Right now from what I can tell the status of the
18 case is that individual will not be testifying concerning the
19 charges that are in the indictment, the only connection that
20 person has with the case was that the information provided for
21 that -- by that informant was a basis for the issuance of the
22 search warrant which then later on resulted in these charges
23 but that person wasn't present at or didn't participate in the
24 time of the execution of the search warrant or wasn't present
25 or participate in any activity that's being charged in the

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1 indictment.

2 MS. MANIGAULT: Your Honor, you you are correct in
3 stating that the confidential informant was not there when the
4 search warrant was executed; however, my argument to the Court
5 is that the confidential informant information is a material
6 fact for the issuance of the search warrant and that's why
7 we're asking for her to be disclosed and for what benefit that
8 she has ---

9 THE COURT: Well I -- now I ---

10 MS. MANIGAULT: --- received.

11 THE COURT: --- what I -- what -- tell me what -- do you
12 object to any kind of disclosure of whatever kind of deal
13 there was on this?

14 MR. HUNTER: Yes, Your Honor, we object. Well ---

15 THE COURT: All right.

16 MR. HUNTER: --- the deal ---

17 THE COURT: Tell me about that.

18 MR. HUNTER: --- the deal goes along with the identity,
19 Your Honor. This is a case of the search warrant: The
20 confidential informant purchased drugs, brought 'em back to
21 the police to ---

22 THE COURT: Well actually the affidavit just says that, I
23 was reading the affidavit, says, "Within the past seventy-two
24 hours of today's date a CRI working for Spartanburg County
25 observed cocaine being sold," doesn't say they participated in

MOTIONS AND MATTERS

1 the sale, just observed it being sold, "CRI observed Eubanks
2 exchanging cocaine for currency. CRI has in the past has
3 observed quantities being stored inside the residence. CRI
4 knows him to hide illegal contraband in his residence." It
5 doesn't say that they actually purchased it, maybe they did, I
6 don't know, I'm just readin' what the affidavit says and it
7 just talks about observation of these transactions.

8 MR. HUNTER: Yes, Your Honor, but a deal that she had
9 received would be irrelevant to the charges of trafficking in
10 cocaine. If this was the trial for the distribution, then
11 obviously we would have to reveal the deal that she received;
12 however, this is a search warrant case with a trafficking.
13 She is just the basis for the probable cause to then go do
14 the ---

15 THE COURT: Have you ---

16 MR. HUNTER: --- the search warrant.

17 THE COURT: --- provided -- are you seeking any
18 information about how many times this informant has provided
19 reliable information?

20 MS. MANIGAULT: Yes, sir, that's in our motion.

21 THE COURT: Okay.

22 MS. MANIGAULT: Excuse me.

23 MR. HUNTER: And Mr. Hutchins can provide that during the
24 suppression testimony.

25 THE COURT: Okay. Well he's he's gonna have to provide

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1 that. We got ---

2 MR. HUNTER: Yes.

3 THE COURT: --- got to establish that that she's a
4 reliable informant. I'm gonna deny it as to the identity and
5 and and also the other part what was that? the seeking the ---

6 MR. HUNTER: The in -- the deal.

7 THE COURT: --- identity and the deal I'll deny that as
8 well. What I will require though is that you do provide
9 information to establish that it was a reliable informant that
10 was being relied upon.

11 MR. HUNTER: Yes, Your Honor.

12 THE COURT: All right.

13 MS. MANIGAULT: Your Honor, we take exception to rule and
14 we make our -- renew our motion at the trial.

15 THE COURT: Oh, I understand. I understand you've
16 excepted that. It's in the record ---

17 MS. MANIGAULT: All right. Thank you, Your Honor. Your
18 Honor, I -- that's -- I ---

19 THE COURT: --- and then we'll take that testimony in a
20 moment but go ahead, Ms. Manigault, on your motion.

21 MS. MANIGAULT: Your Honor, as to my additional motion,
22 excuse me, the defense would move that the search warrant be
23 quashed and the evidence be suppressed that was found as a
24 result of the search warrant and in that the affidavit is
25 insufficient in describing factually what the department was

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1 seeking. Your Honor, there's statements of conclusion and
2 even if the Court looked at the totality of the circumstances,
3 I do not believe that the Court could -- would find that this
4 affidavit was enough to issue a search warrant. The -- as the
5 Court has referred to and, Your Honor, we would ask that the
6 Court make the search warrant court's exhibit for for my
7 arguments.

8 THE COURT: Any objection?

9 MR. HUNTER: No, Your Honor. We were actually ---

10 THE COURT: You have ---

11 MR. HUNTER: --- gonna do that ourselves.

12 THE COURT: --- a copy to put in? All right.

13 MR. HUNTER: I can provide you with the original copy if
14 you would like.

15 THE COURT: We'll make it a court's exhibit for this
16 hearing. It'll be marked.

17 (Search warrant marked Court's Exhibit No. 1 for
18 identification.)

19 THE COURT: All right.

20 MS. MANIGAULT: Your Honor, our argument is is
21 insufficient probable cause to have the the warrant issued.
22 The Court had read in these affidavit of the search warrant
23 that a confidential reliable informant observed in the
24 residence within the past previous seventy-two hours to the
25 June 13th date. Then it further goes on to state, Your Honor,

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1 In the past the CRI has observed quantities of cocaine being
2 stored inside the residence. We have no factual dates or
3 information what was in the past, what what dates she observed
4 this, where the -- where she observed any possible quantities
5 of cocaine being stored so we argue to the Court that there
6 was insufficient insufficient probable cause to have the
7 search warrant issued. If the Court -- we realize that the
8 Court has already ruled on the disclosure of the confidential
9 informant's name and benefits but in reviewing that video the
10 confidential informant allegedly met Ms. -- the defendant in
11 the yard when he was driving up, coming back from the store
12 according to the video. The confidential informant did not
13 observed -- observe on the underlying date of June the 12th
14 anything in the house, of the residence according to the
15 videotape and so they're relying on past observation of
16 confidential informant and they have not provided us with any
17 dates or times or year ---

18 THE COURT: All right.

19 MS. MANIGAULT: --- or the place of the the drug that's
20 allegedly supposed to be stored.

21 THE COURT: All right. I understand the objection. You
22 wish to put in testimony on that?

23 MR. HUNTER: Yes, Your Honor.

24 THE COURT: Call your witness.

25 MR. HUNTER: The State would call Investigator Matt

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Hutchins.

2 THE COURT: Come forward to my left to be sworn, please.

3 MATT HUTCHINS, having been first
4 duly sworn, testified as follows:

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

7 INVESTIGATOR HUTCHINS: Investigator Matt Hutchins.

8 THE COURT: Mr. Hunter, it's your witness.

9 DIRECT EXAMINATION BY MR. HUNTER:

10 Q. Matt, what what do you do for a career?

11 A. I'm a narcotic investigator with the Spartanburg County
12 Sheriff's Office.

13 Q. How long have you been doin' that?

14 A. I've been with the sheriff's office since 2002.

15 Q. And what have your duties been at the sheriff's office?

16 A. Originally when I came to the sheriff's office I was
17 assigned to uniform patrol. I was on uniform patrol for about
18 a little over a year then I was transferred to narcotics.

19 Q. So how long have you been in narcotics?

20 A. Roughly six years.

21 Q. What are your general assignments as a narcotics
22 officer?

23 A. As a narcotics investigator, we conduct narcotics
24 investigations from street level to high-end drug
25 organizations.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. Okay. Does your duties as a narcotics officer include
2 obtaining search warrants?

3 A. They do.

4 Q. And how many times have you had the opportunity to obtain
5 a search warrant?

6 A. At least a hundred.

7 Q. Okay. Briefly explain the standard operating procedure
8 for obtaining search warrants.

9 A. What you do is you have an affidavit part and then the
10 search warrant part, it's got a cover sheet to return. During
11 the course of the investigation you would fill out affidavit
12 which would be based on facts and present it to a
13 magistrate.

14 Q. Did you obtain a search warrant for [REDACTED] Hickory Nut Road
15 in Inman on June 13th 2008?

16 A. I did.

17 Q. Okay and where is this located?

18 A. That's located in Spartanburg County.

19 MR. HUNTER: Your Honor, if I may, I believe you have two
20 copies of the search warrant. I'm missing one.

21 THE COURT: Well I don't mean to hog them all. Here's
22 the actual exhibit. There we go.

23 (Whereupon, counsel retrieved the exhibit.)

24 MR. HUNTER: Okay.

25 BY MR. HUNTER:

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. Now, Investigator Hutchins, you've been provided a copy
2 of the certified copy of search warrant?

3 A. I have.

4 Q. All right. What is your procedure in preparing an
5 affidavit?

6 A. Preparing the affidavit [sic] you would type in the facts
7 that you know in the case then present it to the magistrate to
8 well see if he believes it contains probable cause.

9 Q. Did you follow that procedure in this case?

10 A. I did.

11 Q. What did you expect to find if granted a search warrant
12 in this case?

13 A. The description of property sought is cocaine, a
14 Scheduled II controlled substance; U.S. currency scales;
15 baggies; ledgers; diaries; electronic media and paraphernalia;
16 any item related to the drug trade.

17 Q. And why did you expect to find drugs or the list that you
18 just read off?

19 A. Through the course of the investigation and along with CI
20 information.

21 Q. What is the CI information you're speaking of?

22 A. The CI knew cocaine sales to take place at the residence.
23 CI new cocaine to be hidden in various locations on the
24 property.

25 Q. And how did the CI know this?

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 A. Through past experience and dealings with Mr. Eubanks.

2 Q. Approximately how many past dealings?

3 A. I think at least four to six.

4 Q. Would those be involved with the sheriff's office?

5 A. Yes.

6 Q. Did you know of any past dealings before the sheriff's
7 office?

8 A. Personally I do not.

9 Q. Okay. What other information has the confidential
10 informant supplied to you?

11 A. In the past in reference to other cases, also has
12 provided evidence that has been corroborated through other
13 sources and also provided information through undercover buys.

14 Q. How did you deem the CI reliable?

15 A. Through the past information that's been corroborated,
16 also through arrest of subjects and seizure of illegal
17 contraband in other cases.

18 Q. So another subject other than Mr. Eubanks?

19 A. Yes.

20 Q. And how does the CI know the sight, smell, packaging and
21 texture of cocaine?

22 A. Through the course of dealing with the narcotic.

23 Q. If you would, what was your reason, your belief that the
24 property you sought was gonna be on these premises?

25 A. It says, "Within the past seventy-two hours of today's

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 date 6/13 of 2008, a confident reliable informant working for
2 the Spartanburg County Sheriff's Office observed cocaine being
3 sold at the residence described above. CRI observed James
4 Eubanks exchanging cocaine for U.S. currency. In the past CRI
5 has observed quantities of cocaine being stored inside the
6 residence. CRI knows James Eubanks to hide illegal contraband
7 throughout the residence on his person and on the curtilage
8 area to avoid police detection. CRI knows cocaine by sight,
9 smell, texture and packaging. CRI has has provided
10 information to the Spartanburg County Sheriff's Office in the
11 past that has led to the arrest of subject and the
12 confiscation of illegal contraband."

13 Q. All right. And those those first two sentences what does
14 that describe?

15 A. "Within the past seventy-two hours from today's ---

16 Q. Yes.

17 A. --- date?" That describes the time time frame in which
18 the CRI observed the transaction take place.

19 Q. Did the CI take place in that transaction?

20 A. Yes.

21 Q. Were you there for that transaction?

22 A. I was not there personally.

23 Q. Did you, did you take place in the investigation of that
24 transaction?

25 A. I did.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. What did your investigation entail?

2 A. CRI was equipped with audio and video recording device.
3 The CRI was provided Spartanburg County Sheriff's Office
4 recorded funds. The CRI was searched along with the vehicle
5 prior to the buy and was followed to the location. After the
6 transaction took place the CRI left the location, again
7 followed the CI back to a predetermined location and recovered
8 the cocaine. CRI was again searched along with the vehicle
9 and no contraband located.

10 Q. Did you provide the CI with recorded funds?

11 A. Yes, sir.

12 Q. When did you do that?

13 A. Just prior to the buy.

14 Q. When you met back up with the CI, were the recorded funds
15 found?

16 A. No, sir.

17 Q. What did the CI have on their person?

18 A. A quantity of cocaine that they turned over as being what
19 they purchased from Mr. Eubanks.

20 Q. Okay. And approximately how many times have you done
21 that with this CI?

22 A. With this CI total eight -- seven, eight, nine times
23 somewhere.

24 Q. Okay. And how many times with Mr. Eubanks?

25 A. Four, maybe five.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. Okay, but that was before the 6/12 confidential buy.

2 A. Yes, sir.

3 Q. In in fact, you said past seventy-two hours. What date
4 was the buy occurring?

5 A. If my memory serves, I believe it was the 12th.

6 Q. Okay. Now in the sentences after that you describe what
7 the CI has observed. How did you learn that information?

8 A. Through the CI telling me and also through the course of
9 the investigation that they observed the cocaine in the
10 residence before in the past and also knew cocaine to be
11 hidden on the property to elude police detection.

12 Q. Okay. Did you corroborate this with your own
13 investigation?

14 A. Yes.

15 Q. And did you deem it reliable?

16 A. Yes, sir.

17 Q. When you presented this affidavit to the magistrate, what
18 did he do?

19 A. I take a oath swear and go what's in it to be the truth
20 to my knowledge, I present it to the magistrate which in this
21 case was Judge was Brian Taylor. The judge read it and
22 granted the search warrant.

23 Q. Did the judge know anything about this case before the
24 affidavit?

25 A. No, sir.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. So you swore to the affidavit under oath?

2 A. Yes, sir.

3 Q. Did you supplement that with any verbal testimony?

4 A. No, sir.

5 Q. Did you also provide a description of the person, place
6 or thing to be searched on the affidavit?

7 A. I did.

8 Q. What was that?

9 A. It says, "From downtown Spartanburg travel Asheville
10 Highway towards Inman, travel Asheville Highway to Interstate
11 26, travel I-26 westbound towards North Carolina, travel I-26
12 to Exit 10 highway 292 and turn left, travel Highway 292 to
13 Hickory Nut Road, turn left onto Hickory Nut Road, the
14 residence to be searched is the last residence on the left
15 located on the corner of Hickory Nut Road and Pen Del Road.
16 The residence is a brick with red -- is brick with red roof.
17 The residence has red and white trim. The search to include
18 the residence, curtilage area and any outbuildings. The
19 search is to also include the person of James Crip Eubanks."

20 Q. Have you followed that route?

21 A. Yes, sir.

22 Q. Where does that route lead you?

23 A. To the premises that were searched.

24 Q. Okay and who owns that premises?

25 A. Mr. James Eubanks.

MATT HUTCHINS - CROSS-EXAMINATION BY MS. MANIGAULT

1 Q. Okay. Was the search also to include Mr. Eubanks?

2 A. Yes, sir.

3 Q. And all of this was included on your sworn
4 affidavit [sic]

5 A. Yes, sir.

6 Q. When did you swear this to the magistrate Turner?

7 A. Taylor, Magistrate Taylor.

8 Q. Or Taylor, excuse me.

9 A. June the 13th 2008.

10 Q. Okay. And you see a signature down there (indicating).
11 Is that -- did you observe him sign this?

12 A. Yes, sir.

13 Q. That is his signature?

14 A. Yes, sir.

15 Q. And under the "Affiant" part is that your signature?

16 A. It is.

17 MR. HUNTER: Your Honor, that's all the questions we have
18 of Mr. Hutchins.

19 THE COURT: Ms. Manigault, Your witness.

20 MS. MANIGAULT: Thank you, Your Honor.

21 CROSS-EXAMINATION BY MS. MANIGAULT:

22 Q. Mr. Hutchins, in your affidavit you swore to Magistrate
23 Taylor that your CI had ob -- only observed cocaine being
24 sold. Is that in the affidavit?

25 A. The wording says "observed" yes, ma'am.

MATT HUTCHINS - CROSS-EXAMINATION BY MS. MANIGAULT

1 Q. Okay. And today you're testifying to the Court that your
2 CI actually participated in a buy of cocaine?

3 A. Yes, ma'am.

4 Q. You you also stated in your affidavit says "In the
5 past ---

6 A. Yes, ma'am.

7 Q. --- CRI has observed quantities of cocaine being stored
8 inside the residence."

9 A. Yes, ma'am.

10 Q. All right. What were, what were those past dates?

11 A. I don't have my notes with me. It will be the past video
12 recordings.

13 Q. Which was in 2007?

14 A. I, if that's what they are, I don't have my notes ---

15 Q. I don't ---

16 A. --- have my notes with me.

17 Q. --- I don't wanna suggest that to you but do you have any
18 i -- was it within seventy-two hours of the time that you got
19 the search warrant?

20 A. As far as the observin' 'em inside the residence, I do
21 not believe so.

22 Q. So, "In the past CRI has observed quantities of cocaine,"
23 that did not occur within seventy-two hours of this search
24 warrant being issued is that correct?

25 A. The "within seventy-two hours" was the CRI observed James

MATT HUTCHINS - CROSS-EXAMINATION BY MS. MANIGAULT

1 Eubanks exchanging cocaine for U.S. currency. "In the past
2 CRI has observed quantities of cocaine being stored inside the
3 residence." On the date within seventy-two hours, the
4 transaction took place in the driveway at which afterwards
5 Mr. Eubanks walked into the residence. Okay. My question to
6 you is in the past, the incidents that you are alleging to the
7 court today, you're testifying that either your confidential
8 informant either four or five times on various dates in the
9 past have dealt with James Eubanks so then those occurrences
10 occur within seventy-two hours of you procuring the search
11 warrant.

12 A. Those occurrence were not within seventy-two hours. The
13 occurrence was the "within seventy-two hours" was the exchange
14 that was observed ---

15 Q. All right.

16 A. --- on the residence on the property.

17 Q. And you have testified to the court today that you have
18 no recollection of the time frame of the four or five previous
19 times is that correct?

20 A. I I believe it was the last one to be in the later part
21 of '07.

22 Q. In '07?

23 A. Yes, ma'am.

24 Q. And this search warrant was signed by Judge Taylor June
25 13th of '08?

MATT HUTCHINS - CROSS-EXAMINATION BY MS. MANIGAULT

1 A. But the observation and the transaction located on the
2 property was within seventy-two hours and was on the 12th of
3 June the 12th of '08.

4 Q. All right. You said the observation on the property.
5 Were you there ---

6 A. The CRI was equipped with audio and video recording
7 device.

8 Q. And when your confidential informant arrived at the
9 property, was Mr. Eubanks there?

10 A. Initially was not. Mr. Eubanks arrived at the
11 location.

12 Q. After your CI arrived.

13 A. Yes, ma'am.

14 Q. Mr. Eubanks was not in the house, did not go into the
15 house.

16 A. After the purchase he did but prior to no, ma'am.

17 Q. And your search warrant was executed on 6 -- on 6/18 when
18 the return was signed?

19 A. It was executed on June 18th '08 yes, ma'am.

20 Q. All right. All right. You testified to the Court that
21 your evidence was corroborated through other sources. What
22 were your other sources that corroborated the past observation
23 of quantities of cocaine?

24 A. There was another CRI that also provided information that
25 cocaine would be hidden on the property and was known to be on

MATT HUTCHINS - CROSS-EXAMINATION BY MS. MANIGAULT

1 the property and also observed in the past throughout the
2 house.

3 Q. All right. So your -- the the corroboration of the other
4 CRI did that occur within seventy-two hours of you procuring
5 the search warrant?

6 A. Not following what you're asking.

7 Q. You said that you have information corroborated by
8 another CRI.

9 A. Basically the other CRI corroborated what this CRI was
10 saying also in that he would hide it throughout the residence
11 and around the property.

12 Q. My question to you is that information that you received
13 from your other CRI, did you receive that information within
14 seventy-two hours before procuring this (indicating) search
15 warrant ---

16 A. Um, ---

17 Q. --- or was that in 2007 also?

18 A. It was -- that would have been earlier in 2008. Whether
19 it was then -- whether that corroboration took place exactly
20 within seventy-two hours I'm not sure on that but he did
21 corroborate what this informant was tellin' us on on the date
22 of the transaction of the 12th, that that CRI knew him to hide
23 it throughout the residence and on the property.

24 Q. So the reason you got the search warrant that's dated
25 June 13th 2008 is because what?

MATT HUTCHINS - CROSS-EXAMINATION BY MS. MANIGAULT

1 A. On June the 12th 2008, CRI purchased cocaine in the
2 driveway from Mr. Eubanks. CRI knew from past experiences and
3 in the past had observed cocaine in the residence.

4 Q. Okay.

5 A. Um, the C ---

6 Q. I'm sorry. Go ahead.

7 A. --- the CRI provided information that they knew
8 Mr. Eubanks to hide the cocaine throughout the residence and
9 on the property.

10 Q. All right.

11 A. That information had been received prior to also through
12 another informant.

13 Q. All right. So the the relevant information in in this
14 search warrant that you procured from Judge Taylor on June
15 13th 2008 is that according to your affidavit your CRI only
16 observed cocaine being sold and did -- and and then "in the
17 past CRI" was that added, just added for information or was
18 that relevant to obtaining your search warrant?

19 A. You talk "In the past CRI observed quantities of
20 cocaine ---

21 Q. Yes, ---

22 A. --- being stored at?"

23 Q. --- why did you ---

24 A. That's ---

25 Q. --- feel ---

MATT HUTCHINS - REDIRECT EXAMINATION BY MR. HUNTER

1 A. Because the CRI knows in the past that CRI has has
2 observed cocaine inside the residence, um, ---

3 Q. All right.

4 A. --- and this was the residence of Mr. Eubanks.

5 Q. Well you testified that your CRI did not buy res -- did
6 not buy drugs on June 12th 2008 from inside the residence.

7 A. The transaction took place in the driveway ---

8 Q. The driveway.

9 A. --- and then Mr. Eubanks walked inside.

10 Q. All right.

11 THE COURT: Anything further, Mr. Hunter?

12 MR. HUNTER: Yes, Your Honor, just to clear a few things
13 up.

14 THE COURT: Yes, sir.

15 REDIRECT EXAMINATION BY MR. HUNTER:

16 Q. These other buys she's talking about did they occur in
17 October and November of 2007?

18 A. That sounds to be right.

19 Q. What was your investigative procedure while investigating
20 Mr. Eubanks?

21 A. Basically what what the course of investigation was was
22 to identify co-conspirators, others involved in the drug trade
23 and also the source of supplier.

24 Q. Okay. And how long does that usually take?

25 A. Just varies.

MATT HUTCHINS - REDIRECT EXAMINATION BY MR. HUNTER

1 Q. It varies? So is that the difference in time between the
2 November '07 buys?

3 A. Different -- the difference was obtaining information on
4 co-conspirators and also conducting investigations on those
5 co-conspirators.

6 Q. Did you have information that co-conspirators were
7 involved?

8 A. Yes, sir.

9 Q. What information was that?

10 A. Was that at least one other subject, possibly two, was
11 involved in the cocaine trade with them and also was an
12 attempt -- attempting to obtain who the source of supply
13 was.

14 Q. Now Ms. Manigault was goin' over observing cocaine in the
15 residence.

16 A. Um-hum.

17 Q. While she participated in the deal or observing cocaine
18 while she participated in the deal, did she not also
19 observe ---

20 A. Yes, sir.

21 Q. Okay. And what's your investigative procedure with CRI
22 buys? Is this something that's usually put in search
23 warrants?

24 A. Talkin' about the observe?

25 Q. As far as observing.

JOSEPH PHARIS - DIRECT EXAMINATION BY MR. HUNTER

1 A. Yes, sir, that's the standard how you describe describe
2 the transaction and search warrant.

3 Q. So is that the common language your sheriff's office
4 used?

5 A. Yes, sir.

6 THE COURT: Any ---

7 MR. HUNTER: That's all fr ---

8 THE COURT: --- other questions, Ms. Manigault?

9 MS. MANIGAULT: Nothing further, Your Honor.

10 THE COURT: You may step down.

11 (Whereupon, the witness left the stand.)

12 THE COURT: Any additional evidence?

13 MR. HUNTER: Yes, Your Honor. The State would call Joe
14 Pharis.

15 THE COURT: Come forward and be sworn, sir.

16 JOSEPH PHARIS, having been
17 first duly sworn, testified as follows:

18 THE COURT: Have a seat please and state your name for
19 the record.

20 SERGEANT PHARIS: Joseph Pharis.

21 THE COURT: Your witness, Mr. Hunter.

22 DIRECT EXAMINATION BY MR. HUNTER:

23 Q. What do you currently do for a living, Sergeant Pharis?

24 A. I'm a sergeant in the narcotics division at the sheriff's
25 office.

JOSEPH PHARIS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. How long have you been at the sheriff's office?

2 A. I've been at the sheriff's office since February of 2002,
3 roughly eight years.

4 Q. And what were your experience before the sheriff's
5 office?

6 A. I was employed with the City of Spartanburg Police
7 Department for approximately five and a half years and three
8 of them years are spent in narcotics.

9 Q. Okay. So how long have you been in narcotics?

10 A. Coming up on a total of roughly nine and a half, ten
11 years.

12 Q. Okay. What have your assignments in narcotics been over
13 the years?

14 A. Over the years I've been an investigator which is my
15 duties was to investigated individuals involved in the drug
16 trade and since then I've been promoted to a supervisor which
17 is supervising the investigators in their investigations.

18 Q. As a narcotics officer, have you ever had the opportunity
19 to prepare a return for a search warrant?

20 A. Yes, I have.

21 Q. And how many times have you prepared a return?

22 A. Well over a hundred.

23 Q. What's the standard protocol in preparing a return?

24 A. Once we get on the scene and the scene is secure I will
25 find a location in the residence where I can sit down and have

JOSEPH PHARIS - DIRECT EXAMINATION BY MR. HUNTER

1 space to work and collect evidence. The search team will go
2 and search the area that is included on the search warrant.
3 During their search if they locate a item which they believe
4 to be evidence, they will call me, I will come, observe the
5 item where they found it, collect it from that area, bring it
6 back to my workstation and log it on the return portio --
7 portion of the search warrant.

8 Q. Did you follow that protocol in this case?

9 A. Yes, I did.

10 Q. What is the protocol for when a search team finds an item
11 believed to be relevant to the search warrant?

12 A. Like I said they will call me. One the first things we
13 do once I get there there's usually an individual assigned to
14 take photographs. The photographs are taken of the evidence:
15 where it's at, where it was located and then I collect it and
16 once I collect it I will place it into it's a relevant
17 evidence bag whether it be a BEST bag for testing or just a
18 regular evidence bag and then I'll submit it to evidence at
19 the sheriff's office.

20 Q. Who collected the evidence on the search warrant in
21 question?

22 A. I did.

23 Q. Why did you collect the evidence?

24 A. That was just my assigned duty for that day.

25 Q. Okay. And how did you go about collecting the

JOSEPH PHARIS - DIRECT EXAMINATION BY MR. HUNTER

1 evidence?

2 A. Once individual said they found evidence I would go to
3 that location, physically see it there then once again I would
4 collect it from there after it was photographed and bring it
5 back to the workstation work table, log it on the return
6 portion of the search warrant.

7 Q. Okay. So you wrote down what you collected.

8 A. Yes, I did.

9 Q. Okay. Did you leave a copy of the return and the search
10 warrant with anyone?

11 A. Yes, I left it at the residence.

12 Q. Okay. What did you do with the original return?

13 A. The original return I take it in front of a magistrate,
14 at this case I think it's gonna be Judge Paslay, for him to
15 return, to sign off on the return portion of the search
16 warrant and the original search warrant was left at the
17 magistrate's office.

18 Q. Okay. Were you under oath when you left this search
19 warrant with the magistrate's office?

20 A. Yes.

21 Q. And who swore you?

22 A. Judge Paslay before I signed my executing officer's
23 signature.

24 Q. And who did you file it with?

25 A. The ma -- Judge Paslay at the magistrate's office.

JOSEPH PHARIS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. Okay. Now when you collect all this evidence, what do ya
2 do with it?

3 A. Once we's bagged up into either evidence bag which would
4 be a i.e. a BEST bag or however it pertains, it will go to the
5 sheriff's office, put it in the evidence locker.

6 Q. Again, let me go back to the return real quick.

7 A. Okay.

8 Q. The -- what date did you give Judge Paslay the return?

9 A. On the 20th.

10 Q. So that was within the ten days from the issuance of the
11 warrant.

12 A. Yes, sir.

13 Q. Okay. What did you collect at the residence ---

14 A. I collected ---

15 Q. --- and where did you collect it?

16 A. Go back to the starting page here. "From the person of
17 Mr. James Crip Eubanks two clear baggies, both contained white
18 powder substance, a sum of U.S. currency, a BB&G card with the
19 numbers written on the back; from the bedroom of James Crip
20 Eubanks a sum of U.S. currency in a Sentry Safe located in the
21 closet, Sentr -- Sentry Safe located in the bedroom closet of
22 James Crip Eubanks, sum of U.S. currency located under the bed
23 in the bedroom of James Crips Eubanks, from the bedroom of
24 James Crips Eubanks located in a dresser two boxes of sandwich
25 baggies, a SunTrust account statement; from the outbuilding a

JOSEPH PHARIS - DIRECT EXAMINATION BY MR. HUNTER

1 red an blue Igloo box of thirteen clear bags all contained a
2 rock/powder substance, also a black bag containing clear and
3 white baggies; from the kitchen, paperwork and bank
4 information; from the property, a John Deere tractor, an
5 E-Z-GO golf cart, a Ford Mustang yellow and black, a Polaris
6 four wheeler, a Ford F-350 Super Duty 4-door Dually, a white
7 Yukon, a trailer holdin' a grill; from the bedroom of James
8 Crips Eubanks a South Carolina certificate of title from the
9 Department of Motor Vehicles for a '96 BMW 4-door, Allstate
10 paperwork receipt; in the hall closet, State Farm Insurance
11 paperwork, a LG flat screen TV, an RCA TV, a Titan Industrial,
12 I believe that was a air tank, a powerboat PowerBoss Briggs &
13 Stratton, I think 5500, ten horsepower, air tank and then a
14 portable cable 150 PSI and tools from the residence."

15 Q. Have you had an opportunity to go to the evidence room to
16 review the evidence?

17 A. Yes, I have.

18 Q. Was there anything in the evidence that you did not write
19 on the search warrant return?

20 A. No, I don't believe so. I believe everything is
21 collected.

22 Q. Was there a surveillance system that's not on the return
23 that is in evidence?

24 A. Yes, you're right.

25 Q. Was that recovered at the scene?

JOSEPH PHARIS - DIRECT EXAMINATION BY MR. HUNTER

1 A. Yes.

2 Q. And why is that not on the return?

3 A. Best of my knowledge I just forgot to put it on there
4 when I collect it.

5 Q. Is there anything on the return that was not collected?

6 A. Besides the the, uh, ---

7 Q. Was there anything that's actually on the return that was
8 not presented to evidence?

9 A. No.

10 Q. What about the the baggies?

11 A. The -- I have two different kinds of of baggies. There
12 was a picture taken of Glad baggies which is a smaller size
13 than the -- a box of multiple boxes of baggies which I
14 collected.

15 Q. Okay. But the Glad baggies that are mentioned in
16 this ---

17 A. Is not on here.

18 Q. Okay. Have you had an opportunity to review this
19 (indicating) box?

20 MR. HUNTER: Your Honor, if I may propose to admit this
21 for the purpose of this hearing as one evidence exhibit, the
22 items in this box.

23 THE COURT: Is that the items that were returned on
24 the ---

25 MR. HUNTER: Minus minus the large items as the cars

JOSEPH PHARIS - DIRECT EXAMINATION BY MR. HUNTER

1 and ---

2 THE COURT: Oh, okay. Any objection?

3 MR. HUNTER: For the purpose of this hearing.

4 THE COURT: Any objection?

5 MR. HUNTER: You can -- here -- if you wanna ---

6 (Whereupon, defense counsel examined the exhibit.)

7 (Whereupon, a discussion was held off the record.)

8 MS. MANIGAULT: I reserve an objection for the purpose of
9 this hearing.

10 THE COURT: Being other than the purpose of this hearing
11 is that what you're saying?

12 MS. MANIGAULT: Correct, Your Honor.

13 THE COURT: Okay. It'll be admitted solely for the
14 purpose of this ---

15 MR. HUNTER: Solely for ---

16 THE COURT: --- hearing and will be marked as one
17 exhibit.

18 MR. HUNTER: Yes, Your Honor.

19 (Box of evidence marked State's Exhibit No. 1 and
20 admitted into evidence for in camera hearing.)

21 BY MR. HUNTER:

22 Q. You had an opportunity to review the items in this box?

23 A. Yes, sir, I have.

24 Q. What are the items in this box?

25 A. Uh, take a look inside. You have the Igloo cooler that I

JOSEPH PHARIS - DIRECT EXAMINATION BY MR. HUNTER

1 recovered, you have the bank bag Ziploc bag that contains
2 multiple pieces of paperwork, just briefly some of 'em are the
3 State Farm Insurance paperwork, then you have a black Day
4 Planner that's also it contains some paperwork inside it.

5 Q. Do those items -- are they in the same or substantially
6 the same condition as you last saw them on June 18th?

7 A. Yes, sir.

8 MR. HUNTER: Your Honor, I believe we've already admitted
9 but we would offer to admit these items into evidence for ---

10 THE COURT: They're admitted.

11 MR. HUNTER: --- the purpose of this hearing.

12 THE COURT: They're already in for purposes of this
13 hearing.

14 MR. HUNTER: Yes.

15 BY MR. HUNTER:

16 Q. First two items that you retrieved from the search
17 warrant what were they again?

18 A. From the person of James Crip Eubanks two clear baggies
19 both contained a white powder substance, sum of U.S. Currency
20 and a BB&G card with the numbers written on the back.

21 Q. And from Item No. 7?

22 A. From the outbuilding a red and blue Igloo box, thirteen
23 clear bags all containing a rock/powder substance.

24 Q. Sergeant Pharis, let me show you what's been premarked
25 State's Exhibit 2. Do you recognize that?

JOSEPH PHARIS - DIRECT EXAMINATION BY MR. HUNTER

1 A. This would be the BEST bag which the items believed to be
2 cocaine white powder substance was put in for further testing
3 at the lab.

4 Q. Okay. Did you collect that?

5 A. Yes, I did.

6 Q. What did you do afterwards ---

7 A. After I ---

8 Q. --- after collecting it?

9 A. After I collect it I sealed it in the BEST bag, signed it
10 saying I was the person sealin' the BEST bag, turned it into
11 evidence for further testing.

12 Q. Is it in the same or substantially the same condition as
13 you remember it then?

14 A. Of course after testing or during the testing they took
15 it outta the individual thirteen baggies but it appears that
16 the thirteen baggies are also inside the sealed bag.

17 Q. Does it appear to contain the two baggies also found on
18 Mr. Eubanks?

19 A. Yes.

20 Q. And it's the same or substantially the same condition?

21 A. Yes, sir.

22 MR. HUNTER: Your Honor, at this time we would offer
23 State's Exhibit -- is it 3, 4?

24 MR. MCCARTY: Two.

25 THE COURT REPORTER: Two.

JOSEPH PHARIS - DIRECT EXAMINATION BY MR. HUNTER

1 MR. HUNTER: --- 2 into evidence for purpose of this
2 hearing.

3 MS. MANIGAULT: We object.

4 THE COURT: Object to it being admitted for ---

5 MS. MANIGAULT: Yes.

6 THE COURT: --- this hearing? What's the ---

7 MR. HUNTER: On what grounds?

8 THE COURT: --- objection?

9 MS. MANIGAULT: Your Honor, the Court is aware of my
10 motion is to exclude the evidence, it's ---

11 THE COURT: Exclude the evidence from what?

12 MS. MANIGAULT: From the search warrant.

13 THE COURT: This this is -- I'm gonna admit it.

14 MS. MANIGAULT: Yes, sir.

15 THE COURT: It's in for this hearing not for the trial.

16 (State's Exhibit No. 2, drugs, admitted into evidence.)

17 MR. HUNTER: Yeah.

18 BY MR. HUNTER:

19 Q. All right. Just one final question. What did you, I
20 believe I asked you earlier but what did you do after you
21 sealed that bag?

22 A. After I seal it and sign it I drop it off in evidence
23 drop locker to be collected by the chemist for testing.

24 Q. Okay. No further questions.

25 THE COURT: Your witness.

JOSEPH PHARIS - CROSS-EXAMINATION BY MS. MANIGAULT

1 MS. MANIGAULT: Thank, Your Honor.

2 CROSS-EXAMINATION BY MS. MANIGAULT:

3 Q. Mr. Pharis, ---

4 A. Yes, ma'am.

5 Q. --- Sergeant Pharis, ---

6 A. Yes, ma'am.

7 Q. --- all right. You were, you were present when the
8 search warrant was executed on June 18th 2008?

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

10 Q. And did you leave a copy of the search warrant with the
11 defendant or give the defendant a search warrant or ---

12 A. I left ---

13 Q. --- was one provided for him?

14 A. --- I left a copy at the residence which is stated at the
15 top of the return where I wrote, "At the residence was left on
16 the table."

17 Q. Okay. You left it at the residence?

18 A. Yes, ma'am.

19 Q. All right. And I think you testified when you did the
20 return you also left a copy of the return at the residence?

21 A. Yes, ma'am.

22 Q. Now you testified that you went back for the judge to
23 sign your return on June the 20th. Are you sure of that date
24 of 2008?

25 A. Yes, ma'am.

JOSEPH PHARIS - CROSS-EXAMINATION BY MS. MANIGAULT

1 Q. And you would have been the proper person to have the
2 judge sign off is that correct?

3 A. Yes, ma'am.

4 Q. Now you said that you were assigned to collect the
5 evidence on that day, ---

6 A. Yes, ma'am, that was my duties ---

7 Q. --- on ---

8 A. --- for that day.

9 Q. --- June 28th at the residence of James Eubanks.

10 A. June the 18th.

11 Q. I'm sorry. June 18th.

12 A. Yes, ma'am.

13 Q. All right. Now so did you find contraband yourself or
14 did other people find it and tell you where it was?

15 A. The search team would search the residence, find the
16 evidence then call me to collect the evidence after it was
17 photographed.

18 Q. All righty. All right. So the search team would find it
19 and point it out to you and then you would go to that area.

20 A. Yes, ma'am.

21 Q. All right. Do you recall how long it it took you on the
22 18th to log in your return?

23 A. It was several hours.

24 Q. Several hours? So the search team was continually
25 working throughout the house?

JOSEPH PHARIS - CROSS-EXAMINATION BY MS. MANIGAULT

1 A. Yes, ma'am, and the property.

2 Q. And the property. All right. I believe you said that
3 everything's listed on the return except the surveillance
4 system that was called to your attention?

5 A. Yes, ma'am.

6 Q. Are the television listed on Page 2 of your return?

7 A. Yes, ma'am, that be Item looks like 12 and 13. Twelve
8 would be the LG flat screen with the serial number and the 13
9 is the RCA TV serial.

10 Q. All right. Have have you listed anything on here
11 that's -- that you didn't take that you're aware of?

12 A. There was, let's see, there was baggies that there was a
13 photograph taken of that I did not collect at the time is Glad
14 sandwich baggies.

15 MS. MANIGAULT: May I approach, Your Honor, the
16 witness?

17 THE COURT: Yes, ma'am, you may.

18 (Whereupon, a discussion was held off the record.)

19 MS. MANIGAULT: Beg the Court's indulgence.

20 THE COURT: Yes, ma'am.

21 BY MS. MANIGAULT:

22 Q. All right. What's the date -- what was the date that
23 that you, that ya'll got the search warrant?

24 A. That was executed or it was ---

25 Q. Yes, sir.

JOSEPH PHARIS - CROSS-EXAMINATION BY MS. MANIGAULT

1 A. The execution is June the 18th of 2008.

2 Q. 2008? And your return?

3 A. My return was signed by the judge on the 20th of June of
4 2008.

5 Q. All right. So you filed your return with the judge on
6 June 29th 2008 is that correct?

7 A. Yes, ma'am.

8 Q. And the solicitor's office was provided with that return
9 on what, on what day? Do you know?

10 A. Uh, ---

11 Q. When did you provide information to the solicitor's
12 office?

13 A. It -- a copy of the whole search warrant and return would
14 have been given to the solicitor's office in a, in a case
15 file. I don't know what day they got that.

16 Q. Okay, were you ---

17 (Whereupon, the defendant's cell phone rang.)

18 MS. MANIGAULT: Sorry, Your Honor.

19 (Whereupon, a discussion was held off the record.)

20 THE DEFENDANT: I'm sorry, sir.

21 THE COURT: Yes, ma'am.

22 MS. MANIGAULT: Sorry, Your Honor.

23 BY MS. MANIGAULT:

24 Q. So were you responsible for getting the case file or was
25 Mr. Hutchins responsible for the case file?

JOSEPH PHARIS - REDIRECT EXAMINATION BY MR. HUNTER

1 A. Investigator Hutchins was responsible for the case file.

2 Q. All right but on August 11, 2008 would the case file have
3 been in the solicitor's office by then with the return?

4 A. I could not answer that question.

5 Q. Okay. Thank you.

6 THE COURT: Anything further, Mr. Hunter?

7 MR. HUNTER: Yes, Your Honor.

8 REDIRECT EXAMINATION BY MR. HUNTER:

9 Q. You had an opportunity to review the certified true copy
10 from the magistrate's office?

11 A. Yes, sir.

12 Q. And that's signed at the bottom by Judge Paslay.

13 A. Yes, sir.

14 Q. On what date?

15 A. On June the 20th of 2008.

16 Q. Okay. When you have a case file, do you have the
17 certified copy or do you have the copy before it's signed?

18 A. The copy before it's signed.

19 Q. Okay. So when you provide our office with a copy
20 it's the ---

21 A. Unsigned copy.

22 Q. Okay. No further questions.

23 THE COURT: Any other questions, Ms. Manigault.

24 MS. MANIGAULT: No questions, Your Honor.

25 THE COURT: You may step down.

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1 (Whereupon, the witness left the stand.)

2 MS. MANIGAULT: State have any additional witnesses?

3 MR. HUNTER: That's it, Your Honor.

4 THE COURT: Defense wish to call any witnesses?

5 MS. MANIGAULT: Your Honor, we'd request that the Court
6 allow us to enter the video from the June 12th 2008 buy into
7 the record.

8 MR. HUNTER: Your Honor, we object to that. I mean, that
9 that is going -- giving him the identity of the CI which
10 you've already ruled upon. The video is just the basis for
11 the search ---

12 THE COURT: What ---

13 MR. HUNTER: --- warrant.

14 THE COURT: --- what will it show that that I need to see
15 concerning the the issuance of the vid -- I mean the search
16 warrant?

17 MS. MANIGAULT: Your Honor, the the testimony from both
18 officers have again provided the Court that the confidential
19 informant is materially involved in this case on ---

20 THE COURT: My my ruling ---

21 MS. MANIGAULT: --- issues of bench warrant.

22 THE COURT: --- my ruling before was that this particular
23 individual apparently was not a witness as to the results of
24 the search. The only purpose for the CI, I believe, CRI, was
25 to obtain, to obtain the search warrant which was later

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1 executed. The CRI was not present and was not involved in any
2 of the charges of trafficking, I think, which is before the
3 Court.

4 MS. MANIGAULT: Correct.

5 THE COURT: The CRI made a buy. There's no evidence
6 be -- been presented even that the the amount of the buy would
7 constitute trafficking and my ruling was that since the CRI is
8 not a witness as to the guilt or innocence of the defendant
9 for the charges before this court that they didn't have to
10 reveal that person's identity. Now the question is the
11 sufficiency of the affidavit and the information supplied ---

12 MS. MANIGAULT: Yes.

13 THE COURT: --- to the magistrate.

14 MS. MANIGAULT: Yes, sir.

15 THE COURT: There's no evidence that the video was placed
16 with the magistrate. I haven't heard that testimony yet if
17 that occurred. What occurred was the officer appeared and
18 gave an affidavit based on information supplied by the CRI
19 which included the buy which he said he observed firsthand on
20 the equipment. He didn't watch the recording, he was I think
21 the testimony was he was there and watched the buy take place,
22 not not on a, on a -- some type of electronic device.

23 MR. HUNTER: Your Honor, he he did not -- he observed it
24 afterwards, that was ---

25 THE COURT: Okay ---

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1 MR. HUNTER: --- his testimony.

2 THE COURT: --- so he saw it after. But again, what what
3 purpose would that serve as far as what the magistrate based
4 his decision on?

5 MS. MANIGAULT: It would serve no purpose, Your Honor, as
6 far as the magistrate basing his decision.

7 THE COURT: Okay. I'm not gonna allow it to go in at
8 this time.

9 MS. MANIGAULT: Thank you.

10 THE COURT: Anything else that you wanna have put in from
11 the defense's perspective?

12 MS. MANIGAULT: No, Your Honor, we would just renew our
13 motion at the ---

14 THE COURT: All right.

15 (Whereupon, a discussion was held off the record.)

16 THE COURT: Do you wanna go -- you wanna make an
17 argument?

18 MR. HUNTER: Oh, on this, yes, Your Honor. I'm providing
19 the defense with a copy of State vs. Dupree as well as ---

20 THE COURT: Pass it up.

21 MR. HUNTER: --- Your Honor.

22 (Whereupon, counsel handed the document to the Court.)

23 MR. HUNTER: Your Honor, this is a 2003 South Carolina
24 Court of Appeals case ---

25 THE COURT: Yes.

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1 MR. HUNTER: --- which rules that a controlled buy by
2 itself can give rise to probable cause. It states -- on
3 Page 4 lists a a litany of cases noting that a controlled buy
4 with sufficient corroboration under *Gates* even though the
5 affidavit failed to describe in explicit detail the police
6 surveillance of the informant during a controlled buy. I
7 believe that's exactly the point of this case. While the
8 affidavit did not describe exactly what Mr. Hutchins did
9 searching the car as other affidavits did, it still ruled that
10 the controlled buy was sufficient for the affidavit to give
11 rise to probable cause. As you're aware a magistrate judge
12 deals with probabilities. He only needs to have rise to give
13 to probable cause. We're not talkin' about reasonable doubt
14 here. We believe the affidavit and testimony from
15 Mr. Hutchins and Mr. Pharis gave rise to probable cause and
16 attuch -- attached a neutral magistrate's decided so and we
17 would ask the Court not to vacate his Judgment.

18 THE COURT: Anything further, Ms. Manigault?

19 MS. MANIGAULT: Your Honor, in the *State vs. Leroy*
20 *Dupree*, the case that the State just handed up to you, the
21 Court has some language in there that talked about the
22 establishment of the informant having previously supplied
23 accurate information and so we don't have that basis to go on
24 with this informant except the conclusionary statement that
25 has been submitted in the affidavit of the search warrant. We

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1 agree that the Court has said reliability can also be
2 established by independent verification; however, there was no
3 independent verification in this case.

4 MR. HUNTER: Your Honor, this ---

5 THE COURT: I'm I'm gonna, I'm gonna disagree.

6 MR. HUNTER: Okay.

7 THE COURT: I'm gonna rule on admissibility which means
8 I'm gonna uphold the warrant. All right anything else? I've
9 I've upheld the search warrant and ---

10 MR. HUNTER: Nothing from the State, Your Honor.

11 THE COURT: Anything further from the defense?

12 MS. MANIGAULT: Your Honor, we have submitted a motion
13 for -- your ruling is upholding the search warrant therefore
14 allowing the evidence of the drugs in.

15 THE COURT: Yes, ma'am.

16 MS. MANIGAULT: We have submitted a a motion regarding
17 the disciplinary action of any officers involved in the
18 search, particularly Investigator Matt Hutchins and Mr. Pharis
19 since they're the two that testified here today.

20 THE COURT: Let me ask a question.

21 MS. MANIGAULT: Yes.

22 THE COURT: Are you aware of information that that might
23 generate?

24 MS. MANIGAULT: Your Honor, not information I can
25 validate without the Court inquiring into it.

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1 THE COURT: All right.

2 MS. MANIGAULT: Um, ---

3 THE COURT: Do you have ---

4 MS. MANIGAULT: --- I would ask ---

5 THE COURT: --- do you have enough information to form a
6 belief concerning any information that it might generate?

7 MS. MANIGAULT: Yes, sir, I ---

8 THE COURT: I'm tryin' to figure out exactly where we're
9 goin' with this.

10 MS. MANIGAULT: Yes, sir. I have information that that I
11 would ask the Court to inquire even if you don't allow me to
12 see ---

13 THE COURT: Well because I may do an in, ---

14 MS. MANIGAULT: --- the information that ---

15 THE COURT: --- I may do ---

16 MS. MANIGAULT: --- the Court would view.

17 THE COURT: --- an in camera review of the records to see
18 if I find something that goes to the issue that you're talking
19 but I'm not sure exactly what issue that goes to so ---

20 MS. MANIGAULT: Your Honor, the the issue goes to the
21 integrity of the officer -- officers, any disciplinary action
22 that they've had regarding their job either as nar -- narcotic
23 officers or on the force at the Spartanburg County Sheriff's
24 office and so the information I have I cannot verify without
25 the Court inquiring into it and so I would make this motion

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1 asking the Court that even if you do not allow me to see that
2 the Court would review the information that I've asked for.

3 THE COURT: Let's let's see where the State is.

4 MR. HUNTER: Yes, Your Honor. While I reviewed, I don't
5 believe there's a particular South Carolina case on this
6 issue, I do have a case from the Tennessee Court of Appeals
7 where it discusses this rule and adopts, it's *State of*
8 *Tennessee vs. Butts*, excuse me. He -- they ruled that the
9 defense has to have a strong showing of materiality before the
10 police personnel records would even be viewed in an in camera
11 inspection. I believe she's just going on a fishing
12 inspectio -- expedition. She has not stated any reasons why
13 she believes these records are gonna reveal anything. She's
14 made no showing much less a strong showing.

15 MS. MANIGAULT: May I respond?

16 THE COURT: Yes, ma'am, I want you to.

17 MS. MANIGAULT: Thank, Your Honor. Your Honor, this case
18 when originally, when my client was originally arrested, this
19 case was sent up to the federal courts.

20 THE COURT: Um-hum.

21 MS. MANIGAULT: It remained there for approximately six
22 or seven months or a a time period and was kicked back down as
23 not not wanting to touch it. The information we received, I I
24 do not wanna malign any officer and that's why I'm asking the
25 Court to verify were there a problem with the evidence or the

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1 drugs or or his procedure and investigation, that's only the
2 information I have. I cannot say that it is accurate or not
3 accurate so ---

4 THE COURT: That stuff doesn't go to ---

5 MS. MANIGAULT: --- I'm asking the Court to inquire.

6 THE COURT: --- to disciplinary actions. I'm I'm -- if
7 there was some problem with the way that the investigation was
8 handled or some problem with the the handling of the drugs or
9 something of that nature, I'm not sure that goes to
10 disciplinary actions, that -- that's what I understood that
11 you were looking for.

12 MS. MANIGAULT: Your Honor, yes, sir, you're correct. I
13 was looking for that. I'm going to the point where if he has
14 been suspended or for days with pay or without pay because of
15 some action with evidentiary room properties or whatever;
16 monies, drugs ---

17 THE COURT: It has to do with this case?

18 MS. MANIGAULT: Any case not just this case because it
19 goes to the integrity of the officer as again, I submit to the
20 Court that I have no credible information I can give you in
21 writing or an affidavit from an individual to present to you.
22 The only thing I have is information that has been given to me
23 orally and I cannot go any further than that and so I'm asking
24 the Court to inquire into the matter in camera.

25 THE COURT: You might wanna ask the credibility of the

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1 oral information that you've received since you've tested the
2 State's credibility of its informant. Is this somebody who
3 ha -- is in a position to know these things and would have
4 been involved directly on this? Is this somebody who heard
5 from their brother's cousin that somethin' mighta happened?

6 MS. MANIGAULT: No, sir.

7 THE COURT: Do you follow what I'm saying?

8 MS. MANIGAULT: Yes, sir. No, this is somebody who wo --
9 who had been -- who has been involved in this case with but
10 not a part of the Spartanburg County Sheriff's Office but was
11 involved in the case when it was out of that office but the
12 Spartanburg officers were still a part of the case.

13 MR. HUNTER: I believe ---

14 THE COURT: Mr. McCarty, you wanna take this?

15 MR. HUNTER: Yes. I believe she's talkin' about Agent
16 Donahue [sic]. Is this ---

17 THE COURT: Who is Agent Donahoo? I haven't met him yet.

18 MR. MCCARTY: You're Honor, I I don't know what she, at
19 this point what type of information she's tryin' to elicit.
20 At this point it just sounds like conjecture as to whether or
21 not somebody may have had something on their record in the
22 past that might impugn their credibility when they testify.
23 There's nothing specifically, I'm sorry, Eddie, there's
24 nothing specifically alleged ---

25 THE COURT: Are you -- are are we talkin' about -- who we

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1 talkin' about? Give me a name.

2 MS. MANIGAULT: We're talking about the officers I listed
3 on my motion, it's every officer that's on the return for the,
4 for the search warrant.

5 THE COURT: Well now you got ---

6 MR. MCCARTY: And and I respectfully ask ---

7 THE COURT: --- you got suspicion about everybody that
8 was on the return of the search search warrant?

9 MS. MANIGAULT: Your Honor, we we listed those names and
10 the only two officers they presented today so I've narrowed my
11 motion to would only include Sergeant Joe Pharis and
12 Investigator Matt Hutchins.

13 THE COURT: Okay. We've kinda narrowed it down now.

14 MS. MANIGAULT: Yes, sir.

15 MR. MCCARTY: Your Honor, again, I I would have to ask
16 the Court to find this more than ju -- more along the lines of
17 just a fishing expedition. The only thing I can provide to
18 you today as to why or why not that case may have been fe --
19 not prosecuted federally is just by what Agent Hutchins
20 himself has been informed of and the only reason and and I can
21 honestly tell the Court I know one of the participants
22 involved was former U.S. attorney who's no longer with the
23 U.S. Attorney's Office and that may have been part of some of
24 the case. We may not know the specific reason for why it
25 wasn't prosecuted federally. If she has that reason, I'd ask

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1 that it be revealed at least so we can review it.

2 MS. MANIGAULT: The only thing I can say is the case
3 was -- the prosecutor at that time was Regan Pendleton and she
4 was there when the case was returned and was there
5 subsequently several months afterwards so that that would not
6 be the reason because she left. Um, ---

7 MR. MCCARTY: I don't know ---

8 MS. MANIGAULT: --- I have ---

9 MR. MCCARTY: --- what the reason is, Your Honor. We
10 don't know ---

11 THE COURT: Not sure I have much to go on, Ms. Manigault.
12 I don't even know what I'm looking for.

13 MS. MANIGAULT: Your Honor, all right we're dealing with
14 a a drug case here, a trafficking cocaine ---

15 THE COURT: Yes, ma'am.

16 MS. MANIGAULT: --- and any reason that either of these
17 two officers would have been disciplined dealing with
18 evidentiary procedures or sheriff's office procedures the
19 collection of evidence or the storing of evidence or the
20 proper maintaining -- maintenance of evidence, I'm --
21 that's ---

22 THE COURT: Well, ma'am, I ---

23 MS. MANIGAULT: --- what I'm looking for.

24 THE COURT: --- I can understand how that would be an
25 issue if it involved this case.

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1 MS. MANIGAULT: Yes, sir.

2 THE COURT: Now if there was a disciplinary matter
3 involving honesty or dishonesty, that could go to credibility
4 but I haven't -- those words haven't come out of your mouth
5 about credibility or honesty, it came outta mine. You're
6 talking about not following evidence procedure perhaps in some
7 other case, while that's interesting, I don't know the
8 relevance to this case. It's like sayin', Well he might have
9 sped down the road two weeks ago so he musta sped yesterday.
10 I'm not sure that's -- the relevance of that is not unless you
11 see him and when somebody's charged with a crime, for example,
12 I can't bring in the fact that they've been convicted the same
13 crime a few times in the past unless you can show motive or
14 common purpose, there's gotta be a link between 'em and just
15 because there may have been some disciplinary action in the
16 past on the handling of evidence in some other case, that's
17 interesting but I'm not even sure it goes toward relevant
18 information in this case. Now if there's a problem 'cause
19 there was disciplinary action involved in the handling of
20 evidence in this case, whole new ball game, I'll be glad to
21 talk -- look into that, but you're not -- I haven't heard you
22 make that accusation at this point in time. And again, if
23 it -- if there's an accusation that you're saying that
24 involves somehow credibility or reliability of information
25 that they've provided in the past, credibility of a witness is

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1 always an issue in a case and that's another thing that might
2 peek my interest enough to go say, Show me what you got, but
3 so far it's it's what you described to me is very nebulous and
4 it's not in any way directly connected to the issues that'll
5 be involved in the trial of this case and so I'm I'm lookin'
6 for a little more flesh to your motion, otherwise I'm gonna
7 have to say it's "nebulous" was the word that ---

8 MS. MANIGAULT: Thank, Your Honor. Your Honor, I I
9 cannot and I will not say to the Court anything further than I
10 have said. I I I just believe that I cannot ---

11 THE COURT: All right. At this time I'll ---

12 MS. MANIGAULT: --- do that because I'm ---

13 THE COURT: --- I'm I'm -- based on what I've heard ---

14 MS. MANIGAULT: Yes, sir.

15 THE COURT: --- I'll deny the motion.

16 MS. MANIGAULT: Thank you.

17 THE COURT: All right. Anything else?

18 MS. MANIGAULT: That's it.

19 MR. HUNTER: Nothin' from the State, Your Honor.

20 MS. MANIGAULT: That's it, Your Honor.

21 THE COURT: All right. We're -- we've been going for a
22 little while. We'll take about a te minute break and then
23 we'll get started with the trial. The Court's in recess for
24 about ten minutes.

25 MR. MCCARTY: Thank you, Your Honor.

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1 (Whereupon, a recess was taken.)

2 THE COURT: All right. Looks like everybody present.
3 The State ready to proceed?

4 MR. HUNTER: Yes, Your Honor.

5 THE COURT: Defense ready to proceed?

6 MS. MANIGAULT: Yes, sir.

7 THE COURT: Bring the jury in.

8 (The following takes place in the presence of the jury.)

9 THE COURT: All right. The record will reflect that all
10 jurors have returned to the courtroom. First of all, I wanna
11 thank you for your patience, although the bailiffs tell me
12 that you handled it well, but I do appreciate your patience
13 while we had to take care of preliminary matters and at this
14 point in time we're now in a position to begin the actual
15 trial of the case so at this time, madam clerk, I'm going to
16 ask that you swear the jury panel for me.

17 (Whereupon, the jury panel was sworn.)

18 THE COURT: All right. If there were any members of the
19 jury panel that have failed or refused to take the oath that
20 the clerk just administered, please stand.

21 (No response.)

22 THE COURT: The record will then reflect that all jurors
23 have been sworn concerning their duties in this case. Before
24 we begin the trial of the case I'm going to go over some
25 matters with you that would that perhaps I feel that you

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1 should know about. I do know there's a couple of people here
2 that have been on a jury with me already but some of you this
3 may be the first time that you've been selected on a jury this
4 week or even ever and I'm gonna speak to those of you first of
5 all who probably have never been in this position before
6 actually serving on a jury in the trial of a criminal case
7 such as this one. For those of you who don't actually attend
8 court sessions or haven't been in this position before, it's
9 my belief that probably most of what you know about our jury
10 system you would have gathered from watching television shows
11 or movies or reading books or maybe from school, things of
12 that nature, and while all of those sources of information are
13 interesting in the case of TV shows and books and movies, they
14 have interesting plots and excellent acting and story lines
15 that keep you interested throughout the process that I tell
16 people it never ceases to amaze me that on a television show
17 they can try a case all the way to its conclusion in the space
18 of an hour and still have time for commercials so obviously
19 they they take a little license with what goes on in a real
20 courtroom, it's not exactly the way it really happens. Those
21 sources of information are intended primarily for your
22 entertainment, they're intended to keep you riveted to the TV
23 set or to the book. What you're engaged in today however is
24 intended for anything but your entertainment. What you're
25 engaged in is a fundamental part of our democracy and I hope

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1 you appreciate that. In most countries around the world if
2 you look at the justice systems that function in those
3 countries, you would find that most of them do not allow the
4 direct participation by citizens in the important decisions
5 such as guilt or innocence that go on in courtrooms in those
6 countries. Our system is somewhat unique in that respect when
7 you take the total world as the picture and what you're
8 engaged in then is a search for the truth, it's an effort to
9 see that justice is done between the parties that are before
10 this court. You can -- this courtroom is a place of honor,
11 it's dedicated to the preservation of citizen's rights through
12 our justice system which many people believe is one of the
13 best justice systems ever devised on the face of this earth.
14 It's not a perfect justice system, nothing that's devised by
15 men and run by men is ever perfect, but it's an effort to see
16 that justice is done between the parties that are before this
17 court. The attorneys that are going to appear during this
18 trial are here as advocates for their clients, they're here to
19 represent their client's interest before you and you could
20 expect from them to act in a reasonable and a professional
21 manner in doing so but first and foremost they are also
22 officers of this court. At some point in time they have
23 appeared before this court or some other court and taken an
24 oath to assist you in your search for the truth. I'll remind
25 you too that you have now come before this court, you've taken

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1 an oath to decide this case based upon the evidence and the
2 law that's presented during this trial, you too are expected
3 to act in a reasonable, ethical and a professional manner in
4 the execution of your responsibilities as jurors before this
5 court. It's my personal belief that service on a jury in our
6 country is the second greatest service that a citizen can
7 render to your government the first of which being service in
8 the military so I wanna thank each of ya for your willingness
9 to come forward and serve on a jury. If it weren't for good
10 citizens such as yourselves who are willing to accept that
11 responsibility, our system couldn't function as it was
12 designed by our forefathers under the constitution and the
13 laws of this state and the United States so again, thank you
14 for your willingness to come forward and participate in our
15 system this week.

16 What I'm telling you now is not intended to be a charge
17 concerning the law in this case. I will -- it'll be my
18 responsibility, once all the arguments are made, the evidence
19 has been presented, to charge you concerning the law in this
20 case. This is an effort to explain to ya the roles and
21 responsibilities that each of us has in the, in the -- in this
22 trial today and to give you some idea of the procedure that we
23 will follow in in conducting the trial before you so this is
24 not intended to be a charge concerning the law.

25 Now I've already gone over with you the indictment in

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1 this case, I read that to you earlier, I won't read it to ya
2 at this time. I'll go back over that with you in -- at the
3 end of the case during my charge on the law but I've explained
4 to you that an indictment is simply the document that brings
5 the case before this court, it contains the charge that has
6 been lodged against the defendant, it informs me of the charge
7 to be tried in this court today, it informs the defendant of
8 the charge that has been lodged against him. To that
9 indictment the defendant has pled not guilty and by that plea
10 under the law and the constitution of this state the burden
11 now is upon the State to prove the defendant's guilt by proof
12 beyond a reasonable doubt, and I'll explain all of those
13 concepts to you again in more detail when I go over the law
14 with you at the close of the trial, but it will be your
15 duties, ladies and gentlemen, at the close of this trial to
16 decide whether or not the State has met that burden of proving
17 the indictment by proof beyond a reasonable doubt.

18 Now your purpose therefore as jurors is to find and
19 determine the facts in this case and under the law and the
20 constitution of this state you are the sole judges of the
21 facts in this case. I am the presiding officer of the trial
22 and it's my responsibility to see that the proper procedure is
23 followed in handling the case, to rule on questions of the
24 admissibility of evidence or the appropriateness of questions
25 that have been asked during the trial but I hope that you

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1 don't take from anything that I say in the discharge of my
2 duties that I have any opinion as to how you determine the
3 facts in this case. I will tell you now the law doesn't allow
4 me an opinion on that subject and I don't have an opinion as
5 to how you determine the facts in this case. You are the sole
6 judges of the facts in this case. You are to determine from
7 the facts and the testimony that you hear during this trial
8 and the other evidence brought into the record through that
9 testimony it's your duty to determine what inferences you feel
10 might be properly drawn from the evidence that's presented and
11 it's especially important that you perform your fact-finding
12 duty diligently and conscientiously because I'll tell you
13 under our system of justice ordinarily there's no means by
14 which an erroneous determination of facts made by a jury can
15 be corrected.

16 Now the same law that makes you the sole judges of the
17 facts makes me the sole judge of the law in this case. The
18 law as I give it to you at the close of the trial is the only
19 law that you can use in making a decision in this case and I
20 will instruct you that if you walked into the courtroom today
21 with a notion as to what the law is or what the law ought to
22 be, you should leave that notion outside of the jury room
23 before you begin your deliberations. Under your oath as
24 jurors it's your responsibility to accept the law as I give it
25 to you, exactly as I give it to you, then apply it to the

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1 facts as you find them to be, you should then be in a position
2 to render a just and a true verdict at that -- at the close of
3 the trial.

4 Now it'll be your duty to determine the facts in this
5 case from the evidence that you hear during the trial in this
6 case and therefore it will be your responsibility to determine
7 the truth or the credibility of the evidence that you hear
8 during the trial. Truth and believability mean basically the
9 same thing and I will tell you in determining the credibility
10 or the believability of the witnesses as they testify during
11 the trial that you should use your own good common sense in
12 doing that. Every day each of you makes a decision as to what
13 you choose to believe and what you choose not to believe,
14 again, using your own good common sense so therefore I would
15 ask ask you at the close of the trial to be in a position to
16 determine the credibility or the believability of the witness
17 who testified. As the sole judges of the facts you can
18 believe all of what a witness tells you, none of what a
19 witness tells you or part of what a witness tells you. You
20 can believe one witness against all the others who testify or
21 all the others against the one because you're the sole judges
22 of the facts, you're the sole judges of the credibility and
23 believability of the witnesses. Using your own good common
24 sense, you can apply such factors in making that decision as
25 to whether or not a witness has a stake in the outcome of the

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1 case, whether or not that witness may have a bias or prejudice
2 one way or the other, whether or not the witness actually has
3 the ability to know the facts about which the witness is
4 testifying and I would urge you to observe the witnesses as
5 they testify: the way they speak, how they deliver their
6 testimony. You have a right to consider anything that's in
7 the record of the case including the demeanor of the witnesses
8 in determining the credibility or the believability of the
9 witnesses who will testify in this trial so therefore I would
10 urge you to pay close attention to what goes on during the
11 trial. Try not to let your thoughts wander. Watch the
12 attorneys, watch the witnesses as they testify, that should
13 put you in a position at the close of the trial when
14 deliberating with your other juries -- jurors to to make a
15 good decision or a rational decision concerning credibility
16 and believability of witnesses who testify during this case.

17 Now the only evidence that will be presented during the
18 trial is the testimony of the witnesses who will testify who
19 are sworn to tell the truth and testify from the witness stand
20 and the other documents that come into the record during
21 during their testimony.

22 Now I'm I'm going to caution ya that in the exercise of
23 my duties from time to time there might be an issue that would
24 come up that I believe would involve a discussion concerning a
25 matter that I believe may not be admissible in evidence; in

MOTIONS AND MATTERS

1 other words, a matter that shouldn't be put into the record.
2 If I believe a discussion like that's about to take place
3 doing my job as the presiding officer to see that you only
4 consider properly admissible evidence in making your decision,
5 I'll ask you to step outside the jury room while the lawyers
6 and I have a discussion about that particular issue. Once
7 we've completed discussion I'll bring you back into the
8 courtroom and I'll make a ruling. I will tell you now don't
9 take from the fact that I've asked you, asked you to step
10 outside of the courtroom -- room during that discussion again
11 that I have an opinion as to how you determine the facts, it's
12 simply me doing my job to see to it that only properly
13 admissible evidence comes into the record for you to consider
14 in reaching your decision.

15 Now in a few minutes I'm going to allow the attorneys to
16 start the case with what's called an "opening argument" or
17 "statement." The way the procedure goes, because I've told
18 you the State has the only burden of proof in this case, the
19 State will go first with its argument followed by the defense
20 then the State will go next with presenting its evidence
21 followed by any evidence the defense chooses to put up because
22 again, the State has the only burden of proof then once
23 that's -- the evidence has been completed there'll be closing
24 statements or arguments made by counsel followed by my charge
25 on the law and the direction for you to begin your

MOTIONS AND MATTERS

1 deliberations, that's the procedure that we'll follow. I will
2 tell you that the statements made by the attorneys both at the
3 beginning of the trial and at the end of the trial do not
4 constitute evidence in the case, they can't be used directly
5 by you in determining the guilt or the innocence of a
6 defendant. At the beginning of the trial it simply sums up
7 the case from their client's perspective as to how they think
8 it's gonna go and what they think's gonna be presented during
9 the trial. At the close of the trial they sum up the evidence
10 that you've heard from their client's perspective -- perspective
11 but again, they are commenting on the evidence. Those
12 statements themselves are not evidence and again, can't be
13 used by you in making a direct determination of guilt or
14 innocence of a defendant in the case.

15 Now one other matter I'll point out to you I do not
16 select a foreperson of the jury until I charge you concerning
17 the law. I know on TV they do it at the beginning of the
18 trial. Don't think that I've forgotten the appointment of a
19 foreperson, there will be a foreperson appointed but that'll
20 happen at the end of the trial. When I make that
21 appointment, I'll advise you a foreperson has no greater say
22 in the outcome of this case than any other juror. In order
23 for this jury to reach a verdict, it must be unanimous, that
24 means each and every one of you must agree upon the verdict
25 before it becomes the jury's verdict so every juror has an

OPENING STATEMENTS

1 equal say in the outcome of the case. The foreperson would
2 preside over deliberations, would also communicate with the
3 Court during deliberations if necessary and will be the person
4 who actually writes the verdict on a piece of paper once the
5 verdict has been reached but I'll make that appointment at the
6 close of the trial not at the beginning of the trial. I wanna
7 be sure that I haven't violated anyone's rights in my opening
8 comments to you. Any objections from the State?

9 MR. HUNTER: None from the State, Your Honor.

10 THE COURT: Any objections to my comments from the
11 defense?

12 MS. MANIGAULT: Not from the defense, Your Honor.

13 THE COURT: Now at this point in time I told you that we
14 would begin the trial by allowing the State to make its
15 opening statement followed by the defense. Mr. Hunter.

16 MR. HUNTER: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 MR. HUNTER: May it please the Court.

19 THE COURT: Yes, sir.

20 MR. HUNTER: Ladies and gentlemen, I'm gonna ask you to
21 not judge a book by its cover. If you look at Mr. Eubanks, he
22 doesn't seem like the type of person trafficking cocaine over
23 two hundred (200) grams but I'm asking you to not judge a book
24 by its cover, to hear all the evidence, to hear the testimony,
25 to see the evidence and then render a verdict. This case is a

OPENING STATEMENTS

1 search warrant, a search warrant that was executed at [REDACTED]
2 Hickory Nut Road in Inman, South Carolina, Mr. Eubanks
3 residence that he owns, that he lives there. At the time of
4 the execution of the search warrant you'll hear evidence that
5 a small amount of cocaine was found on Mr. Eubanks's person.
6 You'll also hear evidence that a larger amount of cocaine,
7 almost a pound of cocaine, was found in a shed in his backyard
8 that was locked. You'll hear evidence of who had that key.
9 Mr. Eubanks had that key. You'll also hear the amount of
10 money found in Mr. Eubanks' residence, a large amounta money,
11 almost forty thousand dollars (\$40,000) found in Mr. Eubanks's
12 residence in a safe. Guess who had that key? You'll also
13 hear of multiple vehicles found at his residence. Mr. Eubanks
14 at the time was not married, his children did not live with
15 him but yet he had multiple vehicles that he drove. What I
16 have to do with this case is prove to you that Mr. Eubanks
17 trafficked over two hundred (200) grams. You'll hear
18 instructions on what trafficking means from the judge at the
19 end of this case but to give you a preview, it means
20 possession; in this case constructive or actual, constructive
21 and actual, you'll hear the instructions from the judge,
22 actual I have this (indicating) in my pocket, I have actual
23 possession of this. That stuff over there (indicating) I was
24 messin' with I don't have actual possession of with right now
25 but I still assert control over those documents. What you'll

OPENING STATEMENTS

1 hear is that Mr. Eubanks had actual possession of a small
2 amount of cocaine on his person. He had constructive
3 possession of almost a pound of cocaine in the shed in his
4 backyard. He asserted control over that. You'll hear from
5 Officer Hutchins, please stand (stood,) and Sergeant Joe
6 Pharis (stood) with the Spartanburg County Sheriff's Office.
7 You'll also hear from Paul Norris, another member of the
8 narcotics team of the Spartanburg County Sheriff's Office.
9 You'll also hear from Beth Stuart who's a chemical analyst
10 with the Spartanburg County Sheriff's Office. She tests the
11 white powdery substance found at the residence. The evidence
12 will show that the almost pounds, the white powdery substance
13 found at Eu -- Mr. Eubanks's house, was in fact cocaine. I'm
14 gonna ask you to to use your common sense. I also ask you not
15 to judge a book by its cover. Use your God given common sense
16 to look at the facts in this case, look at the evidence,
17 listen to the testimony, your common sense will tell you who
18 you should believe. You'll have that gut feelin' and I ask
19 you to go with that gut feelin'. Now I'm not gonna stand up
20 here and ask for a verdict of guilty, not yet, that'll go
21 against what the judge just told ya. You have a duty to
22 listen to the evidence, to not make up your mind until you
23 hear the whole case. So use your common sense, listen to the
24 evidence and don't judge a book by it's cover. Thank you.

25 THE COURT: Mrs. Manigault for the defense.

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1 MS. MANIGAULT: Thank, Your Honor. Ladies and gentlemen,
2 again my name is Dorothy Manigault, I represent James R.
3 Eubanks who is charged in this case. Your Honor has explained
4 to you that the process of getting a case to court is preceded
5 by an indictment for the charge which is not evidence. Your
6 Honor has told you that he will charge you what the evidence
7 is in this -- what, excuse me, what the law is in this case
8 after you've heard the evidence in this case and I would
9 submit to you that you should take what Your Honor says as the
10 law in this case as fully what the law is. Even if I try to
11 restate the law or the solicitor's office try to restate the
12 law what we think it is or that is not relevant, you are to
13 take what Your Honor says what the law is. He's also told you
14 that the State has the burden of proof. The State must prove
15 beyond a reasonable doubt that James R. Eubanks did commit the
16 crimes that he is charged with here today. That burden of
17 proof is not a gut feeling. That burden of proof is a
18 substantial proof that the State has to provide to you. The
19 State has asked you to use your common sense, that is correct,
20 your common sense in weighing the evidence that is presented
21 to you by the State. Your Honor has told you about the
22 witnesses that may come forward and you are to decide on the
23 credibility or believability of the witnesses as you observe
24 them and the way what they're testifying to you, to you under
25 oath. Your Honor has told you that you can believe some of

OPENING STATEMENTS

1 what a witness says or none of what a witness says, you can
2 believe all of what a witness says, it is up to you that as
3 you sit and hear the case and then when you go back to
4 deliberate with the twelve of you that you decide whether the
5 evidence is substantial or not substantial, whether the
6 evidence -- whether the witness was credible or not credible,
7 whether the witness was believable or not believable so Your
8 Honor has indicated to you what you're to look for and to pay
9 close attention. I just want to say to you and re-emphasize
10 what the judge has said to you. I ask that you pay close
11 attention to the testimony that is going to be presented from
12 this (indicating) witness stand and that you observe and
13 listen and that you ask yourself what has been left out or is
14 there information that -- more information we need or have
15 they presented everything beyond a reasonable doubt to prove
16 to your satisfaction that this James R. Eubanks is guilty as
17 charged and so we ask that you pay close attention. Thank you
18 so much.

19 THE COURT: The State may call its first witness.

20 MR. HUNTER: Your Honor, the State calls Matt Hutchins.

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

22 MATT HUTCHINS, having been
23 first duly sworn, testified as follows:

24 THE COURT: Have a seat, please, and once you're seated I
25 ask that you state your name for the record.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 INVESTIGATOR HUTCHINS: I'm Investigator Matt Hutchins.

2 THE COURT: Mr. Hunter, your witness.

3 MR. HUNTER: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MR. HUNTER:

5 Q. You involved in a search warrant at [REDACTED] Hickory Nut Road?

6 A. I was.

7 Q. Where is that located?

8 A. It's located in the Inman area of Spartanburg County.

9 Q. So it's in Spartanburg County?

10 A. Yes, sir.

11 Q. What were your duties prior to the execution of this
12 search?

13 A. I was assigned to the vice and narcotic unit of the
14 Spartanburg County Sheriff's Office.

15 Q. Okay. How long have you been in law enforcement?

16 A. Started in 1998 was a constable with the Spartanburg
17 County Magistrate's Office, 2000 to 2002 I was a lake warden,
18 uh, Lake Bowen and Blalock and became employed with the
19 Spartanburg County Sheriff's Office in 2002.

20 Q. What were your original duties with the sheriff's office?

21 A. I was assigned to uniform patrol when I was actually
22 hired, spent a little over a year as uniform patrol officer
23 and then was promoted to narcotics investigator.

24 Q. How long have you been a narcotics agent?

25 A. Probly six years, a little over six years.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. What are your -- some a your assignments as a narcotics
2 agent?

3 A. We conduct narcotics investigations anywhere from street
4 level dealers to drug organizations, anywhere from minor drug
5 offenses on the street to major drug organizations.

6 Q. Does your job involve executing search warrants?

7 A. It involves executin' search warrants, conductin'
8 undercover buys, different type of investigative techniques.

9 Q. How many times have you executed a search warrant?

10 A. A hundred, more than one hundred.

11 Q. When was this particular search warrant obtained?

12 A. The search warrant was obtained on June the 13th of 2008.

13 Q. And when was it executed?

14 A. It was executed on June the 18th of 2008.

15 Q. Did you help execute this search warrant?

16 A. I did.

17 Q. All right. What date did you say it was executed
18 again?

19 A. June the 18th of 2008.

20 Q. At what time was it executed?

21 A. At 9:38 a.m.

22 Q. What were your duties before 9:38?

23 A. That morning my duties I was in a vehicle with some other
24 investigators and we were conducting surveillance of the
25 location we was gonna execute the search warrant on.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. Okay. What did you observe?

2 A. When initially arrived at the location, I observed
3 Mr. Eubanks and another subject walking from the direction of
4 an outbuilding and getting into a vehicle.

5 Q. All right. Can you describe this outbuilding?

6 A. The property's located on the corner of Pen Del Road and
7 Hickory Nut Road, sits on the corner. The driveway actually
8 goes into the side of the residence, the outbuilding is
9 positioned behind the residence.

10 Q. Okay. And how were you positioned to observe this?

11 A. I was actually initially drivin' down Pen Del Road
12 passing the driveway and observed it.

13 Q. Okay. What were the defendant's movements that
14 morning?

15 A. Defendant got into a vehicle, left, the other subject got
16 into another vehicle, left, units followed both vehicles
17 initially then we followed Mr. Eubanks's vehicle to a a
18 restaurant on Highway 9.

19 Q. Okay. What vehicle was he drivin'?

20 A. He was drivin' the it's a white Yukon don't have the year
21 in front of me.

22 Q. Okay. But it was a white Yukon?

23 A. Yes.

24 Q. What restaurant did he eat at that morning?

25 A. Jerry's Restaurant.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. Okay. And you had the search warrant at that time?

2 A. Yes, sir.

3 Q. Why did you not execute it at that point?

4 A. What what we attempt to do is; number one, officer's
5 safety but also the safety of the public gettin' people into
6 custody. We was lookin' for an opportunity where we could
7 approach Mr. Eubanks safely and and somewhat quietly.

8 Q. Okay. So what did he do after he ate breakfast?

9 A. After he ate breakfast he then went to Papa Crip's Bar
10 located on Miller Farm Road.

11 Q. Okay. What is Papa Crip's Bar?

12 A. It was the bar that under my -- that carries his name.

13 Q. Okay. What what does Papa Crip refer to?

14 A. Crip is a nickname that James Eubanks has had for a a
15 while.

16 Q. So another name would be James Eubanks' Bar.

17 A. Yes.

18 Q. Okay. What did you do once he arrived at the bar?

19 A. When he arrived at the the bar, we rode in behind him and
20 I approached him and informed him that had a search warrant
21 for his person and for the -- his residence and just conducted
22 a quick pat down for weapons of his person.

23 Q. Did you find any weapons at that time?

24 A. No weapons was located on him, no.

25 Q. Was there anyone with him at this point?

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 A. There was another subject in the passenger seat.

2 Q. What did you do with both subjects at that point?

3 A. Mr. Eubanks was loaded into the vehicle that I was in
4 while I Mirandized him, locate him in the vehicle I was in and
5 we proceeded to take him back to his residence.

6 Q. When you Mirandized him, give give a little explanation
7 of that. What did you mean?

8 A. Miranda is the Miranda rights informing 'em of their
9 rights to an attorney and their rights not to talk to us
10 without an attorney.

11 Q. Okay. Did he, did he at any time invoke his right to an
12 attorney?

13 A. He did not.

14 Q. Okay. Where did you take them from the bar?

15 A. To [REDACTED] Hickory Nut Road.

16 Q. Was the subject with him, the same subject you observed
17 in the morning, at his residence?

18 A. No, sir.

19 Q. Okay. What happened when you arrived at the residence?

20 A. When we arrived at the residence, Mr. Eubanks, what
21 was -- we -- went to that residence with us, another subject
22 by the name of Sherri Collins was located inside of the
23 residence, we then, Investigator Pharis was conducting the
24 return and then we have a search team, Investigator Pharis
25 doing the return locates a place to sit down where once the

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 evidence is located it's brought back he he will go retrieve
2 it and then brings it back to that location.

3 Q. Can you explain to the jury what a return is.

4 A. Return is the back part of a search warrant where you
5 list out all the evidence recovered. The the person
6 conducting the return is the custodian of the evidence, he
7 will go, if I'm on a certain team and I locate an item that
8 we're gonna take as evidence I notify him, return man will
9 come and actually collect the evidence from that location and
10 it's who actually puts the object or whatever into evidence.

11 Q. Did -- how many people were at the residence when you
12 showed up?

13 A. We initially got there Sherri Collins was the only one
14 inside the residence.

15 Q. Okay. When you say "we," how many is "we?"

16 A. Of ---

17 Q. An approximate number.

18 A. Seven to eight.

19 Q. Is that the usual amount of a search team?

20 A. Yes, it's, uh, would be our narcotics unit.

21 Q. Did you talk to Ms. Collins?

22 A. I did throughout the search warrant return periodically,
23 don't believe I was the initial one that spoke with her.

24 Q. Do you know if she was put under Miranda?

25 A. I I do not.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. Did you help clear the residence?

2 A. I did.

3 Q. Did you find anybody else in the residence?

4 A. No, sir.

5 Q. Did you help search the residence?

6 A. I did.

7 (Pause.)

8 Q. What did you find?

9 A. Upo -- my duties was to search the master bedroom which
10 was the bedroom of Mr. Eubanks. Myself, Joe Colderone and
11 Lieutenant Brian Duncan at the time located a safe in the
12 closet, recessed in the bottom of the closet.

13 Q. Investigator Hutchins, I'm gonna show you what's been
14 premarked State's Exhibit 3. You recognize that (indicating)
15 picture?

16 A. I do.

17 Q. What is it?

18 A. It's the safe that was located in the bottom of the
19 closet.

20 Q. Does it fairly and accurately depict that events that you
21 saw that day?

22 A. It does.

23 MR. HUNTER: Your Honor, at this time State would offer
24 to admit State's Exhibit 3 into evidence.

25 THE COURT: Any objection?

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 MS. MANIGAULT: No objection, Your Honor.

2 THE COURT: It'll be received as marked. You may
3 proceed.

4 (State's Exhibit No. 3, photograph, admitted into
5 evidence.)

6 BY MR. HUNTER:

7 Q. Who is that (indicating) in the picture?

8 A. That would be the defendant Mr. Eubanks.

9 Q. And what is he doing in this picture?

10 A. He is opening the safe for us.

11 Q. How is he opening it?

12 A. It's got a key and it's also got a combination. You have
13 to turn the key to unlock it and then punch in the combination
14 for it to open.

15 Q. And who had the key?

16 A. Mr. Eubanks.

17 MR. HUNTER: Your Honor, may I publish this to the
18 jury?

19 THE COURT: You may. Ladies and gentlemen, by "publish"
20 that means he's gonna be allowed to show it to you.

21 (Whereupon, counsel published the exhibit to the jury.)

22 BY MR. HUNTER:

23 Q. Were you there when he -- you were obviously there when
24 he opened the safe, ---

25 A. Yes.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. --- what was found inside the safe?

2 A. An amount of U.S. currency.

3 MR. HUNTER: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 BY MR. HUNTER:

6 Q. Investigator Hutchins, I'm gonna show you what's been
7 premarked State's Exhibit 4 and 5. You recognize these
8 (indicating) photos?

9 A. I do.

10 Q. And what are they? Start start with the State's
11 Exhibit 4.

12 A. State's Exhibit 4 is a card -- a card, it's like on the
13 back of a business card from the person Mr. Eubanks, has the
14 combination to the safe on it.

15 Q. Okay. Does it fairly and accurately depict what you saw
16 that day?

17 A. It does.

18 Q. Now is State's Exhibit 5 ---

19 A. This wou ---

20 Q. --- what is that?

21 A. --- this would be the safe and the contents that was in
22 it when it was opened.

23 Q. And what were the contents?

24 A. Quantity of U.S. currency, there's also some like old
25 jewelry or somethin' in the bottom of it.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. Does it also fairly and accurately depict what you saw
2 that day?

3 A. It does.

4 MR. HUNTER: Your Honor, at this time the State would
5 offer State's Exhibit 4 and 5 into evidence.

6 THE COURT: Any objection?

7 MS. MANIGAULT: Your Honor, may I at this point renew my
8 objections to that ---

9 THE COURT: Yes, ma'am, you may ---

10 MS. MANIGAULT: Thank you.

11 THE COURT: --- and I will make the same ruling.

12 MS. MANIGAULT: Thank you.

13 THE COURT: Thank you very much.

14 MS. MANIGAULT: All right.

15 THE COURT: It's admitted. You may proceed.

16 (State's Exhibit Nos. 4 and 5, photographs, admitted into
17 evidence.)

18 MR. HUNTER: Your Honor, may I publish this ---

19 THE COURT: You may.

20 MR. HUNTER: --- to the jury? Thank you.

21 (Whereupon, counsel published the exhibits to the jury.)

22 BY MR. HUNTER:

23 Q. Now State's Exhibit 4 you said those are the numbers to
24 open the safe?

25 A. Yes.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. In whose possession were they found?

2 A. Mr. Eubanks.

3 (Pause.)

4 Q. Investigator Hutchins, I'm gonna pass you what's been
5 premarked State's Exhibit 6 and 7, start with State's
6 Exhibit 7. Do you recognize that (indicating)?

7 A. I do.

8 Q. And what is that?

9 A. This would be -- we're talkin' about 6.

10 Q. Seven.

11 A. Seven?

12 Q. Yes.

13 A. Number 7 that would be the U.S. currency being removed
14 from the safe.

15 Q. And does it fairly and accurately depict the events as
16 you remember them that day?

17 A. It does.

18 Q. And Exhibit 6 you recognize that (indicating)?

19 A. I do.

20 Q. And what is that?

21 A. That would be the U.S. currency, it's being separated
22 out, uh, you can see the safe right here (indicating) in the
23 top left corner.

24 Q. And who would be that person in the picture?

25 A. That would be me.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. Does is it fairly and accurately depict the events as you
2 saw them that day?

3 A. It does.

4 MR. HUNTER: Now, Your Honor, we'd offer State's Exhibit
5 6 and 7 into evidence.

6 MS. MANIGAULT: Your Honor, I renew my objection.

7 THE COURT: Subject to your previous objections it'll be
8 admitted.

9 (State's Exhibit Nos. 6 and 7, photographs, admitted into
10 evidence.)

11 MR. HUNTER: Your Honor, may I publish to the jury?

12 THE COURT: You may.

13 (Whereupon, counsel published the exhibits to the jury.)

14 BY MR. HUNTER:

15 Q. Was that the only U.S. currency found in Mr. Eubanks's
16 bedroom?

17 A. No, sir, it was not.

18 Q. What else was found in Mr. Eubanks's bedroom?

19 A. There was currency located under the mattress also.

20 Q. I'm gonna show you what's been premarked State's
21 Exhibit 8, I'm showing the defense counsel. Do you recognize
22 this (indicating) picture?

23 A. I do.

24 Q. What is it?

25 A. Be Investigator Colderone holding a ma -- the mattress up

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 with the currency that was located under it.

2 Q. Were you there when he located this?

3 A. I was.

4 Q. Does that fairly and accurately depict what you remember
5 happened that day?

6 A. It does.

7 MR. HUNTER: Your Honor, at this point State would offer
8 to admit Exhibit 8 into evidence.

9 THE COURT: Any objection?

10 MS. MANIGAULT: We renew our objections, Your Honor.

11 THE COURT: Subject to your previous objection it'll be
12 admitted.

13 (State's Exhibit No. 8, photograph, admitted into
14 evidence.)

15 MR. HUNTER: And publish, Your Honor?

16 THE COURT: Yes, sir, you may do so.

17 (Whereupon, counsel published the exhibit to the jury.)

18 BY MR. HUNTER:

19 Q. Investigator Hutchins, I'm passing to you what's been
20 premarked as State's Exhibit 9, do you recognize that
21 (indicating)?

22 A. I do.

23 Q. And what is it?

24 A. That's the U.S. currency that separated out from the
25 mattress.

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Q. Okay. And does it fairly and accurately depict what you
2 remember happening that day?

3 A. It does.

4 MR. HUNTER: Your Honor, at this point State would offer
5 to admit Exhibit 9 into evidence.

6 THE COURT: Your objection's subject to previous
7 objection?

8 MS. MANIGAULT: Yes, sir. Thank you, Your Honor.

9 THE COURT: Subject to previous objection the Court will
10 admit it as marked.

11 (State's Exhibit No. 9, photograph, admitted into
12 evidence.)

13 MR. HUNTER: And we'd like to publish it, Your Honor.

14 THE COURT: You may do so.

15 (Whereupon, counsel published the exhibit to the jury.)

16 BY MR. HUNTER:

17 Q. Again, what is this (indicating) Investigator Hutchins?

18 A. That's the U.S. currency separated out that was located
19 under the mattress of Mr. Eubanks's master bedroom.

20 Q. Was that all the U.S. currency found in his bedroom?

21 A. Yes, sir, I believe it is.

22 Q. Do you count the currency when you first find it?

23 A. Basically what we do when we first find it we do a quick
24 assessment of it, separate it out best as possible. The exact
25 count is done back at sheriff's office narcotics office. Due

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 to security reasons, at least two people have to accompany the
2 money and then it's double and sometimes triple counted for
3 accuracy.

4 Q. Do you remember if you were involved in counting this
5 money?

6 A. Initial scene, like in the last exhibit you just showed,
7 seventeen stacks, try to put it in a thousand dollar stacks
8 roughly. Yes, I was a part of countin' this money once it did
9 get back to the office.

10 Q. All right. Approximately how much U.S. Currency was
11 found?

12 A. In the safe located in the master bedroom it was twenty
13 thousand one hundred dollars (\$20,100); under the mattress was
14 seventeen thousand (17,000.)

15 Q. Okay. So in his bedroom a total of thirty-seven thousand
16 one hundred dollars (\$37,100)?

17 A. Yes, sir.

18 Q. Okay. Investigator Hutchins, I'm gonna show you what's
19 been premarked State's Exhibit 10. Do you recognize that
20 (indicating) picture?

21 A. I do.

22 Q. And what does it show?

23 A. That's a box of Ziploc baggies that was located, there's
24 actually two boxes in this pictures, one's sittin' up on top
25 of the dresser, one was located in the drawer that

MATT HUTCHINS - DIRECT EXAMINATION BY MR. HUNTER

1 Investigator Colderone is holding up and also some bank
2 account information was located on the dresser, you can see it
3 in there also.

4 Q. Does is it fairly and accurately depict what you saw that
5 day?

6 A. It does.

7 MR. HUNTER: Your Honor, at this time State would offer
8 to admit Exhibit 10 into evidence.

9 MS. MANIGAULT: Subject to my same objections, Your
10 Honor.

11 THE COURT: Subject without objection the Court will
12 admit it.

13 (State's Exhibit No. 10, photograph, admitted into
14 evidence.)

15 MR. HUNTER: We would like to publish it as well.

16 THE COURT: And you may publish.

17 (Whereupon, counsel published the exhibit to the jury.)

18 BY MR. HUNTER:

19 Q. How long have you been a narcotics officer?

20 A. Over six years.

21 Q. In your years and experience what is the purpose of
22 sandwich baggies?

23 A. On my experience it's not typical if someone keeps a
24 large amount or boxes of sandwich baggies ---

25 MS. MANIGAULT: Your Honor, object.

MOTIONS AND MATTERS

1 THE COURT: Ladies and gentlemen of the jury, at this
2 time I'm gonna ask you to step back to the jury room while I
3 take up something with the attorneys. As always when you
4 leave the courtroom, I'm going to ask you not to begin any
5 discussions concerning this case until I advise you to do so.
6 You may retire.

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

9 THE COURT: Ms. Manigault, you may state your objection
10 in full.

11 MS. MANIGAULT: Your Honor, the officer began to testify
12 that on his experience people' baggies are not kept in certain
13 spots. I would object to that testimony. I would say to the
14 Court that he can testify to what he's observed while he
15 searched. I keep baggies across my house in my bedroom for
16 jewelry and that's not a common, you know, experience so I'm
17 objecting to his common experience testimony.

18 MR. HUNTER: Your Honor, the cocaine was found in corner
19 baggies. Plastic baggies are cut in the drug trade and the
20 corner is twisted off and that's how they house cocaine. To
21 have a corner bag or baggies in your bedroom on top of your
22 dresser, is a very much in common scheme with what drug
23 dealers do ---

24 THE COURT: Well, you know ---

25 MR. HUNTER: --- although Ms. Manigault is not a drug

MOTIONS AND MATTERS

1 dealer.

2 (Laughter.)

3 THE COURT: Well I I think what you're asking him you --
4 I -- what I will allow him to testify to would be that of
5 course that what he found was the cocaine in the corners of
6 sandwich baggies, also that he found a large number of
7 sandwich baggies in the home ---

8 MR. HUNTER: Okay.

9 THE COURT: --- but to draw the conclusion that that
10 somehow is used exclusively in the drug trade, my lunch came
11 today in a sandwich bag so I'm not sure that's gonna be
12 somethin' that I would allow him to testify to, that's in the
13 form of an opinion or speculation so I think again, he can
14 testify how it was housed, what it was -- appeared to be
15 stored in, corners of sandwich bags, Did you find a lotta
16 sandwich bags there, sure you can ask him that question what
17 he found but for him to draw a conclusion that somehow
18 those -- that indicates involvement in the drug trade, per se,
19 I'm not gonna allow him to give that's an opinion, that's
20 speculation, okay? I'll sustain the objection to that extent.

21 MS. MANIGAULT: Thank, Your Honor.

22 THE COURT: All right. About how much longer you got
23 with this witness?

24 MR. HUNTER: It's gonna be a little while. We ---

25 THE COURT: Okay.

MOTIONS AND MATTERS

1 MR. HUNTER: --- we might be best to take a break.

2 THE COURT: I think we might break for the evening and
3 let him resume his testimony in the morning. Okay. Bring the
4 jury back.

5 (The following takes place in the presence of the jury.)

6 THE COURT: All right. I have sustained the objection
7 for the qualification. Ladies and gentlemen, I note that
8 we've reached five o'clock in the afternoon and and I know you
9 have a life outside the courthouse so we're gonna stop for the
10 afternoon at this point in time. I will caution you that
11 during the break that you shouldn't listen to, watch, or read
12 any media reports concerning this case. I don't know that
13 this case will be reported in the media but I've learned a
14 long time ago I don't control what they put in the media so
15 the whatever is there if you should see this case mentioned,
16 don't listen to it, don't watch it, don't read it, don't
17 attempt to gather any information concerning this matter
18 outside of the courthouse from the media or from any other
19 source including such things as the internet. I will tell you
20 now that your oath is to decide the case solely upon the
21 evidence that's presented during this trial. The only place
22 evidence is presented is during this trial and that your oath
23 is to decide it solely based on the evidence you hear in the
24 courtroom and upon the law as I give it to you in the
25 courtroom. Don't don't talk over the case with anyone at home

MOTIONS AND MATTERS

1 or even among yourselves during the break. Again, you only
2 have partial information at this point in time, you certainly
3 don't know everything and if you begin to discuss something
4 based on partial information you may begin to formulate
5 opinions based on that partial information and of course
6 you've been selected as fair and impartial jurors with an open
7 mind concerning the case, keep that open mind until you've
8 heard all of the evidence and I've charged you concerning the
9 law in this matter and then and only then begin to discuss it.
10 If someone at home wants to know what you're doing, you can
11 tell 'em you've been selected for a trial of a case and you'll
12 tell 'em all about it when it's over but that's about all you
13 should say about the case at this point in time. Should
14 anyone attempt to contact you concerning your participation in
15 this trial during our break, please advise the Court of that
16 fact. I can tell you that jury tampering in this state is a
17 felony, I take it seriously and I would see the proper action
18 is taken should someone attempt to contact you concerning your
19 participation in this case. We'll resume in the morning at
20 9:30. I'll ask you to be back in the jury room that's in use
21 for this trial, the bailiffs will show you how to get there.
22 Don't go back to the assembly room, come back to the jury room
23 that's in use for this trial, be there at 9:30 in the morning,
24 we should be able to continue the trial shortly thereafter.
25 Thank you very much and you're free to go at this time.

MOTIONS AND MATTERS

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: Officer, I will caution you you're in the
4 middle of your testimony, it would be highly improper for you
5 to discuss your past, present, or future testimony with anyone
6 during the break so you should not discuss your testimony with
7 anyone during the break. Is the defendant on bond at the
8 present ---

9 MS. MANIGAULT: Yes.

10 THE COURT: --- time?

11 MS. MANIGAULT: Yes, sir.

12 THE COURT: Sir, I'm going to allow you to remain on bond
13 at this point in time. I will caution you that at 9:30 in the
14 morning we'll resume the trial of your case. If you fail to
15 appear at that time, the Court will issue a bench warrant for
16 your arrest and we will try you in your absence. Do you
17 understand how ---

18 THE DEFENDANT: Yes, ---

19 THE COURT: --- that would work?

20 THE DEFENDANT: --- I understand. Yes, sir.

21 THE COURT: All right, sir. We'll resume at 9:30 in the
22 morning. Thank you very much.

23 MS. MANIGAULT: Thank you, Your Honor.

24 THE DEFENDANT: Thank you, sir.

25

1
2
3 CERTIFICATE OF REPORTER
4

5 I, Margaret A. Woods, Court Reporter in and for the State
6 of South Carolina at Large, hereby certify that I reported the
7 preceding case on February 23, 2010 at the time and place
8 heretofore set forth; and that the foregoing pages numbered
9 from 5 through 120, inclusive, constitute a true and accurate
10 transcription of my stenographic notes of the said proceeding.

11 I further certify that I am neither attorney nor counsel
12 for, nor related to or employed by any of the parties
13 connected to the action, nor am I financially interested in
14 the action.

15 August 27, 2010

16
17 Margaret A. Woods 5/4/11

18 Margaret A. Woods, Court Reporter
19 in and for the State of South Carolina at Large.
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS
3

4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5) OF
6 PLAINTIFF,)
7 vs.) RECORD
8 JAMES R. EUBANKS,) 09-GS-42-1852
9 DEFENDANT.)

10 February 24th, 2010
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge, and a jury.

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

16 RYAN McCARTY and EDDIE HUNTER
17 ASSISTANT SOLICITORS
18 Attorneys for the State

19 DOROTHY MANIGAULT
20 ESQ.
21 Attorney for the Defendant
22
23

24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>State's Exhibits</u>		
S-1	Box of Evidence		
S-2	Drugs		66
S-3	Photograph		
S-4	Photograph		
S-5	Photograph		
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S-7	Photograph		
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S-9	Photograph		
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S-11	Photograph	6	28
S-12	Photograph	6	29
S-13	Photograph	6	43
S-14	Photograph	6	42
S-15	Photograph	6	38
S-16	Photograph	6	40
S-17	Cooler	6	45

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
3				
4	C-1	Search Warrant		
5	C-2	Notice of Life Sentence		106
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P R O C E E D I N G S

(Whereupon, six photographs were marked as State's Exhibit Nos. 11 through 16. A cooler was marked as State's Exhibit No. 17. All of the above exhibits were for identification purposes only at this time.)

THE COURT: Mr. Hunter, Mr. McCarty, are we ready to go?

SOLICITOR McCARTY: Just one moment, Your Honor. I want to get this ready. Make sure we're up to speed.

THE COURT: I understand.

SOLICITOR McCARTY: Thank you, Your Honor.

SOLICITOR HUNTER: I believe we're ready, Your Honor.

THE COURT: All right. Mrs. Manigault, is the defense ready to proceed?

MRS. MANIGAULT: Yes, Your Honor.

THE COURT: I believe, officer, you were on the stand when we rested yesterday. If you'll come back up.

(Witness returns to the stand.)

THE COURT: And I believe you were in the process of your direct examination, is that correct?

SOLICITOR HUNTER: That's correct, Your Honor.

THE COURT: Make sure I'm in the right spot.

Okay. Bring the jury in.

(Whereupon, the following takes place within the

Matt Hutchins - Direct examination
by Solicitor Hunter

1 presence of the jury.)

2 THE COURT: All right. The record will reflect that
3 the jury has returned to the courtroom. I trust everyone
4 had a good evening, and you're ready to begin.

5 Does the State wish for me to poll the jury at this
6 time?

7 SOLICITOR HUNTER: No, Your Honor.

8 THE COURT: Defense wish to poll the jury?

9 MRS. MANIGAULT: No, Your Honor.

10 THE COURT: Okay. It does appear that all jurors are
11 present.

12 At this time we're going to resume with the direct
13 examination by the State of this witness.

14 Mr. Hunter, you may proceed.

15 CONTINUED DIRECT EXAMINATION

16 BY SOLICITOR HUNTER:

17 Q When we ended yesterday we were speaking about State's
18 Exhibit 10. This -- since we ended yesterday we've had the
19 time to go home and go home at night and a couple hours have
20 passed.

21 Again, what did you find in that picture?

22 A It would be two boxes of Glad fold top sandwich baggies
23 along with some paperwork.

24 Q And where did you find them?

25 A It's in the master bedroom of Mr. Eubank's residence.

Matt Hutchins - Direct examination
by Solicitor Hunter

1 Q Okay. And how did you determine that it was Mr.
2 Eubank's bedroom?

3 A Through property with names on it in the, in the
4 bedroom along with the items consistent with him living in
5 there.

6 Q Were you around the house when the white powdery
7 substance was obtained?

8 A Yes, sir.

9 Q Did you see the white powdery substance?

10 A After it was located, yes, sir.

11 Q And how was it packaged?

12 A In baggies.

13 Q What type of baggies?

14 A Typical packaging of illegal contraband is cut sandwich
15 corners, sandwich baggies. It was packaged in like cut
16 sandwich baggies.

17 Q Thank you.

18 In your profession, do you need to know the street
19 value of narcotics?

20 A Yes, sir.

21 Q And how many times have you participated in undercover
22 buys?

23 A Through personal experience, and also C.R. buys, C.R.I.
24 buys, hundreds.

25 Q When you say personal experience, what do you mean by

Matt Hutchins - Direct examination
by Solicitor Hunter

1 that?

2 A With me acting in an undercover role, and---

3 Q So, who purchases the illegal narcotics?

4 A And when I'm in the undercover role, I personally would
5 purchase them.

6 Q And when -- what's your activity when a confidential
7 informant buys?

8 A Basically the confidential informant, you -- recorded
9 phone calls are made to the targeted investigation. We
10 review those and also the C.R.I.'s are equipped with
11 audio/video recording devices where we have the recording of
12 the transactions.

13 Q Have you had an opportunity to speak with people
14 involved in the drug trade?

15 A Yes, sir.

16 Q And what type of people?

17 A Associates of dealers, actual drug dealers. Anywhere
18 from buyers to sellers.

19 Q And how many times would you approximate?

20 A Hundreds.

21 Q And in your conversations with these people, have you
22 ever discussed the street value?

23 A Yes, sir.

24 Q Approximately how many times then?

25 A There again, hundreds.

Matt Hutchins - Direct examination
by Solicitor Hunter

1 Q All right. Have you received any training or read any
2 publications on the street value of drugs?

3 A Yes, sir.

4 Q And does your office participate in rounding up the
5 street value of drugs?

6 A Yes, sir.

7 Q What do you do with that information?

8 MRS. MANIGAULT: Your Honor, I'm objecting to this line
9 of testimony.

10 THE COURT: The amount of testimony?

11 MRS. MANIGAULT: The, the line of testimony. Your
12 Honor---

13 THE COURT: And what's, what's the nature of the
14 objection?

15 MRS. MANIGAULT: Your Honor, I have no information, I
16 have no information about the street value of the persons
17 he's talked to. They've not been verified. So, I have no
18 way of challenging this.

19 THE COURT: well, I'm gonna, I'm gonna overrule the
20 objection. I'll allow him to testify, as he has thus far,
21 that he's participated in drug buys and that he's familiar
22 with that price. I'll let you continue with the line of
23 questioning. Obviously I don't want to get into hearsay
24 from people.

25 SOLICITOR HUNTER: No, Your Honor.

Matt Hutchins - Direct examination
by Solicitor Hunter

1 THE COURT: And if that's the nature of her objection,
2 she -- no one should be quoted.

3 SOLICITOR HUNTER: No, sir, Your Honor.

4 THE COURT: Because we don't allow hearsay.
5 Go ahead, Mr. Hunter.

6 Q We were talking about the publications.
7 What, what are they?

8 A The Drug Enforcement Administration yearly puts out a
9 publication, Regional of Drug Values.

10 Q And have you read this publication?

11 A I have.

12 Q Okay. Have you ever been qualified as an expert in the
13 street value of drugs?

14 A I've testified on several occasions to street value,
15 yes, sir.

16 Q Where?

17 A In hearings in General Sessions Court.

18 SOLICITOR HUNTER: All right. Your Honor, at this time
19 the State would offer Investigator Matt Hutchins as an
20 expert in the street value of narcotics.

21 THE COURT: Any objection to his designation as such?

22 MRS. MANIGAULT: Yes, sir, my continuing objection.

23 THE COURT: All right. I'm gonna overrule the
24 objection.

25 MRS. MANIGAULT: Thank you.

Matt Hutchins - Direct examination
by Solicitor Hunter

1 THE COURT: Ladies and gentlemen, let me explain to you
2 the process that we're going through right now so that
3 you'll understand what this is about. Ordinarily, under the
4 rules of evidence that govern our courts, witnesses are not
5 allowed to offer opinions on subjects. They must testify
6 from their personal knowledge about some different things
7 that they're testifying about.

8 An exception to that general rule is made for witnesses
9 who have been designated as expert witnesses. That's a
10 witness who, because of their knowledge, experience,
11 training, and/or education, have become an expert in some
12 field or calling and about which the jury generally would
13 not have knowledge about that particular field.

14 In this case the witness is being offered as an expert
15 on the street value of drugs. I have overruled the
16 objection and will designate him as such. That means he has
17 the, the right to give his opinion on that subject and also
18 give the reasons for his opinion on that subject. Later on,
19 when I charge you concerning the law, I will give you
20 additional information as to how you can treat this
21 testimony in your weighing of the facts.

22 But at this time, suffice it to say, the witness has
23 been designated as an expert in this field. Therefore, he
24 will be allowed to offer his opinion in this, in this field
25 as well as the reasoning behind his opinions.

Matt Hutchins - Direct examination
by Solicitor Hunter

1 You may proceed.

2 Q In your personal information or experience, have you
3 come across the street value of cocaine?

4 A I have.

5 Q And how is cocaine usually sold on the streets?

6 A On the streets it's sold in smaller quantities.
7 Typically by grams or eight balls, which an eight ball being
8 approximately 3.5 grams.

9 Q What are the two types of ways illegal contraband is
10 sold?

11 A When cocaine is, is basically imported into this
12 country, it's more a pure form. Usually in compressed block
13 form called a brick or a kilogram is standard weight used
14 for that. Once sellers of the narcotics get it, they will
15 attempt to cut it with a cutting agent to expand their
16 profit on the drugs.

17 Q So, would you consider the large form wholesale?

18 A The, the large form would be wholesale. The cut form
19 would be retail.

20 Q Okay. Do you have experience of how cocaine was sold
21 in June 2008?

22 A Yes, sir.

23 Q Is that different from today?

24 A It does. Drug prices go up and down. It's the supply
25 and demand. You'll see it fluctuate yearly. Right now drug

Matt Hutchins - Direct examination
by Solicitor Hunter

1 prices are higher than what they were in 2008.

2 Q And what is the typical retail of cocaine? '

3 A In 2008?

4 Q Yes, in 2008.

5 A In 2008, a, an ounce, which is 28 grams, is going for
6 between eight and nine hundred dollars an ounce is what
7 we're seeing, and the reason it's that variance from dealer
8 to dealer, that was kind of the range we were seeing at that
9 time.

10 Q And is cocaine sold in smaller amounts?

11 A It is.

12 Q What is the typical small, the smallest amount you
13 typically see bought?

14 A Some dealers sell it in a gram.

15 Q Okay.

16 A Typical standard would be eight ball is commonly
17 referred to as 3.5 grams. Typically a gram to, to an eight
18 ball is what you see on the street level.

19 Q And how much would a gram cost?

20 A Roughly, around that time, around a gram to a gram and
21 a half was going for about a hundred dollars.

22 Q A hundred dollars.

23 And an eight ball?

24 A And---

25 Q Just for a second, what, what is an eight ball?

Matt Hutchins - Direct examination
by Solicitor Hunter

1 A An eight ball is basically an eighth of an ounce.

2 Approximately 3.5 grams.

3 Q So, how much is an ounce?

4 A Twenty-eight grams.

5 Q Okay. And how much does an eight ball retail for in
6 June 2008?

7 A Be anywhere -- you know, it's like everything else, the
8 more you buy, you get price breaks on it. At that time an
9 eight ball was going for somewhere in the neighborhood of
10 250 to 300.

11 Q Okay. So, we'll go on the low end, 250.

12 A Yes, sir.

13 Q All right. On wholesale, how much would you expect for
14 13 ounces?

15 A Wholesale wise, the, the span I was referred to
16 earlier, the eight to, eight hundred to nine hundred
17 dollars, that was on the wholesale end of it for an ounce.

18 Q So, it would be approximately \$850 if we put it in the
19 middle?

20 A On the -- yes, sir.

21 Q Per ounce?

22 A Per ounce on the wholesale end. And to get the retail
23 basically, you basically -- you take the, the values I gave
24 for the ounce, for the gram, the gram and a half at a
25 hundred dollars and multiply that out.

Matt Hutchins - Cross-examination
by Mrs. Manigault

1 SOLICITOR HUNTER: Okay. Your Honor, no further
2 questions.

3 Please answer any questions Mrs. Manigault has for you.

4 THE COURT: Mrs. Manigault, your witness.

5 MRS. MANIGAULT: Thank you, Your Honor.

6 THE COURT: Yes, ma'am.

7 MRS. MANIGAULT: Excuse me.

8 CROSS-EXAMINATION

9 BY MRS. MANIGAULT:

10 Q Investigator Hutchins, I believe you testified
11 yesterday that you executed a search warrant at, assisted
12 with executing a search warrant at [REDACTED] Hickory Nut Road in
13 Una?

14 A Yes, ma'am.

15 Q Okay. And I believe you testified that you were in
16 surveillance of that residence for a short period of time
17 that morning?

18 A Yes, ma'am.

19 Q How long was that surveillance?

20 A We were intending to set up surveillance to observe Mr.
21 Eubank's leaving. As we initially got to that location is
22 when we observed Mr. Eubanks and another subject walking
23 from the direction of the outbuilding towards the vehicles.

24 Q walking toward the outhouse, outbuilding?

25 A From---

Matt Hutchins - Cross-examination
by Mrs. Manigault

1 Q From?

2 A ---the direction of the outhouse, outbuilding towards
3 the vehicles.

4 Q Okay. You said walking from the direction of the
5 outhouse?

6 A Yes, ma'am.

7 Q Okay. So, did you see either of them come out of the
8 outhouse?

9 A Never saw either one of them come out of the
10 outbuilding. The way the outbuilding, building is situated
11 behind the residence, it's, it's the only thing kind of in
12 that area.

13 Q Okay. I didn't hear your last statement.

14 A Where the outbuilding was sitting, the direction they
15 were coming, that's the only thing kind of in that area from
16 the direction they were coming from.

17 Q Okay. Did -- you stated that you followed Mr. Eubanks,
18 is that correct?

19 A Yes, ma'am.

20 Q And did you follow the other subject?

21 A Surveillance on the other subject was broke off so that
22 both vehicles could follow Mr. Eubanks.

23 Q So, you did not follow the other subject that you saw
24 coming from the property?

25 A For a very short ways and then we continued to follow

Matt Hutchins - Cross-examination
by Mrs. Manigault

- 1 Mr. Eubanks and did not follow the other subject.
- 2 Q Okay. How short is a short way?
- 3 A We actually followed the other subject to 26 and 292,
- 4 Highway 292, and that's where we ceased surveillance on him.
- 5 Q So, less than a mile?
- 6 A Yes, ma'am.
- 7 Q Okay. All right. And when you followed Mr. Eubanks
- 8 from his home, I believe you testified that he got into a
- 9 Yukon?
- 10 A Yes, ma'am.
- 11 Q And did, did you verify what name the Yukon was listed
- 12 in?
- 13 A I do not have that in front of me. If I recall
- 14 correctly, I believe it had a dealer tag on it, but I'm not
- 15 positive on---
- 16 Q You didn't verify that the Yukon was listed for Melton
- 17 Lease Fleet?
- 18 A I do have that information, yes, ma'am.
- 19 Q All right. And---
- 20 A But I do not have it in front of me.
- 21 Q You said it still, it still had a dealers tag on it?
- 22 A If I recall correctly, yes, ma'am. I do not have the
- 23 information in front of me, in front of me on that tag
- 24 number.
- 25 Q All right. And how long did you know this case was

Matt Hutchins - Cross-examination
by Mrs. Manigault

- 1 coming for trial?
- 2 A I got a subpoena I believe a couple weeks ago.
- 3 Q Okay. All right. You followed Mr. Eubanks to a place
- 4 where you said he had breakfast?
- 5 A Yes, ma'am.
- 6 Q What's the name of that place?
- 7 A Jerry's Restaurant.
- 8 Q All right. And how long was he in there?
- 9 A Roughly 30 to 45 minutes.
- 10 Q All right. And did you approach him at that place?
- 11 A No, ma'am, we did not.
- 12 Q And Mr. Eubanks left Jerry's and got into his car and
- 13 went where?
- 14 A Went to Papa Crip's Bar.
- 15 Q Papa Crip's Bar?
- 16 A Yes, ma'am.
- 17 Q And did you verify who the owner is or proprietor is
- 18 for Papa Crip's Bar?
- 19 A The information that we had received was the license I
- 20 believe is in a Melton subject's name.
- 21 Q A Melton who?
- 22 A A Melton subject. Terry Melton---
- 23 Q Terry Melton. Okay.
- 24 A ---I believe is who it is in.
- 25 Q The proprietor would be Terry Melton.

Matt Hutchins - Cross-examination
by Mrs. Manigault

1 All right. But I believe you testified on yesterday
2 that the bar is named after Mr. Eubanks?

3 A Yes, ma'am, that's---

4 Q And, and how did you get that information?

5 A Through C.I. information. Also through surveillance of
6 frequently seeing him at that place.

7 Q Okay. All right. All right. When you took Mr. -- I
8 think you stopped him at Crip's, Papa Crip's, correct?

9 A Yes, ma'am.

10 Q And you took him into custody.

11 was he under arrest?

12 A He was advised that we had a search warrant for his
13 person and his residence. After he was Mirandized and went
14 back to his residence with us.

15 Q Okay. He was advised that he had, he had a search
16 warrant for his person?

17 A Yes, ma'am.

18 Q And that was the same search warrant that you
19 preferred, procured on June 13th, 2008?

20 A Yes, ma'am.

21 Q All right. And you went back to [REDACTED] Hickory Nut Road,
22 is that correct?

23 A That's correct.

24 Q And when you arrived at Hickory Nut Road, who was
25 there?

Matt Hutchins - Cross-examination
by Mrs. Manigault

- 1 A Mrs. Sherri Collins.
- 2 Q Was there anybody else there?
- 3 A Not -- well, the passenger in Mr. Eubanks' vehicle, he
- 4 also was taken back to the residence.
- 5 Q And the passenger's name was?
- 6 A I believe it was a Mr. Wilde's.
- 7 Q All right. Was there anybody else, civilian there,
- 8 when you were executing the search warrant with other
- 9 officers?
- 10 A After we arrived at the residence, another female,
- 11 shortly after we got there, arrived and, and I believe she
- 12 was some relation to Mrs. Collins.
- 13 Q I believe you testified yesterday that there are a
- 14 number of vehicles in the yard where Mr., where you executed
- 15 the search warrant?
- 16 A Yes, ma'am, there were.
- 17 Q And did you verify who the title was for those
- 18 vehicles?
- 19 A The title information, I know at least one of the
- 20 vehicles had a title in the dash in Melton Fleet Leasing.
- 21 Q Melton Fleet Lease?
- 22 A Yeah, Fleet Leasing, yes, ma'am, and I believe there
- 23 was a, the F350 dually had a tag on it that I believe was
- 24 registered to a relative of Mr. Eubanks.
- 25 Q All right. And were there, were there any other

Matt Hutchins - Cross-examination
by Mrs. Manigault

1 vehicles there registered to Melton Fleet Lease?

2 A The two vehicle -- two of the vehicles are the only two
3 that I'm aware of.

4 Q That's the Yukon?

5 A The Yukon.

6 Q And one other?

7 A And, and the -- it was a Mustang.

8 Q And did you verify, in your investigation, that Mr.
9 Eubanks was selling automobiles for Melton Fleet Lease?

10 A No, actually I was advised by Melton Fleet Leasing that
11 he was test driving the vehicles.

12 Q Okay. Now, I believe, in State's Exhibit No. 3, there
13 was a picture of a safe where Mr. Eubanks, you testified,
14 was opening the safe?

15 A Can I see the exhibit?

16 Q Yeah.

17 A Yes, ma'am.

18 Q All right. And he was under arrest at this point?

19 A He had not been arrested at that point, no, ma'am.

20 Q All right. And you ordered him to open the safe?

21 A We asked him for the combination and key and he
22 complied.

23 Q He complied. Excuse me. Excuse me. I believe you
24 testified that the monies found in the safe was
25 approximately 20,000?

Matt Hutchins - Cross-examination
by Mrs. Manigault

1 A The money located in the safe was \$20,100, yes, ma'am.

2 Q Okay. And who took control of the money in the safe?

3 A Investigator Joe Pharis, doing the return, took, took
4 that into, that into evidence.

5 Q Did anybody else touch the money in the safe before
6 Joe, Investigator Pharis got there?

7 A I was -- I took it out of the safe and was spreading it
8 in stacks as was in the picture.

9 Q All right. And who was the -- on State's Exhibit No.
10 8, who was the person lifting the mattress?

11 A That would be Investigator Joe Calderon.

12 Q And did you yourself handle that money right there
13 under the mattress in State's Exhibit 8?

14 A I do not recall personally handling that money. If
15 memory serves, I believe I was in the room when Joe Calderon
16 separated, separated it out into stacks, and I, I could of
17 assisted him. But I do not recall that.

18 Q And once -- excuse me. Once the money was separated,
19 Investigator Pharis took control?

20 A Yes, ma'am.

21 Q All right. In the safe you said you found some
22 jewelry, is that correct?

23 A In the photograph there was the bag in the bottom. I
24 believe it contained old jewelry, things of that nature.

25 Q Oh, you did not open the bag?

Matt Hutchins - Cross-examination
by Mrs. Manigault

1 A I looked in it. It was not anything of, pertaining to
2 the case or anything like that. So, I did not recover it.

3 Q You did not recover it?

4 A I did not move it or---

5 Q Oh, okay.

6 A ---have Joe Pharis to recover it or it was not taken by
7 our office.

8 Q All right. And I believe you testified that you, the
9 money found in the mattress was approximately 17,000?

10 A Yes, ma'am, the money located in the mattress was
11 \$17,000.

12 Q So, the total amount, amount of money that you
13 confiscated from that, that bedroom was 37, approximately
14 seven, 37,000?

15 A To be exact, I believe it was \$37,100, yes, ma'am.

16 Q 37,100.

17 Did you ever try to make contact with the other vehicle
18 or person that was in the area the morning you came when you
19 made, made surveillance?

20 A We, we did not make contact with that subject, no,
21 ma'am. I personally just---

22 Q Did you, did you ever -- so, you have not questioned
23 that person at all?

24 A No, ma'am, I have not.

25 Q And that person was never arrested?

Matt Hutchins - Cross-examination
by Mrs. Manigault

1 A No, ma'am, that person was not.

2 MRS. MANIGAULT: All right. No further questions, Your
3 Honor.

4 THE COURT: Redirect?

5 SOLICITOR HUNTER: None, Your Honor.

6 THE COURT: You may step down, sir.

7 State may call its next witness.

8 SOLICITOR HUNTER: The State would call Investigator
9 Paul Norris.

10 THE COURT: Come forward, sir, to be sworn right here.

11 PAUL NORRIS, being first duly
12 sworn, testified as follows:

13 THE COURT: Have a seat please. I'd ask that you state
14 your name on the record

15 WITNESS: Investigator Paul Anthony Norris.

16 THE COURT: Mr. Hunter, it's your witness.

17 DIRECT EXAMINATION

18 BY SOLICITOR HUNTER:

19 Q Mr. Norris, what do you currently do for a living?

20 A I am assigned to the Narcotic's Division for the
21 Spartanburg County Sheriff's Office.

22 Q And how long have you been in law enforcement?

23 A It'd be ten years this coming September.

24 Q Okay. Take us through your career as a law enforcement
25 officer.

Paul Norris - Direct examination
by Solicitor Hunter

1 A worked patrol approximately four, four and a half
2 years. Was then assigned to the car breaking and task
3 force. Approximately a year and a half from there I went to
4 the criminal investigation division as a white collar
5 investigator and also as a property crime investigator, and
6 then by 2006, April 2006 been assigned to the Narcotic's
7 Division.

8 Q Okay. So, how long have you been a narcotic's officer
9 since?

10 A Just about four years now.

11 Q Were you a narcotic's officer in June 2008?

12 A Yes, sir, I was.

13 Q Did you have the opportunity to assist in the search
14 warrants during your time as a narcotic's officer or anytime
15 in law enforcement?

16 A Yes, I have.

17 Q Approximately how many times?

18 A I'd say approximately, up, up at that time, probably
19 like 50 times.

20 Q And what was your duties in June 2008?

21 A My duties was to help with surveillance on the, Mr.
22 Eubanks, and then, after he was detained, go back to the
23 residence and help search the residence.

24 Q Okay. So, you participated in the execution of the
25 search warrant?

Paul Norris - Direct examination
by Solicitor Hunter

1 A Yes, I did.

2 Q What were your assigned duties that day in the search?

3 A At first I was in the living room just watching the
4 subjects, making sure, you know, everybody was secured.

5 After, I can't really tell what time it was, after a few
6 minutes I went outside and helped search the premises, which
7 is an outbuilding located on the back right-hand corner of
8 that residence.

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

11 THE COURT: You may.

12 Q I'm gonna show you what's been premarked State's
13 Exhibit 11.

14 Do you recognize that?

15 A Yes, sir, that's the outbuilding located at the
16 residence.

17 Q Okay. Did you take that picture?

18 A No, sir, I did not.

19 Q Okay. But is that fairly and accurately depict what
20 you saw that day?

21 A Yes, sir, it is.

22 SOLICITOR HUNTER: Okay. Your Honor, at this time we
23 would move State's, offer to move State's Exhibit 11 into
24 evidence.

25 THE COURT: Any objection?

Paul Norris - Direct examination
by Solicitor Hunter

1 MRS. MANIGAULT: None, Your Honor.

2 THE COURT: Without objection it will be received as
3 marked.

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

6 SOLICITOR HUNTER: Your Honor, may we publish it on the
7 overhead?

8 THE COURT: You may, sir.

9 Q When you went to the outbuilding, what condition was it
10 in?

11 A It was closed and had a padlock on the door.

12 Q So, you couldn't enter the building?

13 A No, sir, could not.

14 Q How were you able to gain entry into the building?

15 A Went back inside the residence and asked Mr. Eubanks
16 for the keys. He had the keys and was directed where the
17 keys were at the time. Retrieved the keys, went back out to
18 the outbuilding, and unlocked the door.

19 Q So, who, who told you where the keys were?

20 A Mr. Eubanks.

21 Q All right. Let me show you what's been premarked
22 State's Exhibit 12.

23 Do you recognize that?

24 A Yes, sir.

25 Q What is it?

Paul Norris - Direct examination
by Solicitor Hunter

1 A That is the set of keys that I retrieved and entered
2 the, the building with, unlocked the Master lock with.

3 Q Does that fairly and accurately depict what you saw
4 that day?

5 A Yes, sir, it is.

6 Q Has it been altered in any way?

7 A No, sir, it has not.

8 SOLICITOR HUNTER: Your Honor, at this time we'd offer
9 State's Exhibit 12 into evidence.

10 THE COURT: Any objection?

11 MRS. MANIGAULT: No objection.

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

14 (Whereupon, State's Exhibit No. 12 was received into
15 evidence at this time.)

16 SOLICITOR HUNTER: May we publish it, Your Honor?

17 THE COURT: You may.

18 Q If you could, just briefly describe what this picture
19 shows.

20 A It shows the padlock that was unlocked with a set of
21 keys hanging from the lock. One key is inserted into the
22 Master lock, which is the one that opened the, the lock
23 which is on the outbuilding.

24 Q Once inside, what did you do?

25 A Went inside the, the outbuilding and tried to do a

Paul Norris - Direct examination
by Solicitor Hunter

1 systematic search of the building. Started on the
2 right-hand side. When I walked in, located a cooler that
3 was in the floor, opened up the cooler, and inside the
4 cooler was multiple sandwich baggies with a white powdered
5 substance. Excuse me. I notified Investigator Hutchins
6 what I located. He came outside real quickly to inspect.
7 Then we had someone photograph what was located, photograph
8 the key that you see there, and then it was turned over to
9 Sergeant Pharis to recover.

10 Q Did you ever touch the white powdery substance?

11 A No, sir, I did not.

12 Q Once you opened the cooler, did you back away?

13 A Yes, sir.

14 SOLICITOR HUNTER: No further questions, Your Honor.

15 THE COURT: Mrs. Manigault, your witness.

16 CROSS-EXAMINATION

17 BY MRS. MANIGAULT:

18 Q It is Investigator Norris?

19 A Yes, ma'am.

20 Q All right. Approximately how long, after you arrived
21 at the [REDACTED] Hickory Nut, did you execute the search of the
22 outhouse?

23 A I, I don't recall what the time period was.

24 Q Was it minutes or hours or what?

25 A It was probably minutes.

Paul Norris - Cross-examination
by Mrs. Manigault

- 1 Q Minutes.
- 2 Okay. And otherwise you were in the living room area?
- 3 A Yes, ma'am.
- 4 Q With individuals?
- 5 A Yes, ma'am.
- 6 Q Okay. Now, you said that you, you went out to the
- 7 outhouse and it was locked and you came back in or --?
- 8 A Yes, we went outside---
- 9 Q Okay.
- 10 A ---to search the outbuilding and the outbuilding was
- 11 locked and we went back inside the residence.
- 12 Q Okay. Outbuilding.
- 13 All right. You testified that Mr. Eubanks gave you the
- 14 instructions where the keys were?
- 15 A Yes, ma'am, that's correct.
- 16 Q Where, where were the keys?
- 17 A I don't recall exactly where they were if they were on
- 18 his person or if they somewhere else in the house or on the
- 19 coffee table where he was sitting in front of.
- 20 Q Okay. Was Mr. Eubanks in the living room, the place
- 21 were you were secured?
- 22 A Yes, ma'am.
- 23 Q Okay. And did you search him or are you---
- 24 A No, ma'am, I did not.
- 25 Q You did not.

Paul Norris - Cross-examination
by Mrs. Manigault

1 So, all you can recall from testimony today is that he
2 directed you to where the keys were?

3 A Yes, ma'am, that's correct.

4 Q All right. And I think you testified that, when you
5 went into the outhouse, you located some plastic baggies
6 with white powdery substance?

7 A Yes, ma'am, that's correct.

8 Q And where did you locate that?

9 A On the right-hand corner of the outbuilding inside it.
10 It was inside of a Igloo cooler box type cooler.

11 Q Okay. And was -- it had to be unzipped, unsnapped
12 before you looked in it?

13 A I believe you had to open it. It was like a -- it
14 wasn't a zipper type. I'm not sure if it's a zipper type or
15 not, but you had to lift the top up.

16 Q Okay. And you lifted, looked in it, and that's it?

17 A Yes, ma'am.

18 Q All right. And were you alone?

19 A I believe Lieutenant Duncan was with me at the time.

20 Q Lieutenant Duncan?

21 A Yes, ma'am.

22 Q And who notified Investigator Pharis that, that you
23 found something?

24 A I did.

25 Q And so, you left Lieutenant Duncan there with what you

Paul Norris - Cross-examination
by Mrs. Manigault

1 found?

2 A I -- we called Investigator Hutchins out and then we
3 went back out. I went and, and told Mr. or Sergeant Pharis
4 what I found.

5 Q Okay. So, Investigator Hutchins came out---

6 A Came out briefly.

7 Q ---and viewed, viewed what you found?

8 A Uh-huh. (Affirmative).

9 Q All right. And then all of you went back into the
10 house?

11 A No, ma'am.

12 Q Okay. Who went back to notify Investigator Pharis?

13 A I did.

14 Q You did.

15 So, you left Investigator Hutchins and Lieutenant
16 Duncan there?

17 A Yes, ma'am.

18 Q All right. Thank you.

19 THE COURT: Redirect?

20 SOLICITOR HUNTER: None, Your Honor.

21 THE COURT: You may step down, sir.

22 State may call its next witness.

23 SOLICITOR HUNTER: The State would call Sergeant Joe
24 Pharis.

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

Joe Pharis - Direct examination
by Solicitor Hunter

1 JOE PHARIS, being first duly sworn,
2 testified as follows:

3 THE COURT: Have a seat please, sir.

4 (Witness complies.)

5 THE COURT: State, state your name for the record.

6 WITNESS: Joseph Pharis.

7 THE COURT: Mr. Hunter, it's your witness.

8 DIRECT EXAMINATION

9 BY SOLICITOR HUNTER:

10 Q What do you currently do for a living?

11 A I'm a sergeant in the Spartanburg County Sheriff's
12 Office Narcotic's Unit.

13 Q And how long have you been in law enforcement?

14 A A little over 15 years.

15 Q All right. And what have your duties been for the past
16 15 years?

17 Was it all with the Sheriff's Office?

18 A No, sir, it wasn't.

19 Q Where did you begin?

20 A I started at Greenville County Sheriff's Office
21 Detention Center. I worked approximately two and a half
22 years there. Then got employed by the Spartanburg Public
23 Safety Department at the City Police Department. I worked
24 approximately five and a half years there. Approximately
25 three years with them was in narcotics, and then got hired

Joe Pharis - Direct examination
by Solicitor Hunter

1 on with the Sheriff's Office. worked patrol roughly six
2 months and was assigned to narcotics shortly after there.

3 Q And so, how long have you worked in narcotics total?

4 A Total, roughly nine years.

5 Q Okay. And how much of that was with the Sheriff's
6 office?

7 A Probably seven and a half.

8 Q Okay. What are your duties as a narcotic's officer?

9 A Investigate narcotic's complaints, narcotic's crimes,
10 street level dealers, high end, high end drug dealers.

11 Q And were you a narcotic's officer on June 12th or
12 18th, 2008?

13 A Yes, sir, I was.

14 Q And what were your duties at that, at that time?

15 A My duty on June 18th was to fill out and recover any
16 evidence found on this search warrant, fill out the return
17 portion of the search warrant, log anything that we took
18 from the residence.

19 Q Have you had an opportunity to assist in search
20 warrants?

21 A Yes.

22 Q Approximately how many times?

23 A Hundreds.

24 Q Okay. Explain exactly how a search warrant, once it's
25 been executed, the duties that different officers have.

Joe Pharis - Direct examination
by Solicitor Hunter

1 A Oh, once you get to the search location and once that
2 location is secured, we usually bring everybody that's on
3 the scene to a central location so one officer can watch
4 them people. Then you break up to what we call search
5 teams. They will go to assigned areas, bedrooms, living
6 rooms, outbuilding, yard, wherever we, it's, it's indicated
7 in the search warrant to be searched. Search teams would
8 search. One person is assigned to photograph. One person
9 is assigned to the return portion, which is the evidence
10 portion of the search warrant.

11 Once the search teams find evidence to be collected
12 that we're gonna take in your custody, they call for the
13 evidence to be photographed, and then they call for the
14 return person to come physically remove that item from that
15 place, bring it to where we call a central work area.
16 Usually it's a kitchen table or something like that that we
17 have room to spread paperwork out and write. Bring it back
18 to there and it's logged on to the return portion of the
19 search warrant and then place it into evidence.

20 Q Why is there one person to collect the evidence?

21 A Keep the chain of custody.

22 Q Okay. who collected the evidence on the search warrant
23 at [REDACTED] Hickory Nut Road?

24 A I did.

25 Q Okay. And why did you collect the evidence?

Joe Pharis - Direct examination
by Solicitor Hunter

1 A I drew that straw that day.

2 Q Okay. And how did that occur specifically on this
3 date?

4 A From---

5 Q For you collecting the evidence.

6 A Just picked me to collect the evidence that day, and,
7 like I said, once the search team found something, I was
8 assigned to go recover it and log it into evidence.

9 Q What time did you arrive at this location?

10 A Approximately 9:38 a.m.

11 Q What did you observe when you first arrived?

12 A When we first arrived, of course, we went inside the
13 residence to, to secure the residence, and there was a
14 female located inside the residence.

15 Q And who was that female?

16 A I don't have her name. I didn't have contact with her.
17 I'd have to have the report to---

18 Q All right. To your personal knowledge, do you know who
19 lives at [REDACTED] Hickory Nut Road?

20 A Through the investigation that, and the information
21 forwarded to us, it would be a James Crip Eubanks.

22 Q Okay. Were you also involved in the search other than
23 collecting evidence?

24 A No, when you collect evidence you, that is your
25 assigned duty. You do not search.

Joe Pharis - Direct examination
by Solicitor Hunter

1 Q Okay. Let me show you what's been premarked State's
2 Exhibit 15.

3 Do you recognize this?

4 A Yes, sir, I do.

5 Q And what is it?

6 A That is Mr. Eubanks and myself in a photograph and I am
7 recovering what appears to be two bags, two small baggies of
8 a white powder substance from his front right pocket.

9 Q Okay. Does that fairly and accurately depict what
10 happened that day?

11 A Yes, sir.

12 Q Has it been altered or amended in any way?

13 A No, sir.

14 SOLICITOR HUNTER: Your Honor, at this time we would
15 offer State's Exhibit---

16 A 15.

17 SOLICITOR HUNTER: ---15 into evidence.

18 THE COURT: Any objection?

19 MRS. MANIGAULT: Subject to my continuing objections,
20 Your Honor.

21 THE COURT: Subject to the previous objections, it's
22 admitted---

23 MRS. MANIGAULT: Thank you, Your Honor.

24 THE COURT: ---as marked.

25 (Whereupon, State's Exhibit No. 15 was received into

Joe Pharis - Direct examination
by Solicitor Hunter

1 evidence at this time.)

2 SOLICITOR HUNTER: Your Honor, may I publish?

3 THE COURT: You may.

4 Q Okay. Who's the man in the Panthers shirt?

5 A That would be me.

6 Q Okay. And who is the man next to you?

7 A That would be Mr. Eubanks.

8 Q What are you doing?

9 A I'm recovering the two small baggies which contained a
10 white powder substance from his front right pocket.

11 Q Okay. Sergeant Pharis, I'm gonna show you what's been
12 premarked State's Exhibit 16.

13 Do you recognize that?

14 A Yes, sir, I do.

15 Q How do you recognize that?

16 A This is also items that was recovered from Mr. Eubanks'
17 person. Looks like some bank statement, some cash, receipt,
18 his driver's license.

19 Q Does that -- where was that found?

20 A On his person.

21 Q Well, where was that picture taken?

22 A This is on his table in his living room.

23 Q Does it fairly and accurately depict what you saw that
24 day?

25 A Yes, sir.

Joe Pharis - Direct examination
by Solicitor Hunter

1 Q All right. Is it altered or amended in any way?

2 A No, sir.

3 SOLICITOR HUNTER: Your Honor, at this time the State
4 would offer State's Exhibit No. 16 into evidence.

5 MRS. MANIGAULT: I would---

6 THE COURT: Any objection?

7 MRS. MANIGAULT: I would like to review that.

8 THE COURT: Yes, ma'am.

9 SOLICITOR HUNTER: Just for the Court record, I did
10 previously show defense counsel the premarked exhibits
11 today.

12 THE COURT: Okay.

13 MRS. MANIGAULT: No objection, Your Honor.

14 THE COURT: Without objection, it will be received into
15 evidence as marked.

16 (Whereupon, State's Exhibit No. 16 was received into
17 evidence at this time.)

18 SOLICITOR HUNTER: Your Honor, may I publish?

19 THE COURT: You may.

20 Q Where were these items recovered?

21 A From the pockets of Mr. Eubanks.

22 Q Okay. In particular, what is this item right here?

23 A That's U.S. currency.

24 Q Do you know how much that was?

25 A I think it was approximately 1,400.

Joe Pharis - Direct examination
by Solicitor Hunter

1 Q All right. Thank you.

2 were you called out to the outbuilding by Investigator
3 Paul Pharis?

4 A Yes, sir, I was.

5 Q What happened when you were called out to the
6 outbuilding?

7 A Once I got to the outbuilding, they told me they had
8 discovered evidence located in a small cooler. I looked at
9 the cooler, opened the cooler, saw what was there. The
10 person that was taking photographs at that time actually
11 took a picture of the evidence inside the cooler, which
12 appeared to be multiple baggies of white powder substance.
13 Once that photograph was taken, I removed the baggies
14 individual and laid them up on I believe it was a table saw
15 to get a overall picture of how many baggies were in that
16 cooler.

17 Q Okay. Let me show you what's been premarked as State's
18 Exhibit 14. I have previously shown defense counsel this
19 exhibit.

20 Do you recognize that picture?

21 A Yes, sir, I do.

22 Q And what is it?

23 A That is the Igloo cooler and the multiple baggies
24 located inside.

25 Q Does it fairly and accurately depict what you saw that

Joe Pharis - Direct examination
by Solicitor Hunter

1 day?

2 A Yes, sir, it does.

3 Q Has it been altered or amended in any way?

4 A No, sir.

5 SOLICITOR HUNTER: Your Honor, at this time the State
6 would offer Exhibit No. 17 into -- is it 17?

7 A Fourteen.

8 SOLICITOR HUNTER: Fourteen into evidence.

9 THE COURT: Any objection?

10 MRS. MANIGAULT: Continuing objection, Your Honor.

11 THE COURT: Subject to continuing objections it will be
12 admitted.

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

15 SOLICITOR HUNTER: May I publish?

16 THE COURT: Yes, sir.

17 Q So, this is a picture of inside the cooler?

18 A Yes, sir, it is.

19 Q And how baggies were inside of it?

20 A Thirteen.

21 Q Sergeant Pharis, I'm gonna hand you what's been
22 premarked State's Exhibit 13.

23 Do you recognize this picture?

24 A Yes, sir, I do.

25 Q And how so?

Joe Pharis - Direct examination
by Solicitor Hunter

1 A These are the individual baggies from inside the cooler
2 that are laid out on the saw table.

3 Q Does it fairly and accurately depict what you saw that
4 day?

5 A Yes, sir, it does.

6 Q And has it been altered or amended in any way?

7 A No, sir.

8 SOLICITOR HUNTER: Your Honor, we offer State's Exhibit
9 13 into evidence.

10 THE COURT: Any objection?

11 MRS. MANIGAULT: Your Honor, my objection continues
12 from the earlier motions.

13 THE COURT: Yes, ma'am.

14 MRS. MANIGAULT: Thank you.

15 THE COURT: It will be admitted as marked subject to
16 her objections.

17 (Whereupon, State's Exhibit No. 13 was received into
18 evidence at this time.)

19 SOLICITOR HUNTER: Your Honor, may I publish?

20 THE COURT: You may.

21 Q You testified earlier about the saw horse, correct?

22 A Saw bench?

23 Q The saw bench. Excuse me.

24 What is this picture?

25 A That is a picture of the baggies, individual baggies

Joe Pharis - Direct examination
by Solicitor Hunter

1 laid out on the saw bench. Basically give us an area to lay
2 them out to take a photograph.

3 Q Okay. Who placed them on this saw bench?

4 A I did.

5 Q Okay. And how many baggies were there?

6 A Thirteen.

7 Q Of?

8 A Powder, white powder substance.

9 Q Let me show you what's been premarked as State's
10 Exhibit 17.

11 Do you recognize this?

12 A Yes, sir, I do.

13 Q And how do you recognize this?

14 A This is the cooler that I removed and placed into
15 evidence from the outbuilding on the property of James Crip
16 Eubanks.

17 Q Is this the same cooler as in Exhibits 13 and 14?

18 A Yes, sir, it is.

19 Q And is it in the same or substantially the same
20 condition as you remember that day?

21 A Yes, sir.

22 SOLICITOR HUNTER: Your Honor, at this time we would
23 offer State's Exhibit 17 into evidence.

24 THE COURT: Subject to your continuing objection---

25 MRS. MANIGAULT: Yes, sir.

Joe Pharis - Direct examination
by Solicitor Hunter

1 THE COURT: ---Mrs. Manigault?

2 MRS. MANIGAULT: Thank you, Your Honor.

3 THE COURT: It'll be admitted subject to that
4 objection.

5 (Whereupon, State's Exhibit No. 17 was received into
6 evidence at this time.)

7 THE COURT: You may proceed.

8 Q Sergeant Pharis, I'm gonna hand you what's been
9 premarked as State's Exhibit 2.

10 Do you recognize this?

11 A Yes, sir, I do.

12 Q And how do you recognize this?

13 A This is the sealed what we call a B.E.S.T. Bag. It's
14 an evidence bag that I placed the white powder substance
15 found at the search warrant into. There's my name printed
16 out. There's my signature saying I sealed this bag.

17 Q Okay. What is a B.E.S.T. Bag?

18 A B.E.S.T. Bag is basically a sealed evidence bag. Once
19 you find drug evidence, you place it into these and you seal
20 it, sign it, and then it is sent to our, our lab for
21 testing. It has a heat seal across the top. Once it's
22 sealed, if it is tampered with before our evidence or when
23 our chemist collects it, they will not test it. They'll
24 come back to us and ask us why this seal has been tampered
25 with, and, of course, we have to sign it and date it and put

Joe Pharis - Direct examination
by Solicitor Hunter

1 on the back side what we want it tested for.

2 Q What is inside the bag?

3 A It's a white powder substance.

4 Q Okay. Is this the same white powder substance that you
5 collected?

6 A Yes, sir, it is.

7 Q Is it in the same or substantially same condition as
8 you remember---

9 A Besides---

10 Q ---on June 18th, 2008?

11 A Yes, sir, besides this being outside the individual
12 baggies, it is in the same condition.

13 Q Can you just explain what you mean by outside the
14 individual baggies?

15 A When I, when I place it into the sealed bag, I place
16 the white powder substance actually inside each individual
17 bag in here. When the chemist receives it for testing, they
18 have to take it out, but they leave the original packaging
19 inside and that's the plastic baggies here.

20 Q And how many total plastic baggies did you put in
21 there?

22 A Actually, the 13 from the cooler and then the two that
23 was removed from Mr. Eubank's person.

24 Q What did you do with it once you collected it?

25 A Once I collected it, like I said, once again, we fill

Joe Pharis - Direct examination
by Solicitor Hunter

1 out the, the B.E.S.T. Bag, place all the information
2 concerning suspect information, who the test results are
3 getting sent to. Then once I seal it, sign it, and date it.

4 Q Okay. And then where do you take it?

5 A We take it to evidence.

6 Q Do you remember when you took this B.E.S.T. Bag?

7 A It would of been that day.

8 Q And so, on June 18th?

9 A Yes, sir.

10 Q And what do you do with it in evidence?

11 A We drop it -- if no one's actually in the evidence room
12 at the time, we'll drop it into the evidence locker to be
13 collected.

14 SOLICITOR HUNTER: Your Honor, no further questions.

15 THE COURT: Mrs. Manigault, your witness.

16 CROSS-EXAMINATION

17 BY MRS. MANIGAULT:

18 Q Investigator Pharis, I believe you say you arrived at
19 around 9:30 a.m.?

20 A Yes, ma'am.

21 Q And you went into the residence at [REDACTED] Hickory Nut?

22 A Yes, ma'am.

23 Q And what officers were with you when you arrived?

24 A Be Lieutenant Duncan, Investigator Matt Hutchins,
25 Investigator Henry Beck, Investigator Paul Norris,

Joe Pharis - Cross-examination
by Mrs. Manigault

1 Investigator Joe Calderon, myself, Investigator Nate
2 Cantrell.

3 Q All right. And you, you stationed yourself inside the
4 residence?

5 A Yes, ma'am, I did, at the dining room table.

6 Q And you -- I think you testified that you logged
7 evidence as you were advised that it was discovered?

8 A Yes, ma'am.

9 Q Okay. And so, you would leave the dining area to
10 collect the evidence?

11 A Uh-huh. (Affirmative).

12 Yes, ma'am.

13 Q Is that correct?

14 A Yes, ma'am.

15 Q All right. When you left the dining table area to
16 collect evidence, who was stationed at the evidence area for
17 evidence you already received?

18 A No one.

19 Q All right. And were there other persons in the house
20 besides the officers that you just named?

21 A Yes, ma'am.

22 Q Okay.

23 A Mr. James Eubanks was inside the residence.

24 Q All right.

25 A A female subject, I don't recall her name though, and

Joe Pharis - Cross-examination
by Mrs. Manigault

1 the other male subject that was riding with Mr. Eubanks when
2 we stopped him at the bar.

3 Q All right. So, those were three civilians that were
4 sitting in the house?

5 A Yes, ma'am.

6 Q When you collected the, the evidence from the
7 outbuilding, who notified you that there was something out
8 there?

9 A Investigator Paul Norris.

10 Q All right. I believe in State's Exhibit No. 16 there
11 was a photograph?

12 A Yes, ma'am.

13 Q All right. You, you pointed out that in that
14 photograph there was U.S. currency of approximately \$1,400,
15 is that correct?

16 A Yes, ma'am.

17 Q There are three other items that look, looks like
18 checks, is that correct?

19 A Yes, ma'am.

20 Q All right. And they were checks?

21 A Appears to be one maybe a Bank of America check, a BB&T
22 check, and another check that's folded. I can't tell the
23 bank on it.

24 Q Okay. Do you have any recollection today who those
25 checks were made out to?

Joe Pharis - Cross-examination
by Mrs. Manigault

- 1 A I do not.
- 2 Q All right. Thanks. On State's Exhibit No. 13 --
- 3 A Yes, ma'am.
- 4 Q -- you testified that these items were found in the
- 5 outbuilding?
- 6 A Yes, ma'am.
- 7 Q All right. And there were 13 bags, is that correct?
- 8 A Yes, ma'am.
- 9 Q And the, the weight of those 13 bags with the white
- 10 powder substance, did you log that in?
- 11 A I did not weigh them. It's---
- 12 Q Okay. That's fine.
- 13 A Okay.
- 14 Q All right. And those bags, did you, did you handle
- 15 those bags yourself?
- 16 A Yes, ma'am.
- 17 Q All right. Are those bags tied up or---
- 18 A Yes, ma'am.
- 19 Q ---cut or---
- 20 A You could see the knots in the bags.
- 21 Q Knots?
- 22 A Yes, ma'am, right here at the top in the photograph.
- 23 Q Okay. So, would any of these bags exhibit cut corners
- 24 or something like that?
- 25 A Not from this picture if I can tell they were cut

Joe Pharis - Cross-examination
by Mrs. Manigault

1 corners.

2 MRS. MANIGAULT: Okay. Beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 Q Thank you.

6 THE COURT: Redirect, Mr. Hunter?

7 SOLICITOR HUNTER: Yes, Your Honor. Briefly.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY SOLICITOR HUNTER:

11 Q She asked if, if you weighed the bags, correct?

12 A Yes.

13 Q Did you take a field weight of the bags?

14 A Yes, a field weight.

15 Q Did you take a field weight of each bag?

16 A Yes.

17 Q Okay. Do you remember what those were?

18 A Approximately one ounce.

19 Q Okay.

20 A Twenty-eight grams.

21 Q Did you also do any chemical tests to the substances?

22 A We do a field test, a presumptive test.

23 Q And what is a presumptive test?

24 A A presumptive test is a -- we use a agent or, or
25 chemical used called voltax, and what that will do is you

Joe Pharis - Redirect examination
by Solicitor Hunter

1 take a small sample of the, of the substance you want tested
2 if you're presuming it's cocaine, put it in a, basically a
3 white bowl. And when you put the pink voltax on top of it,
4 if it's cocaine or if it's presumptive to be cocaine, that,
5 the sample inside the white powder substance will actually
6 turn blue, and we've got that positive presumptive test from
7 that.

8 Q Do you do that on each bag?

9 A Yes.

10 Q And what was the presumptive test on each bag?

11 A That it was cocaine.

12 Q No further questions.

13 THE COURT: Recross?

14 MRS. MANIGAULT: None, Your Honor.

15 THE COURT: You may step down, sir.

16 Ladies and gentlemen, at this point in time we're going
17 to take a short break. I'll allow you to go back to the
18 jury room. If any of you are smokers, the bailiff will
19 accompany you to get a smoke. We'll allow you to stretch
20 your legs, clear your head before we proceed with additional
21 testimony.

22 As always, I'll caution you not to begin any
23 discussions about this matter until you've heard all the
24 evidence, I've charged you concerning the law, and
25 instructed you to begin your deliberations.

1 You may retire to the jury room.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. Court will be in recess for
5 about ten minutes.

6 Thank you very much.

7 SOLICITOR HUNTER: Your Honor, may we briefly approach?

8 THE COURT: Yes.

9 (Whereupon, a bench conference was held at this time
10 followed by a short recess being taken.)

11 THE COURT: Yes, sir.

12 SOLICITOR HUNTER: The witness is here, Your Honor.

13 THE COURT: Okay. All right. So, the State's ready.
14 Is the defense ready?

15 MRS. MANIGAULT: Yes, sir.

16 THE COURT: All right. Bring the jury in.

17 (Whereupon, the following takes place within the
18 presence of the jury.)

19 THE COURT: All right. The record will reflect that
20 the jury has returned to the courtroom, and you may call
21 your next witness.

22 SOLICITOR HUNTER: Your Honor, the State would call
23 Jack Westmoreland.

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

25 WITNESS: Yes, sir.

Jack Westmoreland - Direct examination
by Solicitor Hunter

1 JACK WESTMORELAND, being first duly
2 sworn, testified as follows:

3 THE COURT: Have a seat please, and once you're seated,
4 state your name for the record

5 WITNESS: John D. Westmoreland.

6 THE COURT: Your witness.

7 DIRECT EXAMINATION

8 BY SOLICITOR HUNTER:

9 Q Mr. Westmoreland, what do you commonly go by?

10 A Jack.

11 Q Okay. What do you do for a living?

12 A Work for Spartanburg County Sheriff's Office.

13 Q And what are your duties at this time?

14 A Right now I'm assigned to evidence.

15 Q How long have you been in law enforcement?

16 A Over 26 years.

17 Q Can you briefly describe your path as a law enforcement
18 officer?

19 A Uniform patrol division, narcotic's division, court
20 division, warrant division, and now evidence.

21 Q So, you've done pretty much a little bit of everything?

22 A Yes, sir.

23 Q How long have you been in the evidence room?

24 A Over two and a half years.

25 Q Okay. Were you in the evidence room in June 2008?

Jack Westmoreland - Direct examination
by Solicitor Hunter

- 1 A I was.
- 2 Q What are your duties in the evidence room?
- 3 A To take evidence in and enter it in the computer system
- 4 and then store it for court.
- 5 Q Is it a little different with narcotics?
- 6 A It is.
- 7 Q Okay. Can you briefly describe how narcotics are
- 8 treated in the evidence room?
- 9 A They're put in the drop box, which is a secured box.
- 10 We have a key for it. We take it out. We enter it into the
- 11 computer system. We place it into the drug room for the
- 12 chemist to come pick up and test.
- 13 Q Okay. And when you get evidence out of the drop box,
- 14 what do you do with it if it appears to be tampered with?
- 15 A Don't mess with it.
- 16 Q What do you do then?
- 17 A We normally call the officer who put it into evidence.
- 18 Q Okay. Did you receive evidence in the case against
- 19 James Eubanks?
- 20 A I did.
- 21 Q Okay. And what date did you receive that evidence?
- 22 A On the 19th.
- 23 Q Okay. I'm gonna show you what's been premarked State's
- 24 Exhibit 2.
- 25 A Yes, sir.

Jack Westmoreland - Direct examination
by Solicitor Hunter

- 1 Q Do you recognize that?
- 2 A Yes, I do.
- 3 Q And how do you recognize that?
- 4 A It's got my handwriting right here on it.
- 5 Q Okay. Is that the evidence you received in this case?
- 6 A It is.
- 7 Q Okay. When did you receive it again?
- 8 A On the 19th.
- 9 Q And what do you do once you receive it?
- 10 A I enter it in the computer system and I place it into
- 11 the drop box or the evidence drug room for the chemist to
- 12 come pick up.
- 13 Q To your knowledge, was that evidence ever tampered with
- 14 before---
- 15 A No, it was not.
- 16 Q ---before you received it?
- 17 A No, sir.
- 18 Q Was it tampered with when you put it in the drug room?
- 19 A No, sir.
- 20 Q And what date did you put it in the drug room?
- 21 A 19th.
- 22 Q And when you say you put it in the drug room, what
- 23 exactly do you mean?
- 24 A It's like -- we have a separate room that's a drug room
- 25 we keep all the drugs in, and that's where we put it. We

Jack Westmoreland - Direct examination
by Solicitor Hunter

1 put it in that drug room.

2 Q And who has access to that room?

3 A Evidence officers.

4 Q Okay. And anybody else?

5 A That's it. The sheriff and the chief deputy.

6 Q And the chemists?

7 A And the chemist, yes.

8 Q Okay. And to your knowledge that was never tampered
9 with?

10 A (Witness nods negatively.)

11 Q Did it stay in your custody and control from the entire
12 time of the 19th to the 20th?

13 A It did.

14 Q Okay. That's all from this witness. Please answer any
15 questions Mrs. Manigault may have.

16 THE COURT: Mrs. Manigault, it's your witness.

17 CROSS-EXAMINATION

18 BY MRS. MANIGAULT:

19 Q Officer Westmoreland?

20 A Yes, ma'am.

21 Q Okay. Now, you stated you received the evidence on
22 June 19th, 2008?

23 A Yes, ma'am.

24 Q And was -- and at what time did you receive it?
25 Do you recall?

Jack Westmoreland - Cross-examination
by Mrs. Manigault

1 A It would of been in the morning. I'm not sure when.

2 Q When you checked, when you came to work, when you
3 checked---

4 A Yes, ma'am, I took it out of the drop box and---

5 Q Okay. Do you know when it was placed in the drop box?
6 Does your report say?

7 A The report?

8 Q Uh-huh. (Affirmative).

9 A The report says it was put in the drop box the 18th.

10 Q Okay. I believe the State asked you whether it was
11 tampered with before it was placed in the drop box.

12 You would have knowledge of that, would you?

13 A If it would of been tampered with, it would of had a
14 broken seal on it and I would be able to tell.

15 Q But you would have no knowledge if there was tampered,
16 if anything was tampered with before it was placed into the
17 package and put in the drop box?

18 A Correct.

19 Q All right. Thanks.

20 SOLICITOR HUNTER: No questions from this witness.

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

22 SOLICITOR HUNTER: May he be excused, Your Honor?

23 THE COURT: Any objection?

24 MRS. MANIGAULT: No objections, Your Honor.

25 THE COURT: You're free to go. Thank you,

Beth Stuart - Direct examination
by Solicitor Hunter

1 Mr. Westmoreland.

2 WITNESS: Thank you, sir.

3 THE COURT: You may call your next witness.

4 SOLICITOR HUNTER: Yes, Your Honor.

5 The State would call Beth Stewart.

6 THE COURT: Ma'am, come forward to my left to be sworn
7 please.

8 BETH STUART, being first duly
9 sworn, testified as follows:

10 THE COURT: Please have a seat in the witness stand.

11 Once seated, state your name for the record

12 WITNESS: Mary Elizabeth Stuart.

13 THE COURT: Mr. Hunter, it's your witness.

14 DIRECT EXAMINATION

15 BY SOLICITOR HUNTER:

16 Q Ms. Stuart, what do you do for a living?

17 A I'm a forensic chemist with the Spartanburg County
18 Sheriff's Office.

19 Q And how long have you been working for the Spartanburg
20 County Sheriff's Office?

21 A Coming up on seven years.

22 Q Okay. Have you been a chemist the entire time?

23 A I have, yes.

24 Q What type of education do you have?

25 A Sure. I have a Bachelor's of Science in Chemistry from

Beth Stuart - Direct examination
by Solicitor Hunter

1 the College of Charleston. I also have a Bachelor's in
2 Science in Biochemistry from the College of Charleston, and
3 I have a Master's in Chemistry from the University of South
4 Carolina.

5 Q Okay. What training do you have in the fields of
6 narcotics and chemistry?

7 A I had drug training at Spartanburg County Sheriff's
8 Office. I've also been to the DEA forensic chemist school.
9 I have been to the DEA clandestine laboratory school, and
10 every year we have 40 hours of continuing education.

11 Q And what does the continuing education entail?

12 A Sure. The company -- there's a company called Agilent,
13 which is the maker of our instrumentation in the lab, and
14 they have courses that are 40 hour courses. We go to those.
15 We also go to DEA courses that are continuing education as
16 well as any professional society groups that we're members
17 of that have continuing education courses.

18 Q So, you've done those at least 40 hours every year that
19 you've been employed at the Sheriff's Office?

20 A Yes.

21 Q Have you had the opportunity to chemically analyze
22 substances for the presence of narcotics?

23 A I think I'm pushing about 3,000 cases now.

24 Q That was gonna be my next question.

25 A Yes.

Beth Stuart - Direct examination
by Solicitor Hunter

1 Q Have you ever testified as an expert in the field?

2 A I have. 21 times.

3 Q Where?

4 A Here in Spartanburg County.

5 SOLICITOR HUNTER: Okay. Your Honor, at this time we
6 would offer Beth Stuart as an expert in the chemical
7 analysis of narcotics.

8 THE COURT: Any objection?

9 MRS. MANIGAULT: None, Your Honor.

10 THE COURT: All right. She'll be designated as an
11 expert within that field. I've already explained to the
12 jury what that designation means and you may proceed.

13 Q When your lab receives a substance to test it, what
14 steps are taken to insure that the substance has not been
15 tampered with?

16 A Sure. We go to the evidence room, to the drug room.
17 The evidence officers actually let us in there and we
18 receive the drugs. At that point, before we ever leave
19 evidence, we look at the drugs and make sure that -- the
20 packaging that they're in is called tamper evident. It's
21 not tamper resistant. If somebody wanted to cut it they
22 could, but it's tamper evident, which means if they try to
23 rip it, tear it, the lines on the side would show it. The
24 seal at the top would be broken.

25 So, we check it at that point before we'll ever take it

Beth Stuart - Direct examination
by Solicitor Hunter

1 from evidence, and then, at that point, we log it out of
2 evidence and take it back to the lab with us.

3 Q If you receive a substance that there was evidence of
4 tampering, would you test it?

5 A Well, as I say, we won't even remove it from the
6 evidence room if the seal and everything is not in tact.

7 Q What would you do then?

8 A We would just leave it in evidence and let them know
9 that they needed to contact the officer to come and make
10 sure the drugs are as in when they place them and reseal
11 them properly.

12 Q Did you receive a substance in the case against James
13 Eubanks?

14 A I did.

15 Q Okay. I'm gonna show you what's been premarked as
16 State's Exhibit 2.

17 Do you recognize this?

18 A I do, yes, sir.

19 Q And how can you identify this exhibit?

20 A Sure. Once we get an item back to the lab, before we
21 actually start testing it, once again, we check it for any
22 tampering and on the outside of the B.E.S.T bag, which is
23 what it would of originally been packaged in, we put our
24 initials, the date, and there's an okay that let's me know
25 it was sealed before I open it. So, my initials are there.

Beth Stuart - Direct examination
by Solicitor Hunter

1 Also, in the seal of the bag, here are my initials, the
2 date in which I sealed it up, and the lab number that I
3 assigned it.

4 Q When did you receive this exhibit?

5 A I received it on June the 20th of 2008.

6 Q Okay. Did you perform any testing on it?

7 A I did.

8 Q When did you perform the testing on it?

9 A When?

10 Q When.

11 A I started my analysis on June the 20th of 2008, that
12 same day.

13 Q Did this exhibit stay in your custody and control the
14 entire time?

15 A Yes, it did. We are in a locked security environment
16 that only myself, the other chemist, and the sheriff has a
17 key to, and we have a safe.

18 Q Was it tampered with when -- was it evidence of
19 tampering when you received it?

20 A No, I would of never took it.

21 Q Okay. What did you do with this exhibit once you
22 received it?

23 A Sure. Like I say, once I am going to work a case, I
24 pull it out. Once again, I check. I know it's hard to see.
25 But these lines here, if someone tried to rip, they would be

Beth Stuart - Direct examination
by Solicitor Hunter

1 distorted. This seal would be broken. I check that again
2 before I open it even though I've already checked it once,
3 put my initials, the date, and okay, which says it was
4 sealed before I opened it, and then I cut it open.

5 At that point I do a visual inspection of it, and then
6 I do a presumptive test, which is basically a spot color
7 change chemical test, and then I do a confirmatory test,
8 which is on instrumentation.

9 Q Now, you talk about a presumptive test, is that
10 different from a Voltax test?

11 A The Voltax test that the officers have on the street is
12 a field test like what we do. But what we do for the
13 officers, all the chemicals are combined in one little
14 bottle so they don't have to think about drop this one on,
15 then this one, then that one. They can just drop one. It
16 turns blue.

17 The chemicals that we use we actually have separated
18 out into bottles so we see a progressive color change. It,
19 it happens in steps. Like under this chemical it won't
20 change, then it should turn to blue, then it should not be
21 anymore, that, that sort of thing. So, it's a little more,
22 but it's still a field test.

23 Q Did you do a presumptive test on this exhibit?

24 A I did, yes, sir.

25 Q And what were the results?

Beth Stuart - Direct examination
by Solicitor Hunter

1 A For item one, which is, which was two corner bags
2 containing a white powder substance, it was found to be
3 cocaine at 0.34. That's after the instrumentation test
4 also. And item two was 13 bags containing white powder
5 substance in which cocaine was found at 351.50 grams.

6 Q Okay. Can you please explain what the instrumentation
7 test that you're talking about to the jury?

8 A Sure. It's called -- the acronym for it is G.C.M.S.,
9 which is gas chromatograph mass spectrometer, and basically
10 it's instrumentation in which the first part of the
11 instrument separates all the components of the mixture
12 you're putting in, and the second part of it identifies it.
13 So, basically we get what we call a quote unquote
14 fingerprint, fingerprint spectrum of the substance. Looks
15 the same every time we put the substance in the instrument,
16 and then we can read it and say what the substance is.

17 Q Okay. From those tests and your years and experience,
18 were you able to the, form an expert opinion as to what the
19 substance was?

20 A Yes, I was.

21 Q Please state your opinion.

22 A Once again, item one was cocaine found at 0.34 grams,
23 and item two was cocaine at 351.50 grams.

24 Q So, you also weigh these substances?

25 A Yes, sir, on an analytical balance.

Beth Stuart - Direct examination
by Solicitor Hunter

1 SOLICITOR HUNTER: Your Honor, at this time we would
2 offer State's Exhibit 2 into evidence.

3 THE COURT: Any objection?

4 MRS. MANIGAULT: My continuing objection, Your Honor.

5 THE COURT: Subject to the continuing objection---

6 MRS. MANIGAULT: Thank you.

7 THE COURT: ---of the defense, it will be admitted.

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

10 SOLICITOR HUNTER: Your Honor, may I publish to the
11 jury?

12 THE COURT: You may.

13 Q When you add the substances together, what was the
14 total weight?

15 A For items one and two together?

16 Q That's correct.

17 A 351.84 grams.

18 Q There's something else other than white powdery
19 substance, cocaine, in this bag.

20 what is that?

21 A Are you referring to the Ziploc and baggies?

22 Q Yes.

23 A what -- they're the packaging that they were in before
24 I tested them.

25 Q Okay. No further questions at this time. Please

Beth Stuart - Cross-examination
by Mrs. Manigault

1 answer any questions that Mrs. Manigault has for you.

2 THE COURT: Mrs. Manigault, your witness.

3 MRS. MANIGAULT: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MRS. MANIGAULT:

6 Q Ms. Stuart, I believe you testified you received the
7 items on June the 20th?

8 A Yes, ma'am.

9 Q Of '08?

10 A Yes, ma'am.

11 Q Was there a property and evidence sheet included with
12 the items that you received in that packet?

13 A Our paperwork that we do are called Form B's and C's.

14 Q Form B's?

15 A And they were with it, yes, ma'am, in the envelope.

16 Q And I believe you testified that you're an expert
17 chemist?

18 A Yes, ma'am.

19 Q All right. Expert witness in chemistry.

20 All right. Do you have anything to do with forensics
21 as far as fingerprinting or anything like that?

22 A No, ma'am.

23 Q Do you have -- did you have anything to do with
24 fingerprinting any of the---

25 SOLICITOR HUNTER: Objection, Your Honor. Relevance of

Beth Stuart - Cross-examination
by Mrs. Manigault

1 fingerprinting in this case. We've heard no evidence---

2 THE COURT: She's not been offered as an expert in that
3 field. I'm gonna sustain the objection.

4 MRS. MANIGAULT: Thank you, Your Honor.

5 Q All right. You said that the only thing you had to do
6 with this is testing the substance that was given to you in
7 the sealed bags, is that correct?

8 A Yes, ma'am.

9 Q And that's the white powder substance?

10 A Yes, ma'am.

11 Q All right. Thank you.

12 THE COURT: Redirect?

13 SOLICITOR HUNTER: Nothing, Your Honor.

14 THE COURT: You may step down.

15 Do you wish to have the witness excused?

16 SOLICITOR HUNTER: Yes, Your Honor.

17 THE COURT: Any objection?

18 MRS. MANIGAULT: No, Your Honor.

19 THE COURT: You're free to go, ma'am. Thank you very
20 much.

21 WITNESS: Thank you.

22 THE COURT: State may call its next witness.

23 SOLICITOR HUNTER: Your Honor, at this time the State
24 rests.

25 THE COURT: Ladies and gentlemen of the jury, at this

1 point in time I have to take up some matters with the
2 attorneys out of your hearing. And so, I'm going to ask you
3 to step back to the jury room once more. Again, I will ask
4 you not to discuss the case or anything about the case until
5 I ask you to begin your deliberations.

6 You may retire.

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

9 THE COURT: Any motions at this time?

10 MRS. MANIGAULT: Your Honor, the defense would make a
11 motion for directed verdict in that the State has not proved
12 the elements of the crime as charged.

13 THE COURT: Based upon my view of the evidence as
14 presented, I do find that there's sufficient evidence to
15 justify the case being allowed to go to the jury. So, I'll
16 deny this motion.

17 MRS. MANIGAULT: Thank you, Your Honor.

18 THE COURT: Any other motions that you need to make?

19 MRS. MANIGAULT: Not at this time, Your Honor.

20 THE COURT: All right. I do wish to inquire of your
21 client concerning his right to testify.

22 So, at this point in time, Madam Clerk, please place
23 the defendant under oath.

24 MRS. MANIGAULT: Like him to stand, Your Honor?

25 THE COURT: No, he can, he can -- just raise your

1 right-hand.

2 (Whereupon, the defendant was placed under oath at this
3 time.)

4 THE COURT: All right, sir. Mr. Eubanks, there's some
5 matters I need to go over with you at this time. I'm going
6 to explain to you certain of your Constitutional rights.
7 Once I've finished my explanation I'll give you an
8 opportunity to ask any questions you'd like to ask. I want
9 to be sure that you understand these rights.

10 Do you understand what we're doing now?

11 DEFENDANT: Yes, sir. Yes, sir.

12 THE COURT: All right. We've reached the stage of your
13 trial where you have the right to present your defense. You
14 have the right to claim the protections given to you under
15 the Fifth Amendment to the United States Constitution. That
16 amendment reads, in part, that no person shall be compelled,
17 in any criminal case, to be a witness against himself.

18 Now, what that means is that while you have the right
19 to testify, no one can make you testify in this case. No
20 one can -- the right to remain silent is a personal right.
21 It belongs to you. If you decide to testify I do need to
22 explain to you that you will be subject to the same rules
23 that govern any other witness who will be testifying. That
24 means that you will be examined by your lawyer, and then
25 cross-examined by the State's attorneys.

1 I will tell you that, in addition, that, that involved
2 in that cross-examination, should you have convictions that
3 involve dishonesty or false statements or for crimes
4 punishable by imprisonment for more than one year on your
5 record, and this Court makes a determination that the
6 probative value of that information outweighs its
7 prejudicial affect, the solicitor, in that situation, would
8 be able to introduce your prior record to attack your
9 credibility.

10 Now, if you decide to testify, the decision on your
11 part must be made freely and voluntarily and intelligently.
12 That means with knowledge of the rights given to you under
13 the Fifth Amendment, and also knowledge of the consequences
14 that would result from your decision to testify. I will
15 advise you that if you decide not to testify in this case
16 that I will instruct the jury that they can not give the
17 fact that you did not testify any consideration whatsoever
18 in deliberating on your case, and that there should be no,
19 absolutely no prejudice to you because you did not testify.
20 I will instruct them that they should not even discuss that
21 factor during their deliberations.

22 Now, the decision as to whether or not to testify is
23 left entirely up to you. You have every right to consult
24 with anyone you wish to consult with concerning this right.
25 That means your attorney, family, friends, or anyone else.

1 But then the final decision will be yours as to whether or
2 not you testify.

3 Now, Mr. Eubanks, do you understand what I've
4 explained?

5 DEFENDANT: Yes, sir.

6 THE COURT: You have any questions about this right?

7 DEFENDANT: No, sir.

8 THE COURT: Had you had an opportunity to discuss this
9 with your lawyer?

10 DEFENDANT: I'm fixing to.

11 THE COURT: Well, just one second. Let me finish
12 talking to you.

13 DEFENDANT: Oh, I'm sorry.

14 THE COURT: So, you'd like to discuss further with your
15 attorney at this time?

16 DEFENDANT: That will be fine.

17 THE COURT: You, you have every right to.

18 Do you wish to do that?

19 DEFENDANT: No.

20 THE COURT: All right. Anyone else you'd like to
21 discuss this discussion with?

22 DEFENDANT: No, sir.

23 THE COURT: All right. Do you wish for me to ask the
24 state to disclose any matters that they would try to bring
25 up during your cross-examination?

1 DEFENDANT: No, sir.

2 THE COURT: All right. Do you wish to testify in this
3 case?

4 DEFENDANT: No, sir.

5 THE COURT: Okay, sir. Now, does the -- is the defense
6 ready to proceed with its witnesses?

7 MRS. MANIGAULT: Your Honor, the defense will not call
8 any witnesses.

9 THE COURT: All right. Then what I'm gonna do is I'm
10 gonna take about a five to ten minute break and allow
11 everybody to take a few minutes to get ready for closing
12 arguments. I anticipate that we will go ahead and do our
13 closing arguments and I'll charge the jury before we break
14 in your lunch.

15 Now, at this time, Madam Clerk, it looks like we're
16 gonna go past 12:00. I'm gonna ask you to go ahead and take
17 an order from the jury concerning their, their lunch and
18 instruct you not to discuss anything else with them during
19 that time other than to take their orders for their lunch.

20 CLERK: Yes, sir.

21 THE COURT: Let them know it looks like we're going
22 through lunch as far as the Court proceedings.

23 We'll take about a ten minute break. I'm gonna stay on
24 the bench. We'll be at rest.

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

1 THE COURT: Are you ready?

2 SOLICITOR HUNTER: We are, Your Honor.

3 THE COURT: Mrs. Manigault, are you ready---

4 MRS. MANIGAULT: Yes, sir.

5 THE COURT: ---to bring the jury in?

6 I assume you're going to open and close?

7 MRS. MANIGAULT: No, sir.

8 THE COURT: You're not.

9 So, you just want to close?

10 MRS. MANIGAULT: Yes, sir.

11 THE COURT: Got you.

12 All right. Bring the jury in.

13 (Whereupon, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect that
16 the jury has returned to the courtroom. And when we broke
17 earlier the State had completed the presentation of its
18 evidence in the case. At this time the defense has the
19 right to call any witnesses that the defense wishes to call.

20 Do you wish to call any witnesses?

21 MRS. MANIGAULT: Defense rest, Your Honor.

22 THE COURT: All right. That completes the presentation
23 of evidence in this case. I told you that when we reached
24 this point in the trial that the -- you can come on in,
25 Tanya. I started before you got here.

1 CLERK: Sorry.

2 THE COURT: I told you, when we reached this point in
3 the trial, that we would allow the attorneys to make a
4 closing statement or argument.

5 So, at this point in time, Mr. Hunter, you may proceed
6 for the State.

7 SOLICITOR HUNTER: Thank you, Your Honor.

8 May it please the Court?

9 THE COURT: Yes, sir.

10 SOLICITOR HUNTER: At the beginning of this case I
11 asked you to not judge a book by its covers, to read the
12 pages, to look at the evidence, to see what has been
13 presented here today. To not just look at Mr. James Eubanks
14 today. He doesn't look like a person that housed 350 grams
15 of cocaine. But listen to the evidence, to read those
16 pages, and I think you've seen that James Eubanks is guilty
17 of trafficking cocaine over 200 grams.

18 I also asked you to use your common sense, and that's
19 what the theme of this closing argument is gonna be. Use
20 your common sense.

21 Look at the evidence presented.

22 what does it suggest to you?

23 what do you think?

24 what's your gut feeling?

25 First I'd like to go over Matt Hutchins testimony. He

1 testified that once he was at the house he went to a safe.

2 That's James Eubanks opening the safe.

3 Who had the key to that safe?

4 James Eubanks.

5 Who had access to that safe?

6 James Eubanks.

7 Other than jewelry and family items, what was in that
8 safe?

9 \$20,100. That's a lot of money, a lot of cash to have
10 on hand.

11 What other cash was found in the house?

12 \$17,000 found under his bed. His bedroom. His bed at
13 [REDACTED] Hickory Nut Road. \$17,000 for a grand total of \$38,100
14 so far.

15 You also heard Matt Hutchins testify about the street
16 value of narcotics. Thank you. You heard him testify in
17 retail and in wholesale prices. Retail being the small
18 amount, what the street level person would pay for cocaine.
19 The wholesale being how much for a larger amount.

20 Excuse my handwriting. It's not, not very neat.

21 Wholesale prices. We asked him how much for an ounce,
22 which was 28 grams. He said eight hundred to nine hundred
23 dollars. We'll go with the low figure there, the \$800.

24 Now, you've also heard Beth Stuart testify that she
25 weighed the drugs. She weighed the drugs and that they were

1 packaged, according to Jeff Pharis, approximately one ounce
2 baggies, the drugs found in the outhouse or the outbuilding,
3 excuse me, on James Eubanks' property. So, 13 approximately
4 one ounce baggies.

5 So, the wholesale price for the cocaine found outside
6 of his house, \$10,400.

7 What happens when you break that up if you're gonna
8 break that up and sell it on the street?

9 We heard Matt Hutchins testify that typical of an eight
10 ball or a gram. You know, a gram, there's 28 grams in an
11 ounce. A gram was typically a hundred dollars.
12 Twenty-eight grams in an ounce. So, an ounce, on retail,
13 \$2,800. They're approximately 13 one ounce baggies found in
14 his residence. When you multiply that together, you get
15 \$36,400. Use your common sense.

16 Who had access to this outbuilding?

17 Whose property was it on?

18 Who was seen leaving the vicinity of this outbuilding
19 the morning of the execution of the search warrant?

20 How would somebody, other than Mr. Eubanks, leave
21 \$10,400 or up to \$36,400 sitting in his property?

22 I think your common sense tells you the answer.

23 Also go to Paul Norris' testimony. He was the one who
24 found the cocaine. Went to the locked building. Once he
25 was there, went back inside looking for the keys.

1 who did he ask for the keys?

2 James Eubanks.

3 who directed him to where the keys were?

4 James Eubanks.

5 who had access to that outbuilding?

6 James Eubanks.

7 Now, Paul Norris went to the outbuilding, opened up the
8 door. Inside was this cooler and inside this cooler on his
9 property with his access was 13 ounces of cocaine. A little
10 over 350 grams of cocaine. Paul Norris didn't touch the
11 cocaine. Called over Investigator Matt Hutchins to
12 photograph, to look at it. He then, once Matt Hutchins
13 showed up, went and got Joe Pharis. Joe Pharis, who was
14 collecting all the evidence that day, so that one person
15 collected, collects all the evidence, came out there, took
16 the cocaine from 13 different baggies out of this cooler and
17 placed them on the bench.

18 Now, if you look carefully, you can count 13 baggies.
19 He testified that once he did that he put them in the
20 B.E.S.T. Bag. The B.E.S.T. Bag was then taken to the
21 evidence locker where Jack Westmoreland recovered it the
22 next day out of the drop box, the drop box only he has
23 access with other evidence that was there. Jack
24 Westmoreland took that cocaine to Beth Stuart who testified
25 it was not evident that it had been tampered with when she

1 received it. She received it, tested it, and found 350, a
2 little over 350 grams of cocaine.

3 That's not the only thing that was found that day.
4 Sergeant Pharis also located two quarter baggies in James
5 Eubanks pocket.

6 Guess what substance was in those on his person?
7 Cocaine.

8 Now, Beth testified as an expert. You -- probably
9 about 3,000 times now testing substances. She did a
10 presumptive test and a chemical test. The presumptive test,
11 just like the presumptive test that Joe Pharis performed,
12 came back positive, positive for cocaine. She weighed the
13 substance. It weighed over 350 grams. She weighed the two
14 corner baggies. They weighed less than one gram. She also
15 did an instrument test. An instrument test is a little more
16 precise than the presumptive test.

17 She put it in the, I can't even say the word, the gas
18 chromatographer. The thing that spins around and tests it.
19 That test also came back positive for cocaine.

20 In that picture up there, how was it packaged?
21 Packaged in little baggies twisted off at the end.

22 How was cocaine packaged in his pocket?

23 The same way.

24 What was found in his bedroom by Investigator Matt
25 Hutchins?

1 Glad baggies on his dresser drawer.

2 Here's a man who had \$20,000, \$20,100 in his safe.

3 Another 17,000 under his bed and we hear Joe Pharis testify
4 he had another \$1,400 on his person with the two corner
5 baggies. So, we have a total of \$39,500 just inside this
6 house.

7 What does your common sense tell you about that?

8 What does it tell you about that when it's also found
9 in an outbuilding with 350 grams of cocaine?

10 So, at this point I'm just gonna ask you to use your
11 common sense. Don't judge a book by it's cover just by
12 looking at James Eubanks. Look at the evidence. Look at
13 the cash found at his residence. Look at the cocaine found
14 in his shed on his person. Not only the cash, the amount of
15 cash he had on hand.

16 You've seen the pictures and you'll get to take them
17 back to the jury room with you.

18 Who had access?

19 James Eubanks.

20 Who lived in that house?

21 James Eubanks.

22 Who had cocaine packaged in his pocket like the cocaine
23 packaged outside?

24 James Eubanks.

25 Now, he may not look like a drug dealer that would have

1 350 grams of cocaine outside, but I believe the evidence is
2 shown you that.

3 Now, at the beginning of the trial I didn't ask you to
4 return a verdict of guilty. The judge said it was your duty
5 to listen to all the evidence, to wait until the end to
6 deliberate and decide. But this is the point where I'm
7 gonna ask you to return a verdict of guilty for James
8 Eubanks for trafficking over 200 grams of cocaine.

9 Thank you.

10 THE COURT: Mrs. Manigault.

11 MRS. MANIGAULT: Please the Court, Your Honor.

12 THE COURT: Yes, ma'am.

13 MRS. MANIGAULT: Ladies and gentlemen, my -- the
14 solicitor says to use common sense. Common sense would
15 indicate, I submit would indicate to you that if you have
16 two individuals you see coming from proximity of the
17 outbuilding and you only follow one of them, then common
18 sense, I submit to you, says that the other person also may
19 have had access.

20 There was no testimony from this witness chair whether
21 other keys were available or, and/or collected. The
22 testimony that came from the chair was that Mr. Eubanks
23 directed him to where the key was. That officer couldn't
24 remember whether it was on the table or somewhere else in
25 the house. He couldn't recall. That's fine.

1 But the State is talking about access, access.

2 who had access to this outbuilding?

3 The testimony that the officers have submitted to the
4 Court today and yesterday is that there was a search warrant
5 for this property. The testimony they submitted is that the
6 property belonged to James Eubanks. But also the testimony
7 submitted to you by the officers was that somebody else was
8 at the house because they escorted James Eubanks back to the
9 house from Papa Crip's Restaurant or the other restaurant or
10 wherever they stopped him. They escorted him back to the
11 house.

12 So, the question of access and residency in this home
13 has been left open, and common sense will tell me or should,
14 I submit to you, should indicate that there are other
15 individuals that had access to this home that may have lived
16 at the home and also had access to the outbuilding.

17 Now, on -- the State's witness themselves testified
18 they saw two people coming from the outbuilding. They
19 followed one for a little bit, canceled that trail, and just
20 went on to Mr. Eubanks. So, the other man had access to the
21 out-house, outbuilding, excuse me, where the drugs were
22 found.

23 Now, Your Honor will, has, will instruct you as to the
24 law. And as I indicated to you in my opening statement is
25 that you take the law as Your Honor submits it to you. But

1 Your Honor will give you a premise and a principle that is a
2 very serious principle involved and that is one of
3 reasonable doubt. That it is the responsibility of the
4 State to prove to your satisfaction, as 12 jurors
5 deliberating and coming to a decision, that the State has
6 presented evidence to you beyond a reasonable doubt. Again,
7 I submit to you gut feeling is not reasonable doubt.
8 Reasonable doubt is a very serious principle of law that our
9 Courts abide by.

10 The drugs or the 13 bags as listed in State's Exhibit
11 No. 13 were found in the outbuilding in a blue cooler that
12 is here. The chemist tested it. The chemist weighed it. I
13 asked one question about fingerprints, and, of course, the
14 chemist is the chemist and not -- that's all she is. So,
15 there's been no evidence presented to you today or yesterday
16 about any fingerprints on the baggies, 13 baggies that were
17 found in the outbuilding at the property of [REDACTED] Hickory Nut
18 Road, Inman, South Carolina. Common sense, I would submit
19 to you, would of tested for fingerprints.

20 There's a picture that the State presented to you, No.
21 15, State's Exhibit No. 15. This picture is of James
22 Eubanks, my client, and this shows officer, an officer
23 taking a baggy out of his pocket. That is clear. That is
24 actual. That is undisputable.

25 But the chemist has testified that this, these two

1 baggies of drugs that actually was on my client's person in
2 his pocket was only 0.34 grams. And so, the State wants you
3 to reach a conclusion that if he had that small amount, then
4 that big amount out there must be his. But remember, the
5 State is the one claiming access, who had access, who had
6 access to his outhouse, excuse me, outbuilding, who had
7 access. So, yes, this is undisputable, 0.34 grams.

8 Your Honor will give you the law on actual, on
9 possession, on both actual and constructive, and to
10 paraphrase the law, and, again, take what the judge says to
11 you, but paraphrasing the law for constructive is anyone
12 that could have possession or control of an item. Anyone
13 that could have possession or control. Again, the State's
14 argument of access.

15 Where does it start.

16 Where does it stop?

17 The large amount of money in the house, money is not
18 illegal or we'd all be in trouble. Keeping cash on hand is
19 not illegal, and in the State's Exhibit No. 16 you will see
20 that not only did my client have cash, he had checks. The
21 State didn't offer testimony of how much the checks were
22 written for or the amount of it. They didn't offer
23 testimony about the Bank of America check.

24 So, the assumption that the State wants you to make,
25 and it is assumption, that all monies found were illegal or

1 as a result of the drugs that they found in the outbuilding.
2 Again, I submit to you the question of access, the other
3 man, other people living at the residence, there was no
4 constructive or real testimony about who else was living
5 there except they said one woman was there when they got
6 back there. So, that tells me that person may of had access
7 to the outbuilding along with the person that left when
8 officer Hutchins drove up that they started to follow, but
9 didn't follow him. Access.

10 Your Honor will tell you that, when you deliberate
11 together, that each of you have input as to the evidence
12 that you've heard and have weighed from the witness stand
13 and from the testimony, and Your Honor will also tell you
14 that, when you come to a decision, it has to be a unanimous
15 decision. Twelve of you have to agree as to what occurred.

16 Did the State meet its burden of proof?

17 Did the State overcome all this reason, all of the
18 reasonable doubt?

19 We had a judge one time that says you can't -- a
20 reasonable doubt is not whether the Reedy River will
21 continue to flow or whether the Tyger River will continue to
22 flow. That's not a reasonable doubt. But a reasonable
23 doubt is a doubt that you view in a situation or in
24 circumstances that has not been overcome to your
25 satisfaction, and Your Honor will explain that to you

1 further.

2 So, I ask you, as you deliberate in the jury room, that
3 the only thing that the State is proved, I submit to you,
4 beyond a reasonable doubt, is that James R. Eubanks had on
5 his person 0.34 grams of cocaine.

6 Thank you.

7 THE COURT: Ladies and gentlemen of the jury, that
8 concludes the closing arguments by counsel. I told you that
9 once we had reached this stage of the trial it would be my
10 responsibility to charge you concerning the law to be
11 applied in this case.

12 I'm gonna begin where we started earlier, and that is
13 I'm going to go over with you the indictment. This is the
14 charge that's been brought before the Court. It represents
15 notice to this Court of the charge to be tried, to the
16 defendant of the charge that's been lodged against him, and
17 it states the allegations that the State is required to
18 prove in this case.

19 I'll read the indictment to you again. The indictment
20 is for the charge of trafficking in cocaine. The
21 indictment, again, is contained in the indictment in Case
22 Number 09-GS-42-1852. The indictment states that James R.
23 Eubanks did, in Spartanburg County, on or about
24 June 18th of 2008, knowingly sell, manufacture, cultivate,
25 deliver, purchase, or bring into this state, or did provide

1 financial assistance, or did otherwise aid, abet, attempt,
2 or conspire to sell, manufacture, cultivate, deliver,
3 purchase, or bring into this state, or did knowingly,
4 actually, or constructively possess, or did knowingly
5 attempt to become in actual or constructive possession of
6 more than 200 grams of cocaine, a Schedule II controlled
7 substance, in violation of Code Section 44-53-370 of the
8 Code of Laws of South Carolina, 1976 as amended, against the
9 peace and dignity of the State and contrary to the statute
10 in such case made and provided.

11 Now, the indictment charges that charge of trafficking
12 in cocaine 200 grams or more, but less than 400 grams, and
13 that is under the Code Section that I've quoted to you. And
14 I'll remind you that the fact that a defendant has been
15 arrested, charged, and indicted in this case is not evidence
16 in the case nor can it, does it create any presumption or
17 inference of guilt.

18 This document is simply the document that brings the
19 case before the Court. It's the written instrument that
20 contains the charges, and, again, it can not be used by you
21 as evidence of guilt in this case. But I do read it to you
22 because that's the charge that the State is required to
23 prove in the case, and I told you earlier the defendant is
24 pled not guilty to the indictment.

25 Under the laws and the constitution of this state and

1 the United States, that plea puts the burden upon the State
2 to prove the defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is never
4 required to prove himself innocent. I charge you that it's
5 an important rule of the law that a defendant, in a criminal
6 trial, no matter what the seriousness of the charge may be,
7 will always be presumed to be innocent of the crime for
8 which the indictment was issued unless guilt has been proven
9 by evidence satisfying you of that guilt beyond a reasonable
10 doubt.

11 The presumption, presumption of innocence doesn't end
12 when you begin your deliberations, but it accompanies the
13 defendant throughout the trial and into your deliberations.
14 Many people describe it somewhat like the robe that is
15 placed upon, placed upon my shoulders when I come into the
16 courtroom. This robe is, this robe of innocence is about
17 the defendant's shoulders throughout the trial. It remains
18 with him even until you, until your deliberations until it
19 has been stripped by, from him by evidence that satisfies
20 you of the defendant's guilt beyond a reasonable doubt.

21 The presumption of innocence is not a mere legal theory
22 and it's not just a legal phrase. It's a substantial right
23 that all defendants are entitled to unless you, the jury,
24 are satisfied, from the evidence, of the defendant's guilt
25 beyond a reasonable doubt.

1 You may ask yourself well, just what is meant under the
2 law, what is meant by the phrase reasonable doubt. I will
3 tell you that a reasonable doubt is that kind of doubt which
4 would cause a reasonable person to hesitate to act. The
5 State has the burden of proving the defendant guilty beyond
6 a reasonable doubt.

7 Now, some of you may have served as jurors in civil
8 cases. Civil cases are where someone is seeking monetary
9 damages from someone else because of a breach of contract or
10 some wrong that they have done, and in those cases the
11 standard of proof is by the greater weight or the
12 preponderance of the evidence described as the scales of
13 justice tilting ever so slightly in favor of one side or the
14 other.

15 That's not the standard of proof in this case. The
16 standard of proof in a criminal case is more powerful than
17 that. It is proof beyond a reasonable doubt. Proof beyond
18 a reasonable doubt is that kind of proof which would leave
19 you firmly convinced of the defendant's guilt.

20 Now, there's very few things that go on in our lives
21 that can be proven beyond any doubt whatsoever, and the
22 State is not put, put to that burden. The law doesn't
23 require proof that overcomes every possible doubt.

24 I will tell you that if, based on your consideration of
25 the evidence, you are firmly convinced that the defendant is

1 guilty of the crime charged, you must find the defendant
2 guilty. However, on the other hand, if you, if you think
3 there's a real possibility that the defendant is not guilty,
4 you must give the defendant the benefit of the doubt and
5 find him not guilty.

6 During the trial you and I have different functions to
7 perform. As the trial judge, it's my responsibility to
8 preside over the trial and duty to rule on the admissibility
9 of evidence or the appropriateness of questions that have
10 been asked, and you are to consider only the evidence that
11 was admitted into the record of this case and nothing else.
12 You must disregard any testimony, questions, or other
13 matters that I ruled out of order.

14 I have the additional charge, duty to charge you
15 concerning the law in this case. And as the presiding
16 judge, I've told you that I am the sole judge of the law in
17 this case and you are the sole judge of the facts. It's
18 your responsibility, under your oath as jurors, to accept
19 the law exactly as I give it to you, apply the facts as you
20 find them to be, and, therefore, you'll be in a position to
21 discharge your duties, as jurors, under the oath that you've
22 taken.

23 You are, therefore, the sole judges of the facts in
24 this case, the exclusive judges of the facts. I can not
25 indicate, in any way, comment on or make any statement

1 concerning the facts in this case. I've told you earlier,
2 the law allows me no opinion on the facts or how you decide
3 the facts and I have no opinion.

4 So, therefore, please don't take from anything that I
5 say, in the discharge of my duties as the presiding officer,
6 that I have an opinion as to how you determine the facts.
7 Again, the law doesn't allow that opinion on my part, and I
8 do not have an opinion as to how you decide the facts in
9 this case. It's your duty, as the jurors, to determine the
10 effect, the value, the weight, and the truth of the evidence
11 that's been presented at this trial.

12 Now, in deciding this case you have the right to
13 consider two types of evidence. The first type of evidence
14 is described as direct evidence. That's testimony by a
15 witness who claims to have direct knowledge of the facts
16 about which that person testified, someone who was an eye
17 witness, who actually experienced the matters about which
18 that person testified. That's what referred to as direct
19 evidence.

20 The other type of evidence that the law gives you the
21 right to consider in reaching a decision is what is called
22 circumstantial evidence. Now, circumstantial evidence is
23 proof of a chain of facts or circumstances indicating the
24 existence of a fact. It is evidence which we say
25 immediately establishes collateral facts from which a main

1 fact can be reasonably inferred. So, therefore,
2 circumstantial evidence is based on inference and not upon
3 personal knowledge or observation.

4 The law makes absolutely no distinction between the
5 weight or the value that you, the jury, can give to either
6 direct or circumstantial evidence. Nor is there a greater
7 degree of certainty required of circumstantial evidence than
8 that of direct.

9 You should weigh all of the evidence in the case, both
10 direct and circumstantial. And if, after weighing all of
11 the evidence in the case, you are not convinced of the guilt
12 of the defendant beyond a reasonable doubt, you must find
13 the defendant not guilty. If, however, you are firmly
14 convinced of the defendant's guilt beyond a reasonable
15 doubt, you must find the defendant guilty.

16 Necessarily, as the finders of the facts, you must also
17 determine the credibility or believability of witnesses who
18 testify during any trial. It's your duty, again, to analyze
19 the evidence and determine which evidence convinces you of
20 its truth. In determining believability of evidence, I told
21 you to use your own good common sense. You can believe one
22 witness against all the others, all the others against one.
23 You can believe all of what a witness told you, part of what
24 a witness told you, or none of what a witness told you.

25 You may consider whether any witness has exhibited to

1 you an interest, a bias, or other motive in the case. You
2 may also consider the appearance of the witness, the manner
3 in which the witness testified from the witness stand.
4 Again, use your own good common sense to determine
5 credibility or believability of testimony.

6 Also, during the trial, we had two witnesses who were
7 qualified as experts, and I told you that I would talk to
8 you in more detail about that. Generally a person can not
9 give testimony in the form of an opinion. That is lay
10 witnesses. However, they, they have to testify as to what
11 they saw, they heard, senses, or smelled, something of that
12 nature.

13 Again, an exception is made for witnesses who are
14 qualified as experts. That's someone who, because of their
15 educational background, their experience in a field, are
16 permitted to give an opinion concerning the matters in which
17 they are experts. You must give that testimony the same
18 test that you give to any other witness. You give it the
19 weight you think it deserves.

20 If you find that the reasons given for the opinions
21 stated are not sound or that the, the education or the basis
22 upon which an opinion is based is not sound, you have the
23 right to disregard that testimony in its, in its entirety.
24 Like any other witness, you can believe all, part, or none
25 of what a witness tells you. That includes an expert

1 witness. You give it the weight you think it should have
2 based on the test I've told you to use for all witnesses in
3 the case. In other words, an expert's testimony is given no
4 greater weight simply because someone is designated as an
5 expert in the case.

6 I will also instruct you and I will emphasize to you
7 that the fact that a defendant, the defendant did not
8 testify in the case is not a factor to be considered by you
9 in any way in your deliberations and in your consideration
10 of the question of the guilt or innocence of the defendant.
11 It must not be considered by you in any manner whatsoever.
12 I will tell you that a defendant has a constitutional right
13 to remain silent, and the assertion of that right must not
14 be considered by you in your deliberations.

15 I repeat to you, under your oath, you are to draw no
16 conclusion whatsoever from the fact that the defendant did
17 not testify. In fact, the fact the defendant did not
18 testify should not even be mentioned by you in your
19 deliberations or discussed by you in the jury room. The
20 burden of proof in this case is upon the State. The
21 defendant is not required to prove his innocence. That
22 burden of proof remains upon the State to prove the
23 defendant guilty beyond a reasonable doubt throughout the
24 trial.

25 Now, in order to establish criminal liability, criminal

1 intent is always required. That's the mental state that the
2 law requires for a person to have in order to commit a
3 crime. That might be purpose. It might be intent,
4 knowledge. It can even be recklessness or criminal
5 negligence.

6 Now, criminal intent must be proven by the State beyond
7 a reasonable doubt. Criminal intent is always a matter that
8 is determined by the jury from the facts and circumstances
9 of the case. Again, by circumstantial evidence because
10 there's no way that we could look inside someone's head,
11 head and see exactly what they intended to do in any given
12 situation. So, again, criminal intent has to be proven by
13 circumstantial evidence from the facts and circumstances
14 shown to you to have existed when this incident occurred.

15 Now, criminal intent is a mental state. It's a
16 conscious wrongdoing, and it's up to you to determine what
17 the defendant intended to do in this situation based on the
18 circumstances shown to you to have existed.

19 Now, in this case I've already explained to you the
20 charge is trafficking in cocaine, and the charge
21 specifically is trafficking in cocaine 200 grams or more,
22 but less than 400 grams. In this case, the State must
23 prove, beyond a reasonable doubt, that the defendant
24 knowingly sold, manufactured, cultivated, delivered,
25 purchased, brought into the State, provided financial

1 assistance, or otherwise aided, abetted, attempted, or
2 conspired to sell, manufacture, cultivate, deliver,
3 purchase, or bring into the State, and was knowingly in
4 actual or constructive possession or attempted to become in
5 actual or constructive possession of cocaine. The State
6 must prove, beyond a reasonable doubt, that the amount of
7 cocaine or any mixture containing cocaine was at least 200
8 grams or more, but less than 400 grams.

9 Now, to prove possession of a drug, the State must
10 prove, beyond a reasonable doubt, that the defendant, the
11 defendant both had the power and the intent to control the
12 disposition or the use of the cocaine. Possession can be
13 either actual or constructive.

14 Now, actual possession means that the cocaine was in
15 the actual physical custody of the defendant. Constructive
16 possession means that the defendant had dominion or control
17 over the or the right to exercise dominion or control over
18 either the cocaine itself or the property in which the
19 cocaine was found. Mere presence at the scene where drugs
20 are found is not enough to prove possession.

21 Actual knowledge of the presence of the cocaine is
22 strong evidence of the defendant's intent to control its
23 disposition or use. The defendant's knowledge and
24 possession may be inferred when a substance is found on the
25 property under the defendant's control. However, that

1 inference is simply an evidentiary fact to be taken into
2 consideration by you along with the other evidence in the
3 case. You give it the weight you think it should have, and,
4 also, I will instruct you that two or more persons may have
5 joint possession of a drug, either actual or constructive.

6 The word in the statute that says deliver, deliver
7 means to actually or constructively attempt to transfer the
8 drugs. Distribute means to deliver other than means of
9 administering or dispensing a drug. Manufacturing a drug,
10 as used in the statute, means to produce, prepare, convert,
11 process, plant, cultivate, grow, or harvest a drug naturally
12 or chemically. Manufacturing includes any packaging or
13 repackaging of the drug, labeling, or relabeling of the
14 drug.

15 Now, Mr. Alberto Meloncelli, you're gonna be my
16 foreperson of the jury. Now, what that means is that you
17 will be appointed as the person to preside over the
18 deliberations of the jury. You will also, should the jury
19 during the period of your deliberations have a question that
20 you'd like to ask of the Court, you will be the person who
21 will write that on a piece of paper and submit it to the
22 bailiff. I would ask that the jury agree upon the form of
23 the question, allow the foreperson to put it in writing,
24 submit it to the bailiff, and that then will come to me for
25 my response.

1 I will caution you that I'm not allowed to answer each
2 and every question you have during deliberations. I've told
3 you that we have separate functions, and I can't enter into
4 your decisions concerning the facts in any way. That's your
5 job to decide the facts.

6 However, Mr. Foreman, I'm not asking you to edit any
7 question the jury has. Whatever the question might be,
8 write it on the paper, submit it through the bailiff, and I
9 will decide the appropriate response to be given to that
10 particular question.

11 Also, I will be giving you a verdict form I'll go over
12 with you in just a minute. Once the jury has reached a
13 verdict, it will be your responsibility to record that
14 verdict on the verdict form, and, again, knock on the door,
15 inform the bailiff that a verdict has been reached, we'll
16 bring the jury back into the courtroom in order to receive
17 the verdict.

18 Now, I've indicated to you already that the foreperson
19 has no greater say in the outcome than any other juror,
20 juror in deliberations. Your verdict must be unanimous.
21 That means each and every one of you must agree upon the
22 verdict before it becomes the verdict of the jury and before
23 it can be recorded on the form and submitted to the Court.
24 So, each of you will have an equal say in the outcome of the
25 case. The foreperson is simply the person responsible to

1 carry out those, those functions and communicate with me if
2 necessary.

3 I've gone over a lot with you already concerning the
4 charge. I want to go over that with the attorneys and be
5 sure I haven't made a mistake or left something out. And
6 so, we'll talk about that briefly. Also, we'll be gathering
7 the evidence to be submitted to you back in the jury room in
8 just a few minutes once we're sure we've segregated that
9 properly.

10 So, I've got some housekeeping chores to take care of.
11 So, Mr. Foreman, I'm gonna ask the jury to retire one more
12 time to the jury room. Do not start any deliberations until
13 I bring you back to the courtroom for final instructions.
14 You may retire at this time.

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: I'd ask that the attorneys come forward, go
18 through the exhibits, and be sure that we're submitting the
19 proper exhibits to the jury. So, if you'll step forward and
20 go over those please.

21 (Pause.)

22 THE COURT: All right. Any objection to the charge?

23 SOLICITOR HUNTER: One small matter, Your Honor.

24 THE COURT: Yes, sir.

25 SOLICITOR HUNTER: In reading 44-53-370(e)---

1 THE COURT: Uh-huh. (Affirmative).

2 SOLICITOR HUNTER: ---after you went over the
3 manufacturing, aid, and abets, and attempts, cultivates,
4 deliver, purchase or bring into the State---

5 THE COURT: Uh-huh. (Affirmative).

6 SOLICITOR HUNTER: ---you then said and who knowingly
7 actually possesses. I believe the jury may have read that
8 we also, we have to prove that he delivered and that he
9 possessed it.

10 THE COURT: All right. I'll, I'll go back over that
11 with them in the charge.

12 SOLICITOR HUNTER: But other than that, nothing else.

13 THE COURT: All right. Any objection from the defense?

14 MRS. MANIGAULT: None, Your Honor.

15 THE COURT: Any objection to the exhibits as
16 segregated?

17 MRS. MANIGAULT: None, Your Honor.

18 SOLICITOR HUNTER: None from the State.

19 THE COURT: All right. I'll ask you to come forward
20 and take a look at the verdict form, see if there's any
21 objections to the verdict form.

22 (Pause.)

23 THE COURT: Any objections?

24 MRS. MANIGAULT: None, Your Honor.

25 SOLICITOR HUNTER: None, Your Honor.

1 THE COURT: All right. Let's bring the jury back.

2 (Whereupon, the following takes place within the
3 presence of the jury.)

4 THE COURT: Mr. Foreman, I'm going to go back over the
5 statute with you just to be sure that I've got it, gotten it
6 right. In this case I told you that the defendant is
7 charged with trafficking in cocaine 200 grams or more, but
8 less than 400 grams.

9 The State must prove, beyond a reasonable doubt, that
10 the defendant knowingly sold, manufactured, cultivated,
11 delivered, purchased, brought into the State, provided
12 financial assistance, or otherwise aided, abetted, or
13 attempted, conspired to sell, manufacture, cultivate,
14 deliver, purchase, or bring into the State, was knowingly in
15 or actually in constructively or constructively possession,
16 let me read that again, was knowingly in actual or
17 constructive possession knowing, or knowingly attempted to
18 become in actual or constructive possession of cocaine,
19 again, in the amount that I stated earlier.

20 Now, Mr. Foreman, I'm gonna pass to you a verdict form
21 at this time. Let me go over that with you.

22 At the top it has the State and county that we're in,
23 the Court that we're in, and the names of the parties that
24 are involved. It indicates it is a verdict form. Below
25 that, as to the one charge that's before the Court, is the

1 form of the verdict, and the two choices are either not
2 guilty or guilty.

3 There's a line beside each of those. You'll put an X
4 or a check on the line that indicates, indicates the jury's
5 verdict. Please don't take, ladies and gentlemen of the
6 jury, that I've placed those two choices in any particular
7 order as to indicate my preference. There's only two
8 choices, and that's the order that they're in on the form
9 that I use on my computer. And so, that's, that's how that
10 got there. That's always the case in every case that I do.
11 So, don't take the fact that I've got them in any order that
12 that indicates a preference.

13 But once the verdict has been reached, then you'll
14 check the appropriate verdict, sign it, and, again, inform
15 the bailiff of, of the verdict.

16 Your lunch should be here as soon as they arrive from
17 the restaurant. When they do, the bailiffs will be bringing
18 those to you.

19 Mr. Foreman, I'll ask you that you stop deliberations
20 while they deliver those in the room. In other words, don't
21 discuss the case with them present. Once they delivered the
22 lunches and left, you can resume your deliberations while
23 you eat your lunch. But while it's been delivered, just
24 suspend deliberations, deliberations until they've completed
25 that, and please do not discuss the case with them during

1 that process.

2 At this point in time I'm going to ask the jury itself
3 to retire to begin deliberations.

4 You're the alternate, sir. Remain seated. I'll be
5 talking to you shortly.

6 The jury may retire to its deliberations.

7 (Whereupon, the following takes place outside the
8 hearing of the jury.)

9 THE COURT: Any objections to my final instructions
10 from the State?

11 SOLICITOR HUNTER: None, Your Honor.

12 THE COURT: Any from the defense?

13 MRS. MANIGAULT: None, Your Honor.

14 THE COURT: All right. I'm gonna have the defendant
15 placed in custody while the jury's in deliberations. Well
16 be in recess until a verdict is reached.

17 Thank you very much.

18 MRS. MANIGAULT: Thank you, Your Honor.

19 (Whereupon, the jury began deliberations at 12:46 and
20 returned with a verdict at 1:53.)

21 THE COURT: All right. I'm informed the jury has
22 reached a verdict.

23 Is the State ready to receive the verdict?

24 SOLICITOR HUNTER: Yes, Your Honor.

25 THE COURT: Defense ready?

1 MRS. MANIGAULT: Yes, Your Honor.

2 THE COURT: Bring the jury in.

3 (Whereupon, the following takes place within the
4 presence of the jury.)

5 THE COURT: Mr. Foreman, I have been informed by the
6 bailiff that a verdict has been reached.

7 Is that correct?

8 FOREMAN: Yes, Your Honor, it has.

9 THE COURT: Pass it to the bailiff, please.

10 (Foreman complies.)

11 THE COURT: Thank you, sir.

12 Madam Clerk, you may publish the verdict.

13 CLERK: In the General Sessions Court, Case Number
14 2009-GS-42-1852, the State of South Carolina versus James R.
15 Eubanks, we, the jury, unanimously find the defendant, James
16 R. Eubanks, concerning Indictment Number 09-GS-42-1852 and
17 the charge of trafficking in cocaine more than 200 grams,
18 but less than 400 grams, guilty.

19 I certify this is the decision, was the unanimous
20 decision of the jury. This is signed by the foreperson and
21 dated today's date.

22 Ladies and gentlemen of the jury, if this is your
23 verdict and please your verdict, still your -- if this is
24 your verdict and still your verdict, please raise your
25 right-hand.

1 (Whereupon, all jurors raise their hands at this time.)

2 CLERK: Thank you.

3 THE COURT: Thank you, Madam Clerk.

4 Anything further from the State before I release the
5 jury?

6 SOLICITOR HUNTER: No, Your Honor.

7 THE COURT: Anything further from the defense before I
8 release the jury?

9 MRS. MANIGAULT: Nothing, Your Honor.

10 (Whereupon, the jury was dismissed at this time.)

11 THE COURT: All right. If you would approach the bar
12 please.

13 (Parties comply.)

14 THE COURT: All right. Mr. Eubanks, you have been
15 found guilty of, by a jury of your peers in this case. I do
16 understand that there is very little discretion on my part
17 as far as sentencing in this situation. But I'll certainly
18 be happy to hear from you before I pass sentence.

19 Mrs. Manigault, do you wish to speak on his behalf?

20 SOLICITOR HUNTER: Your Honor, if I may, first, we've
21 served Mrs. Manigault and Mr. Eubanks with notice of our
22 intent to seek life without parole.

23 THE COURT: Oh, okay. I was unaware of that. So, pass
24 that up please.

25 (Whereupon, the notice was marked as Court's Exhibit

1 No. 2 and received into evidence at this time.)

2 SOLICITOR HUNTER: Yes, we've premarked it as Court's
3 Exhibit 2 and like to admit into the record.

4 THE COURT: Mrs. Manigault, do you acknowledge that you
5 were served with this according to statute?

6 MRS. MANIGAULT: Yes, Your Honor. I received this.

7 SOLICITOR HUNTER: As part of the Court record, we have
8 attached the affidavits that both Mrs. Manigault and Mr.
9 Eubanks were served prior to ten days---

10 THE COURT: All right.

11 SOLICITOR HUNTER: ---before trial.

12 THE COURT: Anything you'd like to say before I pass
13 sentence in the case?

14 MRS. MANIGAULT: Your Honor, of course, the Court's
15 already ruled on using past prior convictions to be
16 considered an LWOP. We would ask, we would say, submit to
17 the Court that those prior convictions are, were before the
18 statute was amended in 1995, and we'd ask the Court not to,
19 not to use those prior convictions to enhance.

20 THE COURT: Anything you'd like to say on that?

21 SOLICITOR HUNTER: Yes, Your Honor. We're not asking
22 to change those sentences. He's put on notice when that law
23 was come out that if he had the prior convictions, serious
24 convictions, which are two trafficking in cocaine as well as
25 distribution third cocaine, that his next sentence of a

1 serious nature was trafficking cocaine is, would make him
2 eligible and should we so seek the life without parole
3 sentence, Your Honor.

4 THE COURT: All right.

5 MRS. MANIGAULT: Your Honor, I would like to put on the
6 record --

7 THE COURT: Yes, ma'am.

8 MRS. MANIGAULT: -- that he has a conviction in May of
9 1985 and it appears October of 1993, and then he has a
10 conviction for April 18th of 1985 that the State is
11 seeking to use.

12 Other than that, Your Honor, I would like to say that
13 my client is 66 years old. He's a life long resident of
14 Spartanburg County. He's resided in Inman, South Carolina.
15 He has family with him here in Court today. He has monthly
16 income previously of a disability check of \$1,453 now which
17 is converted to Social Security because he's reached the age
18 of 66 of \$1,400 plus dollars. He is a graduate of high
19 school here in Spartanburg County.

20 And as the Court has indicated, there is not much you
21 can do in light of the circumstances. I would also say to
22 the Court that, while we are awaiting disposition of this
23 case for trial, my client has suffered two heart attacks in
24 the last six to seven months. He's been hospitalized and we
25 have a list of medications to send with him that he takes

1 and he also has a vile of heart pills that he carries on
2 him. So, he has a serious heart condition also. So, we
3 would thank the Court for your patience.

4 THE COURT: Anything you'd like to say, Mr. Eubanks?

5 DEFENDANT: No, sir.

6 THE COURT: Anything further, Mr. Hunter?

7 SOLICITOR HUNTER: Just if you'd like to hear his
8 previous record other than those convictions.

9 THE COURT: Well, it's been related to me.

10 Do you have anything else you'd like to add to that?

11 SOLICITOR HUNTER: Other than the serious convictions,
12 he does have a 1975 receiving stolen goods.

13 A 1984, 1985 trafficking offenses, and as well as the
14 1994 distribution of cocaine third offense.

15 THE COURT: Based on the information provided to the
16 Court, the sentence is life in prison without the
17 possibility of parole.

18 Good luck to you, sir.

19 DEFENDANT: Yes, sir.

20 MRS. MANIGAULT: Thank you, Your Honor.

21

22 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

23

24

25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 24th day of February, 2010

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

March 11th, 2010

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4) TRANSCRIPT OF RECORD
5 -vs-) 2009-GS-42-01852
6 James R. Eubanks,)
7 Defendant.) March 31, 2010
Spartanburg, South Carolina

8
9
10 B E F O R E:

11 HONORABLE ROGER L. COUCH, JUDGE
12
13

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

15 JAMES E. HUNTER, ESQ.
16 Attorney for the State

17 DOROTHY A. MANIGAULT, ESQ.
18 Attorney for the Defendant
19
20
21

22 Margaret A. Woods
23 Circuit Court Reporter

24 ORIGINAL
25

1 THE COURT: Alright, we're on the record in the case of
2 State of South Carolina vs. James R. Eubanks. The motion on
3 behalf of the defendant is to set aside the jury verdict,
4 vacate sentence and for a new trial. Ms. Manigault.

5 MS. MANIGAULT: Please the the Court, Your Honor, good
6 morning.

7 THE COURT: Yes, ma'am.

8 MS. MANIGAULT: Your Honor, on behalf of defendant James
9 Eubank we made the motion and we would renew our -- all of our
10 motion made during the trial which was the motion to quash the
11 search warrant, the motion to suppress all the drugs found and
12 our motion to proffer the tape of the CI for review by the
13 appellate court and we believe that had these motions been
14 granted that there would be no way that the jury could find a
15 verdict as it did and we also believe that the verdict
16 rendered by the jury was not according to the facts presented
17 in the case.

18 THE COURT: Alright. Anything further?

19 MS. MANIGAULT: No, sir.

20 THE COURT: Hear from the State.

21 MR. HUNTER: Your Honor, just the State's position is
22 that there was a legally sufficient basis for the verdict that
23 the jury returned and her motion should be denied.

24 THE COURT: Well I wo -- I'm not going to change the
25 rulings that I made on the the motions made during trial and

1 it would be my finding that the jury verdict should not be set
2 aside, therefore the motion is denied. Thank you very much.

3 MS. MANIGAULT: Thank you, Your Honor.

4 THE COURT: The State wish to prepare an order to that
5 effect?

6 MR. HUNTER: Yes, Your Honor.

7 THE COURT: Thank you very much.

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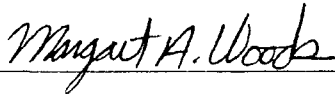
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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on March 31, 2010 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 3, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

March 21, 2011

A handwritten signature in cursive script, reading "Margaret A. Woods", is written over a horizontal line.

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES R. EUBANKS,

APPELLANT

FINAL BRIEF OF APPELLANT

BREEN RICHARD STEVENS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by failing to quash the search warrant of the Defendant's residence and outbuilding for lack of probable cause and suppress all evidence found as a result of the search?

STATEMENT OF THE CASE

Appellant James Robert Eubanks was indicted by the Spartanburg County Grand Jury on April 1, 2009, for trafficking cocaine in an amount between 200 and 400 grams. The charge arose from contraband discovered as a result of the search of Eubanks' home and outbuilding on June 18, 2008.

Eubanks' case was called for trial before the Honorable Roger L. Couch and a jury from February 23 through 24, 2010. R. 1, R. 93. The jury found Eubanks guilty as charged, and he was sentenced to life imprisonment without possibility of parole.¹ R. 184, lines 13-18; R. 188, lines 15-17. At the time of his conviction and sentence, Eubanks was 66 years of age. R. 187, lines 12-13.

¹ Eubanks' post-trial motion hearing was held on March 31, 2010, before Judge Couch.

ARGUMENT

The trial court erred by failing to quash the search warrant of the Defendant's residence and outbuilding for lack of probable cause and suppress all evidence found as a result of the search.

As the State indicated to both the court and jury, this case is about a search warrant and the fruits of its execution. R. 17, line 22—R. 18, line 7; R. 69, line 25—R. 70, line 2; R. 160, lines 21-15. In pertinent part, the affidavit underlying the search warrant in question describes the person and place to be searched as follows:

The residence is brick with red roof. The residence has red and white trim. The search to include the residence, curtilage area, and any outbuildings. The search is to also include the person of James "Crip" Eubanks.

Court's Exhibit (Ct. Ex.) #1. The affidavit further gives the following "reasons for affiant's belief that the property sought is on the subject premises":

Within the past seventy-two hours of today's date (6/13/08) a confidential reliable informant (CRI) working for the Spartanburg County Sheriff's Office observed cocaine being sold *at the residence described above*. CRI observed James Eubanks exchanging cocaine for U.S. currency. In the past SRI has observed quantities of cocaine being stored inside the residence. CRI knows James Eubanks to hide illegal contraband throughout the residence, on his person, and on the curtilage area to avoid police detection. CRI know [sic] cocaine by sight, smell, texture, and packaging. CRI has provided information to the Spartanburg County Sheriff's Office in the past that has led to the arrest of subjects and the confiscation of illegal contraband.

Ct. Ex. #1 (emphasis added). As indicated in the Return to the search warrant as well as trial testimony, the fruits of the search included: two clear baggies containing cocaine and \$1400 from the person of Eubanks; approximately \$37,100 in U.S. currency from the bedroom closet safe and from under a mattress; and thirteen bags containing cocaine from the

outbuilding on the property. R. 88, lines 10-17; R. 128, line 6—R. 131 line 16; R. 149, line 1—R. 150, line 17; Ct. Ex. #1.

The defense moved to quash the search warrant and suppress the evidence found as a result of the search.² In particular, Eubanks asserted that, under the totality of the circumstances, the affidavit did not contain sufficient information to support probable cause where: (1) the confidential informant (CI) did not actually observe a drug transaction with Eubanks in the residence within seventy-two hours of June 13, 2008, but was actually outside on the driveway; and (2) the prior alleged observations by the CI of cocaine inside the residence were made without any specific reference to dates, times, or even years. R. 22, line 1—20.

Citing State v. Dupree,³ the State argued that the affidavit was sufficient to support probable cause based on the presence of the controlled buy with sufficient corroboration. R. 58, line 16—R. 59, line 17.

After hearing testimony from the two officers who drafted, executed, and returned the search warrant, the trial court upheld the warrant and allowed the evidence seized as the fruits therefrom. R. 60, lines 5-15.

“A search warrant may issue only upon a finding of probable cause.” State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997) (citing State v. Owen, 275 S.C. 586, 274 S.E.2d 510 (1981)). The South Carolina General Assembly “has imposed stricter requirements than federal law for issuing a search warrant. Both the Fourth Amendment of

² R. 17, lines 13-15; R. 21, line 21—R. 23, line 21; R. 57, lines 10-11; R. 83, lines 4-11; R. 85, lines 4-8; R. 86, lines 7-12; R. 87, lines 4-10; R. 89, lines 7-12; R. 128, lines 14-22; R. 132, lines 5-12; R. 133, lines 8-16; R. 134, line 22—R. 135, line 4; R. 150, lines 1-7.

the United States Constitution and Article I, § 10 of the South Carolina Constitution require an oath or affirmation before probable cause can be found by an officer of the court, and a search warrant issued.” State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 678 (2000). Further, “the South Carolina Code mandates that a search warrant ‘shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record. . . .’” Id.

The totality of the circumstances test is used to assess whether the information offered in an affidavit is a sufficient basis for probable cause. See State v. Johnson, 302 S.C. 243, 247, 395 S.E.2d 167, 169 (1990). As previously noted by our Supreme Court,

[t]he task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the “veracity” and “basis of knowledge” of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Weston, 329 S.C. at 290-91, 494 S.E.2d at 802-03 (quoting Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983)). Additionally, “[i]n determining whether a search warrant is supported by probable cause, the crucial element is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found in the place to be searched.” United States v. Laylor, 996 F.2d 1578, 1582 (4th Cir. 1993) (holding the search warrant defective where the affidavit failed to explain the geographic relationship between the area where the drug sales occurred and the defendant’s residence). Specifically, “the nexus between the place to be searched and the items to be

³ 354 S.C. 676, 583 S.E.2d 437 (2003).

seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence.” *Id.* (internal quotations omitted).

In the case at bar, the search warrant signed by the magistrate was based solely on the information provided in the affidavit; yet, testimony provided by Hutchins at trial indicates he drafted and submitted the affidavit with reckless disregard for the truth. Thus, the affidavit itself failed to provide information crucial to establish probable cause—especially after one excises the tainted information.⁴

First testimony from Investigator Matt Hutchins (Hutchins) and Sergeant Joseph Pharis (Pharis) of the Spartanburg County Sheriff’s Office narcotics division revealed that the CI indeed participated in a drug buy on June 12, 2008, that was arranged by Hutchins and audio/video recorded. However, the buy occurred at the driveway rather than in Eubanks’ residence. Moreover, testimony also indicated that the CI actually arrived at the location of the buy before Eubanks did in his own vehicle. Thus, Eubanks was not even observed leaving his residence or shed to walk outside and make an exchange; rather, he exited his car and made an exchange with the CI in the driveway. As such, the CI never saw what may or may not have been inside Eubanks’ residence or his shed.

Second, Hutchins was clearly aware that the CI neither purchased drugs inside Eubanks’ residence or shed, nor saw the inside of the residence on June 12, 2008; Hutchins not only helped arrange the drug buy by providing the CI with purchase money and equipping her with Audio/Video equipment, but he also debriefed the CI and watched the

⁴ Hutchins testified that he did not supplement the affidavit with sworn oral testimony to the magistrate. R. 31, lines 3-4. Thus, although “a warrant affidavit which is insufficient in itself to establish probable cause may be supplemented by sworn oral testimony,” the exception has no application to this case. *Johnson*, 302 S.C. 248, 395 S.E.2d at 170.

video. Yet, the affidavit intimated that the CI “observed cocaine being sold *at the residence described above*. CRI observed James Eubanks exchanging cocaine for U.S. currency.” Ct. Ex. #1.

Third, even Hutchins’ coworker, Sergeant Pharis, understood “at the residence” to mean inside the house. In at least two points of his testimony, Pharis stated that he left the Return to the search warrant “at the residence,” where he referred to leaving the Return on the kitchen table inside the house. R. 43, lines 9-11; R. 51, lines 10-21. Further, when one examines the description of the “residence” in the same affidavit, Hutchins described Eubanks’ brick home: “The residence is brick with red roof. The residence has red and white trim.” Ct. Ex. #1. Therefore, based on the common understanding of the language used in the affidavit, the magistrate was misled to believe the CI observed cocaine being sold inside the red roofed brick residence with white trim.⁵

At a minimum, the trial court should have stricken the statement regarding the drug buy from the affidavit, and examined the remaining information present on the face of the document to determine if it was sufficient to support probable cause. See Jones, 342 S.C. 121, 127, 536 S.E.2d 675, 678 (2000) (“[I]f the foregoing criteria have been met, and the remaining content is insufficient to find probable cause after the allegedly false or reckless material has been set aside, the defendant is entitled to his hearing, under the Fourth and Fourteenth Amendments.”) (citing Franks v. Delaware, 438 U.S. 154, 171, 98 S.Ct. 2674,

⁵ Because Hutchins tainted the underlying affidavit with knowing or reckless falsity, the good faith exception to the exclusionary under the Fourth Amendment is inapplicable. See, e.g., Weston, 329 S.C. at 292-93, 494 S.E.2d at 804 (explaining the three situations where deference to a magistrate’s finding of probable cause is not warranted under United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405 (1984)).

2684 (1978)). Had the trial court done so, it would have examined the remaining “observations” by the CI listed in the affidavit—observations which were notably vague. For instance, none of the prior observations state what day, week, month, or even year they were made. See, e.g. Laylor, 996 F.2d at 1582 (“nevertheless, a time frame should have been disclosed. This court has already cautioned the police about the need to specify time periods in warrant applications.”).

Fortunately, the testimony of Hutchins clarified the matter to the trial court: the alleged previous observations of Eubanks by the CI occurred in October and November of 2007. The seven to eight month gap between observation and affidavit is a far cry from the drug buy in Eubanks’ driveway alleged to have occurred within seventy-two hours of the affidavit. Under these circumstances, this evidence provided in the affidavit should be deemed stale and insufficient to establish probable cause. See United States v. Doyle, 650 F.3d 460, 471 (4th Cir. 2011) (“A valid search warrant may issue only upon allegations of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause *at that time*.”) (emphasis in original); United States v. McCall, 740 F.2d 1331, 1336 (4th Cir. 1984) (“[E]vidence seized pursuant to a warrant supported by ‘stale’ probable cause is not admissible in a criminal trial to establish a defendant’s guilt.”). Accordingly, “[u]nder a Franks analysis, probable cause did not exist under the Fourth Amendment of the United States Constitution,” or under Article I, section 10 of the South Carolina Constitution. Jones, 342 S.C. at 127, 536 S.E.2d at 678.

Further, the present case is readily distinguishable from the primary case relied upon by the State in its argument to the trial court on this issue: State v. Dupree, 354 S.C. 676, 583 S.E.2d 437 (2003). In Dupree, probable cause was present in the affidavit to search

the defendant's mobile home because the police officer independently corroborated the statement that "the confidential informant was observed *entering the mobile home* with no crack cocaine in his possession, *exiting the mobile home*, and then turning over the crack cocaine to Deputy Mullineaux." Dupree, 354 S.C. at 691, 583 S.E.2d at 445. Thus, where the affidavit clearly satisfied the nexus requirement in Dupree, it is equally clear that it is lacking in Eubanks' case. No one saw the CI enter into Eubanks' residence on June 12, 2008, to purchase drugs because he did not enter the residence at all that day.

Moreover, Hutchins' attempt to verify or confirm the CI's prior alleged encounters at Eubanks' residence is likewise without merit. First, as indicated above, the dates were never established in the underlying affidavit. Second, Hutchins never gave supplemental sworn oral testimony to the magistrate to explain anything about a second CI that purportedly corroborated the first CI's information. Third, even if Hutchins had tried to orally supplement the affidavit, such information would have served to subvert the puffed information in the affidavit. Therefore, under the totality of the circumstances, the affidavit underlying the search warrant of Eubanks' residence does not set forth sufficient information to support probable cause. As a result, the warrant should have been quashed, and the evidence obtained from it suppressed as fruits of the poisonous tree.

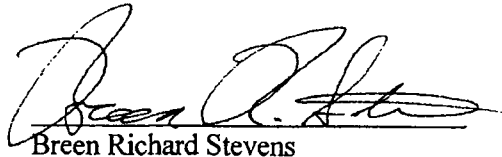
Finally, Eubanks was prejudiced by the trial court's failure to suppress the evidence that was discovered as a result of the defective search warrant. For example, approximately thirteen ounces of drugs, and nearly \$40,000 were found as a result of the executing the search warrant. The State could not have proven Eubanks trafficked cocaine in an amount between 200 to 400 grams without this evidence. Therefore,

Eubanks was prejudiced by the trial court's failure to quash the search warrant and suppress the evidence obtained as tainted fruit. See, Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691 (1961); State v. Philpot, 317 S.C. 458, 461, 454 S.E.2d 905, 907 (Ct. App. 1995).

CONCLUSION

For the foregoing reasons, James Eubanks respectfully requests reversal of his conviction, and a new trial granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen Richard Stevens", written over a horizontal line.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of May, 2012.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

James R. Eubanks, Appellant.

Appellate Case No. 2010-154086

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

Unpublished Opinion No. 2012-UP-602
Heard October 17, 2012 – Filed November 7, 2012

AFFIRMED

Appellate Defender Breen Richard Stevens, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, and Assistant
Attorney General Christina J. Catoe, all of Columbia; and
Solicitor Barry J. Barnette, of Spartanburg, for
Respondent.

PER CURIAM: James R. Eubanks appeals his conviction for trafficking cocaine in an amount between 200 and 400 grams. On appeal, Eubanks argues that the trial court erred in failing to suppress drug evidence seized from his residence and outbuilding pursuant to a defective search warrant. Specifically, Eubanks asserts that (1) the search warrant was not supported by probable cause, and (2) the affidavit in support of the search warrant was misleading and demonstrated a reckless disregard for the truth in violation of *Franks v. Delaware*, 438 U.S. 154 (1978). We affirm.

1. As to whether the search warrant affidavit presented to the magistrate was misleading and demonstrated a reckless disregard for the truth, we find this issue is not preserved for appellate review. At trial, Eubanks moved to quash the search warrant solely on the ground that the affidavit in support of the search warrant did not contain sufficient information to support probable cause. Eubanks did not assert to the trial court that false information was recklessly included in the affidavit, nor did he assert that exculpatory information was recklessly omitted from the affidavit. *See State v. Davis*, 354 S.C. 348, 360-61, 580 S.E.2d 778, 784-85 (Ct. App. 2003) (holding *Franks* issue was not preserved for review when the defendant did not assert below that false information was intentionally or recklessly included in the affidavit and the trial judge made no ruling on that issue); *see also State v. Rutledge*, 373 S.C. 312, 318, 644 S.E.2d 789, 792 (Ct. App. 2007) ("There is a presumption of validity with respect to the affidavit supporting the search warrant.") (quoting *Franks v. Delaware*, 438 U.S. at 171); *State v. Missouri*, 337 S.C. 548, 554, 524 S.E.2d 394, 397 (1999) (stating a defendant's attack on a search warrant must include "allegations of deliberate falsehood or reckless disregard for the truth, and those allegations must be accompanied by an offer of proof").

2. As to whether the search warrant was supported by probable cause, we find the magistrate had a substantial basis for concluding probable cause existed. *See State v. Bellamy*, 336 S.C. 140, 144, 519 S.E.2d 347, 348 (1999) (stating a magistrate may issue a search warrant only upon a finding of probable cause); *State v. Weston*, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997) ("A reviewing court should give great deference to a magistrate's determination of probable cause."); *State v. Dupree*, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003) ("An appellate court reviewing the decision to issue a search warrant should decide whether the magistrate had a substantial basis for concluding probable cause existed. This review, like the determination by the magistrate, is governed by the 'totality of the circumstances' test." (citations omitted)). In this case, the search warrant affidavit stated a confidential informant (CI) had recently observed the sale

of cocaine at Eubanks's residence and "[i]n the past [CI] has observed quantities of cocaine being stored inside the residence." The affidavit further provided, "[CI] has provided information to the Spartanburg County Sheriff's Office in the past that has led to the arrest of subjects and the confiscation of illegal contraband." See *Dupree*, 354 S.C. at 689, 583 S.E.2d at 444 (stating that if a controlled buy is properly conducted "it alone can provide facts sufficient to establish probable cause for a search warrant"); *id.* at 691, 583 S.E.2d at 445 (stating evidence of a drug transaction supports an "inference that more will be found at the place of operation"); *Davis*, 354 S.C. at 356, 580 S.E.2d at 782 (stating a magistrate may find probable cause exists if there is a fair probability that contraband will be found in a particular place); *State v. Scott*, 303 S.C. 360, 363, 400 S.E.2d 784, 786 (Ct. App. 1991) ("In the case of drug dealers, evidence is likely to be found where the dealers live."); see also *State v. Hammond*, 270 S.C. 347, 352-53, 242 S.E.2d 411, 414 (1978) (finding an affidavit was sufficient to establish probable cause when the affiant had been told by a confidential informant that the informant had recently observed the use and sale of drugs "at the above named location" and had provided information in the past that had led to arrests and convictions). Accordingly, we hold the trial court did not err in refusing to suppress the drug evidence seized from Eubanks's residence and outbuilding.

AFFIRMED.

HUFF, THOMAS, and GEATHERS, JJ., concur.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF SpartanburyJAMES R. EUBANKS #213678
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2012-CP-42-4826

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence General Session / Spartanburg SC
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009 GS 4201852 Trafficking in Cocaine
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Feb. 24, 2010 / Life
 - (b) _____

Revised 3/2003

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- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals, South Carolina _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed Conviction _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Nov. 7, 2012 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) Ineffective Assistance of Counsel
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel Failed to challenge the truthfulness of
 (b) the Affidavit
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. N/A
 ii. _____
 iii. _____

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- iv. N/A
- (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?

- NO
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) I had to wait for "Appeal Court" final decision.
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

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- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Dorothy A. ~~Marigault~~ Marigault, P.O. Box 392, Greenville, S.C. 296
- ii. Breen R. Stevens, Division of Appellate Defense,
- iii. P.O. Box 11589, Columbia, S.C. 29211
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL COUNSEL
- ii. Appellate Counsel
- iii. _____
19. State clearly the relief you seek in filing this application:
- NEW TRIAL
20. Are you now under sentence from any other court that you have not challenged?
- NO

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STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, JE, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

JAMES R. EUBANKS # 213678

SWORN to and subscribed before me this 21
day of NOV, 2012.

Eugene K. [Signature] (L.S.)
Notary Public

My Commission Expires My Commission Expires April 4, 2016

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SPARTANBURG COUNTY
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M. HOPE BLACK

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JE, 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.

JAMES R. ELBANKS
Applicant

SWORN or affirmed to and subscribed before me this

21 day of Nov, 2012.
Eugene R. [Signature]
Notary Public

My Commission Expires: ~~My Commission Expires April 4, 2016~~

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SPARTANBURG COURT
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M. HOPE BLANCHARD

PLEASE FILE
MY APPLICATION
FOR PCR

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M. HOPE CLERK

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-4826
James R. Eubanks, #213678,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed November 26, 2012, but received by Respondent on June 20, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the March 2009 term of the Spartanburg County Grand Jury for trafficking in cocaine 200-400 grams – 3rd or subsequent (2009-GS-42-1852). The Applicant was represented by Dorothy A. Manigault, Esquire. On February 24, 2010, the Applicant proceeded to trial and was convicted by a jury. The Honorable Roger L. Couch sentenced Applicant to life without parole pursuant to S.C. Code Ann. §17-25-45(A). A Motion for new trial was heard and denied by Judge Couch on March 31, 2010.

A timely notice of appeal and brief were filed on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Eubanks, Op. No. 2012-UP-602 (filed November 7, 2012). The Remittitur was returned on December 3, 2012.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- a. Ineffective assistance of counsel, in that;
 - i. Counsel failed to challenge the truthfulness of the affidavit.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 27, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

JAMES R. EUBANKS, #213678

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

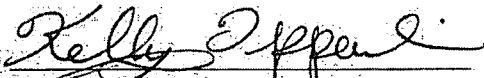
2012-CP-42-4826

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DATED this 27th day of March, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY
3

4 JAMES R. EUBANKS,)
5 Applicant,)
6 vs.)
7 THE STATE OF SOUTH CAROLINA,)
8 RESPONDENT.)

TRANSCRIPT
OF
RECORD
2012-CP-42-4826

9
10 January 13th, 2015
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, Judge.
15

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

17 CHRISTOPHER D. BROUGH
18 ESQ.
Attorney for the Applicant

19 SUZANNE H. WHITE
20 ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent
21

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Applicant's Exhibits</u>		

A-1	Search Warrant	6	7

P R O C E E D I N G S

THE COURT: Okay. This is James R. Eubanks, correct?

MS. WHITE: Yes, Your Honor. They're bringing him in.

THE COURT: Okay. I'm sorry. I didn't realize---

MS. WHITE: No, that's okay.

(WHEREUPON, the Applicant comes into the courtroom at this time.)

THE COURT: This is James R. Eubanks versus the State of South Carolina, 2012-4826. It's before the Court on an application for post-conviction relief.

He is confined at the Department of Corrections as a result of a guilty verdict in a trial on 2009-GS-42-1852, which is trafficking in cocaine 200 to 402, 200 to 400-grams, third or subsequent. Judge Couch, Couch sentenced him to life without parole pursuant to a 17-25-45(a). A motion for new trial was denied on March 31st of 2010 and the matter was dismissed pursuant to an Anders brief in the Court of Appeals in an unpublished opinion with a remittitur having been issued on 12/3 of 2012.

Is the Applicant ready to proceed?

MR. BROUGH: Yes, Your Honor.

THE COURT: And is the State ready to proceed?

MS. WHITE: Yes, Your Honor.

Matt Hutchins - Direct examination
by Mr. Brough

1 THE COURT: It appears that the sole allegation in this
2 application deals with ineffective assistance of counsel
3 regarding challenging the truthfulness of the search warrant
4 affidavit.

5 Is that correct?

6 MR. BROUGH: It is, Judge.

7 THE COURT: Okay. You may proceed.

8 MR. BROUGH: Thank you.

9 THE COURT: You welcome.

10 MR. BROUGH: Your Honor, we'd call Investigator Matt
11 Hutchins first.

12 THE COURT: If you'd raise your right-hand, sir.

13 MATT HUTCHINS, being first duly
14 sworn, testified as follows:

15 THE COURT: If you would take a seat for me and state
16 your full name for the record spelling your last name for
17 the court reporter.

18 THE WITNESS: It's Matt Hutchins. H-U-T-C-H-I-N-S.

19 THE COURT: Is that Matt with two ts?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. You may proceed.

22 MR. BROUGH: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 MR. BROUGH: May it please the Court?

25 THE COURT: Yes, sir.

Matt Hutchins - Direct examination
by Mr. Brough

1 DIRECT EXAMINATION

2 BY MR. BROUGH:

3 Q Investigator Hutchins, are you, are you -- were you
4 part of the investigation regarding a James Eubanks?

5 A I was.

6 Q Okay. And did you, in fact, sign the search warrant?

7 A I did.

8 Q You did.

9 (WHEREUPON, the search warrant was marked as
10 Applicant's Exhibit No. 1 for identification purposes only
11 at this time.)

12 Q I hand you what's been marked for ID as Applicant's
13 Exhibit 1.

14 If you'd look at that for me, sir?

15 A (Witness complies.)

16 Q Is that a copy of the search warrant?

17 A It's a copy of a search warrant. There's a whole lot
18 of writing on here that I'm not---

19 Q I believe there are some annotations on it that are not
20 yours. I think the state will stipulate that that is Ms.
21 Manigault's handwriting on that.

22 A Okay.

23 MS. WHITE: Yes.

24 THE WITNESS: Okay.

25 MS. WHITE: So that's a copy -- I believe it's a copy

Matt Hutchins - Direct examination
by Mr. Brough

1 from her file of the, the search warrant.

2 MR. BROUGH: That's correct.

3 MS. WHITE: Not the original.

4 THE WITNESS: Okay.

5 Q Okay. But you're the individual that swore out that
6 search warrant?

7 A Yes.

8 Q Okay.

9 A I am.

10 MR. BROUGH: Like to have Applicant's 1 into evidence
11 please.

12 THE COURT: Any objection?

13 MS. WHITE: No objection, Your Honor.

14 THE COURT: Marked and admitted without objection.

15 (WHEREUPON, Applicant's Exhibit No. 1 was received into
16 evidence at this time.)

17 Q Investigator Hutchins, what were you looking for when
18 you submitted a search warrant regarding James Eubanks?

19 A You mean -- speaking of the property sought?

20 Q Yes, sir.

21 A It's cocaine, a Schedule II controlled substance, U.S.
22 currency, scales, baggies, ledgers, diaries, electronic
23 media, and paraphernalia, and any items related to the drug
24 trade.

25 Q Okay. And, and as a result of that search warrant,

Matt Hutchins - Direct examination
by Mr. Brough

1 once it was done, was it executed?

2 A It was.

3 Q Okay. And what did you find upon execution just in
4 terms of the drugs?

5 You don't have to go through every item.

6 A Found cocaine.

7 Q Okay. And is that the basis of why he was charged with
8 trafficking?

9 A Yes, sir, it is.

10 Q Okay. Now, in the affidavit on the search warrant, the
11 affiant's belief, you were that affiant, is that correct?

12 A That is correct.

13 Q Okay. And, and the reason for your belief was what in
14 the Applicant's 1?

15 A As stated in the record during the trial, it says
16 within the past 72 hours of today's date, 6/13 of '08, a
17 confidential reliable informant, CRI, working for the
18 Spartanburg County Sheriff's Office observed cocaine being
19 sold at the residence described above. CRI observed James
20 Eubanks exchanging cocaine for U.S. Currency.

21 In the past CRI has observed quantities of cocaine
22 being stored inside the residence. CRI knows James Eubanks
23 to hide illegal contraband throughout the residence, on his
24 person, and on the curtilage area to avoid police detection.
25 CRI knows cocaine by sight, smell, texture, and packaging.

Matt Hutchins - Direct examination
by Mr. Brough

1 CRI has provided information to the Spartanburg County
2 Sheriff's Office in the past that has led to the arrest of
3 subjects and the confiscation of illegal contraband.

4 Q Okay. And the within 72 hours, was that referring to
5 the CI's buy that was done on June the 12th of 2008 at
6 11:06AM?

7 A That is correct.

8 Q That's what you're referring to?

9 A Yes.

10 Q Okay. And in this investigation, it's my understanding
11 that you were doing your investigation along with a couple
12 of other folks?

13 A Yes, this investigation had actually spanned from
14 around October of 2007 to the 6/13 of '08.

15 Q And on this specific day, were you working with a, a
16 Joe Ferris?

17 A I was. He was the sergeant of narcotics at that time.

18 Q Okay. And did you actually observe this transaction?

19 A The CI was equipped with an audio and video recording
20 device.

21 Was I on the property when the buy took place?

22 No, sir.

23 Q Okay. And you followed the CI I guess afterwards to
24 [REDACTED] Hickory Nut Road?

25 A No, the CI was -- that [REDACTED] Hickory Nut Road is where

Matt Hutchins - Direct examination
by Mr. Brough

1 the buy took place.

2 Q Okay.

3 A The CI, as I've stated in the trial, we meet with the
4 CI. They are searched prior to the buy to make sure they
5 are not concealing any contraband on them. They were
6 provided with recorded Sheriff's Office funds, equipped with
7 an audio and video recording device, and then followed to
8 the location. The buy takes place. After the buy takes
9 place, then the CI meets back with us, they're re-searched,
10 and the contraband is recovered.

11 Q And the buy that took place here, did -- the buy
12 actually took place not inside the residence, but actually
13 at -- in the driveway---

14 A That transaction---

15 Q ---where Mr. Eubanks met the CI, isn't that correct?

16 A The transaction took place in the driveway, but then
17 Mr. Eubanks was observed going inside.

18 Q So the transaction took place in the driveway?

19 A Yes, sir.

20 Q Inside a truck?

21 A It's been so long ago. We'd have to look at the video
22 documenting those events. I don't remember if it's standing
23 in the driveway, in a truck, or anything at this point. It
24 should be in the record.

25 MS. WHITE: And, Your Honor, the State would just

Matt Hutchins - Direct examination
by Mr. Brough

1 object to having to go through -- this testimony is all
2 presented in pretrial motions. So if there's nothing new,
3 we would ask that this witness be able to be excused.

4 MR. BROUGH: And, and, Your Honor, while I understand
5 Ms. White's position, there was a pretrial motion on
6 suppression hearing in this case.

7 THE COURT: Uh-huh. (Affirmative).

8 MR. BROUGH: I don't think that the testimony was ever
9 elicited from Investigator Hutchins that the actual
10 underlying buy transaction took place in the driveway and
11 not inside the residence itself.

12 THE COURT: I don't know that it makes a difference.
13 It's curtilage. He has dominion and control.

14 MR. BROUGH: Well, that, that would be our---

15 THE COURT: It's his house, isn't it, or he lived
16 there. It's his residence. I don't know that it really
17 matters where the buy took place. A search warrant
18 generally covers in -- inferentially he certainly didn't get
19 the drugs out of his driveway. They would of had to of been
20 stored somewhere and the testimony, at least at this point,
21 is they observed him go back into the residence after the
22 buy.

23 MR. BROUGH: And I understand that's what the
24 investigator's testified to. I think Mr. Eubanks' testimony
25 is going to show that he actually got it out of his truck in

Matt Hutchins - Direct examination
by Mr. Brough

1 the driveway, but --.

2 THE COURT: I don't know that it matters. A CI comes
3 to your house and conducts a buy, driveway, backyard, shed,
4 house, it's gonna be -- a warrant's gonna be issued.

5 MR. BROUGH: Well, that would be our position is, is
6 that the affidavit was deficient for not laying that out,
7 Judge.

8 THE COURT: I think that there is testimony -- there
9 was a motion to compel filed by his trial counsel, and that
10 motion was made on February 16th of 2010, and she asked
11 that all -- everything from the 6/18/08 search be suppressed
12 and there was a pretrial hearing on that. So if there is
13 testimony that is different or that was not elicited, then
14 you need to limit it to that, but I -- I'm not gonna rehear
15 what's already been heard---

16 MS. WHITE: And, Your Honor, I just meant---

17 THE COURT: ---cause I've read the record.

18 MS. WHITE: Page 454 of the motion, pretrial hearing,
19 Mr. Hutchins or Investigator Hutchins actually says that the
20 transaction took place in the driveway and then Mr. Eubanks
21 walked inside. So the testimony that the drug transaction
22 was in the driveway was presented.

23 THE COURT: Is there any other testimony you want to
24 elicit from the witness that was not elicited during the
25 pretrial suppression?

Matt Hutchins - Direct examination
by Mr. Brough

1 MR. BROUGH: Not as to this witness, Judge.

2 THE COURT: I'm sorry?

3 MR. BROUGH: Not, not as to this witness, Judge, if
4 that's---

5 THE COURT: So do you have any exception to him being
6 excused as the State has requested?

7 MR. BROUGH: None.

8 THE COURT: Okay. Sir, you're excused. Have a good
9 day.

10 THE WITNESS: Thank you.

11 THE COURT: You're welcome.

12 The witness is excused without objection.

13 You may proceed.

14 MR. BROUGH: Call James Eubanks to the stand.

15 THE COURT: He can testify at counsel table if he
16 speaks loudly enough so that he won't have to try to
17 navigate all of this.

18 MR. BROUGH: Okay.

19 JAMES EUBANKS, being first duly
20 sworn, testified as follows:

21 THE COURT: You can put your right-hand down.

22 Sir, state your full name for the record.

23 State your full name for the record.

24 THE WITNESS: James R. Eubanks.

25 THE COURT: And, sir, spell your last name for us.

James Eubanks - Direct examination
by Mr. Brough

1 THE WITNESS: E-U-B-A-N-K-S.

2 THE COURT: Okay. And if you could speak just as
3 loudly as that for me so the court reporter can take down
4 everything that you say.

5 okay?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Try to keep your voice up for me.

8 You may proceed.

9 MR. BROUGH: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 DIRECT EXAMINATION

12 BY MR. BROUGH:

13 Q Mr. Eubanks, were you represented at trial by Dorothy
14 Manigault, sir?

15 A Yes, sir.

16 Q Okay. And what were you charged with, sir?

17 A Charging trafficking cocaine.

18 Q Okay. And ultimately you were convicted on this case?

19 A Yes, sir.

20 Q Okay. And you received a sentence of I believe --?

21 A Life without parole.

22 Q Yes, sir.

23 Could you please tell, sir, sir, what your position is
24 that Ms. Manigault failed to do in your defense, sir?

25 A Well, I don't believe she went back far enough on, on

James Eubanks - Direct examination
by Mr. Brough

1 like the warrant. He got, he got the warrant from the
2 magistrate and didn't have no proof. He just made -- he
3 observes this, that, and the other, but he didn't, he didn't
4 actually get the warrant for what it should of been.

5 Q Okay. And what do you think -- when you refer to the
6 warrant, are you referring to the search warrant, sir?

7 A Yes, sir.

8 Q Okay. And that's what's been admitted as Applicant's
9 1.

10 Is that what you're referring to?

11 A Well, I believe it -- I don't believe he, he give the
12 magistrate the correct information.

13 Q Okay. And what information do you believe was
14 incorrect?

15 A The time and everything else. The time whenever he, he
16 wrote down the warrant and he observed. He didn't say
17 nothing about what he suppose to done. He just observed
18 this and observed that.

19 Q And, and that, that was a -- your trial counsel had a
20 motion to suppress on that issue?

21 A Yes, sir.

22 Q Okay. And your position is, is that she was defective
23 during that?

24 A (Nods affirmatively.)

25 Q And what do you feel she should of done?

James Eubanks - Direct examination
by Mr. Brough

1 A I feel she should of went and went to the magistrate
2 and where the -- subpoenaed the magistrate there where he
3 got the, the warrant to start with.

4 Q Okay. And what do you feel that would of shown?

5 A It would of shown that he didn't, he didn't have the
6 right proof there. He just, he just told he observed it.

7 Q All right. Is there anything other than that you feel
8 like she didn't do right for you, sir?

9 A I can't think of nothing else.

10 Q Please answer any of Ms. White's questions.

11 THE COURT: You may proceed.

12 MS. WHITE: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. WHITE:

15 Q Just briefly.

16 Mr. Eubanks, she -- your attorney did file a motion to
17 suppress the drugs and the search warrant, is that right?

18 A Yes, ma'am.

19 Q And, in fact, she cross-examined the investigator and I
20 believe Sergeant Ferris as well that were involved with the
21 search?

22 A I believe so, yes, ma'am.

23 Q Okay. And, and there was some pretty extensive
24 argument and it took a, took a while.

25 There was some case law presented on your behalf,

James Eubanks - Cross-examination
by Ms. White

1 wasn't there?

2 A Yes, ma'am.

3 Q Okay. And ultimately, after hearing that, the judge
4 ruled that the warrant was sufficient and the drugs should
5 not be suppressed?

6 A I'm not positive on that, ma'am. I'll be honest with
7 you.

8 Q Okay. Well, her motion to suppress was denied?

9 A Uh-huh. (Affirmative).

10 Q And the judge ruled that there was, I guess, probable
11 cause and let me find the page to read you directly.

12 Okay. And the judge actually ruled on admissibility
13 and upheld the search warrant is what his ruling was.

14 Does that sound like that---

15 A That sounds about right, yes, ma'am.

16 Q Okay. All right. And---

17 A But during this operation and all, they, after this,
18 he -- Mr. Hutchins, he got in with the federal man. All
19 right. The federal came out and they arrested me on his say
20 so, and they kept me in -- on the house arrest for seven and
21 a half months and then they dropped it. Said that they
22 couldn't -- didn't have sufficient proof and all. And then
23 he come -- turned right around and took six more warrants
24 out on me.

25 Q And, in fact, your attorney tried to file a motion to

James Eubanks - Cross-examination
by Ms. White

1 get records of possible disciplinary or personnel records
2 partially related to the fact that there had been a federal
3 case and then a state case?

4 A Uh-huh. (Affirmative).

5 Q Is that right?

6 A Yes, ma'am.

7 Q Okay. And those were denied?

8 A Yes, ma'am.

9 MS. WHITE: Okay. Your Honor, I think that's all I
10 have for this witness.

11 THE COURT: Any redirect?

12 MR. BROUGH: None, Your Honor.

13 THE COURT: You may proceed.

14 You have any further witnesses from the---

15 MR. BROUGH: I'm sorry. We rest, Your Honor.

16 THE COURT: Okay. State may proceed.

17 MS. WHITE: Thank you, Your Honor.

18 We'd call Dorothy Manigault to the stand.

19 THE COURT: Counsel, if you would come to the stand and
20 be sworn.

21 DOROTHY MANIGAULT, being first duly
22 sworn, testified as follows:

23 THE COURT: If you would take a seat for me and state
24 your full name for the record spelling your last name for
25 the court reporter.

Dorothy Manigault - Direct examination
by Ms. White

1 THE WITNESS: Dorothy A. Manigault. M-A-N-I-G-A-U-L-T.

2 THE COURT: You may proceed.

3 MR. BROUGH: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 DIRECT EXAMINATION

6 BY MS. WHITE:

7 Q Ms. Manigault, do you recall representing Mr. Eubanks
8 on these charges?

9 A Yes.

10 Q And did you discuss with him prior to, obviously, the
11 possibility of getting the drugs suppressed or anything
12 having to do with the search warrant?

13 A Yes.

14 Q And what was your kind of strategy in trying to get
15 that suppressed?

16 A Our strategy was actually picking out words out of the
17 search warrant which dealt with -- the affidavit stated that
18 the buy was made at the residence. My client was saying,
19 after we reviewed the video and everything, that the buy was
20 made in the driveway, and we were -- it was semantics, a
21 matter of semantics, just to try to argue the point that,
22 that the buy was not made at the residence and we didn't
23 have anything really.

24 Q Okay. And, and you tried to kind of raise issues about
25 the CI, is that right, trying to get information about them

Dorothy Manigault - Direct examination
by Ms. White

1 and whether or not they were reliable?

2 A That's correct. We finally were given the information
3 about the CI maybe two weeks to a month before trial date,
4 and we were able to -- Mr. Eubanks and I were able to see
5 the video and hear the audio to see who the CI was and, and
6 the semantics of the, of the buy.

7 Q Okay. Did you, in preparation for the motion or the
8 trial, what do you do?

9 Do you do case research?

10 Do you have an investigator?

11 A I do case research. Of course, talk extensively with
12 my client to find out whether there's anything at all. He
13 was complaining about Investigator Hutchins and maybe he had
14 done some things that was not ethical in other cases, and,
15 and also in this case. We tried to get any records dealing
16 with that, which was not granted to us.

17 He is right, Mr. Eubanks is right, that he was arrested
18 by federal authorities and that those charges were dropped
19 not because of insufficient evidence. They just did not,
20 did not want to deal with it. They said the State could
21 deal with it.

22 Q Okay. Now, you didn't have any direct evidence of any
23 improper dealings from Investigator Hutchins?

24 It was just I guess not rumor, but that what had been
25 talked about and possibilities, is that right?

Dorothy Manigault - Direct examination
by Ms. White

1 A Right, possibilities, and this came from my client and
2 maybe a -- some of his family members to, to look at those
3 areas to try to see whether anything was there. They
4 believed something was there.

5 Q Okay. And, in this situation, obviously he received
6 life without parole.

7 was there ever a plea offer in this matter?

8 A There was a plea offer up until we started the trial,
9 and the, the plea offer was continued through the motion
10 hearings. That plea offer was 15 years.

11 Q And in your discussions with Mr. Eubanks, he did not
12 want to accept that plea offer?

13 A He did not want to accept the plea offer. Of course,
14 they would of reduced it from trafficking to, to
15 distribution and allow him to plead on a level less than --
16 this would of been his fourth or fifth drug offense, his
17 third trafficking offense.

18 He did not want it. His information -- his statement
19 to me was 15 years is just like a life sentence for him. My
20 client had severe heart problems, he had one limb, and he
21 said 15 years was just like a life sentence. So he did not
22 want to accept it.

23 Q And in that discussion did you discuss with him the
24 possibility that if the motion to suppress was denied what
25 may happen if he went to trial and were found guilty?

Dorothy Manigault - Direct examination
by Ms. White

1 A Yes, I discussed with him that he would get life and
2 because of the severity of the, of the consequences I even
3 wrote him a letter a couple of weeks before to make sure he
4 understood that you're looking at life, you may want to
5 rethink this and take this 15 years, but he would not. I, I
6 discussed that with him and he, he just would not --

7 Q Okay.

8 A -- accept that.

9 Q Thank you very much, Ms. Manigault.

10 A Uh-huh. (Affirmative).

11 MS. WHITE: That's all I have.

12 THE COURT: Any questions for the witness?

13 MR. BROUGH: Just briefly, Your Honor.

14 THE COURT: You may proceed.

15 CROSS-EXAMINATION

16 BY MR. BROUGH:

17 Q Would it be fair to say Mr. Eubanks is pretty up there
18 in age?

19 A Yes.

20 Q Okay. So when he said that 15 years is kind of like a
21 life sentence, he may not make it another 15.

22 Would you---

23 A That's what he told me and, and I explained to him that
24 15 was better than the actual life because, because of his
25 medical condition, that the Department may review his

Dorothy Manigault - Cross-examination
by Mr. Brough

1 records and decide to release him early because of medical
2 problems. So we discussed all of that also.

3 Q And would it be fair to say that Mr. Eubanks felt like
4 Matt Hutchins didn't -- wasn't truthful in his affidavit for
5 the search warrant?

6 A That's correct.

7 Q Okay. And that one of the things that he thought was
8 untruthful about was where the actual underlying transaction
9 occurred, whether it was inside the residence or in the --
10 inside his vehicle?

11 A That's correct.

12 Q Okay. And I believe there was another issue that he
13 had brought up dealing with the, the reliability of this CI,
14 when the last time the CI was actually inside the residence.
15 was that also---

16 A Yes, I think -- I don't want to get it confused. There
17 may of been testimony that somebody saw the CI go into the
18 residence even after the buy. I can't remember. I can't
19 remember for sure, but no, the debate was always the buy was
20 not in the residence. The buy was in the driveway.

21 Q Okay. And, and that was the crux of essentially -- and
22 I guess that testimony is never elicited, that Mr. Hutchins
23 always maintained the story that he had, testified to in
24 regards to where the transaction occurred that took place in
25 the driveway and then---

Dorothy Manigault - Cross-examination
by Mr. Brough

1 A well, you know, it wasn't -- it -- as relates to the
2 search warrant?

3 Q Yes, ma'am.

4 A We were trying to pick out words to, to show that the,
5 the buy didn't happen at the residence. We -- there was
6 nothing in here to do that with. I, I found a case exactly
7 on point against us when we -- as I was preparing for trial,
8 that the parties were arguing that the search warrant said
9 at the residence, and the buy was actually on the outside of
10 the residence, but the Court upheld the validity of the
11 warrant because it was still at the residence.

12 Q Okay. All right. Thank you.

13 We have no further questions.

14 THE COURT: Any redirect?

15 MS. WHITE: Nothing, Your Honor.

16 THE COURT: You may step down.

17 Anything further from the State?

18 MS. WHITE: Nothing further from the State, Your Honor.

19 THE COURT: Any rebuttable from the Applicant?

20 MR. BROUGH: No, Your Honor.

21 THE COURT: Any argument?

22 MR. BROUGH: Your Honor, we just simply ask that the
23 records speak for itself in this case and Mr. Price (sic)
24 would indicate that he felt that the warrant wasn't
25 sufficiently challenged.

1 THE COURT: Would you like to respond?

2 MS. WHITE: And obviously, obviously, Your Honor, we
3 would argue that Ms. Manigault was effective in this matter.
4 She filed the motion, argued the motion. Unfortunately it
5 was not ruled in Mr. Eubanks favor, but that does not equate
6 to ineffective assistance of counsel. In this matter, we
7 ask that the application be denied.

8 THE COURT: I've reviewed the record in this case.
9 Although -- could I have the exhibit please?

10 It's all the way over there.

11 MR. BROUGH: I stole it. I'm sorry, Judge.

12 THE COURT: Thank you.

13 I've reviewed the record in this case including the
14 affidavit that was attached to the search warrant, which is
15 Defendant's -- I mean Applicant's No. 1.

16 The Court would find the Applicant has failed to meet
17 his burden of proof. He is failed to show that his counsel
18 was ineffective, that her performance fell below
19 professional norms.

20 Very clearly in this case she did what was expected.
21 She filed all of her pretrial motions including Brady, Rule
22 5, as well as a motion to suppress filed 2/16 of '10 moving
23 to suppress everything from the 6/18/08 search and that was
24 preserved in a pretrial motion, which is clearly a part of
25 the record.

1 The gravamen of the claim is that the transaction took
2 place in the driveway instead of in the house itself and
3 there really is no basis in fact or in law for that
4 argument. The affidavit very clearly articulates that what
5 is to be searched is not just the house. It is to include
6 the residence, curtilage, and any outbuildings. A driveway
7 is clearly curtilage and the affidavit also indicates that a
8 CI had -- no, a confidential reliable informant working for
9 the Spartanburg County Sheriff's Office observed cocaine
10 being sold at the residence.

11 I don't think you can separate residence and driveway.
12 They're all one. I mean if you go to my house, I, I don't
13 consider my driveway not to be a part of my residence. It's
14 my property and it's my curtilage. So it's all included and
15 there's more than sufficient evidence that the affidavit and
16 the warrant is sufficient on its face and there would of
17 been no basis to suppress the drugs pursuant to that motion,
18 and I think we know that when somebody uses an all
19 encompassing statement residence, you don't have to
20 designate that it actually took place in the driveway.

21 You just have to present sufficient facts such that
22 warrant the property -- the premises being searched because
23 of evidence of illegal activity, and the CI saying he went
24 to the house and bought drugs is more that adequate to
25 support it, the search of the residence coupled with the

1 fact that testimony, at least from the officer, limited
2 testimony that once the buy took place, they saw Mr. Eubanks
3 go back into the residence. I don't think anybody stores
4 drugs in their driveway.

5 so there's no basis to challenge the warrant, and his
6 counsel was not ineffective on this basis and the
7 application is denied.

8 I'm going to instruct counsel to provide, and that for
9 the State to provide me with a proposed order within 20 days
10 of today in word format to djeffersonlc -- sc@sccourts.org
11 in word format, and to copy Mr. Brough on that order, and I
12 will do my best to get that order done within five days of
13 it being submitted to me.

14 Anything further for the record from the Applicant?

15 MR. BROUGH: No, Your Honor.

16 THE COURT: From the State?

17 MS. WHITE: Nothing, Your Honor.

18 THE COURT: Thank you very much.

19 You have a good day.

20 MS. WHITE: Thank you.

21

22

23 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

24

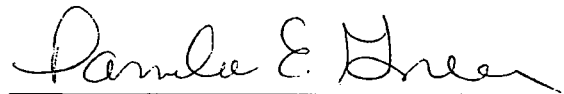
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 13th day of January, 2015.

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

May 11th, 2015



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James R. Eubanks, #213678,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-4826

ORDER OF DISMISSAL

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

The Hon. Deadra L. Jefferson
Christopher D. Brough, Esquire
Suzanne H. White, Esquire
Dorothy A. Manigault, Esquire
January 13, 2015
Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 26, 2012, but received by Respondent on June 20, 2013. The Respondent made its Return on or about March 27, 2014. An evidentiary hearing into the matter was convened on January 13, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Christopher D. Brough, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Investigator Matt Hutcheus and Dorothy A. Manigault, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the March 2009 term of the Spartanburg County Grand Jury for Trafficking in Cocaine 200-400 grams¹ (2009-GS-42-1852). The Applicant was represented by Dorothy A. Manigault, Esquire. On February 24, 2010, the Applicant proceeded to trial and was convicted by a jury. The Honorable Roger L. Couch sentenced Applicant to life without parole pursuant to S.C. CODE ANN. § 17-25-45 (2008). Judge Couch heard and denied the Applicant's motion for new trial on March 31, 2010.

The South Carolina Commission on Indigent Defense, Division of Appellate Defense timely filed a notice of appeal and brief on the Applicant's behalf. The South Carolina Court of Appeals dismissed the Applicant's appeal in an unpublished opinion. State v. Eubanks, Op. No. 2012-UP-602 (filed November 7, 2012), *available at* 2012 WL 10864152. The South Carolina Court of Appeals returned the Remittitur on December 3, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - i. Counsel failed to challenge the truthfulness of the affidavit.

¹ Trafficking in Cocaine, two hundred (200) grams or more, but less than four hundred (400) grams, is punishable by "a mandatory term of imprisonment of twenty-five [(25)] years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars [(\$100,000)]." S.C. CODE ANN. § 44-53-370 (2008). Trafficking in Cocaine is a violent, most serious felony. See S.C. CODE ANN. § 16-1-60 (2008); S.C. CODE ANN. § 17-25-45 (2008).

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sworn by Investigator Hutchins was not accurate. The Applicant testified that he believes Counsel should have subpoenaed the magistrate judge who signed off on the search warrant for his trial. The Applicant admitted that his attorney filed suppression motions challenging the validity of the search warrant and seeking suppression of the admission of the drugs. Further, the Applicant alleged that Hutchins' affidavit was not based on the "right proof." Rather, the Applicant alleged, Hutchins' affidavit was based only on observations. The Applicant admitted that Counsel cross-examined Investigators Hutchins and Pharis. The Applicant also complained that the federal authorities arrested him "on Hutchins' say so" and kept him under house arrest for seven (7) months before dismissing the case.

Counsel testified that the Applicant's trial was going well until the suppression hearing. She testified that her trial strategy in attacking the search warrant was to focus on the words in the affidavit regarding the confidential information gained at the residence. She testified that she was arguing semantics by highlighting the distinction between the drug sale occurring in the residence versus out in the driveway. She testified she "didn't have anything really" to help defend the Applicant against admission of the search warrant, especially since the information obtained about the confidential informant was reliable. Counsel testified that she performed a great deal of case research regarding the search warrant issues, as well as discussed the issue extensively with her client. In fact, Counsel testified that in her research, she found a case directly on point regarding a residence versus outside that was contrary to the Applicant's argument. Counsel opined that she had no basis to really challenge the search warrant, but did so anyway at her client's direction.

She explained that the Applicant's complaints about Hutchins stemmed from purported records of his unethical activity, which were not applicable. Upon investigation, she discovered

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no direct evidence of improper dealings with Hutchins. She further explained that the federal charges against the Applicant were dropped and the case passed off so that the state could "deal with" the Applicant's case and imprisonment. Counsel testified that she did attempt to obtain personnel records regarding the investigators involved in the case because Applicant and his family members believed there were issues with the investigators' truthfulness. However, Counsel testified that she had no concrete basis for the request.

Counsel testified that the Applicant was offered a plea deal for a sentence of fifteen (15) years, which was "good" until after the suppression hearing and ultimately remained open until the case was called for trial. The Solicitor had agreed to reduce the Applicant's Trafficking in Cocaine charge to a Distribution of Cocaine charge in order to offer a fifteen (15) year sentence. Counsel testified that the current Trafficking in Cocaine charge was the Applicant's fourth or fifth drug offense and as part of the plea negotiations was treated as his third Trafficking in Cocaine charge. Counsel testified that they discussed the plea agreement. She further testified that because the Applicant suffered from severe health issues and heart problems he perceived a fifteen (15) year sentence was effectively a life sentence for him. She further testified that as a result of these conversations she deduced the Applicant did not want to plead guilty. Counsel testified that based on the severity of the charges, she wrote a letter to the Applicant to confirm his desire to reject the plea offer, the likelihood of a LWOP sentence if convicted and all the attendant consequences.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant as to all allegations raised in the application and at the hearing.

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325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

This Court finds Counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, Counsel discussed the pending charges, the elements of the charges and what the State was required to prove, range of penalty, the Applicant's constitutional rights, the Applicant's version of the facts, and his possible defenses or lack thereof. Counsel also more than adequately conveyed the State's guilty plea offer.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Failure to Adequately Challenge the Search Warrant

In his Application, the Applicant alleges Counsel was ineffective for failing to challenge the truthfulness of the affidavit underlying the search warrant. Regarding Applicant's allegation

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that Counsel failed to properly object to the search warrant, this Court finds that this allegation lacks merit and this Court finds that the Applicant has failed to meet his burden of proof as to this claim. At the hearing, the State argued that Counsel was effective for filing a suppression motion and arguing against the search warrant and admission of its fruit.

South Carolina's search warrant statute provides:

A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant. If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched.

S.C. CODE ANN. § 17-13-140 (2008). "A search warrant may issue only upon a finding of probable cause." State v. Herring, 387 S.C. 201, 212, 692 S.E.2d 490, 495 (2009) (State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006)). "The duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed." Id. (citing State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987)). The court determines whether probable cause exists based on the "totality of the circumstances":

The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Illinois v. Gates, 462 U.S. 213, 238 (1983). A magistrate's determination of probable cause to search is entitled to substantial deference by this Court on review. State v. Crane, 296 S.C. 336, 339, 372 S.E.2d 587, 588 (1988) (citing State v. Pressley, 288 S.C. 128, 341 S.E.2d 626 (1986)).

The record reflects that Counsel filed a Motion for Disciplinary Records of All Officers Involved in the Search and Arrest on February 17, 2010, pursuant to Rule 5 and 6 of the SC Rules of Criminal Procedure.

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Pursuant to Rule 5 and 6 of the SC Rules of Criminal Procedure

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and Brady v. Maryland. Counsel also filed a Motion to Suppress Evidence on February 17, 2010 seeking suppression of any and all evidence seized as a result of the search. Counsel further filed a Continuing/Supplemental Motion to Produce Pursuant to Rule 5, Rules of Criminal Procedure on February 17, 2010 seeking all relevant discovery materials including information pertaining to the confidential informant and the search warrant. Further, the transcript of the pretrial hearings reflects that Counsel argued her client's legal position in order to seek disclosure of the confidential informant's identity (Tr. 30:4-37:20) and quash the search warrant based on insufficient probable cause supporting the affidavit (Tr. 37:21-39:20; 75:19-76:15). Further Counsel thoroughly cross-examined Investigator Hutchins and Officer Pharis in support of her suppression motion. (Tr. 48:20-54:10; 67:1-71:5). Counsel also attempted to introduce video of the confidential informant buy in support of her argument that the affidavit was not properly before the magistrate when swearing the search warrant. (Tr. 72:5-74:14). Additionally, Counsel moved to discover the disciplinary records of Officers Hutchins and Pharis, to no avail. (Tr. 76:16-84:14).

Therefore, this court finds Counsel properly filed and argued all pre-trial motions, including a motion to suppress the evidence based upon an erroneous affidavit and improperly issued search warrant. Further, the record reflects that Counsel fully and vigorously argued each ground of error assigned by the Applicant.² Counsel's arguments supported the Applicant's

² The Court of Appeals' opinion confirms that "[a]t trial, Eubanks moved to quash the search warrant solely on the ground that the affidavit in support of the search warrant did not contain sufficient information to support probable cause." See State v. Eubanks, Op. No. 2012-UP-602 (filed November 7, 2012), available at 2012 WL 10864152. Further, the Court of Appeals determined that Counsel had not only preserved the issue for appellate review, but that the magistrate had a substantial basis for concluding that probable cause supported the search warrant. The Applicant's assertions that Counsel failed to defend him by properly challenging the search warrant are without merit. The Court of Appeals found that the issue of whether the affidavit was misleading and demonstrated a reckless disregard for the truth was not preserved for appellate review. The Court of Appeals found that the issue of whether false information supporting the affidavit had been recklessly or intentionally excluded from the affidavit, or exculpatory information was recklessly omitted from the affidavit under Franks v. Delaware, 438 U.S. 154 (1978) was not raised as error before the trial court. Franks v. Delaware holds:

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contention that inconsistencies, untruths, and other deficiencies in the affidavit do not form probable cause sufficient to issue a search warrant.

Additionally, this Court finds, as the Court of Appeals concluded, that the totality of the circumstances supported the magistrate's probable cause determination and issuance of the warrant. The warrant was sufficiently particular in its description of the place to be searched by describing the premises, location, address, and directions with sufficient particularity. The warrant also adequately described the property sought and the area of the premises and person to be searched. The warrant included the curtilage of the home, including the driveway, which is reasonable in scope. The Applicant furthers no argument that the affidavit in support of the magistrate's probable cause determination is deficient based on Investigator Hutchins' propensity to lie. Whether Officers Hutchins or Pharis were disciplined or investigated for alleged unethical behavior in the past is irrelevant to the magistrate's determination of whether probable cause existed to issue the search warrant in the present case.

Further, the Applicant's bald assertions that Counsel was ineffective for failing to show that Hutchins' affidavit lacked veracity based on Hutchins' propensity for untruthfulness are inadequate arguments. Additionally, the Applicant's allegation that Counsel should have subpoenaed the magistrate does not form a legal basis for relief.³ Cf. Bannister v. State, 333 S.C.

where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was *156 included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Franks, 438 U.S. at 155-56. The Applicant failed to articulate that Counsel was ineffective for failing to successfully suppress the search warrant under Franks v. Delaware.

³ Nonetheless, this Court finds that had these issues been raised to the Court of Appeals, they likely would have been dismissed pursuant to an Anders brief. Anders v. California, 386 U.S. 738, 741-42, 87 S. Ct. 1396, 1398-99 (1967).

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298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)) (the Applicant's mere speculation as to what a witness' testimony would have been by itself, cannot satisfy the Applicant's burden of showing prejudice). See Edwards, 392 S.C. at 457, 710 S.E.2d at 65 ("So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient."); Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006) (citing Strickland, 466 U.S. at 691, 104 S. Ct. at 2066) ("Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.").

Moreover, this Court can discern no case law in support of the Applicant's argument that the driveway is not included in the curtilage of the home and thus outside of the Applicant's dominion and control under the particular facts of this case. South Carolina's warrant statute further provides, "[t]he property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control." S.C. CODE ANN. § 17-13-140 (2008).

Precedent holds that the driveway is clearly a part of the residence and curtilage of the home for purposes of possession. See State v. Dickey, 394 S.C. 491, 506, 716 S.E.2d 97, 104 (2011) (citing State v. Wiggins, 330 S.C. 538, 548 n. 15, 500 S.E.2d 489, 494 n. 15 (1998)). ("Curtilage includes outbuildings, the yard around a dwelling, a garden of the dwelling, or the parking lot of a business."). Further, "[a]ctual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession, while constructive possession occurs

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when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs are found.” State v. Fripp, 397 S.C. 455, 458, 725 S.E.2d 136, 138 (Ct. App. 2012) (citing State v. Ballenger, 322 S.C. 196, 199, 470 S.E.2d 851, 854 (1996)). “Mere presence is insufficient to prove constructive possession.” State v. Heath, 370 S.C. 326, 329-30, 635 S.E.2d 18, 19 (2006) (citing State v. Tabor, 260 S.C. 355, 364, 196 S.E.2d 111, 113 (1973)). In order to prove constructive possession, the “State must show a defendant had dominion and control, or the *right to exercise dominion and control* over the [illegal substance].” Id. (citing State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980)) (emphasis added). “Further, the State may establish constructive possession by either circumstantial or direct evidence.” Id. “The defendant’s knowledge and possession may be inferred if the substance was found on premises under his control. Id. (citing State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987)) (emphasis added). See also State v. Kimbrell, 294 S.C. 51, 54, 362 S.E.2d 630, 631 (1987) (after Defendant told confidential informant that cocaine was in his bedroom and Defendant showed confidential informant marijuana outside of his residence in his truck, Defendant had actual knowledge of the presence of cocaine and ability to control its disposition and use to support finding of constructive possession of cocaine). Cf. State v. Hammond, 270 S.C. 347, 354, 242 S.E.2d 411, 415 (1978) (“We think that the presence of the truck containing a large quantity of marijuana on Hammond’s property, ostensibly under his control, together with the fact that the officers were there to search his premises for illegal narcotics, gave the officers sufficient probable cause to arrest him.”).

Additionally, this Court finds that the affidavit and search warrant are facially sufficient; therefore, Counsel had no basis to challenge those documents. Accordingly, this Court finds that the Applicant has failed to meet his burden of proof as to this claim and failed to establish that

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Counsel was deficient in this regard. Therefore, this claim is denied and dismissed.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel, Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in her representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by counsel's representation. See id. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

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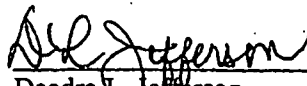
application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26th day of March, 2015.


 Deadra L. Jefferson
 Presiding Judge
 Seventh Judicial Circuit

Charleston, South Carolina
 At Chambers

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WITNESSES

SPTBG CO. SHERIFF'S OFFICE

1. SENTENCES MADE

2. REPORT ENDED

3. CARD PULLED

T. H. Tolson

4. RECEIVED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

ARREST WARRANT NUMBER

ASSESSMENT MADE

FINE CARD MADE

M022504

7. TRAFFIC VIOLATIONS COPY

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

32609

VERDICT

Guilty

2-24-2010

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 30 2009

TERM

THE STATE

vs.

JAMES R EUBANKS

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370

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MARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

MAR 30 2009

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN COCAINE

That James R. Eubanks did in Spartanburg County on or about June 18, 2008, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (200) two hundred grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Martha Go Johnson
ASSISTANT SOLICITOR