

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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NOV 16 2015

SC Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Indictment No.: 2012-GS-36-0267

The State,.....Respondent,

v.

Toaby Alexander Trapp,.....Appellant.

RECORD ON APPEAL

Dietrich A. Lake
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
803-750-8311
Attorney for Appellant

William M. Blitch, Jr.
S.C. Attorney General's Office
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Columbia, SC 29211-1549
Attorney for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Newberry

VS:

Tooby Alexander Trapp

AKA:

Race:

Sex: M

Age: 44

DOB:

SS#:

Address: 90 Little Ranches Road

City, State, Zip: Newberry, SC 29108

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g -

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 12GS36-0267

A/W#: M481160

Date of Offense: 10/8/2011

S.C. Code §: 44-53-0375

CDR Code #: 0452

SENTENCE SHEET

25 yrs - 30 yrs
and 50k☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 0452

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Daniel, Taylor

SC Bar# 100588

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center.

for a determinate term of 25 days/months/years or

☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 50,000.00; provided that upon the service of days/months/years and/or payment

of \$ plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$ 50,000.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 53,000.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 54,000.00
§ 56-5-2995 (DUI Assessment)	\$12	\$ 54,120.00
§ 56-1-286 (DUI Breath Test)	\$25	\$ 54,145.00
Proviso 47.9 (Public Def/Proh)	\$500	\$ 54,645.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 54,670.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 54,820.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ 54,870.00
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea.	\$ 54,910.00
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 54,915.00
3% to County (if paid in installments)		\$ 1,647.45
TOTAL		\$ 56,562.45

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

Nick Bouknight
Newberry County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

March Term, 2012

Indictment # 12GS36-0267

WARRANT NUMBER

M481160

TRUE BILL

THE STATE

vs.

Tooby Alexander Trapp

Maure M. Hedgeman

Foreman of the Grand Jury

ate: 3-16-12

SCANNED

VERDICT

Guilty

Lizabeth A. Hedgeman
Foreman 10-31-14

INDICTMENT FOR

TRAFFICKING CRACK COCAINE
44-53-0375C

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

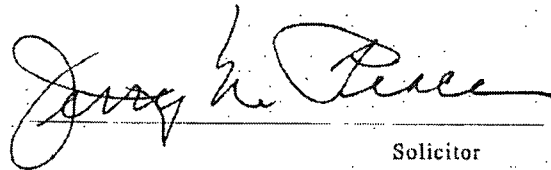
INDICTMENT FOR

TRAFFICKING CRACK COCAINE
44-53-0375

At a Court of General Sessions, convened on the 16th day of March, 2012 the Grand Jurors of Newberry County present upon their oath:

That Toaby Alexander Trapp, did in Newberry County, state aforesaid, on or about the 8th day of October, 2011 willfully, unlawfully, and knowingly traffic in cocaine base (crack cocaine), to wit: that the said defendant(s) did sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was in actual or constructive possession or did knowingly attempt to become in actual or constructive possession of ten (10) grams or more of cocaine base (crack cocaine), in violation of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2012-GS-36-0267

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SC Court of Appeals

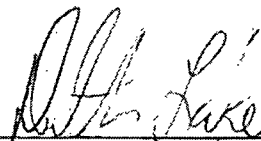
The State,.....Respondent,

v.

Toaby Alexander Trapp,.....Appellant.

NOTICE OF APPEAL

Toaby Alexander Trapp appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Eugene C. Griffith, Jr. on October 31, 2014. This appeal is taken from an order on the record of the Honorable Eugene C. Griffith, Jr. on October 31, 2014, which denied Appellant's motion for a new trial and Judgment Notwithstanding the Verdict (JNOV).



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The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8312
Attorney for Appellant

CLERK OF COURT
JACKIE S. BOWERS

2014 NOV 5 PM 12 51

NEWBERRY COUNTY
FILED

November 5, 2014

Other Counsel of Record

Dale Scott
Taylor Daniel
Assistant Solicitor
Eighth Circuit Solicitor's Office
PO Box 516
Greenwood, SC 29648-0516

1 THE COURT: All right, folks. I got another Jury
2 working in the Jury Room which is the waiting room in
3 Family Court. It's right over there. They'll probably be
4 finished here shortly. I don't know, it may take longer.
5 When y'all come back after lunch at 1:30, we're going to
6 try to get started with this trial. What I want you to do
7 is come right to this metal detector. Y'all just walk
8 through and there will be a Bailiff there and they will
9 show you to either go in this room or put you in another
10 room depending on whether or not this Jury Room is empty.
11 Until then, don't begin discussing the case even though
12 you don't know much about it. I'll have y'all back and
13 ready to go about 1:30. See you after while. All right.

14 (Whereupon, a short break was taken.)

15 THE COURT: All right. And, Solicitor, you ready for
16 these pre-trial matters?

17 MR. SCOTT: I think so, yes.

18 THE COURT: Mr. Lake, you ready?

19 MR. LAKE: Yes, Your Honor.

20 THE COURT: All right. These are your matters.

21 MR. LAKE: Thank you, Your Honor. First, the
22 Defendant would ask to move to suppress the search warrant
23 that was issued in this particular case, Your Honor. The
24 basis of that is that it's our contention that the
25 affidavit or basis for the, I guess, probable cause for

1 the search warrant contains essentially what would be
2 false information and that was the basis of it. I think
3 within the body of that affidavit, it basically says or
4 that basically the probable cause is that, that it's upon
5 going to this particular location, they observed a pill
6 bottle in plain view. And based upon that, they get a
7 search warrant and then come back and execute a search
8 warrant. And they allege that they find some additional
9 information in that, Your Honor. We are contesting that
10 when they went to that particular location, there was
11 actually no pill bottle there. But then there are some
12 later pictures that illustrate that. Just for the record,
13 Your Honor, I think I have a number of photographs that
14 I'd like to show the Court prior to, packets of
15 photographs provided to me. Could I get them marked?

16 THE COURT: We want those as the State's, Defense?

17 MR. SCOTT: I can take a look at them.

18 THE COURT: We are just going to mark them Defense 1,
19 2, whatever, however many there are?

20 MR. LAKE: Yes, sir.

21 (Whereupon, Defendant's exhibits 1, 2, 3, 4, 5, 6,
22 and 7 were marked for identification only.)

23 MR. LAKE: Your Honor, I'm going to hand these up to
24 you, but I just kind of wanted to slowly kind of go
25 through them. And I don't know exactly which one is which

1 that I'm referring to.

2 THE COURT: All these are interior rooms of the
3 house?

4 MR. LAKE: Yes, sir.

5 THE COURT: Okay.

6 MR. LAKE: Now, what we have is, again, is the
7 question where they -- the law enforcement is actually
8 responding to a call for a burglary. When they go to the
9 scene, they actually start photographing and kind of
10 responding to it as a burglary. There were a number of
11 photographs that were taken of Mr. Trapp's home. Now,
12 there were photographs that were taken before anything was
13 disturbed or anything on those lines was in the condition
14 that it was in prior to this alleged location of the
15 drugs. They are actually indicating and I'll pass this up
16 to the Court, you have Defendant's exhibit number 1 and 2
17 which show the entranceway into that particular location.
18 And you can see at that particular time it's in the same
19 condition as the burglary, because there are a number of
20 boxes that are located in that particular area. I think,
21 Your Honor, what's important is when you look at pictures
22 number 3, 6 and 7. And also just showing you 4 and 5 also
23 shows additional photographs of that same location. Well,
24 3, 6 and 7, Your Honor, are important. Because they have
25 photographs of this particular dresser as it looked, you

1 know, prior to the search and -- and right at the
2 burglary. And as you look at that photograph, Your Honor,
3 you get a chance to see what's on that particular dresser
4 at that particular time, and there is of course, no pill
5 bottle.

6 (Whereupon, State's exhibit 8, 9 and 10 were marked
7 for identification only.)

8 MR. LAKE: Thank you, Your Honor. And then when you
9 get a little bit closer and they take some additional
10 photographs. And you can tell they've kind of, law
11 enforcement has kind of disturbed the scene again. When
12 you look at photographs 8, 9 and 10, then all of a sudden
13 something new has been added to the photograph. Okay. It
14 is our contention, Your Honor, and with not even
15 addressing, I guess, what would later on be the
16 chain-of-custody issue, we believe just based upon the
17 photographs alone we have shown, I guess, a substantial
18 showing that there was false information that was added
19 into the search warrant. Your Honor, if you look at the
20 search warrant -- and I'll provide you with a copy of
21 that. Your Honor, if you look at the affidavit for the
22 search warrant, the basis of that search warrant,
23 essentially it shows that the scene of the, that once
24 arriving at, the officer stated processing the scene, a
25 bottle containing a quantity of a white rock-like

1 substance believed to be crack cocaine and a razor blade
2 with residue on it was observed in plain view in a bedroom
3 of the residence. I guess, you will hear testimony from
4 Defense and I don't think there is going to be any dispute
5 that we're talking about what would be Mr. Trapp's
6 bedroom. And the basis of that search warrant is this
7 allegation that, of course, this was in plain view. But,
8 Your Honor, we present photographs showing pre-search or
9 pre-whatever you want to do that, there is actually no
10 pill bottle that was located on that dresser. And I'm not
11 sure whether Deputy Spreng, whose going to testify or not,
12 because he's not listed as a witness in this particular
13 case. But as far as the initial report goes, Your Honor,
14 that was done by Sergeant Bouknight at the time. You
15 know, there again, and it's basically, it's hearsay
16 information. The Court basically says that the -- once
17 the pill bottle contained a quantity of white, cookie-like
18 substance believing to be crack cocaine was observed,
19 Spreng called the reporting officer and the reporting
20 officer advised Spreng that the reporting officer would
21 get a search warrant and not to go any further processing.
22 Spreng stopped processing the scene and placed Trapp into,
23 I guess, investigative detention. So I don't know whether
24 Spreng, he didn't touch anything after that of discovery.
25 But we know for a fact, Your Honor, that when the scene is

1 not disturbed and there are boxes all over everywhere and
2 one of the things that Deputy Epps will testify and I hope
3 he testifies at this particular hearing, he testified that
4 one of the reasons why he actually didn't go into Mr.
5 Trapp's room was because of the number of boxes that were
6 actually located in that particular room and everything
7 like that. But if you can see, if you look at those
8 photographs, Your Honor, it's clear that there is no pill
9 bottle on that dresser. And then suddenly, there is a
10 pill bottle on the dresser. So based upon that, Your
11 Honor, we think that we have met the burden of showing
12 some falsity in that particular affidavit. Now it's up
13 to, I guess, the State in this particular case to, I
14 guess, explain the falsity within that particular
15 document. But I think that if we can establish that there
16 is a preliminary showing, we're entitled to a hearing on
17 the issue of whether the Magistrate in this particular
18 case was given what's -- was given substantial information
19 to make a determination of probable cause. So I think
20 we're entitled to a hearing, Your Honor. And if we prove
21 by a preponderance of the evidence that there is a false
22 statement, then we are entitled to have that information
23 suppressed.

24 THE COURT: All right. What you got, Mr. Scott?

25 MR. SCOTT: I guess I could proffer Robert's

1 testimony. He might be able to explain it. My
2 understanding is the, I guess the motion is that there was
3 a false statement in the affidavit. And that, I guess,
4 the pill bottle was actually not on the dresser. Is that
5 what your understanding is?

6 THE COURT: Well, that's what the photographs --
7 well, there's photographs of the dresser without the pill
8 bottle and photographs with it. The timing of the
9 photographs, I have no idea.

10 MR. SCOTT: Right.

11 THE COURT: But that's what Mr. Lake is arguing.

12 MR. SCOTT: All right. Let me call Robert Dennis
13 then.

14 THE COURT: All right. Come around to be sworn, Mr.
15 Dennis.

16 MR. LAKE: Your Honor, at this particular time we
17 would object to Lieutenant Dennis testifying in this
18 particular case.

19 THE COURT: He's Captain Dennis now.

20 MR. LAKE: Captain Dennis. I'm sorry.

21 THE COURT: Captain Dennis.

22 MR. LAKE: Captain. I apologize. To him testifying
23 in this particular case for several reasons. One he
24 wasn't involved in the determination of probable cause.
25 This is the information that was passed on, I assume, from

1 Spreng to Investigator Bouknight and Investigator
2 Bouknight testified as to the Magistrate. Captain Dennis
3 was not a party to that conversation. And I don't think
4 he's allowed to testify to that. Also, Your Honor, we
5 have been provided no discovery that he has in any way,
6 played any kind of role in the obtaining that search
7 warrant at all.

8 THE COURT: All right. Well, what's Captain Dennis'
9 involvement?

10 MR. SCOTT: I'm kind of learning this as we go. I'm
11 going to have to proffer some testimony from him, Judge.

12 THE COURT: All right. Come around and be sworn. I
13 understand your objection.

14 MR. LAKE: Thank you.

15 THE COURT: If he doesn't have sufficient knowledge
16 for proffer, this is an in-camera anyway.

17 ROBERT DENNIS, being
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SCOTT:

21 Q All right. Captain Dennis, October 8, 2011, did you
22 respond to Mr. Trapp's home at 91 Little Ranches Road?

23 A I did.

24 Q And what was the -- why'd you go there?

25 A The first call I received was from Investigator

1 Robert Spreng at the time who was the on-call
2 investigator. One of my job duties and roles during that
3 period of time was I was over the Investigations Unit. I
4 scheduled the on-call investigators. The on-call
5 investigators, once they're called out, they make us aware
6 and notify us that they're responding to whether it's a
7 burglary or whatever the case may be. So he had made us
8 aware of that he was responding to a burglary at 91 Little
9 Ranches Drive. The second call I received was from
10 Investigator Nick Bouknight who had been summoned by
11 Investigator Spreng. And his discovery after being there
12 for a burglary, he had discovered what he thought was some
13 controlled substance. And was asking, you know, what he
14 needed to do from that point. He was advised by Bouknight
15 to hold his position, not letting anyone go back in the
16 residence or anything like that until he could secure a
17 search warrant. I was notified of that as well and that's
18 what prompted me to respond to the scene.

19 Q Okay. So when you went to the scene, did you observe
20 the pill bottle?

21 A Once I got there to the scene, I was pretty much
22 briefed of what was going on. And then was advised
23 through Robert Spreng by, we have digital cameras. So he
24 could actually show you the pictures through the digital
25 process.

1 Q Okay. And where was the pill bottle when you got
2 there?

3 A The pictures I looked at, they were on a dresser that
4 was in the bedroom.

5 Q All right. I'm not talking about pictures. What did
6 you actually observe yourself?

7 A The actual pill bottle was still left on the dresser
8 in Mr. Trapp's room or what was identified as Mr. Trapp's
9 room. And as a matter of fact, they still had him, they
10 were sitting in the front living room.

11 Q And did you get to talk with Mr. Trapp?

12 A I did. I mirandized Mr. Trapp and---

13 MR. LAKE: Objection. I think he's going out the
14 scope of this particular hearing. What we're here to
15 testify to only relates to probable cause for the search
16 warrant.

17 THE COURT: Okay. But, I mean, I think he's still
18 there. I mean, I understand, but let's get it all out
19 there so I can kind of get an understanding of what's
20 going on.

21 MR. SCOTT: Yes, sir. And really the testimony goes
22 to probable cause as well.

23 Q Okay. So you did talk with Mr. Trapp?

24 A I did.

25 Q And what did he say to you?

1 A The first thing I asked him about was the, we were
2 just kind of like talking about the break-in. And then I
3 advised him the reason why I was there for the call of
4 there was alleged drugs there in the room. And during
5 that conversation, Mr. Trapp advised that it would be
6 determined to be crack cocaine. That he basically forgot
7 it was in there. That whenever he notified our dispatch
8 that his home had been broken into, the dispatcher advised
9 him don't touch anything, don't move anything, we have
10 officers responding. So he said he didn't do anything.
11 He waited until law enforcement got there.

12 Q Okay. So you responded to a burglary. He says his
13 home has been broken into and he gives you consent to come
14 inside and investigate. At that point, your agency
15 located this pill bottle. You said he then admitted to
16 you that it was crack. He said that he admitted that he
17 had forgotten it was there?

18 A That is correct.

19 Q All right. Well, let's, I guess, look at these
20 pictures Mr. Lake was talking about. This is Defense
21 exhibit 8. And what are we looking at there?

22 A This is a closeup of a picture of the dresser, the
23 top of the dresser with the pill bottle and a razor blade.
24 Looks like a perfume bottle and some Alka-Seltzer on
25 there, an ashtray on top.

1 Q All right. Is that what you observed when you got
2 there?

3 A This is what I observed when I got there, yes.

4 Q Okay. And then again, I guess---

5 A That's exhibit 8.

6 Q 8, and then 9, is pretty much the same thing with the
7 pill bottle, and you can see it's kind of in front of like
8 the little cable box, whatever that is?

9 A That is correct. In picture 9, the difference
10 between picture 9 and 8 is just, you know, a distant shot
11 as far as number 8 being a close-up. Number 9 being just
12 a little bit further back.

13 Q I think what Mr. Lake is talking about if you look at
14 Defense 6 and 3. You can see the cable box and you can
15 see the T.V. How do you explain why the pill bottle is
16 not in that picture?

17 A The only thing that, you know, we would have to look
18 at the individual pictures on the disc to look at the time
19 that they were taken to see if anything had been removed.
20 I'll be honest with you, we stepped on boxes, we stepped
21 on clothes and different things to move in and around that
22 room.

23 Q And his room had been ransacked?

24 A It had drawers pulled out, shoeboxes thrown all over
25 the place. At one point, I crawled across the bed to get

1 into the room to where the dresser was at.

2 Q Did you put that pill bottle there? Did you put that
3 pill bottle on his dresser?

4 A No sir, I did not.

5 Q That pill bottle was there on the dresser when you
6 arrived?

7 A It was.

8 Q Okay. I mean, is it possible that when these
9 pictures were taken it had already been seized and, I
10 guess, taken into evidence?

11 A That is correct.

12 MR. LAKE: Objection, Your Honor. That calls for
13 speculation. He has no personal knowledge. I think he's
14 testified to that.

15 MR. SCOTT: Judge, I think that's probably as far as
16 establishing probable cause with a search warrant.

17 Q At that point when you see the pill bottle, what do
18 you do, what's your next step?

19 A Well, that information had already been relayed
20 between Officer Spreng to Bouknight as far as what was
21 going on. I pretty much just confirmed with Bouknight who
22 was, had already met with the Judge and was in route back
23 to the scene. And that's whenever I had shared with him
24 the information of what I'd learned through talking with
25 Mr. Trapp.

1 Q Okay. So initial entry is by consent. And then once
2 you found the pill bottle you apply for a search warrant
3 and you list that pill bottle in your affidavit?

4 A That is correct.

5 Q And then do you return to the home with a search
6 warrant?

7 A Well, I never left the home once I got there.

8 Q Oh.

9 A Officer Bouknight is the one that retrieved the
10 warrant and returned with the warrant. I was on the scene
11 the majority of the time until Spreng, not Spreng,
12 Bouknight got there.

13 Q Okay. And then did you search the house further
14 after that?

15 A I was. I actually was the executor on the search
16 warrant and explained that to Mr. Trapp once Bouknight got
17 there.

18 Q Did you seize any additional evidence?

19 A I would have to look at the search warrant just to
20 refresh. I'm sorry. I've got it right here.

21 Q Okay.

22 A Thank you. On the return of the search warrant, we
23 listed pictures taken by Robert Spreng. Two plastic bags
24 with white solid substance found on the floor in bedroom
25 in front of dresser. A pill bottle on dresser with white

1 solid substance. A CD case scale, a spoon and razor blade
2 with residue and a straw.

3 Q Okay.

4 A And those items were seized on October the 9th, 2011
5 around 1:24 a.m., which that's the time we started the
6 search warrant and execution of it.

7 Q Okay.

8 MR. SCOTT: Okay. Judge, I think Captain Dennis has
9 explained that he personally observes the crack on the
10 dresser, that Mr. Trapp admits to it. I think what Mr.
11 Lake has to do, I believe it's Franks v. Delaware. If
12 he's alleging a false statement in the affidavit he's got
13 to, a), show there is a false statement. I contend there
14 is none.

15 MR. LAKE: Your Honor, I haven't had a chance to even
16 question him.

17 THE COURT: Yeah. All right. Let him question him
18 and then we can argue it.

19 MR. SCOTT: Okay.

20 THE COURT: I agree with that. Let me Mr. Lake have
21 an opportunity to cross-examine Captain Dennis.

22 CROSS-EXAMINATION

23 BY MR. LAKE::

24 Q Captain Dennis, you played absolutely no role in
25 providing any information to the Magistrate, did you?

1 A No, I did not. No.

2 Q Did you ever talk to the Magistrate after that night?

3 A Not that night, no.

4 Q And were you present when Investigator Spreng

5 actually took the photographs?

6 A Not at that moment, no.

7 Q So you weren't present when he took the photographs

8 and you played no role in the search warrant itself. And

9 actually, in fact, you arrived at the scene almost the

10 same time that Investigator Bouknight arrived at the scene

11 with the search warrant, correct?

12 A He was probably maybe four or five minutes behind me

13 pulling in.

14 Q He already has the warrant at this particular point,

15 correct?

16 A That is correct.

17 Q And this would have been before you go into the house

18 and before you even see anything that you allege is there,

19 correct?

20 A Ask it again, Mr. Lake.

21 Q Have you had a chance to read Investigator

22 Bouknight's report?

23 A I have.

24 Q And I think in his report he indicates that you got

25 there just right before he did?

1 A That's correct.

2 Q But he doesn't distinguish how many minutes---

3 A No. No.

4 Q ---whether it was at the same time or anything along
5 those lines, correct?

6 A I was there long enough for Investigator Spreng to
7 brief me on what he had as well as phone conversation of
8 Investigator Bouknight explaining to me what Spreng had
9 explained to him. And he was going to get the search
10 warrant which prompted me to come on out.

11 Q Okay.

12 A So once I got there on scene, it was there -- I was
13 there long enough for Investigator Spreng to explain to me
14 what was going on up to the point of going up to your
15 client, Mr. Trapp, and then talking with him before Mr.
16 Bouknight pulled in.

17 Q So it's fair to say that before you actually went in
18 the house and saw what you alleged to be the drugs, I
19 mean, the search warrant is there at this particular
20 point, correct?

21 A Yes, sir. But if you remember, I clarified that --
22 in direct testimony that Investigator Spreng visually
23 showed me what he had taken pictures of prior to my
24 arrival. So that way, he was giving me an indication of
25 what he had seen and what testimony he had given to

1 Investigator Bouknight to be explained to the Magistrate.

2 Q Do you have any personal knowledge as to whether
3 Investigator Spreng actually spoke with the Magistrate in
4 this particular case to give any supplemental type of
5 testimony regarding the affidavit that was given at that
6 time?

7 A I cannot answer that.

8 Q So you don't have any knowledge about that, correct?

9 A No, sir.

10 Q Okay. And the only thing that you know about the
11 search warrant is that the basic premise of the probable
12 cause is solely based upon the container that is alleged
13 to be on the dresser at that particular time?

14 A That is correct.

15 Q And so you were -- when he took these particular
16 photographs, you don't know what -- at what point this
17 was, do you?

18 A No sir, I do not. Give me just a moment, please. On
19 Defendant's exhibit 2, 5, 4 and 1, after being there that
20 is what I visually observed once the search warrant had
21 arrived on scene and after talking with Mr. Trapp. In
22 Defense exhibit 8, 9 and 10 is the bottle, the razor
23 blade, of what I actually saw with my eyes on the dresser
24 before actually going and making any type of contact with
25 the evidence. And then in 7, 3 and 6, without further

1 investigation of these pictures as far as timestamp, I
2 cannot tell you if this was before your claim of the
3 bottle being there or not being there or after it was
4 seized as evidence.

5 Q Well, who would have moved it?

6 A It would have been picked up---

7 Q The question is, do you have personal knowledge as to
8 who moved it, within those photographs and then who moved
9 it before or after in relation to those pictures?

10 A The search warrant would have been issued or executed
11 by me which would have been the documentation of it. And
12 to maintain that chain, Investigator Nick Bouknight would
13 have been the one collecting that bottle of evidence.

14 Q Do you have any personal knowledge as to when anyone
15 moved it at that particular time, whether it's moved
16 before or after or anything on those lines?

17 A I believe my testimony was just---

18 Q Before you give the, expound upon your answer--

19 A -- if you would allow me to answer the first
20 question, then I can elaborate.

21 THE COURT: Now, hang on. Don't talk all over each
22 other.

23 Q Captain Dennis, answer my question first and then
24 you'll get a chance to explain it. The question that I
25 asked you is a yes or no question. I asked you did you

1 have any personal knowledge yourself as to when that
2 bottle was moved and by who it was moved?

3 THE COURT: That's not yes or no. When and who is
4 not yes or no, so when and who.

5 Q Yes or no? I've added two questions, but do you have
6 any personal knowledge?

7 (Whereupon, Defendant's Exhibit 8, 9, and 10 were
8 marked for identification only.)

9 A I will answer that the same way I answered it earlier
10 in the explanation. In Defendant's exhibit 2, 5, 4 and 1,
11 that is what the scene depicts as I entered personally and
12 viewed the room. Defendant's exhibit 8, 9 and 10, that is
13 what I viewed on the Defendant's dresser of his room.
14 Defendant's pictures 6, 3 and 7, without the timestamp of
15 those pictures I cannot give you any time or who or when
16 that evidence was moved until we're able to view that.

17 Q Is there anything up until today that has prevented
18 you from learning that information as to time, who, when,
19 or if these pictures were derived?

20 A There is nothing that has prevented me from doing
21 that other than being able to look at what the disc on
22 where these pictures were given to you under Rule 5.

23 Q And it will be fair to say that Deputy Epps at the
24 time indicated that he couldn't go into the room because,
25 if you look at his report, because of the number of

1 shoeboxes that were on the floor, correct?

2 A I think it would be fair to say that he probably
3 didn't want to make entry into the room due to that.

4 Q And would it be fair to say that in these particular
5 photographs, specifically number 3, that it's the same
6 kind of condition in terms of shoeboxes that are all over
7 the place, correct? That is consistent with what he
8 described in his report?

9 A That is correct.

10 Q And in this particular photograph and Deputy Epps is
11 actually the responding officer, correct?

12 A That's correct.

13 Q And in that particular photograph, do you see a pill
14 bottle on that particular dresser, yes or no?

15 A No.

16 Q And you're not listed on the return in this
17 particular case either, are you? The return for the items
18 that were found on the warrant?

19 A I believe I am. That is my signature on the search
20 warrant executed on October the 9th, 2011 at 1:24 a.m.

21 Q Okay.

22 A That is my handwriting.

23 MR. LAKE: Beg the Court's indulgence.

24 Q In this search warrant that Investigator Bouknight
25 got at the time, in that particular affidavit that was

1 done, it also doesn't mention anything or makes any
2 allegations about any kind of confession or statement or
3 anything along those lines, does it? That's not contained
4 in this affidavit, is it?

5 A No, sir.

6 Q And did you ever provide any type of report at all in
7 this particular case?

8 A Investigator Bouknight who was the lead documented in
9 his report which is listed as case number 11-9364 of
10 supplemental report, Lieutenant Dennis did read Trapp his
11 Miranda warnings after deputies found the substance.
12 Trapp did tell Bouknight and Dennis that he had forgot the
13 crack was in the bedroom and just didn't think about it
14 once he seen his house had been broken into. Trapp said
15 the dispatcher and his friend told him, don't touch
16 anything before law enforcement get there.

17 Q Did you actually -- I guess would the answer be no,
18 that you did not provide a report yourself. That's the
19 question I was asking you.

20 A No, I did not.

21 Q And so there is no report of this alleged statement
22 that you assert that my client made, other than what
23 you're saying Investigator Bouknight alleged in his
24 report?

25 A What he has reported, and I do not dispute what he

1 just typed and what I just read.

2 Q Is there anything that prevented you from doing any
3 type of supplemental report?

4 A No.

5 Q Have you given any statements to any law enforcement
6 officers about your role that particular night other than
7 what you've testified to today? Did you provide any type
8 of statements or anything along those lines?

9 A No, sir.

10 Q And just so I can be clear, a lot of this information
11 that you have gotten about what happened that particular
12 night, it's either based upon what either Investigator
13 Spreng provided to you and gave you or what Investigator
14 Bouknight told you?

15 A And Mr. Trapp, yes.

16 MR. LAKE: No further questions, Your Honor, at this
17 particular time.

18 THE COURT: Okay. You can step down.

19 MR. LAKE: Your Honor, this is a lot to argue with.
20 I renew my argument that Captain Dennis is not qualified
21 to testify on the issue of the affidavit. You know, he is
22 basically testifying that he really had no personal
23 knowledge. The affidavit has been provided or done based
24 upon information that Investigator Spreng provided to
25 Investigator Bouknight. I think we made a prima facie

1 case that those photographs, you know, as described by the
2 conditions of Deputy Epps, that there was boxes all over
3 everywhere. And we didn't show all of the photographs,
4 that showed later on that the area had been cleared out
5 and moved. And if you watch those photographs, that some
6 of the items had been moved. But you clearly see that
7 there is no photographs. I think we've met our burden in
8 terms of showing that. It's the State's burden at this
9 particular point to have a qualified witness that can
10 testify essentially that the Magistrate's basis for
11 probable cause was done on substantial evidence. I don't
12 think that they can do that, because of none of the
13 witnesses are here will be able to testify.

14 THE COURT: Correct me if I'm wrong, did Captain
15 Dennis not testify he arrived on the scene, was briefed,
16 went inside and spoke with Trapp and observed the pill
17 bottle himself on the dresser. Did he not say that?

18 MR. LAKE: No, Your Honor, the issue is the search
19 warrant.

20 THE COURT: No, I'm going to forget the search
21 warrant for a second. You may be right on the search
22 warrant. But if he walked in, spoke with Trapp and saw
23 the pill bottle, there's no need for a search warrant, is
24 it?

25 MR. LAKE: No, Your Honor, the search warrant is

1 actually based upon the probable cause that was alleged by
2 this pill bottle as being there.

3 THE COURT: What I'm saying, let's suppose there was
4 no search warrant. If Trapp calls the police, the County
5 goes out there, road deputy, then Spreng and then Dennis
6 and then Bouknight. And all of them see the pill bottle,
7 that's all that's picked up and they talk to him. There's
8 no need for a search warrant. Now, the scale, the straw
9 and all that stuff that I haven't heard a whole lot about,
10 that may be suppressible because that was gathered in the
11 search warrant. But why is the search warrant an issue
12 with the pill bottle if this police officer saw it with
13 his own eyes?

14 MR. LAKE: Well, your Honor, how did it get there.
15 And we are really talking about speculation, conjecture.

16 THE COURT: But he said he saw it.

17 MR. LAKE: No, we're not arguing that there is not a
18 photograph of the pill bottle being there.

19 THE COURT: I'm not talking about a pill bottle. I'm
20 talking about his testimony when he got there. When he
21 got there, he walked in and spoke to this guy in the front
22 room, walked in the bedroom and he saw it.

23 MR. LAKE: The problem is, Your Honor, you have
24 photographs that contradict what he has listed as the --
25 the testimony or basically their case is on. They're

1 basically saying we get there, I know what you're trying
2 to say, because it's in plain view they can discover the
3 pill bottle and things of that sort. But that's also the
4 basis of their search warrant. Our contention is that
5 that bottle was never there. I mean, that's what our
6 whole bone of contention is in this particular case.

7 THE COURT: But this officer saw it. Did I
8 misunderstand him, I mean I may have. I thought he said,
9 I walked in the house, spoke with the accused and walked
10 in the back bedroom, it was cluttered up and I saw the
11 pill bottle sitting there. I thought he said that. How
12 are you, how do you get around him?

13 MR. LAKE: Your Honor, the question would be, I
14 understand your question. But I think we're looking at it
15 from a different viewpoint. I think the sole issue is, of
16 course, they've got to show possession, they've got to
17 show knowledge in this particular case.

18 THE COURT: And do you not do that, too?

19 MR. LAKE: He didn't show possession. He showed that
20 he found a bottle but that necessarily hadn't got to the
21 particular point where it could be attributed to Mr. Trapp
22 in this particular case.

23 THE COURT: Maybe I misunderstood what he said. But
24 I thought he said I talked to Mr. Trapp and Mr. Trapp told
25 me that you going to find crack back there. Did he not

1 say that too?

2 MR. LAKE: Your Honor, that's not what I understood
3 the testimony to be. That's not consistent with what the
4 report said they kind of written. The problem is in this
5 particular case, Your Honor, in terms of trying to go
6 forward with this search warrant and the issue of
7 suppression, you're really talking about trying to get a
8 lot of hearsay information in.

9 THE COURT: All right. I understand there's two
10 officers that aren't here. One of them can't come. That
11 they were out there, but this guy has firsthand I, I
12 viewed this, I talked to the accused, I saw this. Whether
13 there is a picture or not, he can testify to all that,
14 can't he?

15 MR. LAKE: Your Honor, he has to be lawfully there.
16 I mean, at this particular point, I mean, the---

17 THE COURT: The police were called for a burglary and
18 he's not lawfully there? I'm baffled. I mean, you know,
19 if they just knocked on the door to see what's going on
20 and busted in there yeah, I'm with you, but they were
21 called out there.

22 MR. LAKE: I understand, but you're looking at it
23 through a, I think the vacuum of saying, okay, throw all
24 of there other issues out in terms of how they come to be
25 out there. I can only look at the issues of what

1 precipitated the search, the recovery, the search warrant
2 and things of that sort.

3 THE COURT: Spreng's out there lawfully, because he
4 was called to investigate another crime. He sees
5 something that causes him concern, calls Bouknight who
6 calls Dennis. A search warrant is in progress. Let's
7 suppose they couldn't find a Magistrate and there was
8 never a search warrant issued and all facts are the same,
9 Dennis goes out there, Mr. Trapp, what's going on? Y'all
10 going to find some crack back there. And sure enough,
11 Dennis walks back and looks, there it is. Why is that
12 search warrant relevant to those facts? I understand the
13 search warrant comes in and the pictures are
14 contradictory. But how do you get around Dennis'
15 firsthand knowledge of those facts just as I laid them
16 out?

17 MR. LAKE: Your Honor, but I think that, but the
18 Court is supposing that this conversation occurred with
19 Mr. Trapp before he actually goes into the location and
20 gets this particular information. You know, if the Court,
21 Mr. Trapp doesn't have to testify in this particular case.
22 But when there is variances in terms of where things
23 started off to where they would eventually become and how
24 things kind of transpired. But the contact with, Captain
25 Dennis testified, I guess, it was initially Mr. Trapp was

1 outside. That's where he encounters Mr. Dennis. He said
2 that, you know, and from there they go in there and
3 particularly locate this, these alleged to be drugs and
4 things of that sort. Any conversations and my client,
5 like you say, he didn't have any conversations with
6 Captain Dennis or with Lieutenant Dennis at that
7 particular time. The only conversation that he had was
8 with the Investigator Bouknight at that particular time.
9 And he testified that's going to be his only -- you know,
10 that would be his testimony. He had no communications. I
11 know Captain Dennis has, you know, testified, but we have
12 no report. That's the problem. What you are relying
13 upon, Your Honor, is a hearsay -- you're relying upon a
14 hearsay statement by Investigator Bouknight that
15 Investigator Dennis read him his Miranda and that
16 Investigator Dennis got this information before going in
17 there.

18 THE COURT: It's not hearsay when he comes in and
19 says it.

20 MR. LAKE: His testimony is actually based upon would
21 be hearsay. I mean, because he said, well, this is what
22 it said in the report. I'm his supervisor. I review the
23 things. I'm the person that decides who goes out there
24 and makes these decisions. But it's not his case
25 individually.

1 THE COURT: All right. I mean, here's where you're
2 losing me, I guess, is Dennis going out there not knowing
3 that the police officer was going to be unavailable later
4 on. So you got at least three police officers out there
5 and he has firsthand knowledge of the condition of the
6 house and can describe it. It was ransacked. It looked
7 like it'd been burglarized. There's boxes everywhere. He
8 went in that house himself. Bouknight may have told him
9 oh, the house is a mess. Well, that doesn't matter. He
10 has firsthand knowledge of walking in the house and
11 looking at it and describes the condition. If he saw the
12 pill bottle there, why is that not just as good as any
13 testimony you can get? Suppose you suppress the pictures,
14 can he come and testify just to that? And suppose I grant
15 you that your pictures don't come in, can't he testify to
16 that?

17 MR. LAKE: Well, Your Honor, then I think you have an
18 issue of scope and lawfulness of being there. And I know
19 it sounds like I'm parceling and things that I'm trying to
20 dance around. I'm really not. I can only deal -- address
21 the issue of what actually happened that particular night
22 in terms of what law enforcement was deciding based upon
23 their, the records that were provided to me. But our
24 understanding, you know, is that it's seen, you know, it's
25 alleged to be seen in plain view.

1 THE COURT: And he testified consistent with the
2 testimony that Bouknight provided to the Magistrate,
3 didn't he, or did he or did he not? I mean, I may be
4 wrong.

5 MR. LAKE: Well, the question -- I mean, Your Honor,
6 I would say there's a different question that needs to be
7 asked. And you're talking about what Captain Dennis saw
8 after that particular, you know, once he got to the scene.
9 We're referring to the issue of what occurred before he
10 got to the scene. Now, I wasn't there. I don't know what
11 he saw. I can only deal with the issues of as the scene
12 is described.

13 THE COURT: Now, here's where you're losing me is,
14 you're working on the assumption that your exhibits, 1
15 through 7, were taken beforehand. And 8, 9 and 10 were
16 taken after hand. How do you know that?

17 MR. LAKE: Your Honor, I inquired as to that fact
18 from the Solicitor's Office. And they told me, yes, they
19 were taken in order. They have the burden of proof, Your
20 Honor. I asked Captain Dennis on the record, is there
21 anything that prevented you from getting that information?
22 I mean there is nothing that prevents them from bringing
23 that camera in here and going straight through it to
24 figure out what the progression of those photographs are.
25 There was nothing that prevented them from doing that, not

1 one single thing. I asked the Solicitor's Office. I sent
2 them that in an email. I asked him that on the stand and
3 he said, no, there was nothing. Well, today, Your Honor,
4 we're here for trial. I mean, I think the ship has
5 passed.

6 THE COURT: I know but you've chosen the order of the
7 pictures.

8 MR. LAKE: No, Your Honor, they just gave me the
9 pictures. I mean, they just gave me the pictures. I was
10 just able to print them last night.

11 THE COURT: I mean, I'm with you on that. I
12 understand that.

13 MR. SCOTT: Your Honor, that's not true. That's not
14 true.

15 THE COURT: Captain Dennis doesn't even need the
16 pictures to testify to what he testified to just now.
17 From what I can tell, he went out there, he spoke, he went
18 in the house, he can describe the house without the
19 benefit of a picture. The pictures help, certainly,
20 showing the condition of the house. But if he has
21 firsthand knowledge of being called out there, dispatched
22 by county control, an investigator that he supervises
23 called and he asked for his assistance and makes the
24 decision to go out there. And he goes on the scene and he
25 observed everything, it seems to me that the State would

1 be prevented from just calling him as a witness of what'd
2 you see, when'd you get there, what'd you do next. All
3 the pictures don't have to come in.

4 MR. LAKE: No, Your Honor, I mean the fact of the
5 matter is, I mean, the Defendant would want some of the
6 photographs to come in. The issue that, I mean, I think
7 that the Court is looking at a different issue from what
8 our argument is to the Court. Our argument to the Court
9 regarding this particular matter was that because we have
10 shown a prima facie, you know, evidence that it appeared
11 that the affidavit was false at that particular time,
12 because he hadn't gotten there at that particular time.

13 THE COURT: How is it false? If he saw stuff like it
14 looked---

15 MR. LAKE: Well, Investigator -- neither Investigator
16 Bouknight, neither was Investigator or Captain Dennis
17 there at the time, because he doesn't know when the
18 photographs were taken.

19 THE COURT: What difference do the photographs make?
20 I mean, you're making a big difference. Here's where
21 you're losing me. And I have got to address the Jury so
22 I'm going to stop arguing with you.

23 MR. LAKE: Okay.

24 THE COURT: Here's what Dennis said, I got on the
25 scene after receiving a call from one of the people I

1 supervise. When I got out there, Mr. Trapp was on the
2 scene somewhere. Went in the house, the house was a
3 wreck, and I saw the pill bottle on the dresser. Sometime
4 after that, it was removed and he's not sure when. What
5 difference does it make what the pictures look like if he
6 can testify to those facts and didn't he just testify to
7 that?

8 MR. LAKE: But, Your Honor, you made the assumption
9 like I said, I didn't introduce all of the photographs
10 when they started going through here. You're making the
11 assumption that the pill bottle was moved after he was
12 there, but he didn't testify to that. He has no clue when
13 those photographs were taken. He has no clue where.

14 THE COURT: But he has a clue when he walked in and
15 saw the pill bottle sitting on the dresser.

16 MR. LAKE: I understand.

17 THE COURT: He has firsthand knowledge of that. So,
18 doesn't that just end it?

19 MR. LAKE: Well, Your Honor, I disagree with it in
20 terms of the argument that is in this particular case. He
21 is there based upon a search warrant. That is why he is
22 there.

23 THE COURT: No, he's not. No, he's not. He went out
24 there to assist the investigators on the burglary. He
25 just happened to be there and see the house ransacked and

1 the pill bottle and he's qualified to testify to what he
2 saw. He didn't go out there for the search warrant. Now,
3 he could have gone out there and done the exact same thing
4 Bouknight did and driven to see the Magistrate and got the
5 exact same thing. But it seems to me that the search
6 warrant was sought to see what else they'd find in
7 addition to the pill bottle. The pill bottle was a given.
8 It was what else is there. That's why they had to go get
9 the search warrant.

10 MR. LAKE: And, Your Honor, I mean, but that's why
11 we're making the suppression. Because we're saying
12 essentially he's not qualified to testify to that
13 particular fact as it relates to the probable cause.

14 THE COURT: All right. I need to stop. I'm not
15 saying I'm ruling yet. I need to deal with the other
16 Jury.

17 MR. LAKE: Thank you, Your Honor.

18 THE COURT: I've got a question from the other Jury
19 and I'd like to send an answer to them, okay?

20 MR. LAKE: Yes, sir.

21 (Whereupon, the Court answers a question for the
22 prior trial for the Jury.)

23 THE COURT: All right. Mr. Scott, I want to hear
24 from you, and then I'm going to come back to Mr. Lake
25 before I issue a ruling. What is your position? I've

1 been sitting here really enjoying my discussion with Mr.
2 Lake.

3 MR. SCOTT: And, all right, let me see if I can cover
4 it as much as I can. Judge, some of that conversation, it
5 would be my argument that the assumption there is that the
6 pictures with the pill bottle in them were taken after the
7 pictures that don't show the pill bottle there. Why don't
8 we just for the sake of argument, I'm going to play
9 devil's advocate and say Mr. Lake is correct. Well, why
10 does that matter? Why does that matter as far as probable
11 cause? It's in the house. Robert Dennis goes and sees it
12 in the house. Toaby Trapp, according to his testimony,
13 admits to it to some degree. They ask him, what is this
14 pill bottle. And he says, well, you're going to -- it's
15 going to be crack. I forgot it was there. I get these
16 cases all the time where they take a bunch of evidence
17 from the house and put it on the bed and then take a
18 picture of it right there. I don't understand how that
19 affects probable cause. They find the crack in the house.
20 Mr. Trapp to some degree admits to it, takes ownership of
21 it, claims that that's his bedroom. That's what the
22 search warrant was based on. That being the probable
23 cause, I can't really wrap my brain around Mr. Lake's
24 argument. I guess the insinuation is that law enforcement
25 planted it there. I don't know. He can argue that to the

1 Jury, I think, but as far as probable cause if he's
2 arguing that there's a false statement, I think he has to
3 make, he has to find three things and that being that
4 there was a false statement made in the affidavit and that
5 the officer made it recklessly or intentionally. And then
6 third, that it was material to the finding of probable
7 cause. Obviously, the pill bottle was material to
8 probable cause. But the argument is that the, it's not a
9 false statement. And so I can't, I hope I've addressed
10 what his argument was, but that's essentially it. Robert
11 Dennis gets on the scene and personally observes it,
12 personally hears Mr. Trapp. He tells me it's a one-on-one
13 conversation between he and Mr. Trapp as far as yeah, it's
14 going to test positive for crack and I forgot it was
15 there. So I think, Your Honor, it's a pretty clear-cut
16 case of probable cause being present for the search
17 warrant.

18 THE COURT: Okay. Let me hear from Mr. Lake again.

19 MR. LAKE: Thank you, Your Honor. And I'll just
20 point to and I'll provide the case, the case of State v.
21 Lorenzo Jones. It's cited at 500 S.E.2d 499 where it
22 basically says the only thing, that once a Defendant makes
23 a substantial preliminary showing that a false statement
24 knowingly and intentionally or with reckless disregard for
25 the truth is included, why they didn't have it in the

1 warrant affidavit. It is necessary to a finding of
2 probable cause that a hearing is required at the
3 Defendant's request. I mean, that's my only essential
4 allegation is that because there is an issue as to when
5 those photographs, you know, were taken and when those --
6 the photographs depict that at the time that he first got
7 there. Because right now we don't know when, what Spreng
8 did because he hadn't testified. All we're hearing is
9 hearsay testimony. Speculative type testimony as to when
10 Spreng took the photographs, whether he took them before,
11 after. Well, that's the sole purpose of these kind of
12 hearings, Your Honor, that we can't decide evidence based
13 upon conjecture or speculation as to whether this was
14 taken before or whether it's taken after, during or
15 anything along those lines. What we're saying is that
16 because there is some photographs that show that in
17 certain photographs where the scene is still kind of
18 disruptive. And we don't see the pictures, I mean see the
19 container, and then in other pictures we do see the
20 pictures, I mean do see the container. The only thing
21 we're saying is that we are entitled to a hearing
22 regarding the probable cause regarding the other items
23 that were found. Because they are alleging that they
24 found additional items subsequent to the search warrant.

25 THE COURT: All right. I tend to agree with that

1 argument. But here's what I disagree, is that Captain
2 Dennis can testify what he saw when he walked in the
3 house. He can also utilize one of those photographs or
4 any of those photographs and answer the question, do these
5 photographs actually depict what you saw there in your
6 presence. Affirmatively or negatively, he can testify to
7 that. If the pictures come in, if he can make that
8 statement, then the pictures could come in. But of his
9 own testimony, sworn testimony in this hearing which
10 you've got, he can testify to what he saw that night on
11 the scene, a conversation with your client if he had any,
12 and what that room looked like without regard to the
13 pictures. Now, my guess is that there's something else in
14 the search warrant you may want suppressed and that may be
15 another argument. But Detective Dennis can testify
16 without regard to the search warrant to what he saw when
17 he got there that night and do these pictures accurately
18 depict what he saw that night. I think that comes in. So
19 whether something is suppressed on the search warrant
20 other than that, but his testimony is consistent -- and
21 it's just by happenstance that he didn't go get the search
22 warrant, that Detective Bouknight did. But it seems to me
23 they would be interchangeable affiants in front of the
24 Magistrate. Either one of them could have gone and said
25 the same thing as to what they saw. It just happened to

1 be Detective Bouknight went. So without the benefit of
2 the search warrant, Detective Dennis could have seized
3 that pill bottle any way, in my opinion. I mean, he had
4 firsthand knowledge. He wasn't -- it wasn't hearsay. He
5 walked in and there it is. I mean, in fact, he was
6 briefed on it ahead of time.

7 MR. LAKE: Is it my understanding that the Court will
8 then allow Captain Dennis to testify insofar as the
9 probable cause for the search warrant. Because I mean
10 that's ultimately what the issue and that I'm referring to
11 is, that I'm suppressing, I made a motion to suppress the
12 search warrant based upon, you know, again the lack of
13 probable cause at that particular time. Because I can
14 only deal with the issue that that's what the additional
15 searches were based on.

16 THE COURT: All right. Well, what else is
17 inconsistent about what Captain Dennis has said if he were
18 the affiant on the search warrant? What is inconsistent
19 with Detective Bouknight's representation to the
20 Magistrate Halfacre?

21 MR. LAKE: I would argue if Spreng had direct
22 communications with Captain Dennis and Captain Dennis
23 talked to Halfacre, then this issue -- this is a moot
24 point and things of that sort. Because he's within the
25 loop of that conversation and then probable cause to the

1 Magistrate can be based upon hearsay type of testimony.
2 But we're talking about things of which he had no
3 knowledge of the conversation between Spreng and
4 Investigator Bouknight as to what he found, when he found,
5 the condition or anything along those lines. And
6 Investigator Bouknight, based upon whatever Spreng has
7 told him goes to Judge Halfacre and gets a warrant which
8 only alleges that the allegation is based upon the pill
9 bottle. Okay. Because they're not making -- they're not
10 saying it's based upon any kind of -- any other evidence.
11 They're just basically saying this item was found in plain
12 view so that is the basis of their probable cause. They
13 chose not to search or anything along those lines. They
14 didn't even arrest him that night. So we're not even
15 talking about searches to arrest.

16 THE COURT: Tell me why the search warrant is
17 necessary for Detective Bouknight or Detective Dennis to
18 seize that pill bottle other than the additional evidence
19 they may have been looking for.

20 MR. LAKE: Your Honor, we're talking about the
21 additional evidence. That's what I'm specifically
22 referring to, additional evidence that they were looking
23 for.

24 THE COURT: What is it? I mean, what are you trying
25 to, what are you trying to suppress. Because I am kind of

1 confused.

2 MR. LAKE: Well, Your Honor, they're alleging
3 essentially that based upon the search warrant they find
4 some additional drugs that were right there in front of
5 the dresser but on the floor.

6 THE COURT: See, that's where I been missing. I been
7 wondering what the hell you care about that pill bottle.

8 MR. LAKE: And sometimes, Your Honor, I mean that's
9 what the essential allegation is that there is some
10 additional drugs that are found. One right there, I think
11 one directly in front of, I think they're basically both
12 of them were directly in front of this dresser but on the
13 floor. And my argument again was just the fact that
14 because we're -- we made at least a prima facie showing of
15 a little preliminary investigation that says, hey, those
16 photographs, one depicts one thing and the other depicts
17 something else.

18 THE COURT: I disagree with you on that. Detective
19 Dennis gives consistent testimony firsthand of the exact
20 representation made to Magistrate Halfacre. It looks spot
21 on to me. What is the difference.

22 MR. LAKE: Well, he -- he never had a conversation
23 with Halfacre.

24 THE COURT: Well, so what? I mean, but all I'm
25 saying is, so what?

1 MR. LAKE: Well, that's the basis of the probable
2 cause is what the -- the sworn affidavit that you provide
3 to the Magistrates. Without that sworn affidavit, then
4 you lack the probable cause--

5 THE COURT: All right. Well, where's the falsity in
6 the affidavit if his testimony is consistent with it,
7 because he says identical information.

8 MR. LAKE: But what I'm saying is that he's -- he
9 would be essentially testifying based upon limited
10 information. Because he's testifying I have no clue when
11 these photographs were taken, one, whether the item had
12 been moved before or after.

13 THE COURT: All right. That's where you are losing
14 me. Why is it necessary, these photographs keep coming
15 in. If he went in that house and saw the condition of the
16 house, the pill bottle sitting there, spoke with the
17 Defendant, there to investigate a burglary, what's false
18 about that? That's all true according to the State's
19 version right now based upon the sworn testimony of
20 Detective Dennis. He was called out to investigate a
21 burglary. Went in, spoke to the victim, now the
22 Defendant. Observed the house in terrible disarray and
23 observed a pill bottle sitting there. What is in that
24 affidavit that Detective Bouknight told Magistrate
25 Halfacre that would be different than what Detective

1 Dennis says he saw firsthand right there himself?

2 MR. LAKE: Well, Your Honor, when you look at the
3 totality.

4 THE COURT: Okay. Well, tell me what's different?

5 MR. LAKE: Okay. When you look at the totality of
6 it, I'm looking more from the standpoint of what would be
7 their testimony essentially as to the condition of the
8 location when they first got there. When they first got
9 there, the condition of the location, there were boxes
10 everywhere. And they take photographs of -- you saw some
11 of the photographs is just when he has just entered into
12 the room to take photographs of what the burglary is.

13 THE COURT: You keep working on that, the photographs
14 look identical to me, just different vantage points. The
15 only different thing, the pill bottle missing from some of
16 the photographs. I don't have any idea what timing is on
17 how the pictures were taken and I don't really see that it
18 makes a difference.

19 MR. LAKE: It would make a difference if those
20 photographs that were taken earlier in the process, you
21 know, if you got a photograph that is taken earlier and if
22 you took a picture of that same area and something is not
23 there. And then in later photographs somewhere down the
24 road that's taken subsequent, all of the sudden you see
25 that item there. Then there has to be some explanation as

1 to how that item got there.

2 THE COURT: You see, you keep putting that order and
3 I disagree with that.

4 MR. LAKE: But, Your Honor, they have never shown any
5 other order. They have never, they have had the
6 opportunity to come in here and say no, Judge, this is how
7 it happened. These are the sequence of photographs. This
8 is when the events occurred. This is how the photographs
9 were taken.

10 THE COURT: But see, the photographs weren't part of
11 the representation made to the Magistrate. You're
12 bringing them into the Magistrate and Magistrate Halfacre
13 was not provided photographs.

14 MR. LAKE: He wasn't, he would not have been provided
15 with the photographs. But what, well see, Your Honor,
16 again, we don't know what he told Investigator, what
17 Investigator Bouknight told Judge Halfacre.

18 THE COURT: What he told him is in his sworn
19 statement, isn't it?

20 MR. LAKE: I would assume that he -- they get
21 information that he responded to a burglary. And he
22 testifies to that on his affidavit that there was a
23 burglary, that they responded to. But the question
24 becomes then is, are these photographs that Investigator
25 Spreng, that he took, did they predate the warrant, did

1 they come after the warrant?

2 THE COURT: That doesn't show falsity. I understand
3 your argument, I am going to deny it. I am not going to
4 suppress that search warrant because it's consistent with
5 sworn testimony that Detective Dennis has given, that the
6 Magistrate did not rely on the photographs, he relied on
7 the affidavit that Bouknight provided them. Detective
8 Dennis then participated in the execution of the search
9 warrant. He was present the entire time. And I think
10 that just completes the loop as the fairness of the
11 probable cause required to get a search warrant. That's
12 just what I see. I understand your argument but that's
13 just what I see.

14 MR. LAKE: And I just kind of state my objection for
15 the record.

16 THE COURT: Okay.

17 MR. LAKE: I also do have a motion to suppress based
18 upon lack of chain.

19 THE COURT: All right, Mr. Scott, what you got on
20 that?

21 MR. SCOTT: Well, I'm going to produce, we've got
22 Robert. I've got Ben Chapman who's the Evidence
23 Custodian. Within the chain would be Patricia Crooks,
24 let's see, Selena Kinard would have been the intake person
25 at SLED. She's no longer with SLED. I think she's moved

1 out-of-state. Patrician Crooks would be another internal
2 SLED chain witness and she's retired. Ultimately, or the
3 next person in that chain would be Lynn and she's going to
4 be here to testify. I believe it's State v. Hatcher case
5 has relaxed some of the---

6 THE COURT: I thought it was Valentine or something
7 like Hart. It had something to do with Hart. What is it?

8 MR. SCOTT: Hatcher is the one I'll, that may be some
9 of its progeny, prodigy? But Hatcher was the first one
10 that I'm aware of.

11 THE COURT: All right. And I'll look at that case
12 first before we try to seek, I want to study that. I am
13 hungry, I want to get something to eat. Is that your last
14 motion, is the chain?

15 MR. LAKE: There was a few other things but we can go
16 ahead.

17 THE COURT: That's all right. You get to argue.

18 MR. SCOTT: But just as far as practical that the
19 chain can be established as long as you -- I mean, you can
20 even have missing links. But as long as you can
21 establish.

22 THE COURT: I thought there was some argument or---

23 MR. LAKE: You can't have a missing link.

24 THE COURT: ---suggestion that the gaps could be
25 filled in if reasonably can or something along, language

1 along those lines.

2 MR. SCOTT: Yeah, but that's the one right there that
3 I would offer for my proposition.

4 THE COURT: All right. The court reporter needs a
5 break as bad as I do. We'll stand at ease.

6 (Whereupon, a lunch break was taken.)

7 THE COURT: All right, who are the chain witnesses or
8 some of them were, piece it together for me. What have we
9 got and what are we missing?

10 MR. SCOTT: We got Robert seizing the dope. And it
11 would have been Ben Chapman as the Evidence Custodian. It
12 would have been checked in there.

13 CAPTAIN DENNIS: It would be myself, Nick Bouknight.
14 At the time, it would have been Jerry Wright who's
15 retired. Now, Ben Chapman, and then whoever you got at
16 SLED.

17 MR. SCOTT: Okay. And so then at SLED it would have
18 been, it would have been checked in with Selena Kinard?

19 CAPTAIN DENNIS: Yes.

20 MR. SCOTT: Patricia Crooks, so here's who we're
21 missing. Obviously Nick, Mr. Wright, who substitutes, as
22 the new Evidence Custodian, Ben Chapman in his place.
23 Selena Kinard has moved out of state. She is the intake
24 person at SLED and Patricia Crooks is retired. Again,
25 these are just internal chain people, Patricia Crooks and

1 Selena Kinard and ultimately, Lynn Blackmon will illicit
2 testimony from her that it comes to her in one of the Best
3 Kits. And it's sealed and she'll be able to establish a
4 chain of all of the people who came before her. Of
5 course, we'll have Robert testifying, and then we call Ben
6 if we need to. I think to me the important people in this
7 is the ones who seize it and then, ultimately, the one who
8 tests it. And I think my understanding of the Patrick
9 case, I think those internal chain people, as long as we
10 can establish the links in the chain, their absence is not
11 necessary or their presence is not necessary.

12 THE COURT: All right, Mr. Lake.

13 MR. LAKE: Oh, thank you, Your Honor. Again, we
14 would move to suppress the chain-of-custody. I don't
15 believe they can make sufficient, the chain-of-custody.
16 And I'll kind of work my way back from what would be, I
17 guess, the beginning of when these drugs are actually
18 taken into possession till eventually when they are, I
19 guess, turned in at some point. You know, again, I'll
20 start back with the fact that the photograph shows that
21 the drugs have been moved, at least some of the drugs have
22 been moved. Now, who moved them, when they moved, they
23 don't have anybody that could testify to that. And so
24 it's really -- we really just got to speculate and
25 conjecture as to what happened during that timeframe until

1 Investigator Bouknight took control of the item. And then
2 eventually turned it over to what would be Captain Dennis.
3 Your Honor, I'll point out a few things that I think is
4 critical in determining that this item is, that were put
5 into the investigation should be suppressed. If you look
6 at the return, Your Honor, and I'm not sure whether you
7 have a copy of it in front of you.

8 THE COURT: I did, but I don't have it in front of me
9 now.

10 MR. LAKE: I'm sorry. I actually have it on my desk.
11 I apologize for that.

12 THE COURT: All right. I knew it was up here,
13 because I thought I had handed it back to somebody else.

14 MR. LAKE: Now, if you look at the items that were
15 seized by Investigator Bouknight, you know, it points out
16 that only two people participated in that search,
17 Investigator Spreng and Bouknight. And there were two
18 plastic bags and a white solid substance found on the
19 floor. There was a pill bottle on a dresser with a white
20 solid substance on there. There's a CD case with a scale
21 and there is a spoon and a razor blade with residue and
22 there was a straw. I think that's important because, Your
23 Honor, when you go look at it, the only thing that I've
24 been given in terms of the evidence log, and I provided a
25 copy of it to the Court. And when I got a copy of the

1 evidence log, it was things that were submitted to, I
2 guess, the Evidence Custodian who is not identified on the
3 only form that I have. They only indicate that
4 Investigator Bouknight had it. They indicate now there's
5 two razor blades. And now all of the sudden, the straw is
6 actually missing. Now, I'll hold this up to the Court.
7 If you look at the, what was taken from the beginning, you
8 go from one razor blade till now, all of the sudden,
9 there's two razor blades that were somehow taken into
10 custody in this particular case and those are the only
11 things that are kind of ID'd. And, Your Honor, when you
12 go to -- on October the 21st what would be the information
13 that was submitted to SLED, neither of the razors were
14 submitted even though they are indicated they're in -- in
15 the Best Evidence case. They're not in there, because
16 they're not tested. I don't think she's going to be able
17 to testify that there are razor blades in there. There is
18 no evidence that the straw made it, because it didn't --
19 somehow it didn't make it into evidence. Didn't make it
20 to be tested. And, Your Honor, the thing that's a little
21 bit more troubling, is if you look at the Form B, Rule 6
22 form that was signed, all of the sudden, there is a new
23 item that's on this item. Apparently, there is a quantity
24 of a white residue that is actually, was submitted. But
25 if you look on that return, Your Honor, there is nothing

1 that indicates that there is some separate residue that is
2 actually found. What you have is they say residue on the
3 scale and when we look at the analysis, then the analysis
4 will discuss that on the alleged scale, which would be
5 item 1.4. There is a powder type substance which is
6 already tested. And then you'll also find there is,
7 again, another substance that has been submitted to them
8 with no idea as to where this substance came from. And so
9 we know that at some point the razors have disappeared,
10 the straw has disappeared. If all of these items are
11 placed in the Best Evidence Bag and now all of the sudden,
12 we've got a new item that has been introduced. We don't
13 know the condition that it was in when it was --
14 throughout this entire time, the condition in which
15 Investigator Bouknight received it from Captain Dennis,
16 the condition in which Investigator Bouknight turned it
17 over to the Evidence Custodian. And even on the form that
18 I've been given and the only form that I've been given,
19 they don't even identify the person that it was given to,
20 when they got the form, when he -- what they do with it,
21 the condition that it was in, when did he get it back, how
22 long did he keep it. And, you know, where did he take it
23 when he got the item back, who did he give it to. I mean,
24 Your Honor, I think it's clear that this is more than just
25 a person that's actually missing and then things of that

1 sort. We've now got things that are in addition to what
2 was recovered and things that were recovered and things
3 that were recovered that are now not listed -- I mean that
4 are now not on the, that weren't tested or weren't
5 submitted in terms of the, to SLED. Even though on the
6 evidence log, it indicated these items were on there. I
7 mean, where did the extra blade come from when the return
8 only mentions one blade.

9 THE COURT: You were referencing something else, some
10 other form. Where is that form?

11 MR. LAKE: Which form are you referring to?

12 THE COURT: That's what I don't know. You kept
13 talking about like there was another form and I don't have
14 it.

15 MR. LAKE: I made reference to the chain-of-custody,
16 I mean for not the chain-of-custody but the drug analysis.
17 But the drug analysis doesn't mention the straw or the
18 razors and they were all allegedly put in the Best
19 Evidence Kit at the first time by Investigator Bouknight
20 back on October the 9th. So they're not even in this item
21 so the question becomes if they are placed in the Best
22 Evidence Kit, where are they now?

23 THE COURT: All right. Mr. Scott, what have you got?
24 I thought there was a document that generally followed the
25 evidence around that was a chain-of-custody document that

1 kind of memorializes, it who took it from where to where
2 to where. Does that document exist?

3 MR. SCOTT: Yeah, it's probably going to be stapled
4 to the Best Kit.

5 MR. LAKE: I asked for that, Your Honor. I have not
6 been provided that to date. So, of course, if it's
7 something he produces now, we would object to present
8 discovery, but I did ask for it. There is an internal
9 chain with the Richland County Sheriff's Department and
10 that is what, the form that I provided to you is what
11 Solicitor---

12 MR. SCOTT: Probably what he's handed to you is the
13 evidence log-in sheet.

14 THE COURT: He did.

15 MR. SCOTT: Okay. So that's the chain I've got.
16 It's, let me show, here is the certified chain from SLED.
17 So you see here that Nick drives it up and Selena
18 Kinard---

19 THE COURT: Yeah, that's what I've been looking for.

20 MR. SCOTT: Okay.

21 THE COURT: Does he not have that?

22 MR. SCOTT: He's got it. Selena would have checked
23 it in.

24 THE COURT: I want a copy of that and then let me
25 look at it. I can't follow y'all's argument without

1 having something to go by, a little roadmap.

2 MR. SCOTT: You don't need the final analysis,
3 though, do you?

4 THE COURT: No, I just want to see that little chain.

5 MR. SCOTT: Okay.

6 THE COURT: That document that showed it, so I can
7 just see, I want to see the gaps.

8 MR. LAKE: Your Honor, not only is there gaps but---

9 THE COURT: All right. Now, hang on. I want to see
10 it, then hear you. It helps me to listen when I have
11 something to follow. Mr. Lake, go through that again.

12 MR. LAKE: Yes, sir.

13 THE COURT: I mean, you had to be following it
14 somehow or maybe you weren't. I don't know. I got lost
15 in the rapid delivery you were giving me.

16 MR. LAKE: I apologize, Your Honor.

17 THE COURT: It's okay.

18 MR. LAKE: It's kind of two-fold. One relates to the
19 pill bottle in terms of the movement of that. There has
20 been no testimony. I don't think there can be any
21 testimony as to when it was moved, how it was moved, who
22 touched those, that pill bottle during the timeframe. We
23 see photographs of it there, then it not being there, but
24 there's no testimony as to who moved it during that
25 timeframe. We do know that at some point, Investigator

1 Bouknight does come into possession. But if you look at
2 the return, Your Honor, the return specifically lists the
3 items that were recovered, allegedly recovered from this
4 location. There was two plastic bags, a pill bottle, a
5 scale and a spoon and a razor blade with residue. Now,
6 those were the items that were submitted to Investigator,
7 I'm sorry, Captain Dennis. Okay. At some point, we don't
8 know when, we don't know in what condition, whether it had
9 been something had changed or not. We do know at some
10 point Investigator Bouknight comes back into possession of
11 these documents because he has logged it down into the
12 property. But now you can see that now once it is logged,
13 I think, Your Honor, in looking here at my document, I
14 think now the straw is now not, wasn't included in the
15 evidence. Okay. And now there are two razor blades that
16 have now been entered into, I guess, what they would call
17 a Best Evidence Bag and things of that sort. Your Honor,
18 the discovery they provided to me does not identify the
19 person that the drugs were handed to, in what condition,
20 whether they were sealed, unsealed. We know that
21 something had to be, the minimal had to been taking out of
22 the initial envelope that Investigator Dennis handed over
23 to Bouknight because the straw is no longer in there. So
24 we know there has been some tampering to a certain degree
25 regarding the items. Okay. And but even if you look at

1 the items that were actually submitted to the Sheriff's
2 Department without identifying who and they didn't tell us
3 when and all these other kind of conditions. But when it
4 makes its way to SLED, now you're missing those razor
5 blades. And now, all of the sudden, you have an extra
6 powdery substance. If you look at the scale, I mean if
7 you look at the search warrant, it mentions that there is
8 a scale with a powdery residue. And she identifies it as,
9 that she found some, I guess, residue or determined there
10 was a certain amount on the scales. But now, all of a
11 sudden, there is an extra powder that cannot be explained.
12 I think he's listed as item 6 on his Form 6. Now, that is
13 something new from what was recovered initially at the
14 scene and there is no one to essentially testify how that
15 got there in the chain-of-custody surrounding that, those
16 particular items. Because, I mean, it's clear evidence
17 that now there's something new, because that's not
18 mentioned on the return at all that there is some extra
19 powder or residue out there. Asked what he has already
20 identified on the spoon and on the razor blade.

21 THE COURT: What about it, Mr. Scott?

22 MR. SCOTT: Judge, I'm having a lot of trouble
23 following the argument. I'm going to produce Robert
24 Dennis, Brad Epps who would be in the chain. And I'm
25 going to produce Ben Chapman if we need to and the SLED

1 chemist. As far as items showing up, I'm not following
2 what Mr. Lake's noting.

3 MR. LAKE: Your Honor, it's clear that when you put
4 something in the bag, the same items should make it to
5 SLED. If those same items don't make it to SLED, then
6 someone has opened the bag, moved the bag, tampered with
7 the bag to a certain degree. So again you're speculating
8 as to the, what's happening during the chain. So based
9 upon that, a suppression is warranted. I think the case
10 law is clear, that suppression is warranted when you have
11 no way of identifying or explaining how things appeared
12 and then disappeared.

13 MR. SCOTT: I think Robert can testify why SLED or he
14 wouldn't submit razor blades to SLED.

15 THE COURT: Well, do y'all have the evidence in the
16 courtroom yet?

17 MR. SCOTT: Sir? Where is the evidence? Where is
18 Ben?

19 MR. DENNIS: He's on his way. I mean, we had to
20 immediately call him and take him away from some other
21 priorities.

22 MR. LAKE: Your Honor, he cannot testify to that. He
23 didn't put those items into--

24 THE COURT: No, I don't care. If he's got the bag,
25 would it not help us to see it. Because this is just what

1 somebody else is saying was part of the evidence.

2 MR. LAKE: This is what Investigator Bouknight
3 himself has put down there in terms of the items that he's
4 indicated were put into the Best Evidence.

5 THE COURT: I understand that. But what if the bag
6 got something else in it. I mean, wouldn't it help to
7 look at it today?

8 MR. SCOTT: Yeah, he's on his way now. Let's call
9 the case and if the SLED agent gets up there and says,
10 well, you know, I remember when the bag, it came to me,
11 the Best Kit was tampered with but I tested it anyway. I
12 think then you can challenge at that point.

13 MR. LAKE: My client is entitled to a preliminary
14 hearing on this particular matter. I don't think he is
15 required to wait during the trial and have someone who had
16 no, didn't, other than I guess turn it over to
17 Investigator Bouknight. I don't even think he testified
18 that he had any contact with the drugs. Trying to testify
19 to something that Investigator Bouknight did. I just
20 don't think that is proper testimony. I don't think he is
21 allowed, the rules of evidence don't allow him to testify.

22 THE COURT: Well, I mean, all right. Now, why is it
23 that these ancillary items, the razor blade and straw
24 residue, well, I don't know whether that is included in
25 any of the weight or analysis of the drugs that are

1 allegedly at issue here.

2 MR. LAKE: But that's not the issue, Your Honor.

3 THE COURT: Well, it is the issue, isn't it?

4 MR. LAKE: No, the issue is whether these drugs,
5 they're supposed to be in the same condition in which they
6 were collected. All of these items are placed into the
7 Best Evidence. So if these items are placed into the Best
8 Evidence Bag, Your Honor, the same items should come out
9 of the bag.

10 THE COURT: Well, I mean, shouldn't Detective Dennis
11 be able to provide testimony as to what he sees, what was
12 given to him?

13 MR. SCOTT: Yes, sir. That's why I think this is
14 premature at this point, we are speculating to what these
15 people are going to testify to.

16 MR. LAKE: Your Honor, he is not, he had no contact
17 with this bag after he gave it to Investigator Bouknight.
18 I have never been given any discovery that he has done
19 anything else with this bag or anything like that other
20 than when he gave it to Investigator Bouknight. After
21 that, Investigator Bouknight took control of the items and
22 I would bet that his testimony will be he had no other
23 contact with this particular case, other than that
24 particular time. To allow him to testify to hearsay as to
25 what condition it was in at the time that he gave it to

1 him.

2 THE COURT: All right. Well, now all right, you keep
3 running off before and get in front of me. If Dennis can
4 testify as to what condition it was in when he gave it and
5 it's essentially the same condition now, doesn't it follow
6 that the gap that Investigator Bouknight gives us perhaps
7 could be filled in with the case law? I don't know. I
8 mean, you keep going on the supposition that if anything's
9 modified then everything is tampered with and, therefore,
10 suppressed. I'm not sure I follow that.

11 MR. LAKE: Well, Your Honor, at that particular point
12 the Court is speculating as to whether it is or whether
13 it's not.

14 THE COURT: Well, you're speculating and wanting a
15 preliminary hearing on it and I'm trying to do that. But
16 I can't look at these two documents and then say, you know
17 what, you're right, it's been tampered with, case over.
18 That doesn't seem fair to me. I think we got to do
19 something more than -- I agree with you, that's kind of an
20 inconsistency. I'll grant that, but that's not enough to
21 say motion granted.

22 MR. LAKE: Your Honor, I mean that's why the pretrial
23 motions so they can proffer this testimony.

24 THE COURT: Well, let's get on with it. Call him.

25 MR. SCOTT: All right. Robert Dennis.

1 THE COURT: Again, come on back up, Captain.
2 Captain, 'you're already placed under oath from the hearing
3 we had just before lunch.

4 DIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q Robert, again on October 8, 2011, when you arrived at
7 91 Little Ranches Road address, who was there?

8 A Whenever I arrived on the scene, it was Robert Spreng
9 and Deputy Brad Epps. When I arrived on the scene and
10 then shortly after being there, Investigator Nick
11 Bouknight arrived on the scene.

12 Q Okay. And let me just kind of move to the pill
13 bottle. You observed that where?

14 A Once I was brought up to speed on pretty much double
15 information from receiving a phone call from Spreng, from
16 receiving a phone call from Investigator Bouknight, I was
17 then walked through the scene. The pill bottle was
18 sitting on top of the dresser in the -- what I would call
19 the master bedroom which was identified as Mr. Toaby
20 Trapp's bedroom.

21 Q Okay. And that's what we see in Defendant's ID
22 number 9, the pill bottle there on the dresser, that's how
23 it appeared when you saw it?

24 A That is correct.

25 Q Okay. So then you talked about it a little bit

1 earlier in the other hearing. Well, there was a search
2 warrant obtained.

3 A In my process of coming to the scene, Investigator
4 Bouknight had had the phone call prior to me advising what
5 Investigator Spreng had seen and he was going to get the
6 search warrant based off of Investigator Spreng's
7 testimony and then that to the Magistrate. And then like
8 I said, as soon as I had gotten there to be oriented to
9 the scene, Investigator Bouknight showed up with the
10 search warrant.

11 Q All right. So then what else did you find after you
12 began executing the search warrant?

13 A As before the search warrant was executed, Mr. Trapp,
14 who had been outside, we did come into the living room
15 area. Sitting on the couch, he was given his Miranda
16 warning by me which he acknowledged he understood. We
17 began talking about what had been seen, what had been
18 found in his room. He acknowledged that it was crack and
19 that he had forgot it was in there. So once we started
20 the actual search warrant going through the bedroom of
21 where the initial pill bottle was found on top of the
22 dresser, we began moving boxes and clothes and picking up
23 the dresser drawers. And there on the floor was a plastic
24 bag containing a substance, a white substance that we call
25 it kind of like in cookie formation. It looks like a

1 cookie but it's all white.

2 Q Okay. So it was on the floor. Did you say, was it
3 near that dresser where the pill bottle was?

4 A It was right in front of that dresser on the floor.

5 Q So again Defendant's exhibit 9, we see the dresser
6 and we see the pill bottle. You saying that the crack was
7 down here in front of the dresser?

8 A That was straight down.

9 Q All right. And did you seize that cookie of crack?

10 A It was photographed and it was seized.

11 Q Okay.

12 A And subsequently turned over to Investigator
13 Bouknight.

14 Q Okay. Well, who is doing the seizing? Do you recall
15 who actually picked up the pill bottle and actually picked
16 up the crack cookie?

17 A I know I am sitting on the couch with a flashlight
18 looking at the evidence. As far as picking it up, I
19 cannot say which one of us picked it up.

20 Q You're the supervising---

21 A -- but sitting there on the bed was me. If you got
22 pictures.

23 Q I think I do. But you were the highest ranking
24 deputy there at the time, is that correct?

25 A That's correct.

1 Q Would you have been supervising the -- I guess the
2 execution of the search warrant, the investigation that
3 was going on?

4 A That's correct. Just there as assisting role
5 capacity.

6 (Whereupon, State's exhibit 1 was marked for
7 identification only.)

8 Q State's ID 1, can you tell what that is?

9 A This is one of our old forms of evidence log-in for
10 Newberry County Sheriff Office. It has the case number,
11 Officer Bouknight. It has the -- it actually has two
12 dates on it, 10/8/11, 10/9/11, the case number, Mr.
13 Trapp's information, two razor blades, a pill bottle
14 containing a quantity of white substance, a pipe, two
15 plastic baggies containing a quantity of white cookie-like
16 substance, a spoon with a white residue, scale with a
17 quantity of white residue on it. And then the
18 chain-of-custody is Bouknight and the date is 10/9/2011.
19 Now, that's the first pack. And it has a brown envelope
20 attached to it. Do you have a pair of scissors? I can't
21 see and read. This evidence form that I read off of is
22 sealed in a heat-sealed bag. But also in that heat-sealed
23 bag is a envelope that has the case number written on it,
24 91 Little Ranches Road collected 10/9/2011. And the
25 description of the items: Plastic baggies, razor blade,

1 pill bottle. And then there is an additional heat-sealed
2 bag that has a spoon; a Bill Cosby, it looks like CD type
3 but it's the scale. And there are some other envelopes in
4 there that I can't readily see. And then there is a SLED
5 drug analysis secure envelope in there. Control number
6 B215834, date sealed 10/10, sealing envelope Nick
7 Bouknight. That's all I can see on that one.

8 Q Probably Nick's the one who seized it if he's the one
9 who signed the sealed---

10 MR. LAKE: Objection.

11 THE COURT: What?

12 MR. LAKE: Not only is he leading the witness, but
13 he's speculating as to who seized it.

14 THE COURT: I know, but it's, we're in-camera.

15 MR. LAKE: I understand.

16 THE COURT: Sit down. I mean, we're proffering. I'm
17 going to rule.

18 MR. LAKE: Okay. All right. I apologize.

19 THE COURT: You going overboard for me. I'm going to
20 give you a chance to argue.

21 MR. LAKE: Thank you, Your Honor.

22 THE COURT: I promise. And you can say Judge, he
23 walked him around by his nose, okay?

24 Q Captain, what is this?

25 A That is what is classified as the SLED, what we

1 classify as the Best Kit. That is what we would actually
2 send drugs down to SLED to be further analyzed and
3 testing.

4 Q All right. And who's it signed by?

5 A Nick Bouknight.

6 Q Is that relevant in any way who signed the
7 heat-sealed Best Kit?

8 A At the time during this case, Investigator Bouknight
9 was the narcotics officer for the Newberry County
10 Sheriff's Office. And he would be handling and dealing
11 with all the narcotics evidence that would have come in
12 during that time-period.

13 Q Okay. But you can't specifically recall whether it
14 was you or Nick who collected the evidence from the scene?

15 A Not at this time, I can't say which one. I can say
16 that all three of us were there.

17 Q Okay. All right.

18 MR. SCOTT: I think the answer to this was right
19 under our nose the whole time. Judge, do you have that
20 Form B, Rule 6 up there?

21 THE COURT: I do.

22 MR. SCOTT: Well, just, I guess read it into the
23 record.

24 THE COURT: Let's mark it as an exhibit.

25 MR. SCOTT: Yeah.

1 (Whereupon, State's exhibit 2 and 3 was marked for
2 identification only.)

3 MR. SCOTT: All right. Judge, I'm just going to read
4 it into the record. We all have a copy. But the Form B,
5 Rule 6, this is the Certificate of Proof of Chain of
6 Physical Custody. It reads, This is to certify that I,
7 Nick Bouknight, an employee by Newberry County Sheriff's
8 Office, and that on 10/9/11, I seized from Toaby Trapp
9 pursuant to search warrant at or near 91 Little Ranches
10 Road, Newberry, South Caroline, 29108.

11 And then it lists the items that were seized. I
12 think this indicates Nick was the one who actually seized
13 it. He lists on here, plastic baggy containing quantity
14 of white cookie-like substance. Plastic baggy containing
15 quantity of white cookie substance. And then, 3), orange
16 pill bottle containing quantity of white cookie substance.
17 4), scale containing quantity of white residue. 5), the
18 spoon with a quantity of white residue. And 6), quantity
19 of white residue. So I think, I guess, that was under our
20 nose the whole time. It seems to answer that particular
21 question.

22 Q So deputy or, excuse me, Captain Dennis, you were the
23 supervising agent over, I guess, Nick at the time? You
24 were the -- you were a lieutenant at the time?

25 A That's correct.

1 Q And what was his rank?

2 A He was a sergeant.

3 Q Okay. And so you were -- you would have been the
4 higher ranking deputy at the time?

5 A That is correct.

6 Q This looks like there's a counter or a bed that you
7 were sitting on?

8 A It was actually the bed in the master bedroom.

9 Q Okay. And this is State's ID number 3. Who is this
10 in the picture?

11 A That is myself sitting on the edge of the bed with a
12 flashlight. The floor in front of me is -- has been
13 cleaned from the boxes and the dresser drawers and
14 locating the white plastic bag or the white substance in
15 the plastic baggies on the floor in front of the dresser.

16 MR. SCOTT: And, Judge, this is just a picture. As
17 Robert was saying, that's him sitting on the bed and
18 pointing at the crack that was located in front of the --
19 oh, okay.

20 Q Well, why weren't razors sealed in the Best Kit if
21 you can, and to your knowledge?

22 A One of the reasons why SLED would not want razors to
23 come down in the Best Kit, because it is plastic, and
24 there could be the chance of someone cutting themselves on
25 those razors. So it is a safety issue of not packaging

1 those razors or sharp objects in a plastic bag.

2 MR. SCOTT: Okay. You know, I think that's probably
3 the extent of my questions.

4 THE COURT: Mr. Lake has the opportunity to question.

5 CROSS-EXAMINATION

6 BY MR. LAKE:

7 Q Captain Dennis, you would agree that on this
8 particular evidence log, it does not indicate who
9 Investigator Bouknight gave whatever items he had to?

10 A And because we have gone through a transition and
11 because of this being -- and Nick Bouknight being the
12 narcotics officer at the time. I believe he would have
13 been the Evidence Custodian of all narcotics regardless of
14 whether you just have his name here. So if he took it, he
15 would maintain control and put it in his evidence log.
16 That has since been changed to where -- at the retirement
17 and Bouknight moving on, Investigator Ben Chapman and
18 Richie Moore are sole custodians of all the evidence that
19 comes into the Sheriff's Office.

20 Q Well, but aren't you speculating as to that?

21 A I don't -- speculate to what?

22 Q When you turn in -- this right here it says the
23 evidence log-in, correct? Is there, does this particular
24 document right here show who he gave that particular
25 document to on October the 9th or what condition that

1 document was in on October the 9th? That's a yes or no
2 question.

3 A I don't think it is.

4 Q Okay.

5 A Because the first thing I--

6 Q Captain Dennis -- Captain Dennis, hold on. Before
7 you answer the question, you have to answer my question
8 first and then you can expound. I asked you a simple yes
9 or no question. Does that form indicate the name who
10 Investigator Bouknight provided that form to on October
11 the 9th, 2011. Yes or no?

12 A Yes, it does.

13 Q Who does it -- whose name is listed on there besides
14 Investigator Bouknight?

15 A Investigator Bouknight. If it had been anyone else
16 that he had given it to, then they would have been in the
17 chain listed as number two, three, four or five.

18 Q So he kept it the entire time up until time -- is it
19 your testimony that he took it and kept it?

20 A That would be the indication of this evidence log-in
21 report until you go to Form B and then whatever evidence
22 log that you get from SLED.

23 Q And do you know what condition he would have had it
24 in during this entire time from October the 9th till
25 October the 21st when it was turned over to SLED?

1 A That would be -- that would be a question for SLED on
2 how they received it.

3 Q That will be a question for SLED. And you received
4 the evidence on that, from the return, correct?

5 A I did what to it?

6 Q From the return from the search warrant.

7 A I documented it on the search warrant. That is
8 correct.

9 Q If you look at that on the search warrant and then
10 compare it to the Form 6, there appears to be a quantity
11 of white residue which will be item number 6. Where did
12 that particular item come from or where was it found?

13 A I've got what's classified on the return of the
14 search warrant, CD case scale. On the form B it says,
15 Scale containing a quantity of white residue on it. So I
16 would say that the white residue was on the scale.

17 Q Okay. If you listen to the question that I asked
18 you. The Form B represents a scale containing a quantity
19 of white residue on it.

20 A Yes.

21 Q Which is number 4.

22 A Yes, sir.

23 Q And then there is a number 5 which is a spoon with a
24 quantity of white residue on it, correct?

25 A But, Mr. Lake, that's not what, that's not the

1 question you asked me. The question was, was the scale
2 and then the white residue. And now you're asking me
3 about a spoon.

4 Q Okay. Well, I apologize, that was poorly worded.
5 The question I was asking you is that there is a mention
6 that there was a scale containing a quantity of white
7 residue on it. And there's a spoon with a quantity of
8 residue on it which is number 5. The question I asked you
9 is number 6 that was submitted to, on the Form B, the
10 quantity of a white residue. I'm asking you, where did
11 that item come from?

12 A Number 6 on Form B?

13 Q Correct.

14 A Okay. I cannot answer that.

15 MR. SCOTT: Judge, it seems like we're getting
16 outside the scope of just the chain issue. We're back to
17 suppression-type argument.

18 MR. LAKE: You know, that's what a chain-of-custody
19 is a suppression issue.

20 MR. SCOTT: Well, it sounds like it's suppression of
21 the evidence. We are tracking the drugs, is that what the
22 chain--

23 MR. LAKE: Your Honor, if you can't make a sufficient
24 chain then, of course, it's suppression of the drugs.

25 MR. SCOTT: It's all seized by Nick, and then it's

1 taken to SLED. We've identified everybody in the chain.

2 THE COURT: We going to take a break.

3 (Whereupon, a short break was taken.)

4 CONTINUE CROSS-EXAMINATION

5 BY MR. LAKE:

6 Q Captain Dennis, again, you have no knowledge whether
7 between October the 9th of 20011 and October 21st of 2011
8 the condition of the items that were submitted into
9 evidence?

10 A No, sir.

11 Q And in fact do you have any knowledge, any condition
12 as to how they were on the date that they were submitted
13 on October the 9th, 2011?

14 A I am not sure I am following what you are asking.

15 Q Let's kind of back up a little bit. How did you
16 provide, you indicated I guess on the return that you were
17 actually given the items, certain items on the return,
18 correct?

19 A What I do is I document what items we are collecting.
20 And then those items were given to Investigator Bouknight
21 for his secure control, access to, for as evidence log-in
22 and then to SLED.

23 Q Were you present, other than the fact that you signed
24 off on the document. Were you present when, I guess, he
25 took control of the items and put them in a bag or did

1 anything with them?

2 A I was present when he secured those from the
3 residence to his vehicle.

4 Q And after that you have no knowledge what happens to
5 them at that particular point, do you?

6 A I can't testify to that, no.

7 Q Okay. And so you don't know what condition they were
8 in from the time they left on October 9th up until the
9 time today, correct?

10 A Only knowing that they would be in his custody and
11 control until he takes it to SLED. And whatever he takes
12 to SLED as indicated on the Form B.

13 Q And do you recall what even type of container or
14 whatever he had the items in, would he place the items in,
15 do you have any personal knowledge.

16 A What we use would be the envelopes, the manila
17 envelopes is what we use or if we, we now have what we
18 call integrity bags. We use those now.

19 Q Those manila envelopes, can you heat seal those
20 items?

21 A No, we actually use tamper proof tape, evidence tape
22 to seal over the actual seals where the envelopes are
23 taped together so to speak or posted together. You can
24 see the tape that would come around on it.

25 Q And were these items sent to SLED together or how

1 were they sent to SLED?

2 A Without seeing the actual intake form I can only say
3 this is what was submitted to SLED on the Form B.

4 Q You have no knowledge as to whether they were sent
5 separately together or anything like that, do you?

6 A No.

7 Q And I know you had indicated that, you know, these
8 items, I guess the pill bottle wasn't submitted to SLED.
9 But does that right here, on this particular item
10 indicates that the pill bottle was submitted to SLED?

11 A As I said earlier, I can only read what I am looking
12 at and what you are giving me as far as the Form B which
13 is the Best Kit Certificate of Proof of Chain of Physical
14 Custody of Control. And then once that is taken down, as
15 you see in the paragraph of what is there on that. And
16 then if you look at the intake form which is when
17 Investigator Bouknight takes it to SLED and logs it into
18 SLED laboratory forensic request and evidence log-in, he
19 is turning it in as what is classified as a one, one item
20 Best Kit Evidence. So, if I had to, without having SLED
21 testify for you, everything that you see that is outside
22 in the back as well as this would have been sealed in this
23 packet. And all of it would have been in here as one item
24 but yet broken down on Form B which SLED would also have a
25 copy of once that packet is open.

1 Q Do you know that for sure or are you speculating on
2 that?

3 A I can say with a one-hundred percent surety that is
4 how it would have been sent down and collected and
5 received by SLED during their protocol as being in twenty
6 plus years of taking evidence down to SLED.

7 Q And you mentioned, I guess testified earlier that a
8 razor blade wasn't submitted down there. But this
9 appears, I guess, the plastic baggies, the razor blade and
10 pill bottle are all in the same?

11 A And if you look, these are two separate heat sealed
12 bags. This one still has the evidence form on it for
13 Newberry County Sheriffs office for Mr. Bouknight. So
14 that would have probably stayed in his evidence control
15 where as this bag contains the Evidence Best Pack from
16 SLED with all the evidence--

17 Q -- you say they didn't receive a pill bottle or they
18 did receive the pill bottle?

19 A Right there is the pill bottle with the Best Kit and
20 if you read on Form B which is item 3, orange pill bottle
21 containing a quantity of white cookie substance.

22 Q And on this particular item right here, what are the
23 items that were submitted to SLED for testing or analysis
24 for this particular item?

25 A I would have to open this up and this would be some

1 testimony that you would have to receive from Ben Chapman
2 because these are new stickers of labels that he is
3 utilizing for the evidence log-in. And although it says
4 here, description, plastic baggies, razor blade, pill
5 bottle. I can't see through that envelope to tell you
6 what is in there.

7 Q So would that mean Mr. Chapman is, I guess, moved the
8 items around or something?

9 A The only way I can explain this is go back as I
10 testified earlier. And I don't know if maybe we need to
11 put it down on a board or something so that everyone can
12 understand it. Back during 2011 Investigator Bouknight
13 would have been in control as well as the Evidence
14 Custodian for all narcotics. Investigator Bouknight is
15 not here with us any longer. So therefore Chief Wright
16 who is now retired was the overall evidence control for
17 other items outside of narcotics. Now that Chief Wright
18 has retired Lieutenant Ben Chapman and Lieutenant Richie
19 Moore are the Evidence Custodians for the Newberry County
20 Sheriffs Office. We have moved probably three times to
21 different locations. From Main Street, we had to move
22 evidence to 520 Wilson Road and utilize a building where
23 Chief Wright maintained that control up until his
24 retirement, turning over and counting all evidence and
25 turning that chain of command to Lieutenant Chapman.

1 Since then we have moved from 520 Wilson Road to 550
2 Wilson Road which is right next door. Lieutenant Ben
3 Chapman has taken all of that evidence from the 520
4 address and moved it to the 550 address in which he has
5 now set up a system in order to maintain the evidence
6 control when it is logged in from deputies or narcotics.
7 And then placed in a specific location in the evidence
8 room.

9 Q With regards to this specific item right here, do we
10 know whether it was moved?

11 A Yes, it was moved. And we know that it is moved
12 because he now has the bar code items on it which are
13 listed on both bags separately.

14 Q Do we know whether, I think you said Chief Wright,
15 whether he specifically moved this particular item
16 himself?

17 A Chief Wright was retired when this item was moved.

18 Q Who specifically moved this particular item here?

19 A Lieutenant Ben Chapman.

20 Q And when did he move it?

21 A You would have to ask him.

22 Q And when you have like normal evidence that you take
23 into custody who actually, did y'all have like a Evidence
24 Custodian person?

25 A I am not sure I understand. I have answered that.

1 Q What I am asking you is on typical evidence, whether
2 it be drugs or not, is there an Evidence Custodian that is
3 at the Newberry County Sheriffs Department. If you don't
4 understand that question then ask me to rephrase it. The
5 question is a yes or a no.

6 A Yes.

7 Q Who was that person at that timeframe?

8 A Which timeframe.

9 MR. SCOTT: Objection, Your Honor.

10 THE COURT: He just told you that Jerry Wright was
11 the Chief Evidence Custodian until he retired and now it
12 is Chapman. He spent ten minutes explaining that. Can we
13 excuse the jury until in the morning. Do y'all have any
14 problem with that?

15 MR. LAKE: No, Your Honor.

16 THE COURT: I am growing low, my sugar is dropping or
17 maybe I have had too much sugar from eating a lot of
18 candy. But I don't know, I am not going to make much more
19 this afternoon. I am getting very candid with you.

20 MR. LAKE: Your Honor, I would rather for the Court
21 to take a break for the afternoon.

22 THE COURT: That is why I took a break a moment ago.
23 Let's send the jury home until 9:30 in the morning. I
24 have got a 9:00 o'clock conference call on some civil case
25 that I have been assigned out of Lexington. Does that

1 suit y'all.

2 MR.. SCOTT: Yes, sir.

3 THE COURT: Please bring the jury in here for me,
4 please.

5 (Whereupon, the jury came into open court at
6 approximately 3:07 p.m.)

7 THE COURT: I have been dealing with some pretrial
8 matters and they have gotten a little more extensive than
9 I anticipated. I told you to be back at 1:30 and I had to
10 deal with that and a jury verdict from another trial. I
11 am going to excuse y'all until 9:30 in the morning. Okay.
12 So, you can't discuss the case. See you in the morning.

13 (Whereupon, the jury was excused from open court for
14 the day.)

15 THE COURT: Let's take a break and let's see if y'all
16 can find some common ground on what exactly we are arguing
17 over. I have got a firm grasp of it. I understand
18 Detective Bouknight not being here is a problem for
19 everybody. But y'all see what y'all can find out and
20 let's take a couple of minutes.

21 (Whereupon, a short break was taken.)

22 THE COURT: Okay, where are we.

23 MR. LAKE: Your Honor, I think we are where we were
24 prior to trial. Again, I will continue to have
25 conversations regarding--

1 MR. SCOTT: He is asking for a conditional discharge.
2 Back there he said he would maybe tow me into a PWID with
3 probation. We are worlds apart, Judge, I don't see it. I
4 had offered a trafficking second with a minimum which is a
5 five year sentence. That is substantially down from what
6 he is facing should he be convicted. The problem is is
7 his prior record and he has been picked up a couple of
8 times since this charge. I can't possibly do probation.
9 All right, come on up here.

10 (Whereupon, a bench conference was held with the
11 Court and the attorneys.)

12 THE COURT: Let's start in the morning at 9:30.

13 (Whereupon, the trial will continue the next morning
14 at 9:30 a.m.)

15 OCTOBER 31, 2014

16 THE COURT: Where had we left off yesterday?

17 MR. SCOTT: You had just ruled in our favor on all of
18 the pretrial motions.

19 THE COURT: Well, Mr. Lake was telling me just the
20 opposite.

21 MR. LAKE: Well, Your Honor, yesterday I think we had
22 stopped right there at Mr. Dennis' testimony. I actually
23 didn't even finish the question. Today if the Court is
24 satisfied with the testimony, I was actually just going to
25 make an argument regarding that matter.

1 THE COURT: I remember where I interrupted you. It
2 was the Evidence Custodian question, because he described
3 that Bouknight was the narcotics Evidence Custodian. And
4 the entire time, Jerry Wright, until his retirement was
5 the supervising and non-narcotic Evidence Custodian. And
6 upon his retirement, Ben Chapman now is the Evidence
7 Custodian for the Sheriff's Department.

8 MR. LAKE: And, Your Honor, what I was trying to get
9 at and Mr. Dennis is not here. It is like Richland County
10 where you actually not turning it into a supervisor per
11 se, you're actually turning it into like a tech or
12 somebody like that. So that's, I guess I didn't ask that
13 question as good as I could have.

14 THE COURT: All right. Now, as I understand it and I
15 interrupted the question. I thought he had already
16 answered your question as to the Evidence Custodian
17 earlier. I understand the sequence of events that
18 occurred that evening and the follow up after the evidence
19 was taken into possession of the Sheriff's Department.
20 Tell me what further arguments you'd like to make on, what
21 have I got to rule on that you've made? So far we're
22 looking at sufficiency and the probable cause of the
23 search warrant. And I think I ruled in favor of the State
24 on that and we were on the next issue as to the
25 chain-of-custody issue you are asking about. Let's hear

1 you on that..

2 MR. LAKE: Your Honor, and I provided the Court with,
3 you know, a case yesterday I cited. It's actually a case
4 that would, you know, kind of showed you but not only what
5 the standard was for, you know, accepting a proper chain
6 but also shows the things that didn't apply in this
7 particular case. Within the case of State v. Taylor, it
8 cites a case of, I am sorry, it cites the case, the Benton
9 Case. Your Honor, this is where you had an issue of a
10 party that collected some blood. And there they kind of
11 held with, you know, if the identity of the person who is
12 handling the evidence is unknown. The Courts have
13 consistently held that evidence as inadmissible. And if
14 you go through the remaining part of that paragraph, it
15 also goes on to say that although there was testimony of
16 the hospital's customary practice regarding the mailing of
17 the blood, there was no evidence that the technologist who
18 drew the blood had sealed the vials and otherwise taken
19 any precautions against tampering which is really the
20 ultimate litmus test for any type of chain. That's the
21 reason why you need a chain is just to kind of remove any
22 evidence of tampering. And so the record did not disclose
23 who had possession of the package containing the vial of
24 blood for several days and it left the identity of those
25 who handled the vials in a manner in transportation to

1 conjecture. And I think, Your Honor, that's what we have
2 in this particular case. We have a situation where drugs
3 were taken at some point. Initially, we don't know who
4 touched them. We do know that the return lists certain
5 items, specific items actually that were, I guess,
6 inventoried, provided, I guess, to Captain Dennis. And I
7 think it's Captain Dennis' testimony that he provided to
8 -- back then to Investigator Bouknight. At that time, you
9 know, it's Captain Dennis' testimony that it was not
10 sealed. It was just in a regular envelope. We don't know
11 at this particular point who he turned this in to. I know
12 there is testimony that he is the custodial inventory for
13 drugs. But there has been no testimony as to the
14 condition or location of actually where the drugs were
15 actually kept. Is there any type of testimony that would,
16 you know, show that there was in no way that the evidence
17 could have been tampered from the time that it was placed
18 in, on October the 9th up until the 21st when it is
19 actually taken to SLED. Now, Your Honor, also take note
20 that, when those items were placed in the envelope,
21 certain items were placed in there. But, however, by the
22 time that we got to the Form 6, which was I guess, sent
23 along with SLED, there are additional items that were in
24 there. Some additional residue which no one has been able
25 to kind of testify as to where that came from and at what

1 point it got into, I assume, that Best Evidence Kit. We
2 have a straw that was collected that was initially placed
3 -- supposed to have been placed in the envelope according
4 to Captain Dennis' testimony. That is now all of the
5 sudden not included within the Best Evidence. And also
6 we've gone from one razor to two razors now. And so we
7 know at some point that there was testimony that, okay,
8 well, we don't send razors. Well, then we know that there
9 is a point where somebody has gone into that bag and at
10 least removed some items and only sent certain things to
11 SLED to be tested and certain things apparently remained,
12 but remained with who and when and upon what conditions?
13 More importantly, Your Honor, we know that Investigator
14 Bouknight took the items on the 21st and they were tested
15 but the technicians are not even here to testify as to
16 what condition they actually received the bag and whether
17 they were complete.

18 THE COURT: I thought they were going to be here.

19 MR. LAKE: I think the only person that's going to be
20 here is just the chemist that's going to testify. But,
21 Your Honor, even as far as that is concerned, you know,
22 when you look at the evidence sheet that they had even
23 after the testing, there is no evidence of where the drugs
24 went after that. We know that Investigator Bouknight got
25 the drugs back, I guess, sometime after the drugs had

1 been, you know, tested. And then all of the sudden, they
2 are returned to him, but where do they go from there. I
3 have seen nothing. There has been no testimony as to
4 where they were at during this timeframe up until the day
5 that we're here for trial. Now, I know at some point they
6 said that Investigator Chapman took control of it and now
7 he's got to separate it again and inventoried now a little
8 bit better than what they used to. But there is nobody
9 here that's going to testify as to, you know, I guess from
10 that point from when Chapman got involved until, you know,
11 Investigator Bouknight picked up those drugs. Where they
12 were at the entire time and in what condition? Was there
13 any evidence of tampering at any time. All of this is
14 left to conjecture which I think our courts have ruled we
15 can't do in these, in these particular cases. And I don't
16 think the State can show that there has been no evidence
17 of tampering and that they can identify all of the
18 potential parties that may or may not have tested these
19 drugs during this timeframe.

20 THE COURT: All right. I think the State's made a
21 showing that the evidence was lawfully taken into
22 possession of the Sheriff's Department by Detective
23 Bouknight. And, obviously, him being a participant in the
24 handling of the evidence and being the narcotics Evidence
25 Custodian and he's not here, that is an issue for the

1 State to deal with. But I think that's a preliminary -- I
2 mean it's an issue that the State runs that risk at trial
3 as to whether they can sufficiently establish the chain.
4 But part of the case you asked me to read, the Taylor
5 case, there's certainly evidence to establish who handled
6 the evidence and if there's -- I mean it's Detective
7 Bouknight. Detective Bouknight, he carried it to SLED and
8 if SLED, whoever deals with that evidence at SLED, they've
9 got, I think I'm speculating as to what the State can
10 prove or not prove because I hadn't heard that. So I
11 don't think I can rule either way. I mean the State's got
12 an opportunity to prove it but they don't have to prove it
13 at a pretrial motion.

14 MR. LAKE: Your Honor, I do think they have to pass
15 through the preliminary test.

16 THE COURT: Well, I think they passed the preliminary
17 test. That's not the only test. But it's kind of like a
18 motion in limine. You have raised the issue. I think
19 sufficiently if they get past the motion, they can
20 identify who had it, they got a chain showing the list of
21 people who have handled it. And, you know, whether they
22 can sufficiently keep that chain together at trial is
23 going to be the issue. I don't know, I mean speculating
24 right now, I can't. I can't say they can or they can't.
25 I understand your aimed at it.

1 MR. LAKE: Yes, sir.

2 THE COURT: And so respectfully, I'll decline to
3 dismiss on that basis.

4 MR. LAKE: Now, I wasn't asking to dismiss. I was
5 asking to suppress the drugs.

6 THE COURT: Oh, well now I don't think that's, I
7 think they've got to try to establish the chain under the
8 law. And the burden of proof is on the State and if they
9 fail then, the drugs don't come in. If they meet that
10 burden during trial and the drugs come in, then that's
11 what they get.

12 MR. LAKE: Yes, sir.

13 THE COURT: I guess what I'm saying is they've shown
14 me enough they get an opportunity to try to establish the
15 chain and get the drugs into trial. If they fail and
16 you're successful in beating the link so be it. But
17 that's not, we haven't gotten that far yet.

18 MR. LAKE: Yes, sir. Just can I state my objection
19 for the record also?

20 THE COURT: Okay. Yeah, you're protected.

21 MR. LAKE: Your Honor, I want to address the issue of
22 this alleged statement that was made. I think I'm
23 required to have a Jackson v. Denno on this particular
24 matter they're alleging. And, I assume, will try to put
25 this statement into evidence indicating that my client

1 stated, oh, so these are my drugs. I knew there were
2 drugs or something to that affect.

3 THE COURT: Okay. They can do that. All right.
4 While we're doing this, I don't want the jury locked in
5 the room. If they want to come and go and meander and be
6 comfortable, let them be relaxed until I need them. There
7 is no reason to hold them back there and then we get ready
8 for them and oh, we got to run to the bathroom. That's
9 what kept happening to us yesterday. Just as long as they
10 don't come in here, they can stand outside and use their
11 telephone or use the restroom or whatever. If they want
12 to sit back there fine, but don't lock them down in the
13 room, because that's of no benefit for us. Because this
14 may take me 15 minutes to do this.

15 MR. SCOTT: And just so we, is this the last motion?
16 Are there anymore?

17 MR. LAKE: No, I do have just, also just, Your Honor,
18 on the motion in limine just to make sure that they don't
19 try to bring up anything about prior record or anything
20 along those lines. I don't think that would be proper in
21 this particular case to show any type of intent. I do
22 think it's not relevant to this particular case and I do
23 think if the Court did find that it was relevant, I think
24 it's sufficient, would be prejudice to my client.

25 THE COURT: Okay. The prior record is not coming in

1 unless you open the door.

2 MR. SCOTT: I don't see how I could do that.

3 MR. LAKE: Or anything, Your Honor, about any pending
4 charges also.

5 MR. SCOTT: All right. Well, Judge, I'm going to
6 proffer Captain Dennis' testimony for the purpose of
7 Jackson v. Denno.

8 THE COURT: All right. Come forward, Captain Dennis.
9 You were placed under oath yesterday and you're still
10 under oath today.

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q Okay. So, Captain Dennis, just to pick up from
14 yesterday, October 8, 2011 when you respond to the 91
15 Little Ranches Road, when you get there has it turned into
16 a drug investigation or is it still a home, a burglary
17 type investigation?

18 A It's still a kind of twofold burglary investigation
19 and then narcotic investigation.

20 Q Okay. So you had already been notified that there
21 was that pill bottle found in the bedroom?

22 A Yes, sir. That is correct.

23 Q All right. And then yesterday you talked about the
24 search warrant being obtained and then searching the home
25 further after the search warrant was obtained. When were

1 you able to speak with Mr. Tooby Trapp?

2 A Probably immediately once getting there. I know Mr.
3 Trapp and, you know, once I was briefed by Sergeant
4 Spreng, Investigator Spreng, I had made contact with Mr.
5 Trapp.

6 Q Where was that?

7 A It started out in the front yard of his mobile home,
8 and then up to the porch and then finally, into the living
9 room.

10 Q Okay. So what you mean you encountered him in the
11 front yard and that's when you began speaking with him?

12 A That's correct. He had already been placed in
13 handcuffs, investigative detention. And so we kind of
14 moved our way into the house, because we knew we were
15 going to be there for a little bit once the search warrant
16 got there. So we moved inside the living room of the
17 trailer.

18 Q Okay. So you're still waiting for the search warrant
19 to arrive at this point?

20 A I believe it had already gotten there about the, I'd
21 say five to six minutes after I arrived. It wasn't long.

22 Q But this is before you began executing the search
23 warrant?

24 A That is correct.

25 Q All right. So he is in custody. Now, did you begin

1 questioning him?

2 A Yes, sir. One of the first things we do is --
3 because I was going to talk to him about evidence being
4 found in the house such as narcotics, he was given his
5 Miranda rights.

6 Q And how do you administer Miranda rights?

7 A Sometimes I do them off the top of my head. Other
8 times I have my card which I carry in my wallet.

9 Q All right. Do you recall, did you read them off the
10 card?

11 A I believe it was probably kind of twofold and
12 starting to read him his Miranda rights, and then making
13 sure that I had the card accessible to make sure I
14 completely, you know, advised him of his Miranda warnings.

15 Q Tell the Court how you advised him on that day, that
16 being October 8, 2011?

17 A He was advised that he had the right to remain
18 silent. That anything you say or did could be used
19 against him in a court of law. That he had the right to
20 an attorney, to have him or her present with him during
21 any type of questioning. He also was advised if he did
22 not have any money for questioning, that the Court would
23 provide an attorney to him without cost to him. I always
24 stop at that point and advise, you know, at some point
25 they could possibly end up paying \$40.00 dollars or

1 whatever later on down the road for an attorney if they so
2 desire to get one. And then the last thing that I advise
3 them is, is that anytime during the questioning if they
4 don't want to answer any more questions, they can say
5 Robert, I don't want to talk to you anymore until I talk
6 with my attorney. And then the final question is, do you
7 understand these rights. And he replied, yes. And then
8 the next statement I asked is, are you willing to talk to
9 me about the drugs that's been found in the house. And he
10 advised an affirmative, shaking his head yes he would talk
11 to me.

12 Q All right. Now, have you known Mr. Trapp prior to
13 this?

14 A Yes.

15 Q And have you spoken with him before?

16 A Yes sir, I have.

17 Q Have you ever had any trouble communicating with him?

18 A No, sir. No, sir. We've always communicated very
19 well together.

20 Q All right. And on this specific occasion, did he
21 appear to have any trouble whatsoever in understanding the
22 rights that you read to him?

23 A No, sir. I think he was, I mean, his appearance, he
24 was upset. He was upset.

25 Q But did he have any trouble understanding your rights

1 or his Miranda rights?

2 A No, sir.

3 Q Did he appear intoxicated?

4 A No, sir.

5 Q Do you know his education level?

6 A No, I do not.

7 Q Okay. But you've never had any trouble communicating
8 with him in the past?

9 A No sir, I have not.

10 Q Okay. And so you said he did agree to speak with you
11 about the drugs?

12 A He did. Yes, he did.

13 Q All right. And what statement did he make to you
14 regarding the drugs?

15 A He made the statement, and I asked him, I said, you
16 know, what about the drugs that we found in your room.

17 And he was like, Man, I forgot about those.

18 And I said, Well, how could you forget about
19 something like that.

20 And he said, well, he said, whenever I called 911 the
21 dispatcher told us, you know, don't touch anything, don't
22 go back in the house, wait for law enforcement.

23 And he said, that's what I did.

24 So we, you know, during that time we just pretty much
25 continued to talk kind of back and forth. And then

1 explained to him the search warrant and why we stopped
2 doing what we were doing investigating the burglary. Then
3 the search warrant was read and given to him and explained
4 what was taken.

5 Q Did he say anything about what type of drugs they
6 were that was in the pill bottle?

7 A He advised that it would be crack.

8 Q This is State's 3. I think yesterday you testified,
9 that's some additional crack that was found on the front
10 of that dresser that the pill bottle was on?

11 A That is correct.

12 Q Okay. Now at this point when you're speaking with
13 Mr. Trapp, had y'all located those drugs?

14 A No.

15 Q Okay. Did you ever have a chance to speak with him
16 about these drugs?

17 A We did talk with him afterwards about those drugs
18 that we'd found. And, you know, he acknowledged the
19 drugs. But we began to talk with him and try to work with
20 him a little bit.

21 Q Okay. That was the sole statement, though. And
22 where was that statement made, was that in the yard or
23 inside of his own home?

24 A That was made inside his home in the living room. He
25 was sitting in a single chair, cushioned chair and I was

1 sitting on the couch.

2 Q Okay. Did you make any threats in order to get that
3 statement?

4 A No, sir. I did not.

5 Q And did you tell him you might be able to help him
6 out if he would admit to the drugs?

7 A No sir, not at that time, no.

8 Q Okay. Thank you, Captain Dennis.

9 THE COURT: Mr. Lake.

10 CROSS-EXAMINATION

11 BY MR. LAKE:

12 Q Captain Dennis, do you know what a report is?

13 A Do I know what a report is?

14 Q Yeah, what is a report?

15 A A report is a incident report documenting the
16 information on the scene of an incident for an
17 investigation.

18 Q And what is the importance of a report?

19 A To document information.

20 Q For what reason?

21 A For recall.

22 Q When did this incident happen?

23 A It happened on October the 9th, 2011.

24 Q And did you prepare a report in this particular case?

25 A No sir, I did not.

1 Q And did you prepare any documents that stated what
2 rights you read Mr. Trapp at the time of this incident?

3 A I did not, no sir.

4 Q And did you provide any statement to Investigator
5 Bouknight that you had talked to Mr. Trapp again and that
6 he had acknowledged somehow the second set of drugs that
7 you found?

8 A Investigator Bouknight was present during the entire
9 talking of Mr. Trapp.

10 Q Is that a memorized, memorialized in his report that
11 you talked to Mr. Trapp again and that he had acknowledged
12 those second set of drugs?

13 A That is not in the, in the first note.

14 Q But you just happened to recall that now, some three
15 years later?

16 A It's not happened now to recall it. That stood in my
17 mind for three years.

18 Q But you never prepared a report saying any of those
19 things?

20 A No, sir. At the time the most important was, what
21 was visibly found that he acknowledged that was on his
22 dresser.

23 Q And isn't it true that y'all did promise him
24 something?

25 A I don't understand what you are saying.

1 Q Was Mr. Trapp arrested that night?

2 A No, Mr. Trapp was not arrested that night due to he
3 wanted to cooperate and help buy drugs from other people.

4 Q Did you put that in a report?

5 A It was placed in there that he was not arrested the
6 night of the incident due to he stated that he wanted to
7 cooperate. And that if he went to jail, many suspects who
8 he would be able to assist with cooperating with law
9 enforcement would find out and it would hinder Trapp's
10 cooperation.

11 Q Did you write that down?

12 A A warrant for Trapp's arrest will be issued at a
13 later time.

14 Q Captain Dennis, did you actually write that?

15 A That was documented by Investigator Nick Bouknight.

16 Q Then the answer to that will be, no?

17 A Did I do that?

18 Q Correct.

19 A No, I did not write that.

20 MR. SCOTT: And, Judge, probably that particular, we
21 don't intend to illicit that at trial. But if the door is
22 opened, then we would probably step through it at that
23 point if Mr. Lake undertook that line of questioning.

24 THE COURT: I would guess he probably would not but
25 that's his decision.

1 MR. LAKE: That will be my decision, Your Honor.

2 Q And so at this particular point, when is he actually
3 arrested?

4 A He was arrested on 11/21, well, a warrant was issued
5 for him on 11/21 of 2011.

6 Q But he actually turned himself in, correct?

7 A That is correct.

8 Q No one actually went out looking for him, did they?

9 A Do what now?

10 Q No one actually went out looking for him on November
11 the 21st or anytime subsequent?

12 A No, sir. He was contacted and he turned himself in.

13 Q He turned himself in when y'all told him. And so
14 even though the warrant was issued, no one still went out
15 there to go looking for him, did they?

16 A The warrant was issued. The warrant was effected by
17 either calling him to turn himself in or if we had to go
18 look for him. Either way, the warrant was issued and
19 served on Mr. Trapp.

20 Q And wasn't Mr. Trapp's son present at the time? Was
21 he out there at the scene?

22 A There was another male out there. But he was out
23 there at the vehicle.

24 Q And at this particular time, Mr. Trapp's son was
25 actually staying with him, correct?

1 A I can't answer that. I know he has a room there.
2 Now, there is a difference between saying someone's
3 staying there or someone lays their head there night after
4 night. So we would need to qualify whether he's full-time
5 staying there or he just comes to lay his head.

6 Q So it would be fair to say Mr. Trapp is out there
7 with cuffs on and is there anybody else out there besides
8 Mr. Trapp and his son?

9 A Just those two.

10 Q Okay.

11 A If that is who that was.

12 Q If that's who that was. Do you have any evidence
13 that it wasn't his son?

14 A No, I do not.

15 MR. LAKE: Beg the Court's indulgence. No further
16 questions, Your Honor.

17 THE COURT: All right.

18 MR. LAKE: We do have a motion to suppress this
19 alleged statement. Your Honor, this statement, there is
20 really no record of this right here. Now, there's
21 something added into this, you know, this statement is
22 allegedly made. You're really talking about, you know,
23 him trying to really piggyback something that, you know,
24 is really hearsay. I mean, this is what it all really
25 kind of stems down from hearsay from what Investigator

1 Bouknight, I mean all of his testimony really essentially
2 is reading the reports off this right there. To say he's
3 not promised anything, Your Honor, I mean is not even
4 believable in this particular case. I mean he's not even
5 arrested and he's allowed, I mean even when the warrant is
6 issued let's say back on -- in November, he's still not
7 called and allowed to turn himself in till sometime in
8 December. So to say that for whatever, you know, whatever
9 communications that they had with him that particular
10 night, if they had these kind of communications, to say
11 that nothing was promised to him, he sure really got a
12 good gift if nothing was promised. Because most people,
13 Your Honor, if drugs are found in their house, they're
14 arrested then, that night. Even if someone cooperates,
15 that cooperation would come later. But to sit there and
16 say, you know, some kind of event occurs and you don't
17 turn yourself in till two months later but there is no
18 promises to you. Your Honor, I think in this particular
19 case for whatever allegation or statement they're trying
20 to allege to him, clearly there's been some promises made
21 to him or assurances made to him that he wouldn't be
22 arrested that particular night, because he wasn't arrested
23 that night. I do think there is some, be some
24 admissibility issues as to whether this statement is free
25 and voluntarily or was it guided from a point of, hey,

1 you've got your son here, you go to jail, what's going to
2 happen to him? I mean that's what you essentially, they
3 know his son is there. I think even the reports mention
4 that his son is there but they don't arrest him.

5 THE COURT: Mr. Scott?

6 MR. SCOTT: Judge, of course, the Court can inquire
7 of Captain Dennis while he's under oath. But my
8 understanding was this statement was given and then he
9 asked, you know, can I cooperate? Can I, can you do
10 anything to help me? This was after the statement was
11 given. I've heard no testimony the son and his presence
12 there, how it, well, I didn't quite follow that argument.
13 I had no understanding of how that affected his statement.

14 THE COURT: It seems to me that the rights were read,
15 a conversation started. There was some familiarity with
16 the parties, Dennis, Mr. Trapp, Bouknight, everyone. The
17 drugs that they were asking about, the Sheriff's
18 Department already knew about it, so tell me about it. I
19 forgot about them. That's the statement we're looking
20 for.

21 MR. SCOTT: Yes, sir.

22 THE COURT: It sounds like a voluntary statement to
23 me. Certainly, there's cross-examination to go in, but
24 this wasn't the first meeting between Mr. Trapp and the
25 Sheriff's Department.

1 that effect. So I think any type of testimony in that
2 realm would be improper.

3 THE COURT: I'll agree. But, you know, being that
4 they can say, it's a small community. I've known Mr.
5 Trapp because I grew up in Newberry and he did, too.
6 That's allowed. But I knew him because he'd been to the
7 Sheriff's Department and interrogated five times is not
8 going to be allowed. So I'm certain Captain Dennis is
9 experienced enough to understand the difference as to what
10 comments he should steer clear of so as not to poison the
11 testimony. But rights are read, the statement was
12 voluntary, it will be allowed.

13 MR. LAKE: And I'd just state my objection for the
14 record.

15 THE COURT: Okay.

16 MR. LAKE: I think that's it right now, Your Honor.

17 THE COURT: All right.

18 MR. LAKE: Oh, Your Honor, there was one additional
19 thing, Your Honor. I think my client did, because I guess
20 because the Court had inquired and he wanted a little more
21 opportunity, he did want me to, I guess, make a request
22 that this matter be continued and held over to another
23 timeframe that will give me an opportunity as his attorney
24 I guess to counsel him a little bit more in this
25 particular case. As I advised the Court, you know, Mr.

1 Trapp has been represented, I guess, from the time of this
2 incident back in 2011 up until, I guess, whenever this
3 Court relieved Mr. Bolt.

4 THE COURT: Yes, about what, four, five, six months
5 ago?

6 MR. LAKE: No. I think he just relieved him in
7 September.

8 MR. SCOTT: In July.

9 MR. LAKE: July.

10 THE COURT: I thought it was in the summertime. Mr.
11 Bolt came to Newberry and it was, we had an informal
12 conference in my chambers is what I remember. Mr. Bolt
13 came up because he closed his practice and had some health
14 issues and what not.

15 MR. LAKE: Yes, sir.

16 THE COURT: And I remember noticing Mr. Bolt was
17 missing the normal amount of hair he normally used to
18 carry.

19 MR. LAKE: And it's just that, I mean from my
20 understanding from him and there may have been an Order.
21 I think the Order wasn't signed until maybe September or
22 something along those lines, I believe. I don't know if
23 the Court has a copy of it or not but that's when he
24 retained me on October the 1st. And so, you know, he
25 wants me to kind of make this motion to continue this

1 matter to give me a little bit more time to make sure that
2 I've done it thoroughly, explained everything to him and
3 things of that sort. So that's my motion.

4 THE COURT: I think this case of the age that it
5 needs to get moved. I understand you're new, but you're
6 experienced. Mr. Trapp is not new to the case. I wish
7 everything could get resolved, the new charges or whatever
8 it is that's out there because I'm not really familiar
9 with what there is out there. And that's not relevant to
10 this trial at all. But, respectfully, I'm going to deny
11 your motion to continue the thing. We're going to move on
12 forward. All right. Y'all want a short break, because I
13 need to step back and get another cup of coffee and we'll
14 start in a few minutes?

15 MR. LAKE: Yes, sir.

16 THE COURT: All right.

17 (Whereupon, a short break was taken.)

18 THE COURT: Let's bring the jury in.

19 (Whereupon, the jury came into open court at
20 approximately 10:21 a.m.)

21 THE COURT: All right, folks, good morning. My
22 pleasure to have y'all here. Thank y'all for being
23 patient with me yesterday. As y'all heard yesterday, the
24 State of South Carolina has an indictment for trafficking
25 crack cocaine against Toaby Alexander Trapp. Mr. Trapp is

1 will get what y'all need to decide this case from these
2 parties and from the Court. All right. All that being
3 said, we'll start with opening introductions, opening
4 statements by both parties. Mr. Taylor Daniel goes first
5 for the State, and then Mr. Dietrich Lake goes second for
6 Mr. Trapp.

7 MR. LAKE: Your Honor, can we approach for one
8 second?

9 THE COURT: Yes.

10 (Whereupon, a bench conference was held in the
11 presence of the jury but out of the hearing of the
12 jury.)

13 THE COURT: All right. Ms. Folk, will you place the
14 jury under oath for me?

15 (WHEREUPON, the jury was sworn at 10:21 a.m.)

16 THE COURT: All right. Mr. Daniel?

17 MR. DANIEL: Thank you, Your Honor. May it please
18 the Court?

19 THE COURT: Yes, sir.

20 MR. DANIEL: Ladies and gentlemen, I apologize if I
21 start coughing or sneezing. My allergies activated
22 because of the weather. It's, you know, 40 degrees in the
23 morning, 80 degrees in the day. It's been a long week.
24 We've already had a trial, one trial. Deputy Solicitor
25 Dale Scott and I just wrapped up a four-day trial

1 yesterday and now today, we summoned you back in to be on
2 a jury for this case. I appreciate you coming in on a
3 Friday. I know it's an inconvenience. You may have
4 children, trick-or-treating, Halloween, but this is going
5 to be a brief case, at least from the State's perspective,
6 three to four witnesses in this case. But just because
7 it's a brief case does not, you know, it's not a trivial
8 matter. It's never a trivial matter when there's a trial,
9 particularly a criminal trial. It's important for all
10 parties concerned. It's important for the State of South
11 Caroline. It's also important, obviously, for Mr. Tooby
12 Trapp. He deserves his day in court. He's getting that.
13 The U.S. Constitution, the Constitution of the State
14 allows people to be tried by a jury of their peers.
15 That's you guys. Newberry County residents, that's why
16 you're on this jury and we didn't pick you by accident, we
17 picked you because we felt like you'd be good jurors from
18 different walks of life, men, women, white, black,
19 different occupations. So just a cross-section of the
20 community is why you're on this jury. Briefly, I'll give
21 you the facts of this case and kind of a roadmap. Keep in
22 mind, I don't know what's going to play out at trial, so I
23 can't be too presumptuous. But the Newberry County
24 Sheriff's Office investigated this case and you have a
25 terrific Sheriff's Office. Robert Dennis is our lead

1 investigator, Captain Robert Dennis. That's why he's
2 sitting at the table with us. But they're involved in
3 this case. The charge against Mr. Toaby Trapp is
4 trafficking in crack cocaine. And trafficking, what that
5 means is it's all weight-based. Ten grams or more of
6 crack cocaine means that's trafficking amounts. Think of
7 this, Sam's club amount, it's bulk, it is bulked out as
8 crack cocaine. It's not buy one bag of chips at a
9 convenience store, it's you buy a six-month supply of
10 chips is essentially trafficking. That's what you got and
11 it's all based on weight. You got to have ten grams or
12 more and in this case, the weight of the crack cocaine
13 found in Mr. Toaby Trapp's house on October 8th of 2011
14 was more than 10 grams. It was twice that. About 21
15 grams of crack cocaine was seized at Mr. Trapp's house on
16 the evening of October 8th or early morning hours of
17 October 9th of 2011. Mr. Trapp resided at 91 Ranches
18 Drive. That's out in the county. I'm not exactly certain
19 where. I can't describe it, but it is here in Newberry
20 County. Mr. Trapp and how this came about, when I tell
21 you this, you just got to listen, because these things
22 happen. We're all human beings. We make a mistake. Mr.
23 Trapp told on himself. Unwittingly, inadvertently told on
24 himself about having crack cocaine. Because Mr. Trapp
25 arrives homes on the evening on October 8th, comes in his

1 house and notices things are scattered about, ransacked.
2 Sees things on his floor, sees shoeboxes taken out of his
3 closet in his bedroom, the bedroom is ransacked. Sees the
4 backdoor open. The backdoor was closed when Mr. Trapp was
5 home earlier. Now, it's open. It was pried. Now, the
6 shoeboxes in the bath, or excuse me, in the bedroom,
7 \$7,000.00 dollars is missing. Toaby Trapp called 911 and
8 reports my home has been burglarized, you know send the
9 police. The police come. Deputy Brad Epps who's sitting
10 right there is first on the scene to take the initial
11 report or being he's the first responding deputy I should
12 say. Toaby Trapp tells him about what happened and says,
13 you know, \$7,000 cash was taken out of my bedroom along
14 with maybe some jars of change I think and, you know, I'm
15 making a report. And see, Toaby didn't touch anything
16 because he wanted to preserve the crime scene for the
17 police to investigate. So he didn't touch anything. He
18 wanted to make sure the police could investigate properly,
19 perhaps fingerprints, take photos. Brad Epps is just a
20 road deputy at that time. Now, I believe he's in
21 investigations. But he then calls, Deputy Brad Epps calls
22 Robert Spreng, the on-call investigator that night, to
23 come by and process the scene so to speak. So while
24 they're processing the scene, when Investigator Spreng
25 comes out there, that's when they stumbled upon the crack

1 cocaine in a orange pill bottle in Mr. Trapp's bedroom.
2 So then the burglary investigation transforms into a drug
3 investigation all because Mr. Trapp didn't remember to
4 clean up his crack, essentially what happened. Probably
5 more concerned with the \$7,000.00 dollars in cash that was
6 taken is why. And Mr. Trapp later on gives a statement to
7 that effect that it was kind of oops, I was more concerned
8 about reporting a burglary, I forgot to clean my crack
9 cocaine up, forgot to put that away. So that's
10 essentially why this case is here before you today. And
11 Investigator Robert Dennis will talk to you about that,
12 the statement that was made to him. They obtain a search
13 warrant once it becomes a drug investigation to find
14 further drugs and they do. Right underneath that orange
15 pill bottle, they find more crack in two separate plastic
16 baggies. That's seized. I want to talk about how
17 evidence is preserved, the integrity of it just to make
18 sure no one tampers with the evidence. The police don't
19 want anyone tampering with the evidence, obviously,
20 they're the police. They want to preserve this. So we'll
21 talk about the process of how we know that nothing was
22 added or taken away from these drugs. That drugs are then
23 sent to SLED or state law enforcement agency and they
24 analyze drugs. You'll hear testimony from a drug analyst,
25 Lynn Black. She tested the drugs just to make sure that

1 they were indeed crack cocaine and yes, they were. She
2 generated a report and she will testify to that effect.
3 She weighed the drugs. A lab weight of, like I said, 21.3
4 grams is what she is going to testify to in her report.
5 You'll hear that testimony. It's trafficking now. That's
6 twice as much as you need. And so that's the Costco
7 amount of crack cocaine. And all we have to prove is that
8 that crack cocaine was Mr. Toaby Trapp's crack cocaine and
9 he possessed it and he possessed at least 10 grams of it.
10 That's all this case is. So we'll talk about the evidence
11 that was seized. You may see some pictures but that's
12 essentially the case. The statement he makes
13 acknowledging that I forgot to clean up the crack cocaine,
14 I was more concerned about my house being broken into. So
15 that's briefly the facts of his case. Now, I don't know
16 what, Mr. Dietrich Lake represents Toaby Trapp. I don't
17 know if he's going to present a case. He doesn't have to.
18 The burden is solely on the State to prove Mr. Trapp's
19 guilt beyond a reasonable doubt. Mr. Trapp doesn't have
20 to prove it. He does not have to prove one thing and you
21 may say to yourself, you know, a case like this seems
22 pretty open and shut. But in this country, it doesn't
23 matter, you get your day in court and that's why, you
24 know, only in America, that's why that it's kind of good
25 to live in this country because even with these kind of

1 facts, we're still going through the process and that's
2 what matters. You want it to be fair, but you can't
3 ignore the true. So that's why when you go to your jury
4 room, you're going to return a verdict that speaks the
5 truth and the Judge will tell you that. You're the finder
6 of facts. You have to tell us guilt or innocence and
7 that's your job. You have to determine somebody accused
8 of a crime in Newberry County is actually guilty or
9 innocent. But the verdict has to be based on the truth is
10 what we're here for. Why do people-- why are they sworn
11 under oath when they testify, because we want them to
12 speak the truth, we want them to tell the truth, we want
13 things to be accurate, so use your common sense. Don't be
14 fooled by misdirection. I don't know the line of
15 questioning that Dietrich Lake may pursue in this case,
16 but I ask you to pay attention to what makes sense. If
17 you heard these facts outside of this courtroom before you
18 are sworn in as a juror, what would you think? You would
19 think yeah, that's Toaby Trapp's crack. You would think
20 that. So don't let that common sense that you've had out
21 there, don't suspend that. Keep that with you while
22 you're a juror in this case, because that's what it is,
23 it's a common sense approach. And the facts in evidence
24 from the witness stand will bear that out what happened,
25 that that was Mr. Toaby Trapp's crack and he possessed and

1 we'll see it as found in his bedroom. Thank you.

2 THE COURT: Thank you, Mr. Daniel.

3 MR. LAKE: Here's a famous quote, and I want to make
4 sure that I get it right, "That an injustice anywhere is a
5 threat to justice everywhere." And that's what we have in
6 this particular case, an injustice. I know the prosecutor
7 has kind of focused their attention on me. Well, I'm not
8 the focus of the case. I'm not going to misdirect you.
9 I'm not going to try to change anything. As he indicated,
10 the facts and the evidence will speak for themselves. And
11 for eight years, that's what I did. I was a prosecutor.
12 And ladies and gentlemen of the jury, I'm not going to
13 waste your time on a Friday just to be doing it. I'm not.
14 He talked about rights that we have. He's right. We have
15 a right to a jury trial. He has a right to the jury trial
16 because one thing, he says that he is innocent of this
17 particular event. And that's what law enforcement wants
18 you, they want you to believe, oh, let's take a look at
19 this right here. Use your common sense and just listen to
20 what you hear from us and that he should be found guilty.
21 Well, that's not how the law works. What happened was on
22 October 8th, 2011, Mr. Trapp comes back home, because this
23 case starts off as a burglary. He calls law enforcement
24 to come out there and respond. He's there with his son.
25 Investigator, I mean I guess now, Epps arrives at the

1 scene and that's where things go bad and they go horribly
2 wrong for Mr. Trapp. And do you ask him does he know why?
3 He's going to tell you no, he doesn't know why. Because
4 Investigator Spreng comes out there and Investigator
5 Spreng comes out there because you will hear Investigator
6 Epps now tell you that, well, I'm just a responding
7 officer at this particular time. This is a little bit
8 more than I can handle, so now I'm bringing in the
9 investigator and he is solely the investigator, I guess,
10 for the scene. So he comes out there and he takes
11 photographs. And ladies and gentlemen of the jury, I'm
12 going to say one thing, because you're not going to hear
13 from Investigator Spreng who came out there. You're not
14 going to hear from him at all. There's Investigator
15 Bouknight who came out there to the scene. You're not
16 going to hear from him at all either. But thank God, that
17 when Investigator Spreng came out there, that he started
18 taking pictures because if he did not take a picture of
19 the scene before the narcotics people got there, ladies
20 and gentlemen of the jury, you all would never know the
21 truth of what happened. The only thing that you would see
22 is a pill bottle on a dresser and you would automatically
23 think that my guy is guilty, but he's not. Because what
24 you're going to see is photographs. They're not my
25 photographs. They're law enforcement's photographs and

1 they were digital photographs that were taken in order.
2 And you're going to see photographs where you see the
3 entryway to Mr. Trapp's room. And you're going to go in
4 there and you're going to see boxes spread everywhere, all
5 over the floor, because they've ransacked. Whoever robbed
6 this place has ransacked it. And they talk about
7 fingerprints. Ladies and gentlemen of the jury, I
8 challenge them because I didn't get any information of
9 where they did any fingerprints on anything where there
10 was a burglary or whether it was a drug case. They did
11 nothing. But the one thing that was beneficial is that
12 you see those photographs as he's coming into the room and
13 that's where Mr. Trapp gets lucky, and you're going to get
14 a chance to see that but again, they're not my
15 photographs. You're going to see photographs of the area
16 where they allege these drugs were at, because you're
17 going to see the boxes as to the condition of the place
18 where it was located. You're going to see the T.V. and
19 you're going to see the dresser. And you're going to see
20 in that area, and I'm going to call it alleged pill bottle
21 is not there. You will not see it in those photographs.
22 Then somehow later, and I'm waiting to get information
23 because, you know, again two of the people you're not
24 going to hear from. So I want to hear Captain Dennis
25 explain to us how all of the sudden that one pill bottle

1 ended up being there later on because then as he comes in
2 all of the sudden, now there are up-close pictures and so
3 now, oh, now we got drugs here. And based upon that, they
4 claim they going to get a search warrant and then based
5 upon those search warrants, they come back to the scene,
6 oh, we found drugs in here. Oh, he just admits. Oh, I
7 forgot about it. I forgot about the drugs. But where is
8 the statement at? You won't see not one written
9 statement. You won't see no video. The only person that
10 you going to hear from is Investigator Dennis, he's not
11 even going to tell you that he even did a report. For
12 something that happened three years ago -- if this guy has
13 confessed, wouldn't you think you'd write a report saying
14 that he confessed, if you are saying that he confessed to
15 you? That's 101 law enforcement. That's what you do
16 reporting for so that you can memorialize and come back
17 and testify later. But now all of the sudden years later,
18 now it's oh, this is what he confessed to. But again,
19 ladies and gentlemen, that's what I say to you sometimes
20 things are not quite what they appear. And thank God we
21 do live in this system, because he has at least another
22 buffer, another layer of protection and that's you because
23 you're the jury in this particular case. You get an
24 opportunity to hear the facts of the case and determine
25 whether they have met their burden of proof and that is a

1 proof beyond a reasonable doubt. And what that means, you
2 have to be firmly convinced that those drugs were there
3 and the drugs was there before law enforcement got there,
4 because that's what the issue is. And, ladies and
5 gentlemen of the jury, I submit to you when you see these
6 photographs, it's going to be clear that those drugs were
7 not there. But again we'll never know why we're at this
8 particular stage. But one thing that you need to be aware
9 of when it relates to Mr. Trapp, and I think this Judge
10 has talked about it. He's going to instruct you what the
11 law is in this particular matter but there is a
12 presumption of innocence in this particular case. But,
13 you know, more so it's more than just a presumption. Mr.
14 Trapp is innocent of this particular crime. That's why we
15 are here and that's why we're not wasting your time. When
16 they get up here and testify, the one thing that I'm going
17 to do is I'm going to do a couple of things. I'm going to
18 make sure they testify as to what they personally knew,
19 what they personally have knowledge of, because that's
20 what the only thing you're supposed to testify in the
21 first place. They give us Captain Dennis who basically
22 did nothing in this particular case. While the
23 investigator that took the photographs and collected the
24 evidence, we don't hear from him at all. You're going to
25 hear from Investigator Dennis. They are going to try to

1 bring in the person that actually did the testing. We're
2 not going to sit here and deny that it was crack cocaine.
3 What we're saying is that it wasn't his. But they're
4 going to bring that person in. They are going to bring
5 the responding officer to just testify to what it looks
6 like and that's it. And I think they may bring in one
7 other person who wasn't even doing the job back in 2011
8 that has any relevance to this particular case. That's
9 all you are going to hear from, but they want you to
10 convict him and call him a trafficker based upon that.
11 That's what annoys me and that is also scary. But again,
12 that's why we have jury trials in this particular case.
13 So I ask that you all take your role seriously and which I
14 know you will. I appreciate your time. This has been
15 hanging over Mr. Trapp's head, you know, for some time.
16 They've had an opportunity to have their witnesses here,
17 but they're not here. They call the cases, they decide
18 when cases are going to be called. And so they decided
19 that they were going to call this case today, Friday
20 morning. So we're here and we're happy to be here. I
21 just ask that you listen to the facts and pay close
22 attention to those photographs. Those photographs that
23 show when Investigator Spreng gets there and you see --
24 have an opportunity to see that dresser. That is where
25 you need to look for, that particular dresser. And I am

1 telling you that there is no pill bottle. Ladies and
2 gentlemen of the jury, again my name is Dietrich Lake.
3 Even though I don't live here in Newberry anymore, I was
4 born and raised here. My parents are still here and the
5 majority of my family is here. Mr. Trapp is a resident of
6 Newberry County. I still consider this, even though I
7 live down there in the Trmo/Ballentine area, this is still
8 home for me. And so you all, each of you, you are his
9 peers and my peers. So I just ask you take your role
10 seriously and we look forward to this particular day in
11 court. Thank you.

12 THE COURT: Thank you, sir. Call your witness.

13 MR. DANIEL: Your Honor, we call Brad Epps.

14 THE COURT: All right.

15 BRAD EPPS, being
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DANIEL:

19 Q Deputy Epps, how long have you been employed with the
20 Newberry Sheriff's Office?

21 A Four years and a few months.

22 Q And what is your current position or rank with the
23 Sheriff's Office?

24 A I'm a sergeant/investigator.

25 Q How long have you been an investigator?

1 A Maybe almost a year now.

2 Q Prior to that, what was your rank?

3 A I was just a road deputy.

4 Q Okay. So October 8th of 2011, you would have just
5 been a road deputy?

6 A Yes.

7 Q Okay. Were you on duty October 8th of 2011?

8 A Yes, I was.

9 Q Did you have an occasion to respond to a call located
10 91 Little Ranches Drive in Newberry?

11 A Yes, I did.

12 Q And that is in the county?

13 A Yes.

14 Q And what was that call in reference to?

15 A It was a burglary.

16 Q And who made -- who was the complaining witness?

17 A Toaby Trapp.

18 Q So you arrive at 91 Little Ranches Road that evening?

19 A Yes.

20 Q About what time?

21 A My arrival time was about 10:19.

22 Q Is that military time, wouldn't that be about 8:00
23 p.m.?

24 A That's 22:19 so that's 10.

25 Q Oh, I thought you said 20:19 or 22:19?

1 A 22:19 is 10:19.

2 Q Okay. So 10:00 p.m., okay, roughly. When you
3 arrived on the scene, what do you observe, who do you meet
4 with?

5 A When I got on the scene, I spoke with Mr. Trapp. He
6 told me that he had came home, went through the front door
7 and noticed some items on the floor and his house had been
8 broken into. He said he had about \$7,000.00 dollars
9 missing and a few other items. And then I looked around
10 and went in the bedroom. The bedroom was ransacked,
11 shoeboxes everywhere, which is where he said he had the
12 \$7,000.00 dollars. So I backed out and called for the
13 on-call investigator which was Investigator Spreng's at
14 the time.

15 Q And let me back up. Mr. Trapp is taking you through
16 the house?

17 A Yes.

18 Q And he reported that, you said \$7,000.00 dollars?

19 A Yes.

20 Q In cash?

21 A Yes.

22 Q And where was that located?

23 A According to Mr. Trapp, it was in a shoebox in his
24 closet.

25 Q In his bedroom closet?

1 A Yes.

2 Q Okay. And he said things were kind of scattered
3 about?

4 A Yes, sir. There was numerous shoeboxes all over the
5 floor.

6 Q Was it just the bedroom that had been ransacked, are
7 any other rooms in disarray?

8 A As far as I can remember, there wasn't any other room
9 that was ransacked, just his bedroom.

10 Q How about signs of forced entry?

11 A The rear door was pried open.

12 Q Pried open?

13 A Yes.

14 THE COURT: Speak up a little bit for me, please.

15 Q What other items did Mr. Trapp report to you that had
16 been taken? You said some other items.

17 A A piggy bank filled with miscellaneous coins, maybe
18 pennies, dimes, quarters, nickels. And a large beer
19 bottle filled with quarters and dollars.

20 Q Did Mr. Trapp indicate, had he moved anything around
21 himself before you got there?

22 A No.

23 Q So Mr. Trapp is reporting that his house was
24 ransacked by some unknown individual?

25 A Yes.

1 Q I'm going to show you a series of photos, Deputy
2 Epps. And you said you did call an investigator?

3 A Yes.

4 Q And who was that investigator?

5 A Investigator Sprengs.

6 Q And where is Investigator Sprengs?

7 A Currently?

8 Q Currently.

9 A As far as I know he's working in Florida somewhere.

10 Q Okay. So he is no longer with the Sheriff's Office?

11 A No longer with the Sheriff's Office.

12 Q When did Investigator Spreng leave the Sheriff's
13 Office?

14 A I believe it's almost two years ago if not two years
15 ago.

16 Q Okay. So he's in Florida right now?

17 A Yes.

18 Q Is he still in law enforcement, do you know?

19 A I have no idea.

20 Q Okay. So what was, so your role was just you were
21 the first responding deputy?

22 A Yes.

23 Q You observe all of these items you said that had been
24 ransacked?

25 A Yes.

1 Q And then you called Investigator Spreng?

2 A Yes.

3 Q At that point is that the extent of your role?

4 A For the most part, yes sir. I mean I photographed

5 the backdoor and that was pretty much my role once

6 Investigator Sprengs got there.

7 Q Okay. You did take some photographs?

8 A Yes, of the backdoor.

9 Q What kind of camera did you have?

10 A A little Canon camera. I don't know the name brand

11 of it.

12 Q Is it like a digital camera?

13 A Yes, it was a digital camera.

14 Q Okay. I know a lot of days people just take pictures

15 with their phone. Did Investigator Spreng, did he take

16 pictures as well?

17 A Yes, he did.

18 Q Okay. Well, I'm going to show you a series of photos

19 that's been marked for ID purposes, State's number 10,

20 just tell me do you recognize that?

21 A That's the rear of the residence where entry was

22 made.

23 Q Okay. So the rear of the backdoor?

24 A Yes.

25 Q And you said that's where entry was made?

1 A Yes.

2 Q Okay. I'm going to show what's been marked as
3 State's number 11. You recognize that?

4 A Yes, sir. That's the pry marks where the door was
5 pried open.

6 Q Okay. It looks like pry marks?

7 A Yes, sir.

8 Q The door was pried open?

9 A Yes.

10 Q Did you suspect a tool or anything had been used?

11 A It could have been anything.

12 Q Okay. State's number 12, you recognize that?

13 A Yes, sir. This is another photograph of the pry
14 marks on the door.

15 Q Okay. State's number 14?

16 A That's the living room.

17 Q Was the living room ransacked?

18 A No, sir.

19 Q Okay. State's number 15, you recognize that?

20 A I don't know what area of the house it's in, but I
21 remember Mr. Trapp telling me that there were CDs on the
22 floor.

23 Q Okay.

24 A I want to say that's the first thing he noticed when
25 he walked in.

1 Q That the CDs were scattered on the floor?
2 A Yes.
3 Q Okay. State's number 16, you recognize that?
4 A More CDs on the floor.
5 Q Okay. State's number 17, what is that?
6 A That's Mr. Trapp's bedroom.
7 Q That's Toaby Trapp's bedroom?
8 A Yes.
9 Q Okay. And that appears to be a lot on the floor
10 there. What is that?
11 A Shoeboxes.
12 Q Okay. Is that where you said shoeboxes were
13 scattered about. Is that where certain things were taken
14 that were in shoeboxes?
15 A Yes, sir. He said the \$7,000.00 dollars was in the
16 shoebox in his closet.
17 Q Okay. State's number 18?
18 A More pictures of the shoeboxes on the floor.
19 Q And then State's number 19?
20 A More pictures of the bedroom with the shoeboxes.
21 Q All right. Did you take these photos?
22 A No sir, I did not.
23 Q But you were, were you present when the photos were
24 being taken?
25 A Yes.

1 MR. DANIEL: Your Honor, I'd offer these exhibits for
2 admission into evidence.

3 THE COURT: Any objection?

4 MR. LAKE: Can I see the photographs? Your Honor,
5 may I approach?

6 (Whereupon, a bench conference was held in the
7 presence of the jury but out of the hearing of the
8 jury.)

9 Q Do these photographs are, do they represent, I guess,
10 a clear and accurate depiction of what you observed on the
11 night of October 8th, 2011?

12 A Yes.

13 Q Now, you said you had taken some photos yourself?

14 A Yes, of the rear door.

15 Q Did you take any other photos?

16 A No, sir.

17 Q Who would have taken these photos, do you know?

18 A Investigator Sprengs.

19 Q Now, was that the extent of your role in this case?

20 A Once Investigator Sprengs got there, I passed the
21 information along that was given to me. I told him what
22 the bedroom looked like and he went in and started looking
23 around.

24 Q Okay. Any other deputies arrive?

25 A Not at that time.

1 Q Did you discover any drugs in the house?

2 A I did not. Not until Investigator Sprengs got there.

3 Q Did you see -- was Toaby Trapp, was he a suspect in
4 your investigation for anything?

5 A No, sir. His house was broken into. He was a victim
6 of a burglary.

7 Q Okay. At what point did you leave that residence?
8 Did you clear the scene at some point?

9 A I did because we had another call like right down the
10 road at the skating rink.

11 Q Do you recall Investigator Captain Robert Dennis
12 being on the scene?

13 A Yes.

14 Q Do you recall any search warrants being issued?

15 A I don't recall it. No but -- no, I don't.

16 Q And you said you were responding to a call later on?

17 A Yes. Once Investigator Sprengs and I believe Captain
18 Dennis was there and I want to say the narcotics officer
19 was there, too. We had another call down the road at the
20 skating rink and I left and came back once I cleared from
21 that call.

22 Q And why again -- why was a narcotics officer involved
23 in a break-in?

24 A Because once Investigator Sprengs got there, he
25 walked in the bedroom where everything was ransacked,

1 looking around the room and looked on the dresser which I
2 believe was to the right of the door and noticed a large
3 amount of crack in a pill bottle.

4 Q Did you observe this crack in the pill bottle?

5 A Yes, I did.

6 Q Okay. And at that point other -- you said other
7 officers arrived?

8 A I don't know when Investigator Sprengs calls either
9 Captain Dennis or the narcotics officer, Bouknight. I
10 don't know when he called them.

11 Q Okay. But you did clear the scene after that?

12 A Yes.

13 Q And you were not in investigations at that time?

14 A I was not.

15 MR. DANIEL: And, Your Honor, I would offer these
16 into evidence now at this point.

17 THE COURT: Any objection?

18 MR. LAKE: No objection.

19 THE COURT: All right. Proper foundation has been
20 laid, they'll be admitted.

21 (Whereupon, State's Exhibits 10, 11, 12, 14, 15, 16,
22 17, 18 and 19 were admitted into evidence.)

23 MR. DANIEL: No further questions. Please answer any
24 questions Attorney Lake has for you.

25 CROSS-EXAMINATION

1 BY MR. LAKE:

2 Q Investigator Epps, how are you doing today?

3 A I'm all right. How are you doing?

4 Q Just fine. You said you got there about 10:19?

5 A Yes, sir.

6 Q Who was with you when you arrived?

7 A I was by myself.

8 Q And you indicated that I guess -- describe for the
9 jury this trailer once you kind of walked into it?

10 A When you walk up on the porch and you walk in the
11 front door which is the living room. And I don't know how
12 many rooms are on off to the right. After you go through
13 the living room to the left there is a kitchen. And then
14 is the master bedroom which is where Mr. Trapp said his
15 bedroom was.

16 Q And are you the first officer there?

17 A I was.

18 Q And how long was it that you're there actually at the
19 scene before either backup arrives or you call
20 Investigator Spreng?

21 A I couldn't tell you.

22 Q And more than 5 minutes, more than 30 minutes?

23 A I don't know. I couldn't tell you. I don't want to
24 guess and be wrong.

25 Q Other than Investigator Spreng, did anybody else come

1 out there?

2 A Yes.

3 Q What other officers came out there?

4 A Captain Dennis and the narcotics officer, Bouknight.

5 Q And when they -- when you first arrived, describe the
6 encounter between you and Mr. Trapp at this particular
7 time?

8 A He gave me a brief rundown of what he saw when he
9 entered the residence which was CDs on the floor and
10 showed me where everything was in the house, where his
11 bedroom was and told me what he had missing.

12 Q And did he actually physically walk you through the
13 scene?

14 A Yes.

15 Q Okay. And I know you testified earlier he didn't
16 touch anything, is that right?

17 A Prior to me getting there, I don't know. But when I
18 was there, no.

19 Q You never personally observed him touch anything--

20 A I did not.

21 Q ---attempt to move anything, attempt to conceal
22 anything?

23 A I did not.

24 Q And he never said to you, man, I got some drugs over
25 here that I forgot about?

1 A No sir, he didn't.

2 Q That entire time, now did you ever get a statement
3 from him or anything along those lines?

4 A I did not.

5 Q And you -- just a few minutes ago you were shown some
6 photographs that have been admitted into evidence. And I
7 think which is State's exhibit number 15 and 16. Were
8 these the CDs that you're referring to that got displaced?

9 A Yes.

10 Q And these particular CDs, they weren't in Mr. Trapp's
11 bedroom, correct?

12 A I don't think they were. I want to say they were in
13 somewhere close to the kitchen and the living room area.

14 Q Okay. So there was another part of the area that had
15 been disturbed along with prying the door open, correct?

16 A Yes.

17 Q And let me show you some better photographs and what
18 I would mark as Defendant's number 3, Defendant's number
19 2, Defendant's number 4, Defendant's number 6 and
20 Defendant's number 7. Just get you to take a look at
21 these photographs and just kind of let me know whether
22 those, I mean they are almost identical same photographs,
23 but are they in the same condition as how you found the
24 scene when you got there?

25 A Yes, sir. That's how it was when I got there.

1 Q That fairly and accurately depicts that?

2 A Yes.

3 Q And at this particular time, what it fairly and
4 accurately depicts, is this when you are with Mr. Trapp as
5 he is walking you through?

6 A Yes.

7 MR. LAKE: Your Honor, at this time, Defendant's
8 would admit into evidence, Defendant's number 2, 3, 4, 7
9 and 6 into evidence.

10 MR. DANIEL: I'll stipulate, Your Honor, they can
11 come into evidence.

12 THE COURT: All right. They're in.

13 (Whereupon, Defendant's Exhibits 2, 3, 4, 6 and 7
14 were admitted into evidence.)

15 Q Okay. Just for the record, go through each one
16 starting with exhibit number two and describe what you see
17 in each particular photograph.

18 A That's a picture taken from, what looks like the
19 hallway going into Mr. Trapp's bedroom.

20 MR. LAKE: Your Honor, may I stop the witness for
21 just a second. Do you mind if I get him to step down
22 maybe in front of the jury and just kind of illustrate or
23 would you prefer him here?

24 THE COURT: All right.

25 MR. LAKE: I'm not technically savvy, Your Honor, so

1 I'm going to need some assistance. Your Honor, I may just
2 have him to stand up. It's easier for me to do this way
3 or here, I don't want to be leaning over the jurors. I
4 just need you to stand up and speak as loud as possible,
5 okay?

6 DEPUTY EPPS: Okay.

7 Q Using State's exhibit number 2, describe for the jury
8 what you see and get a little bit closer so they can see
9 it also.

10 A This appears to be the hallway leading up to Mr.
11 Trapp's bedroom.

12 Q And can you see some of the items that you were
13 describing?

14 A Yes, shoeboxes.

15 Q And this is how you found it when you first got
16 there, correct?

17 A Yes.

18 Q And just starting off with State's exhibit number --
19 I mean, I'm sorry, Defendant's exhibit number 3, what is
20 this?

21 A Mr. Trapp's bedroom again with the shoeboxes and the
22 drawers being pulled out.

23 Q Again, this is the same condition that it was in at
24 the time that you walked through with him, correct?

25 A Yes.

1 THE COURT: All right. I'm want a sidebar real
2 quick.

3 (Whereupon, a bench conference was held in the
4 presence of the jury but out of the hearing of the
5 jury.)

6 THE COURT: I need to put something on the record,
7 ladies and gentlemen. Y'all step to the jury room. We'll
8 take a short break.

9 (Whereupon, the jury was excused from open court for
10 a break.)

11 THE COURT: We will take a break.

12 (Whereupon, a break was taken.)

13 THE COURT: Come to order, please. All right. I
14 expressed a concern I didn't want to trap a witness
15 knowing there's some distinguishing marks on those
16 pictures. Y'all ask questions whatever y'all feel
17 appropriate in cross-examination or on redirect. However
18 y'all want to do that, and I think y'all have studied
19 those pictures more than I have after the sidebar, so do
20 whatever you like.

21 MR. LAKE: All right. Thank you.

22 THE COURT: All right. We ready to continue on?

23 MR. LAKE: Yes, Your Honor.

24 MR. DANIEL: Yes.

25 THE COURT: All right. Bring the jury in please,

1 ma'am.

2 (Whereupon, the jury came into open court at
3 approximately 11:15 a.m.)

4 THE COURT: All right. Mr. Lake, continue on.

5 MR. LAKE: Thank you, Your Honor.

6 CONTINUE CROSS-EXAMINATION

7 BY MR. LAKE:

8 Q I think that, Investigator, I've shown on 2 and 4.
9 I think you've already identified what was in number 4.

10 A 4.

11 Q And I think you've already identified what was in
12 number 3, correct? I think you looked at them
13 chronologically?

14 A I believe I did.

15 Q Okay. Well, just again briefly, just kind of make
16 sure that 3 is in the condition in which you found it when
17 you got to that location?

18 A Yes.

19 Q Okay. And photograph 6, is that the condition that
20 you found it?

21 A Yes.

22 Q Let me show you two other photographs that I didn't
23 show you initially which would be Defendant's exhibit
24 number 7 and 13 and ask you do they fairly and accurately
25 depict what the scene looked like at that particular time?

1 A Yes.

2 MR. LAKE: Your Honor, at this time the Defendant
3 would offer Defendant's exhibit number 7 and 13 into
4 evidence.

5 THE COURT: Any objection?

6 MR. DANIEL: No, sir, Your Honor.

7 THE COURT: All right. They're in, too, also.

8 (WHEREUPON, Defendant's Exhibits 7 and 13 were
9 entered into evidence.)

10 MR. LAKE: Permission to publish to the jury?

11 THE COURT: Sure.

12 Q And at the time that you walked through with Mr.
13 Trapp, did he step -- did he go all the way up in there
14 and step over the boxes, step on any boxes or do anything
15 when he went over there?

16 A No.

17 Q And all of the things that you did that particular
18 night, did you memorialize that in a report?

19 A Yes, sir.

20 Q Did you put all that, everything that you did that
21 night in a report?

22 A Yes.

23 Q Could you explain to the jury---

24 A With the---

25 Q I'm sorry.

1 A The only thing that---

2 Q Make sure you stay over--

3 A Let me read back over it real quick.

4 Q Just let me know when you're ready, okay?

5 A The only thing that's not on here that I can see is

6 where I took the pictures of the backdoor.

7 Q No, I wasn't asking you, I was asking did you do a

8 report?

9 A Yes.

10 Q Okay. And what's the purpose of doing a report?

11 A To tell what happened.

12 Q For purposes of what?

13 A Whoever's calling. I mean to report whatever crime

14 has occurred.

15 Q And so also do they serve the purpose of also

16 allowing you to testify?

17 A Yes.

18 Q And how does that help you when it comes time to

19 testify?

20 A Well---

21 Q How do your reports assist you in testifying?

22 A In being able to recall what I done that, what I did

23 in the, when I arrived on the scene.

24 Q And why is that important for a trial?

25 A It shows everything that was done.

1 Q And will that help you remember a whole lot more
2 about what was said and done by having a report generally?

3 A Yes.

4 Q Does it make it tougher to testify if you don't have
5 those reports if a significant period of time has gone by?

6 A Yes. Well, I mean, there is some stuff that you
7 don't remember also.

8 Q That the report kind of will, refreshing your memory,
9 correct?

10 A Yeah.

11 Q And in this particular report that you did, you
12 indicated that you couldn't enter Trapp's room because of
13 the number of shoeboxes and everything that was on the
14 floor?

15 A Correct.

16 Q And also I know you testified that his room was
17 damaged, but also this report indicates that there was --
18 they had also went into his son's room, correct?

19 A It says that Mr. Trapp said they went in his son's
20 room as well.

21 Q And you personally observed, I guess, the kitchen
22 cabinets were open?

23 A Let's see. Yes.

24 Q And you need to look at your report to remember
25 everything you did, am I right?

1 A Yes.

2 Q If you didn't have that report you wouldn't know that
3 you had saw the kitchen doors open, correct?

4 A Correct.

5 Q You wouldn't have known it indicated that someone
6 else that went into his son's room, correct?

7 A That's correct.

8 Q Because this happened, when did this happen?

9 A 2011.

10 Q Almost three years ago?

11 A Yes, it has been three years.

12 Q And I don't know whether you had answered this
13 question before but at what point do you decide that you
14 need to call in for additional assistance?

15 A Due to the severity of the room. It was, stuff was
16 everywhere.

17 Q And how long, do you recall how long you were out
18 there before Investigator Spreng showed up?

19 A I can't recall.

20 Q It is a significant amount of time or a short period
21 of time?

22 A I can't recall.

23 Q Did you actually personally see Investigator Spreng
24 yourself?

25 A Once he got on the scene, yes sir, I did.

1 Q How did he come to be out there. I know you called,
2 who did you call?

3 A Normally what we do is we call dispatch,
4 communications, and have them to get the on-call to
5 respond to what we have.

6 Q And you are the initial reporting officer, would you
7 have the responsibility, I guess, of kind of gathering
8 reports to know exactly when people are coming and going
9 as it relates to the scene?

10 A Gather a report as in?

11 Q Knowing when additional officers came out there,
12 knowing who came out there and when they came out there?

13 A You mean like another log or something, is that what
14 you are asking?

15 Q Either a supplemental report or log or anything along
16 those lines?

17 A Once the investigator arrived that is when he would
18 take over the scene.

19 Q And what was your role at that particular time, after
20 the investigator arrived and you briefed him in terms of
21 what happened?

22 A To assist him with whatever he needed.

23 Q Did you have to provide him with any assistance or
24 anything along those lines?

25 A I didn't that night, no sir.

1 Q And where were you at when he went back into the
2 home?

3 A I was behind him.

4 Q And where is Mr. Trapp at this particular time?

5 A He was outside.

6 Q And who is out there with him?

7 A The best I can remember I believe his son was there.

8 Q Do you recall how old his son was?

9 A Anywhere between maybe 15 and 18.

10 Q And I think it was your testimony, if I am correct,
11 correction, was there anybody else out there besides the
12 son?

13 A Not that I can recall.

14 Q And when you are walking back into the house with
15 Investigator Spreng, where all do y'all go?

16 A We go throughout the house. I take him to Mr.
17 Trapp's room, he walks through and looks around. And that
18 is when he noticed the crack on the dresser or nightstand.

19 Q And at this particular point where is this crack
20 alleged to be at?

21 A It was either a dresser or nightstand. I am not real
22 sure, it was on a piece of furniture in the bedroom.

23 Q You have no clue where it was at?

24 A What do you mean by where?

25 Q Where in the house?

1 A It was in his bedroom.

2 Q It is your testimony that you were with him as y'all

3 walked through the house and he found this, exactly where

4 did he find it at?

5 A Where in the bedroom I couldn't remember. It has

6 been three years ago.

7 Q That is why you should memorialize those kinds of

8 things? Did you memorialize that in your report that you

9 observed him, Investigator Spreng, find any quantity of

10 drugs?

11 A I did not.

12 Q That is not in your report, is it?

13 A No sir, it is not.

14 Q That is very important, isn't it?

15 A I would agree.

16 Q That is more important than whether the kitchen doors

17 are open, correct?

18 A I would say it is about the same.

19 Q So you equate having kitchen doors open the same as--

20 A -- it is part of what I am looking at.

21 Q Just answer the question. So you equate having

22 kitchen doors open, which you memorialize in this report,

23 versus not putting into this report that I found a whole

24 bunch of crack.

25 A Well, I didn't find it.

1 Q Well, you observed it with him as y'all were working
2 through. But you didn't put it down as important.

3 A It is not in my report.

4 Q And it is not in your report where these actual drugs
5 were found either, were they?

6 A No sir, it is not.

7 Q But that is important too, isn't it. Don't you think
8 that would have allowed the jury to know exactly what you
9 saw at that particular time?

10 A Yes, sir.

11 Q And those photographs, again, show what you look like
12 when you and Mr. Trapp were walking up through there,
13 correct? The photographs that we have already entered
14 into evidence?

15 A Yes.

16 Q And did you ever touch whatever this, well actually,
17 you said you saw it. What did you actually see?

18 A A large quantity of crack in a pill bottle.

19 Q And did you know what that was when you first saw it?

20 A Yes. Well, that's what it appeared to be.

21 Q Okay. And what kind of pill bottle was it?

22 A It was -- I don't remember what color it was. I just
23 know it was a clear pill bottle.

24 Q It's a clear pill bottle?

25 A Yes. Clear as in you can see through it. I don't

1 know what, I don't remember what color it was.

2 Q Okay.

3 A I mean, when I mean clear, I mean you could see
4 through it but as far as if it had a color, I couldn't
5 tell you what color the bottle was.

6 Q Okay. So you couldn't tell me where it was located.
7 You can't tell me whether it's a clear, plastic type or do
8 you know whether it had a name on it?

9 A I can't recall.

10 Q You can't recall that either? Wouldn't that have
11 been important if Mr. Trapp's name was actually on this
12 pill bottle that y'all alleged to have found crack in it?

13 A It would have been, yes sir.

14 Q And that would have been something that needed to be
15 in a report also, correct?

16 A Yes.

17 Q And do you know -- have any personal knowledge as to
18 where that's in anybody's report that this alleged pill
19 bottle had Mr. Trapp's name on it?

20 A Not to my knowledge. I mean, I had to look over the
21 original report to refresh my memory.

22 Q Do you -- did you ever touch that pill bottle?

23 A No.

24 Q Did anyone ever touch it in your possession while it
25 was in your presence?

1 A Not that I can recall.
2 Q Not even Investigator Spreng?
3 A Not that I can recall.
4 Q And you said that you left the scene. How long did
5 you leave the scene?
6 A I couldn't tell you.
7 Q But you ended up coming back?
8 A Yes.
9 Q Why'd you come back?
10 A Because I still, I was still, had to do everything as
11 far as the report.
12 Q Well, what did you do as far as, I guess you would
13 have been the person with the burglary, right?
14 A Yes.
15 Q So did you order anyone out to do any fingerprints?
16 A Did I order anyone to do any fingerprints?
17 Q Yeah, of the door or anything? Did you order anybody
18 to do the fingerprints of the bottle?
19 A No.
20 Q Okay. Did you order anybody to do fingerprints of
21 anything within that house?
22 A No.
23 Q Did you do any DNA swabs of anything that may have
24 been touched---
25 A No.

1 Q ---whether it might have been the pill bottle,
2 whether it might have been a door, whether it'd been
3 anything?

4 A No.

5 Q So exactly what did you do when you came back then?

6 A I stood around.

7 Q You stood around. And while, as you're standing
8 around, where is Mr. Trapp?

9 A I don't know. He may have been inside. He may have
10 been outside. I don't know.

11 Q Would that be important to put in that report where
12 he was at?

13 A He on the scene. I do know that much because there
14 were three other people there.

15 Q Was he in custody at the time you saw him or the next
16 time you saw him?

17 A I don't remember.

18 Q Did he ever confess to you at any point while you
19 were out there, either to you or in your presence that
20 somehow these drugs were his and that he admitted
21 responsibility for it?

22 A Not in my presence, no.

23 Q If you had to kind of -- I'm looking at your report
24 and it indicates that you arrived at 22:19 which is 10:19,
25 but you departed at 2:44 in the morning?

1 A Yes, sir.

2 Q Okay. And is that 2:44 when you left for the first
3 time and then came back?

4 A No, that's when I left for good.

5 Q So you're out there for how many hours, almost five
6 hours or something like that?

7 A That's pretty close.

8 Q Four or five hours? But you don't know where Mr.
9 Trapp was that entire time?

10 A He was on the scene.

11 Q Was Investigator Spreng in your presence that entire
12 time?

13 A No.

14 Q What about Investigator Bouknight, was he in your
15 presence the entire time?

16 A Like I say, because I left.

17 Q What about Captain Dennis?

18 A No sir, he wasn't.

19 Q When did Captain Dennis arrive at the scene?

20 A He got there a little bit after Investigator Sprengs
21 got there.

22 Q And did he take control of the scene or was
23 Investigator Sprengs still in control?

24 A As far as I know, Investigator Sprengs was still in
25 control of the scene, because he was the on-call

1 investigator.

2 Q And what did you observe Captain Dennis do out there?

3 A I don't recall.

4 Q Did you ever at any point see Captain Dennis read Mr.

5 Trapp his Miranda rights?

6 A I can't recall that.

7 Q You can't recall that. So you can't recall any

8 Miranda. Do you recall any conversation between Captain

9 Dennis and Mr. Trapp in your presence?

10 A I can't recall that either. And he may have spoken

11 with him, he may not. I don't remember.

12 Q Do you know where those photographs that you took of

13 the area?

14 A Do I know where they are?

15 Q Yeah, where they are?

16 A Where they are?

17 Q Did you turn them in or turn them over to anyone?

18 A They were attached to the report.

19 Q Which report was that?

20 A This one for the burglary, the report for the

21 burglary.

22 Q Did you ever make any arrests on the burglary?

23 A Did I? No, sir. I wasn't the investigator.

24 Q You wasn't the investigator. Well, you said

25 something about Investigator Sprengs is no longer here?

1 A Yes. He's no longer here.

2 Q And do you know exactly where -- I'm sorry, go ahead.

3 A He's no longer here.

4 Q Do you know when he left?

5 A It's been at least two years or maybe a little under
6 two years.

7 Q A little bit, possibly a little bit under. And this
8 happened back in 2011, correct?

9 A Yes.

10 Q Have you had any communications or conversations with
11 him since he left the Sheriff's Department?

12 A I have not.

13 MR. LAKE: No further questions.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. DANIEL:

17 Q Deputy Epps, why did you respond to 91 Ranches Drive
18 that evening?

19 A For a burglary.

20 Q For a burglary and crack cocaine investigation?

21 A Well, it started out as a burglary. Then once the
22 drugs were discovered, that's when everything else
23 progressed from there.

24 Q Now, when you got there to the scene, you just saw
25 Toaby Trapp and his son, is that correct?

1 A Yes.

2 Q And Toaby Trapp, what did he -- exactly what report
3 did he report?

4 A He told me that his house was broken into. He said
5 he had approximately \$7,000.00 dollars and a few other
6 items missing of monetary value, money-wise.

7 Q So he only told you what items he was missing?

8 A Yes.

9 Q Did he say he if he had any new items that he never
10 had before?

11 A No.

12 Q Did he report that someone had left a pill bottle
13 that contained a white substance?

14 A No.

15 Q All right. And you said the drugs or what you
16 thought appeared to be drugs on -- you said on a piece of
17 furniture?

18 A Yes.

19 Q What kind of furniture did you observe the drugs on?

20 A It was either a dresser or a nightstand.

21 Q All right. So are you using that kind of
22 interchangeably or are you saying--

23 A -- it was a large piece of furniture.

24 Q Okay. I'm going to show you some photos already been
25 admitted to evidence. And where is that?

1 A That is the nightstand to the left of the bed if you
2 are standing beside it.

3 Q The night, is that---

4 A -- it's a nightstand or either a dresser.

5 Q Okay. There is a nightstand and where is the
6 nightstand?

7 A That's either the dresser or the nightstand. I can't
8 really tell for sure. That's either a dresser or a
9 nightstand.

10 Q What's the T.V. on?

11 A It looks like a dresser, just based on the number of
12 drawers that I can see.

13 Q Okay. And you did -- you said you did observe drugs
14 in a pill container, correct?

15 A Yes.

16 Q Were the drugs in that pill container, were they on
17 the same piece of furniture as the T.V. or a different
18 piece of furniture?

19 A I couldn't remember. I do remember it being on a
20 dresser or either a nightstand. I don't remember on what
21 piece of furniture it was on.

22 Q When you first arrived, you said you observed the
23 shoeboxes in Mr. Trapp's bedroom?

24 A Yes.

25 Q Did you go in, did you go into the bedroom any

1 further?

2 A I did not.

3 Q When did you go into the bedroom?

4 A Once Investigator Sprengs got there.

5 Q And who was it that discovered the drugs?

6 A Investigator Sprengs.

7 Q He saw it first? Investigator Spreng saw it first?

8 A Yes.

9 Q And then when did you see it?

10 A When he said, oh, that's crack.

11 Q How, were you standing close by?

12 A Yes. I was behind him but when he said, oh, that's

13 crack. I turned and looked around his shoulder and looked

14 at it.

15 Q And, Deputy Epps, do you recognize this?

16 A Yes.

17 Q What is that?

18 A A pill bottle with what appears to be crack in it.

19 Q And was that in the bedroom?

20 A Yes.

21 Q And you said you were behind Investigator Spreng?

22 A Yes.

23 Q And then you did go to observe the drugs at that

24 point?

25 A Yes.

1 Q And is this what you observed?

2 A Yes.

3 MR. DANIEL: Your Honor, I'd offer Defense number 8
4 for admission into evidence or it's been marked as I think
5 number 8.

6 MR. LAKE: That's State's evidence.

7 MR. DANIEL: Can we mark it as State's?

8 THE COURT: You may. We'll remark it.

9 MR. LAKE: No, it's not.

10 THE COURT: Did you tell me it's Defense 8. Be any
11 objection to it?

12 MR. LAKE: Well, Your Honor, I do not have any
13 objection.

14 THE COURT: 8 is admitted without objection as
15 Defense 8. Ladies and gentlemen of the jury, just so you
16 know, the exhibits get moved State, some are State's and
17 some are Defense. But right now, it's the State's case
18 and they are putting in evidence what's been marked as
19 Defense exhibits.

20 (Whereupon, Defendant's Exhibit 8 was admitted into
21 evidence.)

22 MR. DANIEL: Your Honor, permission to publish
23 Defense 8?

24 THE COURT: And for the record, these do not count as
25 evidence offered by the Defense for the purposes of

1 motions.

2 Q All right. Now, let's describe that again. What are
3 we looking at?

4 A A pill bottle containing what appears to be crack.

5 Q And that pill bottle, do you think that appears to
6 you to be crack?

7 A Yes.

8 Q Have you made cases before or been a part of any
9 cases where you observed crack in a pill bottle?

10 A Yes.

11 Q Did those have people's names on them generally that
12 you found?

13 A Not all the time, no sir.

14 Q Can you get a prescription of crack cocaine?

15 A No sir, you cannot.

16 Q Okay. All right. And I'm going to show you again
17 this picture that we've already published to the jury.
18 Can you see the pill bottle in that picture?

19 A No sir, I cannot.

20 Q Okay. Oh, I apologize, small amount of space. I
21 don't know if the jury saw that previous picture, Your
22 Honor. I am going back, describe again what is in that
23 photo.

24 A A pill container containing what appears to be crack.

25 Q And was there a name on that?

- 1 A Based on the picture, no.
- 2 Q All right. And you see that orange pill bottle that
- 3 you said contained -- contained crack in the previous
- 4 exhibit, can you see it in this photograph?
- 5 A No.
- 6 Q Can you see everything that's on that dresser from
- 7 that vantage point?
- 8 A No sir, you cannot.
- 9 Q What is that right there where my pen's on, what is
- 10 that?
- 11 A I don't know.
- 12 Q What is that?
- 13 A It looks like a piece of paper.
- 14 Q Well, that's a piece of paper you think?
- 15 A That's what it looks like.
- 16 Q And that's right near that orange pill bottle?
- 17 A Yes.
- 18 Q What is that again, my pen, can you tell?
- 19 A It looks like a sheet of paper just based on the
- 20 previous picture from this one.
- 21 Q Okay. But those are two, these two pictures, are
- 22 they the same camera angle, are these the same shot?
- 23 A Not the same camera angle, no.
- 24 Q Is this a closer shot?
- 25 A Yes.

1 Q Okay. And you worked -- you said in 2011, October
2 2011, you were just a road deputy?
3 A Yes.
4 Q Do you still have to generate reports as a road
5 deputy?
6 A Yes.
7 Q How detailed are those reports supposed to be?
8 A As much as the victim or a complainant tells us.
9 Q But you called Robert Spreng, the investigator on
10 call?
11 A Yes.
12 Q Why'd you call him?
13 A Due to the severity of the room, which everything
14 being tossed around the room was ransacked.
15 Q Okay. But as a road deputy, would you take
16 fingerprints, DNA, things like that?
17 A At that time, no sir.
18 Q Okay. And you said you took photographs, right?
19 A I did.
20 Q Do you recognize this?
21 A Yes, I do.
22 Q What is this?
23 A Photographs that I took of the backdoor.
24 Q So those are the photographs you -- that you took?
25 A Yes.

- 1 Q Were those all the photographs you took?
- 2 A Yes.
- 3 Q So the rest of these photographs we're looking at,
- 4 you didn't take?
- 5 A No sir, I did not.
- 6 Q Who took those?
- 7 A Investigator Sprengs.
- 8 Q Did he take a lot of photos, to your knowledge?
- 9 A Yes, because normally they do the outside, all four
- 10 corners, back side and the inside.
- 11 Q Why was he more thorough in taking pictures than you?
- 12 A Because he knows what he's looking for. He's an
- 13 investigator.
- 14 Q Detective, is that another word that's used?
- 15 A Yes.
- 16 Q Okay. And why didn't you mention the crack cocaine
- 17 in your report? Why did you leave that out?
- 18 A Because I called out the investigator and that was
- 19 discovered after he was there. And my initial call was
- 20 for the burglary.
- 21 Q And at the time who was doing drug investigations?
- 22 A The narcotics officer.
- 23 Q Who was that?
- 24 A Nick Bouknight.
- 25 Q And where is Nick Bouknight?

1 A Where is he now? He's no longer with us.

2 Q Okay.

3 MR. DANIEL: No further questions.

4 THE COURT: All right. Clarify something. Was the
5 question and I thought early on this address was Little
6 Ranches Road, not Ranches Road, am I correct on that?

7 MR. DANIEL: Yes, sir. I'm sorry.

8 THE COURT: All right.

9 MR. DANIEL: Little Ranches. Yes sir, Your Honor.

10 THE COURT: Little Ranches Road. Okay.

11 MR. DANIEL: I may have just said Ranches. I'm
12 sorry.

13 THE COURT: I thought I knew about where this was.

14 RE-CROSS-EXAMINATION

15 BY MR. LAKE:

16 Q Deputy Epps, was there anything else that prevented
17 you from requesting that fingerprints be done?

18 A Requested that be done?

19 Q Yes. Have you ever requested fingerprints before?

20 A Have I ever requested?

21 Q That someone did fingerprints.

22 A No sir, I haven't.

23 Q You ever been trained in fingerprints?

24 A Trained?

25 Q Yes, sir.

- 1 A Not at that time. No sir, I was not.
- 2 Q But subsequently have you been trained?
- 3 A Yes.
- 4 Q And you know the importance of fingerprints
- 5 sometimes, correct?
- 6 A I do.
- 7 Q And why is that?
- 8 A You may get a hit on a fingerprint based on AFIS.
- 9 Q For DNA, right?
- 10 A That's right.
- 11 Q If a person touches an object like a bottle, either
- 12 their fingerprint or their DNA could be on there, correct?
- 13 A Potentially if they weren't wearing gloves or
- 14 something over their hands.
- 15 Q And that would -- could give you an idea of the
- 16 person that potentially at some point, maybe can't tell
- 17 exactly when, had contact with that particular bottle?
- 18 A If their DNA or fingerprints are in the system.
- 19 Q And was that option explored in this particular case
- 20 or do you have any personal knowledge?
- 21 A I have no personal knowledge, no I don't.
- 22 Q Now, I think the prosecutor showed you I think two
- 23 photographs and let me make sure I'm correct. Are these
- 24 the two that he showed you?
- 25 A Yes.

1 Q Okay. And in this particular photograph right here,
2 what's been marked as Defendant's exhibit number 8, you
3 see that pill bottle, correct? Describe that pill bottle.

4 A It's a orange-color, clear with a cap on the top
5 containing a, what appears to be crack.

6 Q Okay. And describe the items that aren't that crack
7 bottle.

8 A An ashtray. There is a sheet of paper behind the
9 pill bottle. Looks like two or three bottles of cologne,
10 maybe four. A container of change and some Alka-Seltzer
11 Plus.

12 Q Okay.

13 A And a DVD player.

14 Q Okay. I guess it'd be this particular photograph
15 right here, correct?

16 A Yes.

17 Q Now, explain to me in Defendant's exhibit number 8
18 where you see that same orange type of pill bottle in
19 front of that piece of white paper?

20 A I don't see it.

21 Q And, but you do see some of the same other items that
22 were in that photograph, correct?

23 A Yes.

24 Q Now, everything is there except for this crack
25 bottle, correct?

1 BY MR. SCOTT:

2 Q Captain Dennis how long have you been in law
3 enforcement?

4 A I've been in law enforcement since 1991. Started
5 with the City of Newberry, progressed to getting out of
6 law enforcement for about six or seven months doing some
7 construction work. Getting back in law enforcement at the
8 Prosperity Police Department and then finally in '99,
9 continued my career here at Newberry County Sheriff's
10 Office.

11 Q So law enforcement since '91 and then the Sheriff's
12 Department since '99?

13 A That's correct, yes sir.

14 Q So you have 20 years and some change as law
15 enforcement stands?

16 A Yes, sir.

17 Q And you're a captain now, correct?

18 A That's correct.

19 Q In 2011 you were a lieutenant?

20 A I was.

21 Q And did you have an occasion to respond to this home
22 at 91 Little Ranches Road?

23 A I did.

24 Q Do you know who owned that residence or lived there?

25 A I do. The owner of the residence was Toaby Alexander

1 Q All right. And then Deputy Bouknight, Nick Bouknight
2 was the narcotics agent at the time. It's been testified
3 to that he arrived on the scene as well at some point.
4 And where is Nick Bouknight now?

5 A (No response.)

6 Q Well, let -- Nick Bouknight passed away, is that
7 correct?

8 A That's correct.

9 Q And he was a deputy that worked with you for years,
10 is that right?

11 A That is correct.

12 Q Okay.

13 A I apologize. Just a minute.

14 Q Okay. Well, we just needed to cover that. That's
15 why he's not here, is that correct?

16 A That is correct.

17 Q Okay. Captain, whenever you get to the scene, you
18 had been briefed on the fact that some quantity of crack
19 has been located?

20 A Yes, sir. I received actually two phone calls. The
21 first phone call was from Investigator Spreng of what he
22 had located and that he had contacted Investigator
23 Bouknight for his assistance. Spreng advised that
24 Investigator Bouknight had told him that he needed to
25 pretty much stop what he was doing until we got a search

1 warrant, because it was, in finding the, what they said
2 was drugs in plain view, we wanted to protect the
3 integrity of the scene as well as the officers and Mr.
4 Trapp. So he pretty much just stopped doing what he was
5 doing until Investigator Bouknight could use what
6 information he gathered from Spreng and go to the
7 magistrate of Newberry County and obtain a search warrant.

8 Q All right. So did you get on the scene before the
9 search warrant had arrived?

10 A I probably arrived maybe five to six minutes prior to
11 Investigator Bouknight arriving on the scene with a search
12 warrant.

13 Q All right. And then were you shown the pill bottle
14 in question?

15 A I was, yes.

16 Q Okay. And where was it?

17 A The pill bottle was located in the -- what I would
18 call the distant room, master bedroom belonging to Toaby
19 Trapp.

20 Q And, well, how did you know that was his bedroom?

21 A That was what was indicated by Spreng as well as
22 Investigator Epps during that conversation with Mr. Trapp.

23 Q Okay.

24 MR. SCOTT: This is State's 7, 8, 9.

25 Q Okay. What are those, Captain?

1 A These are photographs depicting a dresser, the top of
2 the dresser basically. It looks like there is hats,
3 remote control, the pill bottle, cologne, some medicine
4 packets, ashtray. And there are three pictures and each
5 picture is from just a kind of a different vantage point
6 of zooming out then in to what was on the dresser. And
7 that's of State's Exhibit 7, 8 and 9.

8 MR. SCOTT: And, Your Honor, we would offer State's
9 7, 8 and 9 for admission into evidence.

10 THE COURT: Any objection?

11 MR. LAKE: I think at least 8 has been already
12 entered. I know it has.

13 THE COURT: 8 is in.

14 MR. SCOTT: Oh, has it?

15 MR. LAKE: That's the same exact picture, so I don't
16 know why they want to--

17 MR. SCOTT: Okay. Well, I'll use yours. I'll use
18 yours. Where is that one?

19 THE COURT: Defense 8.

20 MR. LAKE: Without objection, Your Honor.

21 THE COURT: Yeah, just let them in, 7, 8, 9 are in
22 even though the State's 8 and Defense 8 may be the same
23 one and one's glossy and one is not. I'll let them in.

24 (WHEREUPON, State's Exhibits 7, 8 and 9 were admitted
25 into evidence.)

1 Q All right. And, Captain Dennis, this is State's
2 number 7. You were just previously describing it. But
3 does that fairly and accurately represent what you
4 personally observed?

5 A Yes, it does.

6 Q And you walked into Mr. Trapp's room and that's what
7 you saw with your own eyes?

8 A Yes, sir.

9 Q Okay. State's number 30, what is this?

10 A This appears to be the pill bottle that is depicted
11 in the photograph of State's number 7.

12 Q All right. After you arrive on the scene, you're
13 shown the pill bottle, what do you do next? Where is Mr.
14 Trapp?

15 A Mr. Trapp had been outside. Then we moved up to the
16 porch and then finally moved inside the living room of his
17 residence. He had already been placed in what we classify
18 as investigative detention. So he had handcuffs on
19 whenever I arrived. Once we got into the living room he
20 was given his Miranda Rights which is a warning that we
21 give whenever we're getting ready to talk to an individual
22 about a particular crime. In this case it would have been
23 the drug charges.

24 Q And did you intend to question him?

25 A I did. Once I read him his Miranda rights, making

1 sure that he understood what I was saying and asking him
2 if he would speak to me he clearly advised he would.

3 Q And kind of all hear about them on T.V., but what are
4 the Miranda rights?

5 A The Miranda rights are a warning given to
6 individuals. It starts off, you have the right to remain
7 silent. Anything you say or do can and will be used
8 against you in a court of law. You have the right to an
9 attorney to have him or her present with you during
10 questioning. If you have no money for lawyer fees, the
11 Court will appoint one to represent you without cost to
12 you. Whenever I tell them that I always throw in, because
13 not everything is free. At some point they may end up
14 having to pay some amount of money for representation even
15 though it could be a public defender. And then my next
16 line is that, at anytime during the questioning you have
17 the right to stop answering questions at any time until
18 you talk with your attorney. And I ask if they understand
19 those rights. Mr. Toaby Trapp advised he did. And then I
20 asked him having those rights in mind, are you willing to
21 talk to me without the presence of an attorney.
22 Understanding that, you know, I'm not threatening you or
23 promising you anything. And he agreed to talk to me
24 without an attorney.

25 Q All right. Did he appear to understand all those

1 rights as you read them to him?

2 A Yes, he did.

3 Q Or as you recounted them to him. Newberry is a
4 fairly small community, would you agree?

5 A It is.

6 Q You've lived here, you grew up in Newberry, right?

7 A That's correct, all my life.

8 Q All right. And was this the first time you got to
9 meet Toaby Trapp?

10 A No, sir. I know Mr. Trapp.

11 Q All right. And y'all communicated before?

12 A Yes, sir.

13 MR. LAKE: Your Honor?

14 Q Have you ever had difficulties communicating with one
15 another?

16 MR. LAKE: Your Honor, we would object to this line
17 of questioning in this particular case. Trying to
18 insinuate that.

19 MR. SCOTT: No, I'll move on. I'll move on.

20 THE COURT: Well, I don't think he's insinuating
21 anything. It's a small community.

22 Q He understood what you were talking with him about?

23 A Yes. Mr. Trapp appeared alert and oriented to where
24 he was at and who I was and what was going on.

25 Q Did he appear intoxicated in any way?

1 A No sir, he did not.

2 Q All right. Did you threaten him in any way?

3 A No sir, I did not.

4 Q All right. And at that time, did you offer him any
5 kind of, I don't know, reward or hope or promise of any
6 kind of hope that you'd be lenient on him if he would talk
7 to you?

8 A No, sir.

9 Q All right. What was the line of questions I guess
10 that you submitted to him?

11 A I guess the one thing that was puzzling to us is, you
12 know, although not taking away that the house was
13 burglarized was the fact that we did find what appeared to
14 be crack cocaine still in the room on the dresser. And I
15 asked him, I was like, you know, what's the deal with
16 this, Toaby. I mean, there's drugs in there. And Mr.
17 Trapp admitted that he if--

18 MR. LAKE: Objection.

19 THE COURT: All right. Hang on a second.

20 MR. LAKE: Your Honor, again, I would like to renew
21 my objection in reference to any statement for the reasons
22 that we asserted in the--

23 THE COURT: Jackson v. Denno hearing.

24 MR. LAKE: ---preliminary type hearing.

25 THE COURT: And your record and objection is

1 protected and we'll hear the response now.

2 Q Okay. You were saying that -- you were confused that
3 he had called you here. And you said, what's going on
4 with the dope. Go on.

5 A He admitted that if it was crack in the medicine
6 bottle that he had pretty much forgot it was in there.
7 And that whenever he called 911 the dispatcher advised him
8 to, you know, don't go any further in the house, don't do
9 anything, don't touch anything, we'll have a deputy
10 responding there to take the report. And that's pretty
11 much all he could offer was is he forgot it was in there.

12 Q Okay. The search warrant, you said that arrived to
13 the home shortly after you got there?

14 A Yes, sir.

15 Q Were you involved with the execution of the search
16 warrant?

17 A I was. I was actually the officer that signed off on
18 the search warrant, what we classify as the return. It is
19 given to me. I log-in the time that I receive it and then
20 the items that we take from that home based off of the
21 information provided to the search warrant.

22 Q Okay. Were you able to find any other items of
23 evidentiary value?

24 A We did. When we began the process of looking not
25 only for additional drugs and evidence of drugs, but also

1 anything that we could use to find who broke into the
2 home. We discovered two bags of white substance on the
3 floor in front of the dresser of where we found the pill
4 bottle on top of the dresser. We had to move some drawers
5 and some clothes to actually get to the floor where we
6 discovered that.

7 Q And but it was directly in front of that dresser in
8 State's number 7?

9 A That is correct.

10 Q I'm going to show you State's number 3, do you
11 recognize that?

12 A Yes, I do. It's State's 3. I am sitting on the bed
13 with a flashlight aiming down at the floor directly in
14 front of the dresser where there are two bags of white
15 substance.

16 MR. SCOTT: The State offers States number 3 for
17 admission into evidence.

18 MR. LAKE: Without objection.

19 THE COURT: And without objection.

20 (WHEREUPON, State's Exhibit 3 was admitted into
21 evidence.)

22 Q All right. That's you who took that?

23 A That's correct, yes sir.

24 Q And this is the same dresser that we just saw in
25 State's number 7?

1 A That is correct.

2 Q And what is it that you're shining your flashlight on
3 down here?

4 A Directly under, under my light which is kind of
5 washing it out because of the flashlight and then the
6 camera flash, there are two white plastic bags. And
7 inside those plastic bags is a white hard substance, kind
8 of a cookie formation. And that's what we normally refer
9 as a cookie of crack.

10 Q Okay. This is State's number 20, you recognize that?

11 A Yes, sir. In State's 20, it is just a closer picture
12 of the crack bag.

13 Q Okay. It's just a closer picture where you're
14 shining your light on in this picture?

15 A That's correct.

16 MR. SCOTT: Your Honor, the State offers number 20
17 for admission into evidence.

18 MR. LAKE: Without objection.

19 THE COURT: 20 is admitted without objection.

20 (WHEREUPON, State's exhibit number 20 was entered
21 into evidence.)

22 Q What is this here?

23 A Just below what that blue item is, is the bag of
24 crack cookie.

25 Q All right. And it was your testimony that was

1 directly in front of that dresser where the pill bottle
2 was?

3 A That is correct.

4 Q I'm reaching into the plastic bag ID'd as State's 30,
5 I'm pulling this out. What is that?

6 A That appears to be one of the bags that was
7 discovered on the floor in front of the dresser.

8 Q Okay. And this is labeled, is that SLED's labeled
9 1.2?

10 A I would say so, yes. With the L11 number and that is
11 how they document.

12 (Whereupon, State's Exhibit 30 was marked for
13 identification only.)

14 Q Okay. Another baggie I'm pulling out of a bag, the
15 larger bag but labeled State's number 30. What is that?

16 A This is another bag and again, it's appearance is
17 different from the night we found it either from
18 deterioration or the way it was made. But it's turned a
19 brown color. But the night that we photographed, it was a
20 white substance.

21 Q And this is, is that SLED number 1.1?

22 A That is correct.

23 Q Okay. In twenty something years, about how many
24 times have you come across crack?

25 A Quite a few times.

1 Q I mean does it come in different colors?

2 A It could depend on how it's made or how long it's
3 had, you know, most of the time you find it it's either in
4 a white to off-white type color. And it can be anywhere
5 from maybe the size of your pinky to what you would have
6 in this type picture or even bigger.

7 Q You can't tell it's crack just by looking at it,
8 though, can you?

9 A No, sir. That's the reason why we rely on SLED.
10 Once we find evidence such as narcotics, we would send
11 down to SLED for it to be analyzed and give us the true
12 potency of the drug.

13 Q Okay. So you saw these bags and this pill bottle.
14 Who would have seized it from the scene and packaged it?

15 MR. LAKE: Objection, Your Honor. I don't think he
16 has any personal knowledge as to who seized these items at
17 the time.

18 THE COURT: Well, he didn't answer the question yet.
19 I mean, he was on the scene.

20 MR. LAKE: And he needs to lay a foundation for it.
21 He has not laid a foundation for that type of evidence.

22 Q Do you have personal knowledge of who would have
23 seized it that day?

24 A The person that would have seized it that day would
25 have been Investigator Nick Bouknight with me documenting.

1 as I did on the return for the search warrant.

2 Q And specifically just these three items, the pill
3 bottle and two baggies of what we think is crack. He
4 would have seized these three items?

5 A Yes. He would have seized those items and any other
6 items that would have been associated with the
7 investigation of the narcotics.

8 Q Okay. And he was the lead narcotics officer at the
9 time in 2011?

10 A That is correct.

11 Q And what was the practice as far as seizing
12 narcotics, that being drug evidence? What was the
13 practice at that time as far as evidence and care and
14 custody of those items?

15 A During that time, the narcotics officer was
16 responsible for the collection as well as the storage and
17 then the submission of those drugs to SLED. And then once
18 they came back from SLED, the narcotics officer would pick
19 that up as well as resubmit that into his narcotics
20 evidence locker.

21 Q Okay. So at the time, he kind of had, I guess, a
22 two-part system. Drug evidence was kept over here in one
23 locker and then other evidence was kept elsewhere?

24 A That is correct.

25 Q And Nick, Nick Bouknight at the time was the

1 narcotics agent. So he was responsible for the care and
2 keep, upkeep of the narcotics evidence?

3 A That is correct.

4 Q Okay. And was it policy for him to transport the
5 drug evidence down to SLED for testing?

6 MR. LAKE: Your Honor, I would object again. I mean,
7 this is really speculative-type questioning as to what
8 someone else would have done. We're talking about one
9 specific incident where we're saying this person needs to
10 have done these particular things at this particular time.
11 He's trying to backdoor in--

12 THE COURT: All right. Hang on.

13 MR. LAKE: I think we need to---

14 THE COURT: Hang on. Hang on. All right. Let's
15 take a break. Y'all step to the jury room and go to the
16 bathroom until your food gets here. And then go ahead and
17 eat. I've got a probation matter I need to deal with and
18 I want to hear Mr. Lake a little further on this issue.
19 So y'all can't begin to discuss the case, but step back
20 there. Use the restroom. Make yourself comfortable.
21 Enjoy your lunch, and then we'll get started back as soon
22 as we can.

23 (Whereupon, the jury is excused from open court for a
24 lunch break, lunch was served to the jury in the jury
25 room.)

1 THE COURT: All right. Rephrase that question for
2 me, Mr. Scott. Do that question again. I want to hear
3 that. I think you had a question that was somewhere along
4 the lines of what was the policy of the Sheriff's
5 Department at that time, type leading---

6 MR. SCOTT: We covered that and that was testified to
7 without objection. Then I got to the, you know, it may
8 not be the exact question. But at the time, we covered
9 that Nick would have kept up with his own drug evidence.
10 I asked something to the effect of who would have
11 transported the drug evidence to SLED at that time? This
12 was, the policy has changed since then as far as all
13 narcotics evidence is stored with general evidence now.
14 But at the time, Nick just kind of kept his own stuff.

15 THE COURT: All right. Well, ask that question, what
16 was the policy at that time?

17 Q What was the policy at that time as to the
18 transportation of narcotics evidence to SLED?

19 A At that time, it was the responsibility of the
20 narcotics officer for the labeling and packing of that
21 narcotics in a Best Kit to be submitted to SLED and then
22 transported to SLED.

23 Q Okay.

24 MR. SCOTT: And then it will probably, will be
25 testified to through---

1 THE COURT: I mean, you keep proffering it. I want
2 Mr. Lake to be able to hear it. That's why we got the
3 jury out.

4 MR. SCOTT: Okay. Well, as far as chain type stuff,
5 I think that's as far as I was going to go with that. And
6 then we were going to kind of move into some of the other
7 evidence collected at the scene.

8 THE COURT: And that's what Mr. Lake was wanting to
9 be heard on.

10 MR. LAKE: Yeah, but that is the sole issue in this
11 particular case. You're trying to backdoor evidence in
12 through Captain Dennis. But they'll sit there and admit
13 Nick Bouknight was the sole person that collected it,
14 responsible, maintained, can tell you what happened to
15 these items during all of these different times and in
16 what conditions, things are in all these items. You know,
17 he's the sole, only person that can do that. I mean they
18 are admitting in one sense he's the only person and know
19 specifically what happened in this incident. But yet,
20 they're trying to backdoor information in through Captain
21 Dennis and try to establish a chain-of-custody. The
22 problem they have with that, Your Honor, is not only do
23 you have to establish who would have had it for a period
24 of time, but you got to, someone has to testify as to the
25 condition and show that there is no evidence that there

1 was any tampering or anything along those lines. And the
2 only person that could do that is Investigator Bouknight
3 or if there was an investigator custodial person that he
4 would have turned it into that particular day that could
5 say, okay, this is how it came to me. Nick Bouknight
6 brought it to me and it stays in storage and then when he
7 came and got it back. He picked it up on this particular
8 day. He took it to SLED. You've established the chain.
9 Even if some of those witnesses don't testify and you at
10 least have had someone testify as to the condition of the
11 drugs prior to them getting to SLED.

12 MR. SCOTT: How about this?

13 Q Who else would have had access to the narcotics
14 evidence locker?

15 A At that time, no one, only Nick Bouknight.

16 MR. SCOTT: And, Judge, really that -- he can argue
17 all he wants to the jury that those drugs were tampered
18 with. We don't know what happened those five days they
19 were in the locker room. You know, somebody else could
20 have gone in there and added something or taken something
21 from them. But I think we've done our part in
22 establishing the chain. And then when Lynn gets up there,
23 she'll be able to testify as to who dropped it off and
24 what her chain on her SLED end says. I think it's a
25 question for the jury.

1 MR. LAKE: No. Your Honor, he just made the argument
2 for me. He said if someone could have come in there and
3 done this. Well, that's the sole purpose of why you have
4 these type of hearings so that it doesn't come in, because
5 if someone could have---

6 MR. SCOTT: Make the jury believe that.

7 MR. LAKE: If someone could have come in there and
8 tampered with the drugs. That is the sole reason why you
9 have fungible type evidence and you have
10 chain-of-custodies for that. They have no one. There
11 will be no one could, that can testify as to when Nick
12 Bouknight put it into the locker as to time, what locker
13 he put it into, what condition it was in when he got it,
14 when he actually took it out. Did he take it out on the
15 21st or did he take it out sometime between October the
16 9th and the 21st before he actually took it to SLED. What
17 was the condition?

18 MR. SCOTT: But what's ironic to me---

19 MR. LAKE: I mean, there is nobody there could, there
20 is not one single person that will testify to that. I
21 mean, that is the very reason why fungible type evidence,
22 you need to acknowledge with the persons that have touched
23 it but also to ensure that there has been no evidence of
24 tampering. But his own argument says yes, someone could
25 have came there but that should go to the jury. Well, the

1 law doesn't say that.

2 THE COURT: All right. All right. Enough. I
3 understand your argument. What else were you going to
4 say?

5 MR. SCOTT: Didn't in his opening he said we're not
6 going to contest the fact that it's crack cocaine?

7 MR. LAKE: Saying that it's not crack cocaine. I
8 said we're, I said we're letting it into evidence. We're
9 not saying that. That's a total, that's a totally
10 different argument.

11 MR. SCOTT: Judge, I've got this Brockmeyer case.
12 I've got the U.S. v. Lot and, of course, the Hatcher case.
13 It is the obligation of the prosecution to establish
14 chain-of-custody. This does not mean that everyone who
15 laid hands on the evidence must be called. Gaps in the
16 chain-of-custody normally go to the weight of the evidence
17 rather than it's admissibility. That's what I'm arguing,
18 it goes to the weight. He can make these arguments all he
19 wants to them and if we hadn't proven it beyond a
20 reasonable doubt, then they're going to find him not
21 guilty.

22 MR. LAKE: Your Honor, again, I will take the Court
23 to State v. Carla Taylor which was decided back in 2004.

24 THE COURT: Okay. I want to read that case, when I
25 see if my lunch is here. Didn't y'all have another, I

1 don't remember what form it was. It was some form I saw
2 yesterday.

3 MR. LAKE: 6B or 6, Your Honor.

4 THE COURT: It's something like that. What relevance
5 is that?

6 MR. DANIEL: Your Honor, that indicates the seizure
7 date, October 9th, 2011, and that indicates the day that
8 Officer Bouknight transported it to SLED on the 21st. So
9 you only have that gap of time between the seizure date
10 and the date it was sent to SLED that it was in the
11 custody of Newberry Sheriff's Office prior to being tested
12 at SLED. So and roughly what, a twelve-day period.

13 MR. SCOTT: I think we ID'd that yesterday.

14 MR. DANIEL: But we did recognize that as the
15 document.

16 THE COURT: I'm checking that. I want to read this
17 case and I want to see what the status of my lunch, and I
18 also want to go ahead and do that Department of
19 Corrections matter and get them out of here.

20 MR. LAKE: Yes, sir.

21 THE COURT: So let's stand at ease for this. I want
22 to get those couple of things done while we have the jury
23 eating. So, y'all stand at ease for a minute.

24 (WHEREUPON, a lunch break was taken.)

25 MR. LAKE: I think we have a pending matter. I guess

1 we had made an argument about his testimony. I renew my
2 objections for suppression based upon, from what he can
3 and cannot testify to and along with what the Solicitor
4 indicated while he was addressing the Court, that there
5 was a possibility, yes there is a possibility that someone
6 could have potentially tampered with those items for
7 probably about nine days or so.

8 MR. SCOTT: That was not how I termed it.

9 MR. LAKE: It sounded like that. If I misquoted it I
10 apologize, Your Honor.

11 MR. SCOTT: The purpose of the pretrial, I thought we
12 have kind of covered all of this.

13 THE COURT: All right. I thought and my base of my
14 pretrial ruling was that the return, Captain Dennis'
15 testimony as well as the Form B Rule 6 that Investigator
16 Bouknight filled out showing the evidence which he had
17 custody, possession of. Can we make that an exhibit.

18 MR. SCOTT: Judge, I---

19 THE COURT: I mean, that was my pretrial ruling I
20 thought. I thought we had identified who had the stuff
21 reasonably. I'm reading part of this case. The identity
22 of each person in the chain handling evidence is
23 established, the manner of the handling is reasonably
24 demonstrated.

25 MR. LAKE: Your Honor, if you look at that case that

1 I gave you, it kind of addresses that issue.

2 THE COURT: I mean, what paragraph are you reading
3 from?

4 MR. LAKE: I'm sorry?

5 THE COURT: I'm following you.

6 MR. LAKE: You know where it has the discussion page?

7 I apologize. It's a little bit different than, it is
8 right there at the discussion portion where they start
9 talking about the, where the identity of the person is.

10 THE COURT: Hang on a minute. Okay. I've got you.

11 MR. LAKE: And I think it, that next sentence.

12 THE COURT: All right. And this is discussing the
13 unidentified handlers. But it's been identified by the
14 employee, investigator at the Sheriff's Department that
15 Detective Bouknight was the Evidence Custodian for
16 narcotics at that time. There's this Form B which looks
17 like a business record to me of some type. It's a
18 transmittal. I don't know the control number. If I see
19 Exhibit 30.

20 MR. SCOTT: 30 is the, let's see.

21 THE COURT: This control number at the top of the
22 form indicates it's the max to this scanning B215834 is
23 this scan code. It identifies it, and I think it goes to
24 weight. I think that it's been identified. It's been
25 described as that's the protocol from the Sheriff's Office.

1 is a narcotics officer takes into custody and he's
2 custodian.

3 MR. LAKE: Your Honor, but if you look at that Benton
4 case, if you go through the rest of that paragraph which
5 is almost kind of analogous facts right here. It says
6 although there was testimony of the customary practices
7 which, is what Captain Dennis is trying to testify to even
8 though, again, I don't think that we even laid the
9 foundation that he would have that particular knowledge
10 regarding the mailing of the blood. There was no evidence
11 that the technologist who drew the blood and sealed the
12 vials had otherwise taken any precautions against
13 tampering. That's kind of what we have in this particular
14 case. I think from yesterday's preliminary hearing or
15 hearing, pretrial hearing and Investigator Dennis said
16 that he gave it to him in an envelope and that it wasn't
17 sealed and that was the last time essentially that he saw
18 it. And now we have other testimony yesterday that
19 basically says there were some things in terms of some
20 residue that was found that wasn't on the return. There
21 was a straw that was found on the return that didn't
22 somehow make it to the Best Evidence Bag. And then there
23 is also two razor blades versus one razor blade that is
24 identified in the return. So, I mean, it has to be
25 someone that could testify to essentially that in this

1 particular case that, you know, there is no evidence of
2 the testimony. I think it goes on and basically says, it
3 addressed the issue about unrecorded, the record did not
4 disclose who had possession of the package containing the
5 vial of bloods for several days. The only thing that you
6 have in this particular case is that on October the 9th,
7 2014, Investigator Bouknight did a document saying that he
8 put it in the evidence locker or and put it in, I don't
9 even know where he put it at, because there is no
10 testimony as to where he put it.

11 MR. SCOTT: That was testified to by Captain Dennis.

12 MR. LAKE: But Captain Dennis was not present, Your
13 Honor, when he placed it anywhere.

14 MR. SCOTT: It's office policy. It's agency policy.
15 He can testify to that as a supervising agent.

16 MR. LAKE: Your Honor, again, they're trying to
17 backdoor things and basically say we have no clue how it
18 got where it was. We have no clue when it left. We don't
19 know whether Investigator Bouknight took it out on
20 November the 10th and kept it until the 21st and took it
21 in. He could have taken it out on the 19th and took it or
22 he could have did it on the 20th and taken it or the 21st
23 and taken it.

24 THE COURT: Well, this form is a memorandum prepared
25 by the Evidence Custodian who coincidentally was also the

1 narcotics officer. And it appears to be, I want to
2 classify it almost as a business record. But it's a form
3 that describes a control number of the Best Evidence
4 package itself. It describes who it was seized from, how
5 it was received and where it was received, search warrant
6 at 91 Little Ranches. And has a detailed list of the
7 items that are placed within the bag and then it tells
8 when he delivered it to SLED.

9 MR. LAKE: But who's going to testify to that, Your
10 Honor?

11 THE COURT: I think it's self-authenticated.

12 MR. SCOTT: I've got a Supreme Court case right here
13 that calls it a business record.

14 MR. LAKE: Your Honor, that is not a business record.

15 THE COURT: Why isn't it?

16 MR. SCOTT: Look at Brockmeyer. It's a Supreme Court
17 case, a 2013 case.

18 THE COURT: I thought that was the reason that they
19 started using these forms.

20 MR. SCOTT: Why would we have Rule 6? Why would we
21 have the Best Kits if you had to have every single
22 person--

23 THE COURT: Let me see page, where you're talking
24 about the case.

25 MR. DANIEL: Your Honor, and if I may and this also

1 has a place to be notarized and a signature.

2 MR. LAKE: It's not even notarized.

3 MR. SCOTT: That's Brockmeyer. That's a 2013 case
4 and I think it kind of matches up with Hatcher and here's
5 State v. Carter as well.

6 THE COURT: All right. I mean part of the statement
7 signed by Detective Bouknight on 11/21/11. I made
8 delivery of the above-describe substance, four containers,
9 which references the Best Kit to SLED of SLED, in
10 substantially the same condition as when I received it.
11 And his signature. I don't know how that doesn't comply
12 with identifying the person who handled it.

13 MR. LAKE: Your Honor, but that also goes into play
14 of right of confrontation that we get an opportunity to
15 confront the witness about the veracity of that particular
16 document and statement. I mean it's clearly hearsay, that
17 document is, because he's using it for the truth of the
18 matter asserted that, in fact, what's alleged in that
19 document is accurate. Well, then Mr. Bouknight would have
20 to be the person would, again authenticate that that is a
21 record that was kept in the normal course of his business
22 and that's what he would normally do and those kind of
23 things.

24 THE COURT: He's an investigator. I mean, he can
25 testify that, I assume, I mean to his knowledge. He

1 hadn't been asked that question, I don't believe. Proffer
2 some of that if you got it, Mr. Scott. I don't know that
3 you have it.

4 PROFFER TESTIMONY

5 BY MR. SCOTT:

6 Q And, Captain Dennis, you've been with the Sheriff's
7 Department since 1999?

8 A That's correct.

9 Q All right. And in 2011, you were a lieutenant?

10 A That is correct.

11 Q And were you familiar with office policy regarding
12 the care and maintenance of evidence seized from crimes?

13 A Yes.

14 Q Okay. Were you aware of any differences in the
15 treatment of narcotics compared with other sorts of
16 evidence from other non-narcotic crimes?

17 A The non-narcotic crimes were turned into a locker
18 with a evidence form attached to it describing that
19 evidence. And then Chief Wright, who was the Evidence
20 Custodian for evidence other than narcotics at that time
21 would remove it from the locker and put it in a larger
22 storage area for evidence which was maintained under lock
23 and key by him as well as a alarm system that would
24 activate if someone came into that evidence locker/storage
25 area.

1 Q Okay. Let's say you seized a gun from a shooting or
2 something and you needed to go take a look at it one day,
3 what would you have to do to go take a look at that
4 evidence that you had previously seized?

5 A I would schedule with Chief Wright at that time to
6 retrieve that evidence from evidence, the gun from
7 evidence and he would go and get it and then bring it to
8 us or to me.

9 Q Why wouldn't you just go to the evidence locker
10 yourself to go check it out?

11 A Because we maintain the control of evidence through
12 that chain of Chief Wright being the Evidence Custodian.

13 Q Okay. Now, narcotics evidence in 2011, how would
14 that have been handled and how is that different than
15 non-drug related evidence?

16 A During that time, Nick Bouknight was the narcotics
17 officer as well as the narcotics Evidence Custodian. If
18 he made a case, he would take charge of that evidence
19 doing the chain-of-evidence form as well as logging it
20 into his evidence locker area, which also was under
21 lock-and-key, him only having the key as well as an alarm
22 system on that. Both alarm systems were set up into the
23 communications room so if someone went in there without
24 permission the alarm would be activated. Prior to either
25 Chief Wright going into his separate or Investigator

1 Bouknight going into his separate, they would have to
2 notify our dispatch that they were making entry into that
3 room.

4 Q After hours or anytime?

5 A That's anything, 24/7.

6 Q Okay. So if Nick wanted to go check out some of his
7 own drugs, he'd have to inform dispatch and then he would
8 use his own key to go in there and check it out?

9 A That's correct. He would make entry into his storage
10 area evidence locker.

11 Q Anyone else to your knowledge have keys to narcotic
12 evidence at that time?

13 A No. Not at that time, no.

14 Q Okay. And who was responsible for the transportation
15 of the narcotics evidence to SLED for testing?

16 A During that time, the transportation would have been
17 done by Investigator Bouknight. He would have removed any
18 evidence from his evidence locker, prepared it through the
19 Best Kit. And then secured that Best Kit with whatever he
20 was going to be sending down meaning if there were three
21 or four items that arose out of the same event he would
22 normally store those three items in one Best Kit. And
23 those would be listed on that Form, Rule(b) or, excuse me,
24 Form B, Rule 6 and then that would be packaged in what's
25 called an integrity bag and then sealed. And then

1 transported to SLED and then turned over to their evidence
2 log-in.

3 Q How many years did you work with Nick, Nick
4 Bouknight?

5 A Probably a good 10 years.

6 Q Did you ever have a chance to see his handwriting?

7 A Yes, I have.

8 Q How many times?

9 A Multiple times.

10 Q I'm showing you State's number 2. First of all, do
11 you recognize what that is?

12 A Yes, sir. State's number 2 is a copy of Form B, Rule
13 6. Control number listed at the top is B215834. It is
14 certified information that Nick Bouknight has documented
15 in his writing as well as his signature at the bottom
16 right.

17 Q Okay. You say that's his writing. Do you recognize
18 that to be Nick Bouknight's handwriting?

19 A I do recognize that as Nick Bouknight's writing.

20 Q Okay.

21 A All of it.

22 Q And what does it say, who seized it? Who seized the
23 drugs?

24 A It starts off at the top, this is to certify that I,
25 Nick Bouknight, am employed by Newberry County Sheriff's

1 Office. That on 10/9/11, and just prior to that, he had
2 scratched out and put "NB" above it. I can't tell you
3 what was before that date. I seized from Toaby Alexander
4 Trapp pursuant to a search warrant at or near 91 Little
5 Ranches Road, Newberry, South Carolina 29108 the following
6 substance or containers. Describe substance or container
7 with sufficient particularity to distinguish it: 1)
8 plastic bag containing a quantity of white rock, or white
9 cookie-like substance; 2) plastic bag containing a
10 quantity of a white cookie substance; 3) orange pill
11 bottle containing a quantity of white cookie substance; 4)
12 scale containing a quantity of white residue on it; 5)
13 spoon with a quantity of white residue on it; and 6)
14 quantity of a white residue. On 10/21/11, I made delivery
15 of the above-described substance or containers to SLED, of
16 SLED in substantially the same condition as when I
17 received it. And it is signed Nick Bouknight.

18 MR. SCOTT: Okay. Your Honor, again, I think we've
19 established that Nick was the one who seized it, and then
20 he made delivery on 10/21. It was testified to that he
21 was the narcotics Evidence Custodian at the time. It was
22 further testified to that he was the only one who had keys
23 to that locker. Additionally, it was testified to that
24 there would have had to been permission gained for any --
25 or would have to notify to dispatch anytime he intended on

1 opening up those lockers and going in. I guess I could
2 ask the additional question.

3 Q To your knowledge, do you have any record that
4 dispatch was notified in between? October 9th, 2011 and
5 October 21st, 2011 that these particular drugs were
6 checked out? Do you have personnel knowledge?

7 A Rephrase the question, please.

8 Q All right. You testified that dispatch would have
9 had to have been notified should Nick, I guess, open up
10 the locker and check out any drug evidence?

11 A That's correct.

12 Q All right. To your knowledge, do you have any --
13 well, do you have any knowledge of any records that would
14 indicate that anybody had checked out these drugs, these
15 particular drugs in question in between October 9th, 2011
16 and October 21st, 2011?

17 A I have no knowledge that anyone other than Nick
18 Bouknight would have checked out evidence.

19 Q Okay.

20 MR. SCOTT: Judge, I think that's all the questions
21 we have and the same questions we'd gone over during the
22 prelim or the pretrial.

23 THE COURT: All right.

24 THE COURT: Mr. Lake gets to -- he gets to ask
25 questions if he likes.

CROSS-EXAMINATION

BY MR. LAKE:

Q You testified, I guess, earlier that, you know, I guess between -- from the time that it went from, to SLED that the items would have had to been placed into an integrity bag. Was that your testimony?

A I kind of hear what you're saying, but can you speak up, Mr. Lake?

Q In your testimony you indicated that once the items were collected, at some point they were placed in an integrity bag and then sealed and then delivered to SLED at some point, correct?

A That's correct.

Q Do you have any personal knowledge as to when they were placed into the integrity bag?

A Other than what's documented on the Form B, Rule 6.

Q Do you have any personal knowledge as to the condition of this item before it was placed into the integrity bag?

A No.

Q Do you have any personal knowledge as to whether anyone else could have come into contact with this drug before it's placed into the integrity bag?

A I have no knowledge of anyone other than Investigator Bouknight would have made contact with that drug or

1 evidence.

2 Q Do you have any personal knowledge as -- I know you
3 indicated that it'd have to be taken out of this bag. Did
4 you ever call to confirm whether that even, there is a
5 record of him contacting dispatch on the 21st?

6 A No.

7 Q Did you check?

8 A The only way that I would check would be if they
9 would notify either one of the Evidence Custodian officers
10 that there was a unlawful entry into the evidence storage
11 area.

12 Q And just so I can have some clarifications, how many
13 envelopes did you have when you gave it to Investigator
14 Bouknight?

15 A I don't understand what you're asking.

16 Q You were the only---

17 A ---there are envelopes that were there.

18 Q And I guess I'll rephrase that question and just so I
19 can --when you did the return, there were a number of
20 items, I think about roughly about five items that were
21 taken, correct?

22 A On my return, I have pictures taken by Robert Spreng,
23 two plastic bags with white solid substance found on floor
24 in bedroom in front of dresser, a pill bottle on dresser
25 with white solid substance, a CD case scale, spoon and

1 razor blade with residue and straw. So you would look at
2 seven items outside of the number of pictures that were
3 taken.

4 Q Did the straw make it into the Best Evidence Bag?

5 A I believe I read off everything that would have been
6 itemized on Form B, Rule 6 of what had been itemized in
7 the Best Kit, integrity Best Kit to go to SLED.

8 Q So the answer would be no, correct?

9 A Your question is did the straw go into the Best Kit?

10 Q Correct.

11 A No.

12 Q Okay. But it was with the items, total items that
13 you gave him into that envelope, correct?

14 A It was what was seized from the residence.

15 Q And I guess you indicated, testified earlier that it
16 came into your possession. And then you gave it back to
17 Investigator Bouknight and then the last time that you saw
18 it was when you saw him put it into a car?

19 A Well, it would be in his possession for me to look at
20 and document as I did on the return and for him to
21 maintain the custody and control of it, leaving the scene
22 to his vehicle to his evidence locker and then to SLED.

23 Q Did you ever see him seal the particular items that
24 you gave him?

25 A No.

1 Q Did you ever see him actually put it in a particular
2 locker?

3 A No.

4 Q Did you ever see him take it out of the locker?

5 A No.

6 Q How many lockers did he have that he would
7 potentially use?

8 A And I, I think---

9 Q Is there more than one?

10 A Well, herein lies the issues where the question needs
11 to be kind of directed. We have lockers for all evidence
12 other than narcotic evidence. For narcotic evidence,
13 there was one locker and control that Investigator
14 Bouknight would have had access to if there were cases
15 made by the road deputies and he would get that. However,
16 if Investigator Bouknight was the controlling officer and
17 seizing officer and officer to maintain that evidence,
18 then he would bypass his one locker or drop locker and put
19 it directly into evidence.

20 Q And do we know in this particular case which locker
21 he put it in? Do you have any personal knowledge?

22 A He has one storage locker that he would have gained
23 access to put it in.

24 Q Well, I guess what I'm asking you, are you speaking
25 -- when you say that are you speaking from personal

1 knowledge in this particular case or you specifically
2 trying to refer to some type of common practice?

3 A I am speaking of the common practice and policy of
4 the Newberry County Sheriff's Office at that time for
5 maintaining narcotic evidence.

6 MR. SCOTT: Judge, we got to move on. He's asking
7 the same questions over and over. That was not what was
8 elicited from direct examination. He testifies to office
9 policy at the time.

10 MR. LAKE: Your Honor, I just asked him a question
11 about whether that was office policy.

12 MR. SCOTT: Asked and answer.

13 THE COURT: I thought that was a newer question. I
14 was interested in listening to the answer.

15 MR. LAKE: Again, Your Honor, and I'm not going to, I
16 don't want to keep going over the same, I'm obliged to, of
17 course, because this is my client and you know what he's
18 facing. We still take the position and I take the
19 position that I think the law is clear in this particular
20 case that one, Captain Dennis is not in a position to
21 testify as to what happened that particular date. Now, we
22 learn now that there's two particular lockers and he's
23 testified as to common practice about what Nick may have
24 done and which locker he may have put it into. Now, we
25 are not exactly sure.

1 THE COURT: Here's what I believe I'm confined to is
2 this. If the identity of the person in the chain handling
3 evidence is established and I think that's been done, the
4 manner of handling is reasonably demonstrated and is not
5 as showing of abusive discretion, proof of tampering, bad
6 faith and real motive. I don't believe those have been
7 shown. It's investigation. Drugs were seized. Captain
8 Dennis was on the scene when they were seized. Detective
9 Bouknight took possession of them. He then also following
10 the procedure time filed a Form 6 which references the
11 evidence seized at the scene. It referenced the Best
12 evidence Bag and delivered to SLED. So whichever locker
13 it would be in would be of no consequence, because both of
14 them Detective Bouknight had control of. I thought it was
15 if you didn't know who had it. We know who had it. We
16 just don't have him here.

17 MR. LAKE: No, Your Honor, I have never argued and
18 maybe I wasn't clear. I've never argued that if you could
19 not identify every particular person -- what my argument
20 is essentially is that even if you identified every person
21 that is in the chain, you still have to basically show
22 that there, that someone has to testify that there was no
23 evidence of tampering. Now, what we've got is just one
24 person up here that says I saw the drugs at the initial
25 beginning and then nobody else but the chemist and that is

1 a huge gap in time and tested.

2 THE COURT: Well, I'm going to read the words to you,
3 absent proof of tampering. Not proof of non-tampering,
4 absent proof of tampering. That's the words in the
5 Supreme Court case. Absent proof of tampering. So that
6 doesn't mean the State's got to disprove tampering.

7 MR. LAKE: But that is why, Your Honor, I continue to
8 stress the point that there were items that somehow made
9 their way into the Best Evidence Bag that weren't somehow
10 collected.

11 THE COURT: I think that goes to weight. I agree
12 with you, there is conflicting lists on the return versus
13 the Form 6 of Detective Bouknight. I agree with you they
14 are distinguishable. There's some different items there.
15 There's two razors versus one razor. I agree with your
16 reading of those. I don't think that proves tampering.

17 MR. LAKE: Well, I guess what that does prove, Your
18 Honor, there has been something that occurred between the
19 time that he gave the item to Investigator Bouknight up
20 until the time it is actually testing.

21 THE COURT: All right. But your client is not on
22 trial for those items. They're distinguishable items,
23 the straw and the razor blades and the residue. He's not
24 charged with any of those items in this case. I would
25 probably suppress the State from referencing those.

1 MR. LAKE: Your Honor, I believe those items -- and
2 at least one of them, I think, is mentioned on the drug
3 analysis. I think the additional residue.

4 THE COURT: Well, I understand your argument.

5 MR. LAKE: Yes, sir.

6 THE COURT: I've read Taylor fairly closely. And I
7 think the State barely gets by it, but they get by it and
8 it gives you the opportunity to argue your weight or
9 credibility of the chain but not admissibility. I'm going
10 to allow it. I may be wrong, because it, I mean, I agree
11 it's tenuous. But I think that goes to the weight of the
12 credibility of the chain. All right. And you've made a
13 very good record of it. All right. Bring the jury in,
14 please.

15 (Whereupon, the jury came into open court at
16 approximately 1:54 p.m.)

17 CONTINUE DIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q Okay. After the initial, the pill bottle, I think we
20 got to where you were executing a search warrant and what
21 did you find in front of the dresser that the pill bottle
22 was on?

23 A Located in front of the dresser on the floor after
24 moving some of the clothes and the boxes and the dresser
25 drawers, we located two plastic bags containing a rock,

1 off-white cookie-like substance.

2 Q Okay. And how many bags did you say?

3 A There were two.

4 Q Okay. And we've talked about those earlier from the
5 two -- these two bags that are in State's number 30?

6 A That is correct.

7 Q Okay. And then who would have collected -- who from
8 your agency would have collected the evidence that day?

9 A Officer/Investigator Nick Bouknight.

10 Q Okay. And he was the narcotics agent at the time?

11 A He had actually two roles. He was the narcotics
12 officer who investigated narcotics activities as well as
13 he was the narcotics officer in control of the evidence.

14 Q Okay. So when drug evidence was seized, who would
15 keep up with it?

16 A Investigator Nick Bouknight.

17 Q And what were the procedures that he would undertake
18 in his duties as the Evidence Custodian of the drug
19 evidence?

20 A Investigator Nick Bouknight had a closet or room that
21 was designated as his evidence room where he secured all
22 the evidence. But he also, we had a single locker that
23 was a drop box that if a road deputy made an arrest,
24 whether it was pills or marijuana or cocaine, they would
25 fill out the proper chain-of-custody form, attach it to

1 whatever they placed it in whether it was a bag, a plastic
2 bag or whatever, and then drop it in that evidence drop
3 box. There was only one person that had access to that
4 drop box and the narcotics evidence room which was Nick
5 Bouknight at that time.

6 Q Okay. So if you wanted to check out some drug
7 evidence to analyze it or to take a look at something that
8 was seized, what would you have to do?

9 A I would have to schedule an appointment. If it was
10 drugs, I would have to make that appointment with Nick
11 Bouknight for him to go into his evidence locker and get
12 the item in question.

13 Q Okay. So it's your testimony that October 8th, 2011,
14 you were in Toaby Trapp's house and you see the pill
15 bottle on the dresser and you see the two bags of white
16 rock-like substance in front of the dresser on the floor
17 and Nick Bouknight seized all three of those items?

18 A Nick Bouknight seized those items and I documented
19 them on the search warrant.

20 Q All right. And do you have personal knowledge of who
21 would have transported those items to SLED for further
22 analysis?

23 A That would have been Investigator Nick Bouknight.
24 That was one of his job functions as the narcotic officer.

25 Q Okay. Now, what is a Form B, Rule 6. What is that?

1 A That is a form that is produced by SLED that they use
2 for what is classified as a kit for transporting the
3 evidence. It has this form in it to where you certified
4 who the officer is that actually collected/seized the
5 evidence and then what type of arrest it was seized from
6 as well as the individual it was seized from. And then it
7 is listed as far as what evidence is going to be sealed in
8 that bag to be transported to SLED for testing.

9 Q Have you ever filled one of these out?

10 A I have, yes sir.

11 Q And now is this something that you do in the ordinary
12 course of your line of work?

13 A If I come in contact with drugs, yes.

14 Q Okay. And what about other -- would you use that for
15 other pieces of evidence like blood?

16 A This particular form we would not, no.

17 Q That's specifically for drugs?

18 A This is dealing with drugs.

19 Q And those are ordinarily filled out in the seizure of
20 drugs when they are transported to SLED?

21 A That is correct.

22 Q And did your office maintain copies of those records?

23 A They do, yes.

24 Q Okay. Let me show you State's number 2. Do you
25 recognize that?

1 A Yes. This is a copy of the Form B, Rule 6. At the
2 very top it has a control number which is B215834. That
3 control number would be the number used for identification
4 of the kit that would be used to send the drugs down to
5 SLED.

6 Q State's number 30, can you see that control number
7 listed anywhere on that package?

8 A On package, and this is, the real clear bag that's
9 holding everything that's on the inside is a heat-sealed
10 bag. The actual bag that I call an integrity bag that is
11 inside is blue and white. It has a control number at the
12 very top that says B215834, SLED's logo and then SLED Drug
13 Analysis Security Envelope. It has the agency, Newberry
14 County, date sealed 10/10/11. The printed name on the
15 envelope -- sealing envelope is Nick Bouknight and then he
16 signs underneath his printed name.

17 Q All right. Now, referring back to State's number 2,
18 this is the control number that is referenced in that
19 form?

20 A That is correct, in the top left-hand corner.

21 Q Okay. So Nick indicate in that form what he did with
22 this piece of evidence?

23 A On this form he indicates, this is to certify that I,
24 Nick Bouknight, am employed by Newberry County Sheriff's
25 Office 10/9, excuse me, and that on 10/9/11, in front of

1 that is scribbled out with his initials. I received from
2 Toaby Alexander Trapp pursuant to search warrant at or
3 near 91 Little Ranches Road, Newberry, South Carolina
4 29108. The following substance or containers. Describe
5 substance or container with sufficient particularity to
6 distinguish it: 1) plastic bag containing a quantity of
7 white cookie-like substance; 2) plastic baggie containing
8 a quantity of white cookie substance; 3) orange pill
9 bottle containing a quantity of white cookie substance; 4)
10 scale containing a quantity of white residue on it; 5)
11 spoon with a quantity of white residue on it; and 6)
12 quantity of white residue. On 10/21/11, I made delivery
13 of the above-described substance or container to SLED of
14 SLED in substantially the same condition as when I
15 received it. And his signature is at the bottom right,
16 Nick Bouknight.

17 Q Okay. So he indicates that he seized the drug
18 evidence and then on the 21st, he delivered it to SLED?

19 A That is correct.

20 Q You said something, what is this, it's another item
21 that's in there?

22 A It's actually a scale but it looks as if it is a CD
23 of Bill Cosby is a Very Funny Fellow, Right.

24 Q But it's your testimony that's actually a scale?

25 A Yes, sir. If you actually open it up like you would

1 open up a CD, it's actually a digital scale.

2 Q Well, you can show us. Would you open that up?

3 A If you don't mind, I'd like to put some gloves on
4 real quick.

5 MR. LAKE: Your Honor, this hasn't even been entered
6 into evidence. And I'm not sure if he's trying to publish
7 this to the jury. I mean, there has not been sufficient
8 chain-of-custody for him to try to publish anything.

9 MR. SCOTT: I can introduce it now. I can attempt to
10 lay some more foundation.

11 THE COURT: All right. Attempt to lay some more
12 foundation. Mr. Lake is probably right on that.

13 Q When was the last time you saw that?

14 A The last time I saw that would have been on the night
15 we were at Mr. Trapp's office on October the 8th, 2011 and
16 early morning of October the 9th.

17 Q And where was that located in the house?

18 A I believe that was located on the counter there in
19 the kitchen.

20 Q And is that how it appeared October the 8th of 2011?

21 A With the exception of some writing that was on it
22 looks like was done by SLED.

23 Q I'm going to show you State's number 26. What is
24 that a picture of?

25 A State's 26 is a picture in the kitchen area looking

1 back toward the living room and there is a kind of a
2 little hutch that sticks out that's going from the kitchen
3 into the living room. And it's like a little recessed
4 calendar area and that is the area in which we located the
5 scale, a spoon and a razor.

6 Q Okay. And likewise State's number 24, is that the
7 same thing, just a different kind of angle?

8 A State's 24 is just a closer shot of State's 26.

9 Q That's what you personally observed with your own
10 eyes October 8th, 2011?

11 A Yes, it is.

12 MR. SCOTT: All right. At this time, Judge, we would
13 offer State's number 24 and 26 for admission into
14 evidence.

15 MR. LAKE: Without objection.

16 THE COURT: Without objection, 24 and 26.

17 (Whereupon, State's exhibit 24 and 26 were admitted
18 into evidence.)

19 Q All right. That item that's, did you notice that it
20 was in those pictures?

21 A That is correct.

22 Q Okay. Is that back there?

23 A The top right, yes sir.

24 Q Okay.

25 A Right there at this -- it's in between that orange

1 and the black in the corner. So, right in the middle.

2 Q Am I pointing directly at it?

3 A That's correct.

4 Q And did your office seize that piece of evidence that
5 day?

6 A It was seized, yes.

7 Q And it's notified in that form that you just read
8 from?

9 A Yes, it is.

10 MR. SCOTT: Your Honor, the State would offer the
11 digital scale for admission into evidence.

12 MR. LAKE: We'd object to that, Your Honor. He
13 hasn't laid the proper foundation for a chain, for that
14 particular item.

15 MR. SCOTT: Yeah. It's non-fungible evidence, Judge,
16 and the foundation has been laid at this point.

17 MR. LAKE: Your Honor, could we?

18 THE COURT: Yeah, you may. Come on up here.

19 (WHEREUPON, a bench conference was held in the
20 presence of the jury but out of the hearing of the
21 jury.)

22 THE COURT: All right. For the record, the scale
23 will be admitted as State's exhibit 31. 31, because this
24 is non-fungible and that will be the extent of its
25 admission. And it's subject to an objection from Mr. Lake

1 which was done pretrial and pre-admission.

2 (Whereupon, State's exhibit 31 was admitted into
3 evidence.)

4 THE COURT: Hang on, Mr. Scott. I mean, you don't
5 need to mark that. Make sure you've got Mr. Lake's
6 objection as noted on the record as admitted subject to
7 his objection which we've previously made an extensive
8 record of.

9 MR. LAKE: Yes. My objection to the admission to
10 that particular item. A proper foundation hadn't been
11 laid or a chain-of-custody been established for this
12 particular item.

13 THE COURT: All right. Admitted subject to the
14 objection.

15 Q All I want you to do with State's number 31 is you
16 just open it up and show the jury what that is.

17 A Yeah. Like I said it appears to be a CD case but
18 whenever you actually open it up, it is actually a digital
19 scale.

20 Q Okay. That home, what's the address again?

21 A The address that we were at was 91 Little Ranches
22 Road, Newberry County. It's off of Highway 34 out past
23 the skating rink.

24 MR. SCOTT: Okay. Please answer any questions Mr.
25 Lake has for you.

CROSS-EXAMINATION

BY MR. LAKE:

Q Captain Dennis and again, how long have you been captain?

A Since May of 2013.

Q And what are your responsibilities as captain?

A I still oversee and supervise the Investigations Unit, also the Victim's Advocate Program, as well as the COPS program, which is our Community Oriented Policing unit.

Q And how many officers are you over?

A There are nine of them.

Q And do you have your own set of cases?

A Yes, I continue to work cases at the Sheriff's Office as well.

Q Was this your particular case?

A This was assigned -- which part?

Q Were you the assigned investigator on this particular case or did you assign it to someone else?

A I was the assigned investigator for the burglary. Nick Bouknight was the assigned case officer for the trafficking cocaine.

Q And you understand the importance of, I guess, doing reports, don't you?

A Yes, sir.

1 Q What's the importance of doing reports?

2 A It tracks what the victim or the complainant or the
3 subject would actually tell us as to what the crime is, if
4 anything, or it could just be an information report. So
5 it would be a documentation of those individuals for us to
6 look into and further investigation.

7 Q And could you tell the jury about the report you did
8 in this particular case?

9 A On the burglary, I documented that Mr. Trapp--

10 Q Wait.

11 A You asked me to document or talk about my
12 documentations of my case.

13 Q Investigator -- Captain Dennis, what I asked you did
14 you -- maybe I'll rephrase this. Did you prepare your own
15 report in this particular case?

16 A Yes, I prepared my own report in this case.

17 MR. LAKE: Your Honor, may we take a moment?

18 THE COURT: You got a legal matter?

19 MR. LAKE: Yes.

20 THE COURT: Okay. All right. Ladies and gentlemen
21 of the jury, y'all step in the jury room for a few
22 minutes. We got a issue that needs to go on the record
23 and don't begin discussing the case.

24 (Whereupon, the jury was excused from open court.)

25 MR. LAKE: Your Honor, Captain Dennis has just

1 testified that he prepared his own report. I certainly
2 don't have a copy of any kind of report that he has
3 prepared and he's testified before in preliminary type
4 testimony in terms of pretrial testimony. I think at
5 those particular times, he admitted that he did not
6 provide any type of report or anything along those lines
7 and he essentially relied upon Investigator Bouknight's
8 report. Now, he just before this jury testified that he
9 prepared a report.

10 THE COURT: Well, let him finish answering the
11 question. He said, yes. I want to hear his explanation.
12 What about it?

13 CAPTAIN DENNIS: Yes, sir. I prepared a report on
14 case number 11-9319, burglary. My supplemental report was
15 dated 12/21/2011. My officer number is 064, Robert
16 Dennis. Detailed statement of investigation: Trapp
17 called and advised that he had heard Chaplain is the one
18 who broke into his house but there is no evidence to
19 support this. This case is clear until more information
20 comes available.

21 THE COURT: So that's the incident report regarding
22 to burglary.

23 MR. LAKE: Your Honor, he clearly knew what, I mean,
24 he's trying to parse the words.

25 MR. SCOTT: He asked him if he generated a report

1 with, involving this case.

2 THE COURT: You've been very particular with how
3 you've made him answer questions yes or no. And he
4 answered your question. I think you may want to
5 recharacterize your next question. All right. Is that
6 all you want from him because understandable, I know there
7 is two different cases and he was here on the burglary and
8 he participated in and assisted in the narcotics
9 investigation. His primary investigation was on a
10 burglary and he prepared a report. That's not relevant to
11 this trial. It's not going to be admissible. I mean,
12 unless you, if you want it in, you can put it in.

13 MR. LAKE: Well, Your Honor, if that's the case then
14 that it's not admissible, then I would move to strike that
15 answer.

16 THE COURT: Well, you asked him did he prepare a
17 report of his investigation and yes, he did. I don't
18 think it's relevant to this trial and you can't have it
19 both ways.

20 MR. LAKE: Yes, sir.

21 THE COURT: I mean you are not going to, I'm not
22 going to strike an answer. I think he can explain his
23 answer, but you've tried to prevent him from explaining
24 his answers while asking yes or no questions the whole
25 time you've been asking him questions or at least that's

1 my observation.

2 MR. SCOTT: And also I think he can require him to
3 answer yes or no, but then he's got to give him an
4 opportunity to explain.

5 THE COURT: My suggestion would be the report you
6 prepared was just for burglary. Did you prepare a report
7 in regard to the, what we're on trial now. And then he
8 can answer that question. Let's proffer that right now,
9 if you were going to ask him that question.

10 MR. LAKE: I mean, Your Honor, I mean he can clarify
11 that when he testifies that it was just related to a
12 burglary and nothing related to the drugs.

13 THE COURT: Okay. Fair enough. All right. I want
14 to take a short break so.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Let's bring the jury in.

17 (Whereupon, the jury came into open court at
18 approximately 2:28 p.m.)

19 THE COURT: All right. Folks, we're ready to
20 continue.

21 MR. LAKE: Thank you.

22 BY MR. LAKE:

23 Q Mr. Dennis, you can finish up your response.

24 A Yes, sir. On the report that you were asking about,
25 there's actually two reports. I actually -- I worked the

1 case that was involving the burglary for which I did a
2 supplemental report closing that report out based on some
3 insufficient evidence to prosecute someone for breaking
4 into Mr. Trapp's residence. So I did generate a report on
5 the burglary.

6 Q So you're an investigator on the, so Spreng was no
7 longer the investigator on the burglary?

8 A What happens, Mr. Lake, is when we're on call,
9 although you're on call, you may not be assigned to
10 investigate that burglary. You come out to investigate,
11 taking pictures or photographing the scene, collecting
12 evidence and different things like that to help discover
13 who did it. So although he played that part that night, I
14 actually started the investigation of the burglary.

15 Q Okay. And as part of the investigation of that
16 burglary, how much fingerprints did you request in this
17 particular case?

18 A There were no fingerprints obtained there at the
19 scene that we could use.

20 Q Did you attempt to obtain any fingerprints?

21 A As far as me no, but I know Investigator Spreng did
22 dust.

23 Q And that's, when did he do that?

24 A While I was there on scene.

25 Q And is that memorialized in either your report or

1 Investigator -- well, actually did Investigator Spreng do
2 a report?

3 A I don't think he did a report, no. No, I do not see
4 one in here.

5 Q And so did he report regarding either the burglary or
6 the drug case for which we're here today, Investigator
7 Spreng that is?

8 A No.

9 Q And the only thing that you gave a report of is
10 really more supplemental just saying the fact that you
11 essentially heard that this person was the person that
12 might have broke into the house, correct?

13 A That was relayed by Mr. Trapp.

14 Q So, Mr. Trapp still reached out to you to try to
15 provide y'all with some information about who robbed his
16 house, correct?

17 A That is correct.

18 Q Even after October 8, 2011?

19 A That is correct. That is one of the things that we
20 try to do is stay in contact with individuals about their
21 cases and ask that they do the same.

22 Q Did y'all ever reach out to him about anything that
23 y'all turned up or ask him any additional questions about
24 that burglary?

25 A None that I remember, no.

1 Q Take any DNA swabs or do anything else regarding
2 that?

3 A No.

4 Q And you were testifying essentially about the
5 necessity for a report when you documented that he called
6 you. But wouldn't it have been just as important for you
7 to document this alleged statement that you attribute to
8 Mr. Trapp?

9 A Although it was not done by my hand, it was
10 documented by Investigator Bouknight who was there with me
11 whenever the Miranda rights were given to him and the
12 statement was made. I would only be duplicating what
13 Investigator Bouknight put down.

14 Q And at any point during this timeframe, did you
15 document that you gave the Miranda?

16 A As I said earlier, it was documented by Nick
17 Bouknight in his supplemental of me doing that. So there
18 was no need for me to duplicate what had already been said
19 and in reviewing his report.

20 Q And so you actually reviewed his report, correct?

21 A Yes, sir.

22 Q Let me just show you some additional pictures just to
23 make sure what's been marked in Defendant's exhibits
24 number 14 and 15 and ask you do you recognize those items
25 again?

1 A In Defendant's 14 and 15, they depict the pictures
2 that I had talked about earlier of the bedroom with some
3 disarray on the floor, as well as the two packets of white
4 plastic bags containing the cookie-like substance. And
5 the only difference between the two is the type of paper
6 it's on.

7 Q And let me show you what's marked as State's exhibit
8 number 13 and ask you do you recognize that?

9 A This is actually Defendant's exhibit 13.

10 Q I'm sorry, 13.

11 A Yes, sir. It's another picture of kind of looking
12 between the bed and dresser in the Defendant's or in Mr.
13 Trapp's room.

14 Q And all of those photos fairly and accurately depict
15 the area that particular night?

16 A Yes, they do.

17 Q What number is that of again?

18 A 13, 14, and 15, Defendant's.

19 MR. LAKE: Your Honor, at this time we'd move those
20 exhibits into evidence.

21 THE COURT: Any objection?

22 MR. SCOTT: No, sir.

23 THE COURT: No objection.

24 MR. LAKE: Okay.

25 THE COURT: 13, 14, 15?

1 MR. LAKE: Correct, Your Honor.

2 THE COURT: They're in without objection.

3 (WHEREUPON, Defendant's exhibit numbers 13, 14 and 15
4 were admitted into evidence.)

5 Q Now, you indicated that you kind of followed with Mr.
6 Bouknight on his reports. Did you ever have any
7 communications with the magistrate that night who provided
8 the search warrant?

9 A No, I did not.

10 Q Did you ever have any communications with
11 Investigator Bouknight before he obtained that search
12 warrant that night?

13 A Not before he had gone to the Judge, no.

14 Q Do you have any personal knowledge yourself about any
15 information that was, I guess, given from Investigator
16 Spreng to Investigator Bouknight that would then be given
17 to Judge Halfacre in this particular case?

18 A Investigator Spreng had called and notified me of the
19 burglary, of the drugs that were found, of notifying
20 Investigator Bouknight of the drugs that were found.
21 Pretty much asking him what should he do next, where
22 Investigator Bouknight instructed him that he was going to
23 go get a search warrant, stop what you're doing, let me
24 get the search warrant then we'll come back and continue.

25 Q Did you have personal knowledge of that or you're

1 reading off what would be Investigator Bouknight's report?

2 A That was what was relayed to me personally by
3 Investigator Spreng.

4 Q But there is no document of that conversation either,
5 is there?

6 A No, that's my recollection of that night.

7 Q Let's go over your recollection again of a few other
8 things. On October the 9th, 2011, you signed off on the
9 return, correct?

10 A That is correct.

11 Q And at that particular time you indicated some
12 photographs that were taken?

13 A That's correct.

14 Q And there were two plastic bags with a white solid
15 substance found on the floor in the bedroom, correct?

16 A That is correct.

17 Q Now, also there was a pill bottle on a dresser with
18 solid substance, correct?

19 A Actually, that is a pill bottle on dresser with white
20 solid substance.

21 Q With white solid substance. And there was a CD case
22 scale?

23 A That's correct.

24 Q And a spoon and a razor blade with residue on it,
25 correct?

1 A Correct.

2 Q And there was a straw?

3 A That's correct.

4 Q And those were the items that you specifically gave
5 to Investigator Bouknight?

6 A Bouknight, yes sir.

7 Q Did you personally observe him pick up any of these
8 items?

9 A He was personally handed those items for, after being
10 documented on the return and then he would secure those.

11 Q Who were they handed to him by?

12 A Do what now?

13 Q Who handed it to him?

14 A Well, he had control of them. But I had to look at
15 them to document them on the return so he would have had
16 control of them.

17 Q I'm guess what I'm asking you is, was each item in
18 these particular photographs as they were found that
19 particular night?

20 A I still don't understand.

21 Q The photographs depicted, you've testified that those
22 photographs depict what it looked like that particular
23 night. And what I'm asking you is, when these drugs are
24 located in a specific spot, do you have personal knowledge
25 or did you observe Investigator Bouknight pick up each one

1 of these items?

2 A Yes. Each of these items were picked up and then
3 transferred for me to look at and document on this report.

4 Q And you saw him do that personally yourself?

5 A Yes, sir.

6 Q Okay. And you know what a evidence log is, correct?

7 A I do.

8 Q And there was one done in this particular case,
9 correct?

10 A That is correct.

11 Q It was done on October the 8th, 2011, right?

12 A That's correct.

13 Q And Investigator Bouknight would have done that,
14 correct?

15 A That's correct.

16 Q And on Investigator Bouknight's report, he indicates
17 there's two razor blades?

18 A Okay.

19 Q And but you indicated in the return that you kind of
20 checked it behind, where did the extra razor blade go to?

21 A The pictures depict a razor blade on the dresser next
22 to the pill bottle which is in number 9 which is a State's
23 exhibit.

24 Q So is the return incorrect? You've indicated there
25 is only one razor blade?

1 A And that's what was given to me from, with the spoon
2 and the razor blade that would have been next to the
3 kitchen counter.

4 Q This right here represents everything that y'all
5 alleged to have collected, right?

6 A Yes.

7 Q And I think the prosecutor in this case was talking
8 to you about a Form B and you also kind of just -- you
9 went over the items specifically. You indicated there was
10 a plastic baggie containing a quantity of a white
11 cookie-like substance with this, what was on the return,
12 correct?

13 A That is correct.

14 Q And you indicated that number 2 was a plastic baggie
15 containing a quantity of a white cookie-like substance
16 which is also indicated on here, correct?

17 A That's correct.

18 Q And also on that Form 6 indicates there's an orange
19 pill bottle containing a quantity of white cookie
20 substance,, correct?

21 A That was which number?

22 Q That would be number 3.

23 A 3, yes, yes.

24 Q And that's also identified on your return, correct?

25 A That is correct.

1 Q And number 4 you indicated now there is a scale
2 containing a quantity of a white residue on it, correct?

3 A On Form B, yes.

4 Q And that's also indicated in the return?

5 A The return indicates a CD type scale.

6 Q Then all of the sudden, now there is something new on
7 here that there is a spoon with a quantity of white
8 residue on it, yet it is not on this return.

9 A Yes, it is.

10 Q I'm sorry. It is. I apologize. It's done with the
11 white razor blade residue on it, correct?

12 A That's correct.

13 Q And then number 6, I apologize, is a quantity of a
14 white residue which is separate and distinct from the
15 residue that was on the spoon or alleged on the scale?

16 A That is correct.

17 Q Where did that come from?

18 A I cannot answer that.

19 Q That's not one of the items that you gave
20 Investigator Bouknight according to your return or that he
21 gave you and you returned back to him?

22 A No.

23 Q And you have no clue where this thing was actually
24 even found either, do you?

25 A Do what now?

1 Q This number 6. You have no clue where this quantity
2 of white substance residue, where that even came from, do
3 you?

4 A Not without looking at the SLED report, no.

5 Q And, in fact, the last time you actually saw the
6 items that you gave him which would be the items on this
7 return which was when he left to go, when he left the
8 scene? When is the last -- strike that. Explain to the
9 jury when the last time you saw the evidence in this
10 particular case before this trial?

11 A The last time with seeing the evidence was when we
12 cleared the scene, packaging up everything, putting it in
13 the vehicles and then leaving the scene, would have been
14 the last time.

15 Q And Investigator Bouknight would have been the person
16 that did that, correct?

17 A That is correct.

18 Q And he would not have put it in a sealed envelope
19 and you didn't observe him put it in a sealed envelope,
20 did you?

21 A And he put it in the envelope.

22 Q I guess what I'm saying is not one of the Best
23 Evidence Kit.

24 A Oh, not in that.

25 Q Where you can actually seal it and make sure that

1 nothing has been added or taken away?

2 A That's right. Actually, I believe the containers
3 that he used to package the stuff is still in the Best
4 Evidence Kit there.

5 Q And after that last time you saw him, again, you
6 didn't see it until trial, correct?

7 A Until today, yes.

8 Q And I know you testified as to practices and things
9 of that sort. But do you have any personal knowledge as
10 to once it left your view what happened to those drugs?

11 A Once it left my view, it would have been relied on
12 Investigator Bouknight to place it in his evidence storage
13 until it would have been checked out to go to SLED for
14 testing.

15 Q And so it would have been relied upon. So you would
16 have expected him to do that, but you never saw him do it
17 or anything along those lines, correct?

18 A No.

19 Q And so other than what you allege that Mr. Trapp said
20 that night, you've had no other further work on that drug
21 case, did you?

22 A No sir, I did not.

23 Q Other than you got a call from Mr. Trapp about the
24 burglary?

25 A About the burglary and dealing with the burglary.

1 Q Did y'all ever at any point, as you're a supervisor,
2 ever attempt to get fingerprints off these particular
3 items?

4 A I did not, no.

5 Q Sir?

6 A I said, I did not, no.

7 Q You did not know what?

8 A N-O.

9 Q Oh, you said no?

10 A I did not, no.. N-O.

11 Q Okay. Do you know where that came from? Do you know
12 or have any personal knowledge as to whether anyone at any
13 point has ever done any fingerprints, done any DNA
14 analysis or anything on this particular item?

15 A I would not.

16 Q Okay. And those kind of things are possible in this
17 particular case, because, you know, fingerprints will
18 leave, you know, once you touch a particular item along
19 with DNA, correct?

20 A They could be.

21 Q And in this case right here, there is no identifying
22 markers on this particular type of container?

23 A There is no identifying markers on the container.

24 Q And after it actually leaves, I guess after

25 Investigator Bouknight takes control of the items that you

1 gave him, I know you are testifying as to best practice.
2 But do you have any personal knowledge as to when he may
3 have, I guess, separated things out from, I guess, what
4 was sent to be tested or what wasn't sent to be tested?

5 A No, I would not other than the, what's indicated on
6 the Form B, Rule 6.

7 Q Okay. And because I know there is actually, there
8 were two specific items that, I guess were attached at one
9 point. And you don't have any personal knowledge as to
10 what items went to SLED and what didn't go to SLED?

11 A Yes, sir. With the information that I'm looking at
12 on this packet which has been marked State's Exhibit 30,
13 inside this heat-sealed bag is SLED's Best Kit with the
14 control log and number. On the outside of it is also
15 SLED's label maker that they use to indicate the lab
16 number which references this Best Kit. So I would say
17 what was ever in this kit is what went to SLED. This
18 would have been evidence maintained at the Sheriff's
19 Office which has been marked State's exhibit number 1,
20 based off of the old form now that was used then and then
21 the envelope that was packaged inside.

22 Q And was this the envelope that you gave Investigator
23 Bouknight on that particular night?

24 A Whether I gave it to him or not, that would be one
25 like we use.

1 Q And this particular document, it lists plastic
2 baggies, razor blade and pill bottle as items being
3 contained in this particular envelope?

4 A That is what it says on the new evidence sticker,
5 yes.

6 Q Is there an evidence sticker for this particular bag?

7 A Yes, it is.

8 Q This is it right here?

9 A Yes.

10 Q Where is the thing that has that label right there on
11 it?

12 A What do you mean?

13 Q That right there is a label, are any of these other
14 documents labeled that same way?

15 A No.

16 Q Do you know who would have labeled that?

17 A This new label that is put on this bag is what our
18 new Evidence Custodian officer uses as well as on the SLED
19 bag.

20 Q Were the razor blades sent to, from your own personal
21 knowledge, from what you have looked at, were the razor
22 blades sent to be tested?

23 A No, not according to this, both of the razor blades
24 are in this packet along with, I don't know if that is
25 some type of pipe or what is in there.

1 Q There is a pipe on there also?

2 A I don't know what it is to be honest with you.

3 Q Is that on the Form B?

4 A If it didn't go to SLED it was not put on Form B.

5 Q Is that listed on that particular envelope too, I see
6 you have got it sealed and it is kind of, what is the
7 purpose of having this right here on the item, this tape
8 and everything like that?

9 A That tape would be, once they seal that bag to
10 protect it from either coming open or being tampered with.

11 Q That is the purpose of it, just to make sure, the
12 chain-of-custody really has to do with tampering, correct?

13 A That's correct.

14 Q And do you know who put this particular type of
15 taping on that?

16 A The initials are NB which would be for Nick Bouknight
17 which are his initials and handwriting.

18 Q And was the pill bottle sent to SLED?

19 A On Form B, Rule 6 and in this packet, yes. And also
20 in this packet is the form that Nick would have tore off
21 for his tracking number for that SLED packet which is
22 B215834. And then on the back he has got Trapp written on
23 it and it was in this envelope.

24 Q And so you have got one thing in there and then you
25 have got another set of items, I mean at some point did

1 either Investigator Bouknight or someone, I guess,
2 separate these items into separate envelopes?

3 A I am sure they would have to since we have two
4 separate packets.

5 Q Do you know who did that?

6 A As far as firsthand, no.

7 Q Do you know when it was done?

8 A Other than looking at the evidence form, 10/9/2011.

9 Q Are you speculating as to when that was separated or
10 do you have any personal knowledge yourself?

11 A I am reading what is written on both the packet as
12 well as the evidence form.

13 Q And do you have any personal knowledge as to the
14 condition of the items at the time that they were
15 separated?

16 A No, I do not.

17 Q Do you know who all may have been present at the time
18 these items may have been separated?

19 A No.

20 Q Do you know how long they had been sitting out
21 separated before they were actually placed back together
22 at some point?

23 A No.

24 Q Would it be fair to say that you basically have no
25 other knowledge after you saw Bouknight with it that

1 particular night?

2 A Other than the paper trail of what I have visibly
3 been seeing today, no.

4 Q You yourself created no paper trail yourself,
5 correct?

6 A Although I don't create the paper trail there is a
7 paper trail created so that we can show from one hand to
8 another.

9 Q And this alleged statement that you attributed to Mr.
10 Trapp, did you ever attempt to memorialize that in written
11 form and get him to sign it or anything like that?

12 A No, I did not.

13 Q Did you ever get him to even sign up on a Miranda
14 form where he acknowledged that you read him his rights or
15 that you even had a conversation with him?

16 A No sir, I did not.

17 Q Can you agree that it would be important that if you
18 say that a person confessed that you actually either write
19 a report or at least attempt to get a statement in this
20 particular matter, wouldn't you?

21 A It would depending on the individual.

22 Q Since this trial has started have y'all made any
23 attempts to get any fingerprints on that pill bottle?

24 A Not to my knowledge.

25 Q And I know that you testified that Investigator

1 Spreng, I think you said he was in Puerto Rico or Florida
2 or anything along those lines, is there anything that
3 prevented you all from reaching out to him and having him
4 to come in here and do what you are doing and testify and
5 ask him what happened?

6 A When Mr. Spreng left Newberry Sheriffs Office there
7 was no forwarding address or numbers left to us. Although
8 we know he has family in Florida he also has family in
9 Puerto Rico that he goes back and forth to visit.

10 Q There was nothing that prevented you all from calling
11 this case before he left, was it?

12 A That would be a question for the solicitor's office
13 since they are the ones that schedule the trials and
14 different things that come through the court.

15 Q Has anyone on your behalf or the Solicitor's behalf,
16 do you have any personal knowledge, that anyone ever tried
17 to get Investigator Spreng or anyone else here to testify
18 regarding the facts of this case. I mean, when I say this
19 case, I mean the drug case.

20 A As far as I am aware, I know they contacted me about
21 forwarding information of where he might be as far as a
22 phone number. But as far as the direct contact from Mr.
23 Spreng, no.

24 Q And, again, so we can be clear, he never provided any
25 report that said the same things that you said in

1 reference to, that Mr. Trapp gave a statement to you that
2 those were his drugs?

3 A He did not, no.

4 Q There is no reports from him saying he met you and
5 Mr. Trapp had a conversation at all, is there?

6 A From who?

7 Q Investigator Spreng?

8 A No, he did not document one.

9 Q That is all.

10 REDIRECT EXAMINATION

11 BY MR. SCOTT:

12 Q To your knowledge how many times have you attempted
13 to call this case to trial?

14 MR. LAKE: Objection.

15 THE COURT: That is not relevant, I will not allow
16 that.

17 Q Why wouldn't you fingerprint that medicine bottle?

18 A After the Miranda rights were given to Mr. Trapp,
19 from his own admission stating that was his drugs.

20 Q He admitted that pill bottle was his and the drugs
21 inside of it?

22 A That's correct.

23 Q Was there any need to fingerprint?

24 A Not at that time.

25 Q Thank you.

1 THE COURT: Any recross?

2 MR. LAKE: No, sir.

3 THE COURT: You may step down.

4 MR. SCOTT: The State calls Lynn Black.

5 LYNN BLACK, being
6 first, duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SCOTT:

9 Q Ms. Black, where are you employed?

10 A I work for the South Carolina Law Enforcement
11 Division commonly known as SLED in the forensics services
12 laboratory.

13 Q What is your title in the forensics laboratory?

14 A I am a forensic chemist in the drug analysis section.

15 Q What does the term, forensics, describe in your line
16 of work?

17 A Forensics means as applied to the law. And when you
18 put forensics and science means science has applied to the
19 law.

20 Q Okay. Specifically what kind of items do you
21 analyze?

22 A I receive substances that law enforcement personnel
23 bring in and I analyze them to determine whether they are
24 controlled substances or not.

25 Q So you primarily deal with, I guess, narcotics?

1 A I wouldn't classify them all as narcotics, no sir.
2 But substances, powders, plant material, paper, liquids,
3 anything that someone suspects could be a drug.

4 Q So SLED would have a DNA section that would analyze
5 DNA evidence but there is also, I guess, a generic term,
6 but the drugs section to analyze drugs?

7 A Controlled substances, yes sir.

8 Q How long have you worked in that particular capacity?

9 A I have worked for SLED for a little over 6 years but
10 I have been a drug chemist for 14 years. I worked
11 previously at the Georgia Bureau of Investigations in
12 Atlanta for 8 years.

13 Q And where did you get your undergraduate degree?

14 A I have a Bachelor of Science Degree in Chemistry from
15 Kentucky, Wesleyan College. I also have a certificate of
16 medical technology from the University of Louisville and I
17 have a Master of Science Degree in Forensic Science from
18 Marshall University.

19 Q As a drug chemist with SLED are you required to, I
20 guess, get continuing education, continuous training.

21 A It is not a requirement but they do provide for us
22 that we can do that. At least once a year we get the
23 opportunity to go to a class or a conference where we can
24 take some different training classes and things but it is
25 not a requirement, no.

1 Q Do you have any idea approximately how many samples
2 you would test on a monthly basis?

3 A On a monthly basis, probably anywhere from 80 to 100
4 cases I would say. And a case can be one sample or a case
5 could be ten samples. It just depends. So, I know that I
6 sampled approximately, probably about 4,400 cases since I
7 have been at SLED, in the six years that I have been
8 there.

9 Q Have you ever testified in General Sessions court
10 before?

11 A Yes, sir.

12 Q Do you know how many times?

13 A Here in the State of South Carolina I have testified
14 17 times, overall I have testified 117 times.

15 Q And do you know, have you ever been qualified as an
16 expert?

17 A Yes.

18 Q How many times?

19 A All of those times.

20 Q So 117 times in General Sessions court?

21 A Well, in Georgia, they don't call it that. But, you
22 know, in their court system I testified 100 times but here
23 in South Carolina 17.

24 Q Okay. And what were you qualified as an expert in?

25 A Drug chemistry.

1 MR. SCOTT: Your Honor, at this time we would offer
2 Lynn Black as an expert in drug chemistry.

3 THE COURT: Any voir dire?

4 MR. LAKE: No, sir.

5 THE COURT: She is so qualified. Ladies and
6 gentlemen, what that means is that Ms. Black has some
7 expertise in the field of drug chemistry. She is able to
8 offer opinions in addition to factual testimony in that
9 field. You may continue.

10 Q Ms. Black, did you have an occasion to test some
11 evidence submitted to you in a SLED lab number L11-11971?

12 A Yes sir, I did.

13 Q And who was your listed suspect in that case?

14 A Toaby Trapp.

15 Q And when did you receive or when did you test this
16 evidence?

17 A I tested it on October the 25th, 2011.

18 Q We have been talking about, what is a
19 chain-of-custody in regards to drug cases?

20 A The chain-of-custody is a record of who handles
21 evidence, like for SLED we have our own internal
22 chain-of-custody. And what we use is a bar code that is
23 scanned from person to person. Every person has a bar
24 code for themselves as well. So we scan the evidence to
25 us. When I receive evidence and it gets scanned to me and

1 then that generates, in our computer system, a record that
2 that evidence is in my custody and what date and what
3 time. So the chain-of-custody is very important to keep
4 track of where the evidence is and who touches it.

5 Q And are those records kept in the ordinary course of
6 business at SLED as far as drug evidence?

7 A Yes sir, they are.

8 Q You keep a chain-of-custody on all the samples you
9 test?

10 A Yes, sir. All the evidence, excuse me, all the
11 cases.

12 Q Do you have your records of the chain-of-custody in
13 this case?

14 A I do.

15 Q As far as the samples you received in this particular
16 case when did they arrive at SLED?

17 A According to my records they arrived, they were
18 submitted on October 21st, 2011.

19 Q By whom?

20 A This says Investigator Nick Bouknight of the Newberry
21 County Sheriffs Office.

22 Q Would you spell that last name.

23 A B-O-U-K-N-I-G-H-T.

24 Q Ms. Black, do your records indicate when Mr.
25 Bouknight delivered them to SLED?

- 1 A October 21st, 2011.
- 2 Q What time?
- 3 A 10:54.
- 4 Q Who did he transmit the evidence to?
- 5 A According to my records, Selena Kinard.
- 6 Q Who is Selena Kinard?
- 7 A At that time she was a forensic technician in the
- 8 log-in department at SLED.
- 9 Q So, what does somebody in the log-in department do?
- 10 A They typically receive evidence from law enforcement
- 11 personnel, they will record, excuse me, they will use
- 12 whatever paperwork that the submitting agency brings in
- 13 and type in the information into our computer system,
- 14 suspect names, incident dates, officers names and what
- 15 type of evidence it is. And then they will generate what
- 16 we call a unique crime lab case number which will be
- 17 associated with that case from then on. And they will
- 18 also generate that case number in a bar code fashion and
- 19 place that on the evidence. And then as I said before,
- 20 that is what we would scan, excuse me, in this case the
- 21 log-in person would scan that evidence to themselves. So
- 22 then our records would show that that evidence was in her
- 23 possession.
- 24 Q And this bag, State's number 30. Inside of it is
- 25 another bag, what is this?

1 A That is what we call the Best Kit Bag, the tamper
2 evident bag that comes in a Best Kit that SLED supplies to
3 law enforcement personnel for the submission of drugs.

4 Q Is this how you typically receive the items that you
5 end up testing?

6 A Actually it comes in a manila envelope. The kit
7 itself comes in a manila envelope that has this bag in it
8 and then all the paperwork that the agency would need to
9 submit drug evidence. And typically that is what the
10 log-in person would put the crime lab sticker on. So when
11 I receive it I take this bag out of that envelope and that
12 envelope actually gets destroyed because I put this bag
13 inside another bag. And then on that bag has, I also
14 print out the crime lab case number, bar code and stick it
15 on there.

16 Q Who would have generated that bar code?

17 A That is the Best Kit bar code that is already on
18 there, that comes on that bag and it is also on the
19 envelope, the big manila envelope that that comes in.
20 That is just how the law enforcement agency can keep track
21 of what there evidence is in. That is called the Best
22 number or the control number. I think some people have
23 spoke about that in this trial. But that is just
24 basically, we can look up cases by that number too but
25 generally we use the unique crime lab case number.

1 Q What was the bar code that you said Selena Kinard
2 would have generated?

3 A As I said, it was on the big manila envelope but that
4 is also, it too, just like that, that yellow sticker right
5 here was also on a big manila envelope.

6 Q What does tamper evident mean?

7 A That means if somebody were to try to open up the
8 seal at the top of that bag which is green, it is sticky
9 stuff, that it would be obvious. You know, some of the
10 graphics would be distorted and it would be, it says
11 evident that somebody had tampered with it.

12 Q Do you have any particular policy, as far as when you
13 receive a Best Bag or a Best Kit or whatever you call it,
14 what is your policy, do you observe there has been some
15 tampering involved in that?

16 A If it had been tampered with or it was open we would
17 not keep it, we would send it back to the agency.

18 Q Okay. Did you ultimately test items in this case?

19 A Yes, I did.

20 Q Did that indicate to you that the bag had not been
21 tampered with as far as you could tell when you received
22 it?

23 A That's correct. And I even write on the bag itself
24 that the seal was intact and my initials and the date
25 whenever I open up evidence.

1 Q Okay. Selena Kinard, she received it at 10:54, that
2 is a.m., from Nick Bouknight?

3 A Yes, sir.

4 Q On October 21st, so she gives it all the identifying
5 features that we talked about. And then what does she do,
6 takes it to like an evidence storage bin there?

7 A Yes. After she puts the information in the computer
8 system and then she generates the bar code and she scans
9 it to herself. And at some point she will put it in the
10 evidence vault and then she will scan it to the vault.

11 And I think they will scan it to a particular shelf too so
12 they know exactly where it is in the vault because it is
13 rather large and there is lots of evidence back there.

14 So, she would have done that and I think on our
15 chain-of-custody it says drug evidence intake storage so
16 that is a particular place in the vault.

17 Q And she received it at 10:54, when did she transfer
18 to the evidence vault?

19 A At 10:55.

20 Q So not, certainly don't want to minimize her job.
21 But she kind of takes it from the officers and gives it an
22 identifying feature and then takes it to the storage room?

23 A Correct.

24 Q She doesn't test it or anything?

25 A No, sir. She just transferred it to the vault.

1 Q When is the next time this package moves?

2 A And then on October 25 of 2011 another forensic
3 technician, Patricia Crooks, retrieved it from the drug
4 evidence intake storage area and then she gave it to me.

5 Q According to the chain she just checked it out and
6 transported it to you?

7 A That's correct.

8 Q And did she do any testing or anything with this
9 evidence?

10 A No, sir.

11 Q Where is Selena Kinard now?

12 A I am not sure if she is still living in South
13 Caroline, as far as I know she is. But I have no personal
14 knowledge. She left SLED several years ago.

15 Q She is no longer employed with SLED?

16 A That's correct.

17 Q And Pat Crooks?

18 A She just retired this year earlier and so she is
19 enjoying herself at home.

20 Q Okay. These would have been people who would have
21 transported the drugs from one spot to another, they
22 didn't perform any analysis?

23 A That's correct. They just transport it.

24 Q I want to ask you about specific items that you would
25 have tested. State's number 32. Do you recognize that?

1 A I do.

2 Q And how do you recognize that?

3 A This is a plastic bag that has brownish rock kind of
4 substance in it and it has got, it has a piece of tape on
5 here that has the lab number, L11-11971. And then the
6 item number that is my item number is 1.1 and my initials.
7 So this was item 1.1 in this case.

8 Q Okay. And did you perform any test on that sample?

9 A Yes, I did.

10 Q And did you render, what were the results of item
11 1.1?

12 A This was cocaine base or also known as crack was
13 found and it weighed 10.0 grams.

14 Q And that would have been lab number associated with
15 the case you talked about earlier with the suspect being
16 Toaby Trapp?

17 A That's correct.

18 Q Let me ask you, why is the crack brown. Do you have
19 an explanation for that?

20 A It can change colors because, you know, of how it is
21 made, if it wasn't a very complete reaction when they made
22 it. If this was kept in a hot place or, you know, exposed
23 to extreme temperatures that could cause because the
24 different chemicals that make this up, you know, you just
25 never know. And they could have put in some different

1 cutting agent or something that can cause that. But, yes,
2 because it was not this color when I tested it because I
3 would have noted it on my sheet because generally crack
4 comes in, it can be white, off white. I have seen it this
5 color but usually it is off white or white. But it could
6 be just be from deterioration or just because of the
7 nature of whatever else they put in there.

8 Q But that is a phenomenon you are familiar with?

9 A Yes, sir.

10 MR. SCOTT: Your Honor, State would offer State's 32
11 for admission into evidence.

12 THE COURT: Any objection.

13 MR. LAKE: The Defendant would object. He hasn't
14 laid the proper foundation for the admission of this item.

15 THE COURT: Consistent with my prior analysis and
16 ruling under the Taylor case, I think it should be
17 admitted subject to your objection.

18 MR. LAKE: The only reason I say that, Your Honor,
19 there is an additional witness that has not been called in
20 this particular case. I think that is one of the reasons
21 why, for the objection. Should be part of the chain, I
22 assume.

23 THE COURT: I want to hear you on that. Y'all step
24 in the jury room, don't begin discussing the case.

25 (Whereupon, the jury was excused from open court.)

1 THE COURT: Let me hear you, I think I know where you
2 are going.

3 MR. LAKE: Yes, Your Honor. I mean, there has been
4 no testimony from Investigator Chapman. And she has no
5 knowledge.

6 THE COURT: I think you are right. Some foundation
7 has been laid but not the full foundation.

8 MR. SCOTT: And, Judge, he would not have been in the
9 chain leading up to Lynn Black.

10 THE COURT: He is still in the chain but he hasn't
11 gotten there yet.

12 MR. SCOTT: He would have been in the chain if we are
13 going to bring it to the Court House today ultimately
14 establishing the chain up to Lynn testing it, Ben wasn't
15 going to be in it.

16 THE COURT: She can provide testimony she tested it.

17 MR. SCOTT: Yes, sir. That is fine.

18 MR. LAKE: I don't have an objection to her
19 testifying as what she found was crack. I am saying the
20 admissibility of the actual drugs into evidence. That is
21 what I am objecting to.

22 MR. SCOTT: We have identified it, we have
23 established the chain to the chemist and she is ultimately
24 talking about what her opinion is regarding the sample.
25 It has got to come in if she has already testified to what

1 it is. She has ID'd it, we tracked it all the way to her.

2 MR. LAKE: Investigator Chapman is a link in the
3 chain, Your Honor.

4 MR. SCOTT: Not prior to testing.

5 THE COURT: I think he is right. I think she has to
6 test it, she can testify as testing it but once she sent
7 it back then your chain goes away from her.

8 MR. SCOTT: The point, you said tampering was the
9 basis of the chain-of-custody.

10 MR. LAKE: The chain is all the way up to the trial.

11 MR. SCOTT: Who cares if we tamper with it now. We
12 need to get it to her testing it. This is getting
13 ridiculous at this point. This is just getting ridiculous
14 at this point.

15 THE COURT: Don't you have to have him?

16 MR. LAKE: Yes.

17 MR. SCOTT: He is not in the chain leading up to her.

18 THE COURT: I agree. I agree, she can testify she
19 tested it and what she found.

20 MR. SCOTT: We can have him talk about bringing it
21 here today but I don't see how that, we have had evidence
22 or testimony seizing it there. We have tracked it all the
23 way to the chemist and now she is talking about what it
24 is. We have identified it and Ben will say, yes, I
25 brought it over here in a bag. I mean, that is about all

1 he can say.

2 THE COURT: I think Mr. Lake is right on that one.
3 She can testify exactly like she has. I think he is
4 correct on this part of the chain.

5 MR. SCOTT: I typically introduced the drugs into
6 evidence. But if she is already going to testify to what
7 it is and the jury gets to hear that.

8 THE COURT: I am not going to argue with either of
9 you..

10 MR. SCOTT: I will continue along with this line of
11 questioning and we will have Mr. Chapman here.

12 THE COURT: Let's take a break.

13 (Whereupon, a short break was taken.)

14 THE COURT: Let's bring the jury in.

15 (Whereupon, the jury came into open court at
16 approximately 3:40 p.m.)

17 CONTINUE DIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q Ms. Black, let me show you State's number 33. Do you
20 recognize that?

21 A Yes, I do.

22 Q And how are you able to do so?

23 A This is a plastic bag with the white rock like
24 substance in it and it has got a piece of tape on it that
25 has the lab number on it which is L11-11971 and the item

1 number 1.2 and my initials on it.

2 Q Did you find a result regarding that sample?

3 A Yes sir, I did.

4 Q And what was that result?

5 A This is cocaine base also known as crack, was found
6 7.3 grams.

7 Q 1.1 was 10 grams and that item right there, 1.2 is
8 7.3 grams?

9 A Yes, sir.

10 Q All right. Let me show you State's number 34. Do
11 you recognize that?

12 A Yes sir, this is a orange plastic bottle, also kind
13 of a prescription bottle that has got a white rock like
14 substance inside. It has got the lab case number,
15 L11-11971 and hidden by the State's exhibit tag, 1.3 and
16 my initials.

17 Q And did you test the substance inside of that?

18 A Yes, I did.

19 Q And what was your finding?

20 A Cocaine base also known as crack was found, 4.0
21 grams.

22 Q Okay. So those three items we have, what is it,
23 about 21.3 grams, was that your finding of crack?

24 A That's correct.

25 Q How do you weigh these things. Like that, plop them

1 on a scale and you see what number comes up?

2 A No, sir. Generally I will take the substance out of
3 the bag and weigh it. What I do is I have a piece of
4 weighing paper that I will place on the balance and tear
5 it which is also called zeroing out so the weight, the
6 weight and the paper doesn't register. And then I took
7 the substance out, out of the bag, and placed it on that
8 balance and took the measurement from that.

9 Q Okay. So the weight you came up with would clear
10 these plastic bags or this bottle?

11 A That's correct. They were net weight.

12 Q So, what is your opinion as to all three of those
13 items, what they contain?

14 A They were all cocaine base, also known as crack.

15 Q Okay. Would you refer back to your chain-of-custody.
16 After you tested those items what path did they take?

17 A After I tested them and placed them back into or
18 actually placed them into another plastic bag, not the bag
19 that they originally came in which is the Best Kit tamper
20 evident bag but a plastic bag that we call a KPac, I think
21 that is just the manufacturer's name for it. It is just a
22 plastic bag that is able to be heat sealed. So I place it
23 in there and then I print out a bar code sticker and place
24 it on there and heat seal the bag with my initials and the
25 date. And then I think at this time I probably just put

1 it, if I look at the dates here, I have just placed it
2 back in our drug vault. There is a main drug vault at
3 SLED where all evidence is kept. But in my laboratory on
4 the forth floor we have a drug vault that is just for drug
5 evidence. So I placed it in my area in there until
6 November the 2nd of 2011 when I took it back downstairs to
7 log-in and gave it back to Patricia Crooks.

8 Q What was the, do you see the bag that you put it back
9 in?

10 A Yes. This outer bag right here, it is called KPac.
11 I put the sticker on here and it has the case number on
12 it, the lab case number and then my initials and the date
13 that I sealed it which was October the 25th of 2011 is on
14 the bottom. We just opened this up earlier today here.

15 Q I was going to ask you, were you present when we
16 opened this up today?

17 A Yes, I was.

18 Q So you watched this bag being cut into?

19 A Yes, sir.

20 Q And what was its condition before we cut into it?

21 A It was sealed and nothing tampered with.

22 Q And so it would have, I guess, would have been
23 evident had it been broken into after you put it in there
24 but before we broke into it today?

25 A Yes, sir.

1 Q So you said Pat Crooks and then what, returned to
2 Newberry Sheriffs Department?

3 A Yes, eventually it was returned to Newberry County
4 Sheriffs Department on November 30th, 2011.

5 Q And there was Nick Bouknight, Newberry, drugs for
6 return?

7 A Yes, sir.

8 Q Does that mean he picked it up and returned it?

9 A That's correct. Yes, on this chain-of-custody it has
10 a signature that, also with his name.

11 Q Thank you. Please answer any questions Mr. Lake has
12 for you.

13 CROSS-EXAMINATION

14 BY MR. LAKE:

15 Q Ms. Black, your testimony, I mean you readily come in
16 on the tail end, correct, of typically a case?

17 A Correct.

18 Q And so you have no knowledge as to the underlying
19 facts which led up to you eventually testing these items,
20 do you?

21 A No, I do not.

22 Q And you don't know where, where they have been, who
23 had them or who was in custody of them before they make it
24 to SLED, correct?

25 A That's correct.

1 Q I think you said something, you testified about you
2 have seen this right here turn brown before?

3 A Yes, sir.

4 Q Have you seen it turn brown after you examined it or
5 usually before you get to it?

6 A I have seen both.

7 Q How often would you say you have seen that?

8 A A handful of times.

9 Q Under what circumstances do you see that at times,
10 that change from, I guess, what you testified earlier to
11 would be the white or off tan to the, what color would you
12 describe this?

13 A Kind of tan, brown. Yes, it is just kind of
14 deteriorating. It is kind of wet too. It depends how
15 they make it, what else they put in it. If it is exposed
16 to extreme temperatures. All of those can play a part to
17 what happens.

18 Q When you say exposed to extreme temperatures, would
19 this have been before it got to you or after it got to
20 you?

21 A It could be either one, I mean it could have been
22 deteriorating, you know, from the getgo.

23 Q Do you have any personal knowledge in this case
24 whether the process had started to deteriorate?

25 A No, sir.

1 Q But you said if it had of started deteriorating you
2 would have noted that in your records, correct?

3 A If it had been a different color, yes, I would have
4 noted.

5 Q And did you note that at that particular time?

6 A No, sir.

7 Q So any kind of condition that would have affected it
8 would have affected it after it left your custody,
9 correct?

10 A Temperature wise, yes. But, you know, the fact of
11 however it was made and what it was made with or in, that
12 could have happened beforehand.

13 Q And you indicated temperature wise, where did you
14 have it stored, what kind of temperature are you showing
15 it in?

16 A Typically about 70 degrees.

17 Q And is there any type of polices and procedures as to
18 how these particular items should be stored?

19 A I don't believe we have anything specific to, you
20 know, a particular temperature.

21 Q I guess the question is, is there a way to prevent, I
22 guess, erosion or, you know, degrading of any item that
23 you may have found at any given time or tested it at some
24 point?

25 A Just to keep it in a sealed condition and then in a,

1 you know, not an extreme temperature environment. But,
2 you know, we can't control how it is brought in. Officers
3 can keep it in their hot trunks in the summertime or hot
4 buildings. I don't know, we see that a lot.

5 Q And are you familiar with like the Form B Rule 6 that
6 they addressed?

7 A Yes, sir.

8 Q And what are those documents?

9 A The Form B is one of the documents that comes in a
10 Best Kit that we provide, that SLED provides to law
11 enforcement personnel and it is kind of starts the
12 chain-of-custody for us. That is what they submit to us,
13 we don't keep it, we give it back to them but we make a
14 copy of it or, excuse me, we scan it into our computer
15 system. And then we use that information to confirm the
16 person who brought it in and also sometimes the evidence.
17 There is also a request that comes with that that we--

18 Q You can make a request sometimes before they actually
19 bring it in to get this form and fill it out. Is that
20 possible?

21 A I am not sure I understand.

22 Q I guess what I am asking you, this Form B, Rule 6,
23 that is what gets you started. Is this only when they
24 actually physically bring it to that location or are they
25 able to fill this out and then at some point bring it to

1 you? Do you have any personal knowledge?

2 A That form is old now and we have a newer form so I,
3 if I can look at the form maybe I can recall.

4 Q Okay. This is the thing that kicks off when y'all
5 get it and I want to show you that particular document.

6 A As I said, this is the form that comes in the Best
7 Kit and there is also a Form C so if more than one person,
8 like for instance in this case, Nick took this drug and
9 then he gave it to somebody else who took it back to the
10 sheriffs office then he would sign this to them and then
11 they would have to fill out the Form C that would say
12 where they took it. Now we have one form that has got
13 many blanks and stuff, instead of multiple pieces of paper
14 now we have one form where everybody can write it on
15 there. So sometimes it is one piece of paper but like in
16 this case, but other times it is multiple, it can be
17 multiple pieces.

18 Q And in this particular case item 1 was a plastic bag
19 containing a quantity of rock, could be a substance that
20 you tested, correct?

21 A Correct.

22 Q And it was a plastic baggie containing a quantity of
23 white substance that you took, tested, correct?

24 A Correct.

25 Q There is a orange pill bottle containing a quantity

1 of white cookie substance, correct?

2 A Yes, sir.

3 Q And it was a scale and a spoon that contained a white
4 residue type items on both items, correct?

5 A Yes, sir.

6 Q And you tested those, correct?

7 A That's correct.

8 Q And then there is number 6 where it says a quantity
9 of a white residue. Did you test that?

10 A Yes, I did.

11 Q Where is that listed in your report?

12 A That is item 1.6 on my report.

13 Q And your report, you describe item 1.6 as a ziplock
14 bag, containing a rock substance?

15 A Yes, sir.

16 Q You agree a rock substance is different than residue,
17 correct?

18 A Correct but different people have different opinions
19 as to what is residue and what is an actual rock.

20 Q And what is residue?

21 A Residue would be something, say if you had a bag and
22 you could see something is in there but you can't dump it
23 out or something. And you would like need a Qtip or
24 something to wipe it out with or you would have to rinse
25 it out.

1 Q And what is a rock, a rock is what is here, right?

2 A Correct.

3 Q Something that is substantially bigger, correct?

4 A In some cases. In this particular case it wasn't a
5 whole lot but it wasn't up to weight. I did consume it
6 all in my analysis though. So there wasn't anything left,
7 there is nothing left in that evidence bag to show it. It
8 was a very small amount.

9 Q Does that item right there, number 6, does it
10 indicate that it was in a plastic bag?

11 A No, sir.

12 Q So it goes to the question, how does it get to a
13 ziplock bag?

14 A The officer could have placed it in there, it happens
15 a lot. They don't necessarily put exactly what they put
16 in the Best Kit on, either the request or this B form.

17 Q Do you have any knowledge as to whether it was
18 personally placed in here or not?

19 A I do not.

20 Q Is that the best practice for an officer who touched
21 the drugs, especially residue and put it into a bag or
22 anything along those lines?

23 A We would prefer they put it in a bag, yes.

24 Q They would use their hands or something like that?

25 A Well, gloves would be preferable.

1 Q When the drugs come to you you actually prefer to be
2 the one that opens it up, does the testing just to avoid
3 any argument or any accusations that there could be
4 tampering, correct?

5 A I am not quite sure what you are asking.

6 Q What is the basis for you all doing the
7 chain-of-custody?

8 A To keep track of the evidence.

9 Q And also to prevent what?

10 A Tampering.

11 Q Well, tampering is very important, correct?

12 A That's correct.

13 Q Because if you tamper with the drugs you can have,
14 actually manipulate weight, type of drugs or whether there
15 were any drugs at all, correct?

16 A That's correct.

17 Q And you have no knowledge as to what happened with
18 these drugs before they got to you?

19 A No, sir.

20 Q And your testimony is that when you got it it is in a
21 bag but then on the Best Evidence form completed by
22 Investigator Bouknight is no reference to a bag or
23 anything like that, correct?

24 A Not for item 1.6, no.

25 Q And are all these items together or what, are they in

1 one manila envelope or what are they in?

2 A They were in several manila envelopes. The first
3 four items were in a manila envelope. The last two were
4 not.

5 Q Do you have any idea what happened to those drugs,
6 what condition they were in prior to they got into that
7 envelope?

8 A No, sir.

9 Q And you don't know whether they were separated and if
10 so who may have separated them, do you?

11 A No, sir.

12 Q And so you are saying you have got four separate
13 manila envelopes?

14 A Yes, sir.

15 Q And where was item 1.5 and 1.6, were those separate
16 items, were they in separate envelopes or were they not in
17 an envelope?

18 A They were each in a separate ziplock bag.

19 Q A ziplock bag.

20 A Bags.

21 Q Was that bag sealed when it came to you?

22 A It was closed, yes sir.

23 Q Like heat sealed or along those lines?

24 A No, sir. No, sir.

25 Q If anybody wanted to get in that ziplock bag they

1 could open it up and close it, correct?

2 A Yes, sir.

3 Q Aside from the items that you list on this report did
4 you test a straw or anything like that?

5 A No, sir.

6 Q Did you test any type of pipe or anything along those
7 lines?

8 A No, sir.

9 Q Did you test any razor blades or anything like that
10 to see whether they had shown evidence that someone had
11 been cutting or cooking or whatever with those razor
12 blades?

13 A No sir, it was not submitted.

14 Q Do you know where they were at at the time?

15 A No, sir.

16 Q So they never came to you?

17 A I have no knowledge of those items. So, no they did
18 not come to me.

19 Q I guess the reason that I ask you that, on this
20 Newberry County Sheriffs log, it list the items, plastic
21 baggies, razor blades and it says pill bottle. Is there
22 another pill bottle that we haven't discussed?

23 A Not to my knowledge. I tested the one that came in
24 the Best Kit.

25 Q So, was the pill bottle with the razor blade when it

1 came to you?

2 A There were no razor blades, no sir.

3 Q Now, according to this particular report here, they
4 are now together?

5 A I have never seen that package before. I have no
6 knowledge of it, no sir.

7 Q Did they, on the date it was sealed was on October
8 the 10th of 2011? Is it your testimony that it was placed
9 in this particular bag on October 10th of 2011?

10 A That is what the bag, what was written on the bag,
11 yes.

12 Q But you don't know whether that is accurate or not?

13 A I do not.

14 Q Were you aware between, I guess, would be October the
15 9th until what was in this bag on that particular day or
16 any other day, do you know the condition of those drugs or
17 those items at any time from October the 9th until this
18 particular timeframe of October the 10th, the first time
19 it was actually sealed?

20 A No sir, I have no personal knowledge.

21 Q Now, when you say the envelopes that came to you,
22 these were the actual envelopes that you are referring to?

23 A Yes, sir.

24 Q And these envelopes were not sealed?

25 A No sir, they were not.

1 Q So anybody could just open them up at any time?

2 A Yes, sir. Prior to them giving me--

3 Q Prior to them giving you this right here, correct?

4 A Yes, sir.

5 Q That is all I have.

6 MR. SCOTT: Nothing from the State, Your Honor.

7 THE COURT: You may step down. I need to give the
8 jury a break. Don't discuss the case.

9 (Whereupon, the jury was excused from open court for
10 a break.)

11 (Whereupon, a short break was taken.)

12 THE COURT: Let's bring the jury in.

13 (Whereupon, the jury came into open court at
14 approximately 4:05 p.m.)

15 MR. SCOTT: The State calls Ben Chapman.

16 BEN CHAPMAN, being

17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SCOTT:

20 Q Mr. Chapman, October of 2011 were you with the
21 Sheriffs Department?

22 A Yes.

23 Q What was your duties then?

24 A I was the Evidence Custodian over the, everything but
25 the narcotics.

1 A I took it back and logged it back into evidence.

2 Q And then again this morning, did you bring that back
3 over here today?

4 A I did, I checked it back out and delivered it this
5 morning.

6 Q And did it appear that it had been tampered with when
7 you took control of it?

8 A No. The evidence was just as this morning as it was
9 yesterday afternoon.

10 Q And would anybody have had contact with that since
11 Nick passed away and then since you brought it over
12 yesterday?

13 A No, I am the Evidence Custodian. I have someone that
14 helps me with the evidence. But we are the only two that
15 has any access to any of that.

16 Q Were all those substances inside of that in that
17 condition when you checked them out of your evidence
18 locker?

19 A Yes, they looked just as they do today.

20 MR. SCOTT: Judge, at this time I think we are going
21 to again offer State's 33, 34 and 32 for admission into
22 evidence.

23 MR. LAKE: Your Honor, I would object again, I would
24 renew that same objection. There has been testimony from
25 the forensic, I am sorry, the analyst essentially that one

1 of the documents was indicated that the pill bottle was
2 in, she didn't recognize that. Now, now they have somehow
3 put this bottle back into this right here when it was
4 actually contained in that particular form right there
5 where she indicated and testified to essentially that she
6 did now know what it was, had never seen it before. And
7 this thing clearly indicates a plastic baggy, razor blade
8 and pill bottle. Now he is testifying that, this right
9 here, all of this was in this particular bag right here.
10 I don't think, again, that they layed the proper
11 foundation as to who has touched all of these items at
12 various times to the part that we actually get here to the
13 courtroom today. Especially based upon her testimony that
14 she doesn't even recognize this right here at all. And
15 this right here was actually attached to this.

16 MR. SCOTT: The testimony was that that was never
17 sent to SLED for testing. She further did identify this
18 and she noted that I put the sticker over her label, her
19 handwriting.

20 THE COURT: I thought that Captain Dennis says that
21 this bag did not go to SLED and the bag that was fuller
22 went to SLED and he noted that because of the forms that
23 were attached to them.

24 MR. LAKE: The problem with that, Your Honor, is that
25 this bag right here says that contained within this

1 particular bag was the pill bottle. I mean, I
2 specifically asked the chemist that. So, he may have
3 testified to that but, I mean this is their own documents.
4 So it is clearly something that she says she was not
5 familiar with. Again, Your Honor, not been established
6 the proper chain on this particular case as it relates to
7 any of these items and the Defendant would object to the
8 entry of these items.

9 MR. SCOTT: Judge, this was not sent to SLED, we
10 don't intend to introduce this. We are talking about this
11 bag which has been identified by numerous witnesses. This
12 is all we are talking about, this bag right here. This is
13 the one that Mr. Lake continues to talk about and I
14 believe that is the one that he elicited testimony that it
15 had some sort of pipe and some razor blades in it. We are
16 not concerned with this. Furthermore, we would argue it
17 is non-fungible evidence, the chain is not required. This
18 particular, State's number 30 and its contents is what we
19 are trying to elicit testimony.

20 MR. LAKE: Your Honor, can we have a sidebar.

21 THE COURT: Sure.

22 (Whereupon, a bench conference was held in the
23 presence of the jury but out of the hearing of the
24 jury.)

25 THE COURT: Please go to the jury room, I have to

1 make a record.

2 (Whereupon, the jury was excused from open court.)

3 THE COURT: Are you going to proffer something?

4 MR. SCOTT: Yes, might as well do that.

5 PROFFER TESTIMONY

6 BY MR. SCOTT:

7 Q Now, State's 30, I am going to handle that first,
8 tell me about, this is on the outside of this bag? And
9 what is that?

10 A This sticker, it is a sticker that I placed on this
11 bag when I transferred this evidence into the new building
12 using our new computer system. So I would have been the
13 one that put this description on it here.

14 Q That would have been after you would have taken over
15 Nick's locker and transferred it to the new building,
16 y'all are in a new office now?

17 A Yes.

18 Q Why is it on the outside of the bag, why wouldn't you
19 put it on the inside of the bag like you did on this one?

20 A I sealed that bag. This bag was sealed when I
21 received it and it was sealed until today, this morning
22 when y'all cut it open.

23 Q Okay. This has been broken into, it has got a bar
24 code on it with the same case number?

25 A That's right.

1 Q Because these were taped together this morning,
2 correct?

3 A Right. I mean I moved the evidence and I matched
4 everything up. I went through everything and when I found
5 this here and that there I labeled them each as different
6 items in our system with these stickers and put them
7 together and put them in a centralized place.

8 Q Because they were seized together and they are part
9 of the same case?

10 A They are part of the same case.

11 Q Now, you wouldn't be able to put this sticker on the
12 inside but for having to torn it open, I guess, right?

13 A Well, I sealed that.

14 Q Where was this prior, was this in the manila
15 envelope?

16 A This sheet, that sheet was wrapped around this. And
17 we needed to get a copy of that. So I took it off and
18 made a copy of it and put it back in the bag, put this in
19 there and sealed it off.

20 Q This is the one question, I guess, is generating all
21 of the confusion. We open this up earlier and a plastic
22 bag and razor blade. You have listed pill bottle here but
23 the pill bottle was in this bag?

24 A This description was based off of what I read here
25 which says, pill bottle. But this evidence form would

1 have been the evidence form originally made for all of
2 this evidence. But SLED and she is gone now. SLED
3 doesn't want this.

4 Q Razor blades and plastic baggies?

5 A That's right unless they intend to get a residue off
6 of it. But all of this, this form originally generated on
7 the 8th and the 9th was the form for everything you have.

8 Q Is there any reason you just didn't go ahead and list
9 all of the items right here?

10 A Well, if you will look, this is the Best Kit and it
11 is coded with the SLED number which is what is here. And
12 there may be more and it would be on my evidence sheet
13 that I brought over yesterday.

14 Q You listed three items?

15 A The sticker only prints one line. So if there is
16 more down here and I am not saying there is, but if there
17 is more down there it would be on the other form.

18 Q As far as these stickers, you are just--

19 A It is an abbreviation.

20 Q Okay.

21 A Of what I got off of here and put on here.

22 Q This pill bottle, when you delivered this to us which
23 bag was it in?

24 A This right here.

25 Q Okay. So, it is just, a labeling type procedure is

1 the way I understand.

2 MR. LAKE: I recall the State coming out of, I have
3 never seen testimony where you ask what the Best Evidence
4 of something is. This is the Best Evidence. I hear them
5 testifying to things that aren't in evidence but the Best
6 Evidence of what is actually in this document is what is
7 on this particular form.

8 MR. SCOTT: He just said it was an abbreviation from
9 the long list of what is in there. These were taken
10 together, these were all taken from the same scene.

11 THE COURT: I specifically remember Captain Dennis
12 holding up the pill bottle in the bigger bag yesterday
13 during the pretrial because they were talking, where is
14 the pill bottle, where is the pill bottle. He said, I
15 will show you, right there. And he pointed at it and I
16 happened to observe it at this angle. And I don't
17 disagree with you. The label on the smaller bag says
18 that. But I remember without question the pill bottle as
19 being in the bigger bag.

20 MR. LAKE: Again, I go back what is the Best Evidence
21 in this particular case. Is the actual documents that
22 have been, could actually state what it is. As I recall,
23 Your Honor, I actually thought they had opened this thing
24 yesterday and not today but I could be incorrect. I think
25 the Best Evidence of this issue is what is on the label.

1 I go right back to the same point again, I hate to keep,
2 they probably heard me say it a thousand times about
3 chain-of-custody and the inconsistencies of the documents,
4 the evidence, the relied upon documents that are
5 inaccurate. I mean, they want to use the hearsay
6 statements when they, when it suits them. But when it
7 doesn't suit them then all of a sudden then just ignore
8 it. Just listen to what the officers testify. I mean,
9 you are talking about me having it both ways. They are
10 trying to have it both ways. And the problem is I have no
11 right or my client has no right to confront any of this.
12 I mean he basically has no right, has not been afforded
13 the right to confront any of the witnesses that this
14 information has come in on. So, I don't think you can
15 have it both ways in terms of saying, okay, these hearsay
16 documents are fine and ignore these other ones. And, so
17 again those documents, those items should not come into
18 evidence. I don't think they have established a proper
19 chain in this particular case. They relied upon hearsay
20 documents.

21 THE COURT: I thought exhibit number 2 which was the
22 Form B, Rule 6 Form, Detective Bouknight listed the pill
23 bottle on that form as what he took to SLED, did he not?
24 I am speaking from memory, I didn't see that form, I
25 thought it did.

1 MR. LAKE: But the problem with that, Your Honor,
2 when you go back to the testimony of the chemist, she says
3 basically Investigator Bouknight has it down as just
4 residue. But then she indicates when it comes to her it
5 is in a baggie, it is listed down there as a baggie in her
6 testimony. And she could not explain how it came to be in
7 that baggie. You are really talking about residue. He
8 distinctly described it as residue. I am not quite sure
9 how you can get residue and then put it into a baggie.
10 And then say, what is the means by which you get that
11 residue.

12 MR. SCOTT: There was a scale seized, there was a
13 spoon or a razor blade. We are not seeking to introduce
14 any of that.

15 THE COURT: I am looking at his inventory of what he
16 took to SLED in control bag 2115, I mean 215834 which is
17 the clear plastic bag's scan number, what I call it,
18 whatever you call that, UPC scanner, control number.
19 1)plastic white baggie, white cookie like substance; 2)
20 plastic baggie with white cookie like substance; that
21 should be 1.1 and 1.2. And 1.3 would be the orange pill
22 bottle containing a quantity of white cookie substance.
23 Then you have got the scale, which I presume number 4 is
24 the CD scale containing residue on it. The scale was
25 introduced but not the residue. Then there is a spoon

1 with residue, not introduced as of yet. And then what you
2 are talking about is a quantity of white residue that she
3 recollects was in a baggie but testing exhausted all the
4 residue.

5 MR. LAKE: There is actually a baggie in there. I
6 mean the point that I make is that the testimony from her
7 was that it was in a baggie as far as she got but his
8 report doesn't say that this was in a baggie. She could
9 not testify to the condition that it was prior to it. But
10 the ones where he had a baggie he specifically stated, now
11 you have got testimony from her in terms of her testimony,
12 the item is a rock and that is a bag. He has described it
13 as a residue, she described it as a rock. And those are
14 clearly two different things, Your Honor, in terms of a
15 rock and residue. There is definitely a distinction
16 between those two in terms how she labeled so. So, where
17 did this extra rock come from.

18 THE COURT: I don't know that she gave any weight for
19 any rock. She had a bag, a bag and a bottle.

20 MR. LAKE: Your Honor, in her report she testified to
21 and provided a weight and she identified the particular--

22 THE COURT: I mean, I am going to grant that motion
23 to suppress that piece. From what I was looking at was
24 State's 32, 33, 34, SLED number 1.1, 1.2 and I don't know
25 what the pill bottle was numbered, 1. what.

1 MR. DANIEL: 1.3, Your Honor.

2 MR. SCOTT: Yes, sir.

3 THE COURT: 1.3, those were the ones that the weight
4 testimony came from.

5 MR. LAKE: She testified, Your Honor, I guess what
6 would be 1.6 and she testified that was a .01 gram. That
7 is important, Your Honor, I don't think you could separate
8 the items in terms of, I know the Court is kind of, can I
9 separate it and keep certain things in and keep certain
10 things out. But if you are talking things that went into
11 the Best Evidence Bag, they all should be the same. And
12 what is on the report should be what is in the documents.
13 I mean, again, they chose to call this case to do it
14 without having the witnesses available. And I hate that
15 Investigator Bouknight is not here. But it puts us in a
16 tough spot as far as, you know, there is just significant
17 issues, Your Honor, with these documents in allowing the
18 witnesses to testify based upon these documents as to the
19 condition of these items. Again, I just, I would ask this
20 Court to exclude all of these items because I don't think
21 there has been a proper foundation. I will tell you one
22 thing, Your Honor. I think if one part of the Best
23 Evidence fails, one item in there fails I think it all
24 fails.

25 THE COURT: Okay. You have been very clear on that.

1 MR. LAKE: Thank you, Your Honor.

2 THE COURT: All right. I think it comes in, I think
3 it is the totality. I think it comes in. I understand
4 your argument, I am very clear on it. I think it comes
5 in. The three pieces, 32, 33, 34, those numbers.

6 MR. SCOTT: 32, 33 and 34.

7 THE COURT: These are SLED evidence numbers 1.1, 1.2
8 and 1.3.

9 MR. SCOTT: Yes, sir.

10 THE COURT: I may have it wrong, you may be right,
11 Mr. Lake.

12 MR. LAKE: Your Honor, my only concern, the Court is
13 aware of what my client is facing. And so, you know, I
14 think the type of issues we have and the penalties that is
15 facing this particular situation and I just again, I would
16 state my objection for the record and I have kind of
17 stated it. I just ask the Court--

18 THE COURT: Certainly you can argue it, I mean argue
19 it but I am going to decline to suppress those three
20 pieces of evidence. But I understand and you made a
21 record on that issue. All right, do y'all want to
22 continue, is the jury ready?

23 MR. SCOTT: Yes, sir.

24 THE COURT: All right, go get them.

25 (Whereupon, the jury came into open court at

1 approximately 4:45 p.m.)

2 THE COURT: All right, Mr. Scott.

3 CONTINUE DIRECT EXAMINATION

4 BY MR.. SCOTT:

5 Q Mr. Chapman, you did testify earlier that this bag
6 and its contents were taken over by you from Investigator
7 Bouknight's locker room when he passed away, is that
8 correct?

9 A That's correct.

10 Q And then have they remained under your care and
11 custody since then?

12 A They have.

13 Q And did you check these out of your evidence locker
14 yesterday morning?

15 A I did.

16 Q And was this bag sealed then?

17 A It was.

18 Q And when you brought it here to the courtroom?

19 A Yes, sir.

20 Q And yesterday afternoon you took it back to your
21 locker?

22 A That's correct.

23 Q And it was still sealed?

24 A Yes, sir.

25 Q And when you brought it over this morning was it

1 still sealed?

2 A Yes.

3 Q In fact, we broke it open today for use in court, it
4 was outside of your presence, were you here when we opened
5 it?

6 A I was not.

7 Q Okay.

8 MR. SCOTT: Your Honor, at this time the State would
9 offer State's 32, 33 and 34 for admission into evidence.

10 THE COURT: Subject to the objection placed on the
11 record by Mr. Lake on behalf of Mr. Trapp, they will be
12 admitted.

13 (Whereupon, State's Exhibits 32, 33 and 34 were
14 admitted into evidence.)

15 Q Thank you, Mr. Chapman, answer any questions Mr. Lake
16 has for you.

17 CROSS-EXAMINATION

18 BY MR. LAKE:

19 Q Mr. Chapman, do you have any knowledge about these
20 items before they ever got into the Best Evidence Bag?

21 A I do not.

22 Q You don't know if they were manipulated, changed or
23 added or anything along those lines prior to getting into
24 a Best Evidence Bag, do you?

25 A No, I do not.

1 Q And you weren't involved in any way at all in this
2 particular case, correct?

3 A No, sir.

4 Q Never went out to the scene?

5 A No, sir.

6 Q Never had any discussions with Investigator
7 Bouknight?

8 A No.

9 Q Do you have any clue, I think it was said there was a
10 room where these items were located. Do you have any idea
11 where in this room that these items were?

12 A When I took custody of them they were in a location
13 as noted on the evidence.

14 Q And this particular form it just says, it really
15 doesn't say where it is at, where are these drugs?

16 A They are in the evidence room.

17 Q Where at in the evidence room?

18 A I don't recall exactly what box they were in or what
19 shelf they were in.

20 Q Are they in a box or are they in a shelf?

21 A Everything is on a shelf in a box.

22 Q Everything is on a shelf in a box. Is it a lockbox?

23 A The building is, I am trying to explain it real
24 quick. You walk in the door it has shelves that go all
25 the way around the wall. And on the shelves are a box

1 indicating the case, what case it is. And I don't recall
2 exactly where in the room it was.

3 Q So, when you are saying box you mean like a cardboard
4 box or something along those lines?

5 A Yes.

6 Q Not like a lockbox or anything along those lines?

7 A No. The room is locked.

8 Q The room is locked but they are not itself in a
9 lockbox?

10 A No.

11 Q And back in 2011 who had keys to that particular
12 building?

13 A Nick Bouknight.

14 Q Was he the only person that could go back to this
15 particular room?

16 A Yes.

17 Q And what restrictions were placed on in terms of
18 going back there to that building?

19 A Nick Bouknight was the Evidence Custodian at that
20 time so he would have been the one who cared for the
21 evidence and signed it in and out and took it to SLED.

22 Q Did he have to get approval to take anything out or
23 go back there or anything along those lines?

24 A No, he was the Evidence Custodian.

25 Q So he didn't have to contact dispatch or anybody like

1 that to get authority to go?

2 A The room was protected by an alarm, he had to contact
3 dispatch when he entered the room because the alarm would
4 go off.

5 Q Would that prevent him from actually going into the
6 room?

7 A No.

8 Q Okay. And this document right here, State's exhibit
9 number 1, what type of document is that?

10 A This is a evidence log-in form we were using at that
11 time.

12 Q And on this particular document, just by looking at
13 that document alone, can you tell where Investigator
14 Bouknight put the items that he had secured from the
15 defendant?

16 A No.

17 Q Can you tell by looking at that document right there
18 what condition those items were in dated on October the
19 9th?

20 A Nothing other than the description.

21 Q Can you tell when he may have taken those drugs out?

22 A No.

23 Q Can you tell when he actually returned the drugs?

24 A Not according to this form, no.

25 Q Can you tell what condition they were in when he

1 turned those items in?

2 A According to this, no.

3 Q And was there any type of technician or anybody that
4 worked back in the area in that timeframe that may have
5 assisted Chief Wright or anyone else or was Nick Bouknight
6 the sole person that had access?

7 A Yes, up until I took control of the narcotic
8 evidence, Nick was the only one.

9 Q So he could have come in and got it at any time, it
10 is not documented on that form, is it?

11 A No.

12 Q And does that document indicate when he took the
13 items from Investigator, I am sorry, Captain Dennis and
14 separated it into several different envelopes?

15 A No.

16 Q Does that document indicate the conditions those
17 items were in when he took them from, I guess when he
18 separated them and put them in an envelope?

19 A No.

20 Q No further questions.

21 THE COURT: Any redirect?

22 MR. SCOTT: No, Your Honor, the State rest.

23 THE COURT: You may step down. Folks, I hate to take
24 you out of the courtroom again but I have take up a couple
25 of motions. Now that the State has rested you have heard

1 instructions from the State?

2 MR. SCOTT: No, sir.

3 THE COURT: Mr. Lake, any exceptions?

4 MR. LAKE: No, sir.

5 THE COURT: Look at the evidence and we will take
6 that in to the jury.

7 MR. SCOTT: Judge, about the drugs, we can get some
8 baggies or we can tell them if they need to see it.

9 THE COURT: Let's hold it and if they want to see it
10 send it to them.

11 MR. SCOTT: If somebody will just inform them of
12 that.

13 (Whereupon, the jury started deliberations at
14 approximately 6:14 p.m.)

15 (Whereupon, the alternate was excused from the trial
16 of the case.)

17 THE COURT: I understand we have a verdict. Bring
18 the jury in.

19 (Whereupon, the jury came into open court with the
20 verdict at approximately 7:08 p.m.)

21 THE COURT: All right, Madam Forelay, you have a
22 verdict?

23 Yes.

24 THE COURT: Is it unanimous?

25 Yes.

1 THE COURT: Please hand it to the bailiff. All
2 right, you may publish the verdict, Ms. Folk.

3 Indictment 12-GS-36-267, the State versus Toaby
4 Alexander Trapp indicted for trafficking in crack cocaine,
5 44-53-375(c). The verdict is guilty. Signed Elizabeth A.
6 Hedgepeth, Foreperson. Madam Forelady, ladies and
7 gentlemen, if this is your verdict please indicate by
8 raising your right hand.

9 (Whereupon, all jurors raised their hands.)

10 THE COURT: Any issues for the jury, Mr. Lake?

11 MR. LAKE: No, Your Honor.

12 THE COURT: All right. Folks, we are done and can I
13 speak with y'all briefly in the jury room and thank y'all.

14 (Whereupon, the Court speaks to the jury in the jury
15 room.)

16 (Whereupon, the jury was excused.)

17 THE COURT: Mr. Lake, y'all ready for sentencing?

18 MR. LAKE: Your Honor, we do have some posttrial
19 motions.

20 THE COURT: I am happy to hear from you.

21 MR. LAKE: Your Honor, we ask for a new trial based
22 on the jury's verdict. Your Honor, we renew our motion
23 that there was no substantial circumstantial evidence that
24 which was presented in this particular case. In fact,
25 Your Honor, I would also bring, there was no sufficient

1 chain-of-custody that was established in this particular
2 case. And I think about that, Your Honor, in light of the
3 fact that the testimony was, after the Court allowed the
4 evidence to come in to the record, while the State was in
5 their case and when I got a chance to actually question
6 Investigator Chapman about it then learn now that this has
7 never been in a safe, secure box but just a cardboard box
8 the entire time with no assurances of anything, no
9 testimony by anybody from the State which is required in
10 this particular case to, illustrated that, there was no
11 evidence of tampering. The defendant has no burden in
12 this particular case. They can't shift the burden to the
13 defendant to prove that there wasn't tampering. The State
14 has the burden of proving it all along that there was no
15 tampering throughout this entire process. I think
16 Investigator Chapman's testimony was in direct
17 contradiction to Captain Dennis' testimony about, it was
18 placed in a lockbox. It is either in this lockbox right
19 here, just for the drugs only or this lockbox where it has
20 something related to other cases that were not Bouknight
21 cases. And then we heard the officers, no, there is no
22 lockbox, nothing is secured, just in a plain old card box.
23 And I specifically asked them that, Your Honor. I think
24 my client deserves a new trial based upon the fact that
25 this is testimony that came in after the Court had allowed

1 this, drugs to come in. I don't think there was a
2 sufficient chain-of-custody. I will also point out, Your
3 Honor, you know again, the statement against my client
4 doesn't meet the test that it wasn't done under any form
5 promises or duress or anything along those lines. Again,
6 he was not arrested at that time. Your Honor, I also
7 point out that the Court failed to allow the defendant a
8 hearing on the issue of the search warrant. I think that
9 we presented, you know, preliminary evidence that met the
10 burden to show that there was some falsity to the
11 document. I think some of the testimony to all of the
12 part, through all of the witnesses that testified was that
13 certain things were on certain documents weren't on other
14 documents, certain things were on the search warrant and
15 wasn't on these things. So, I think we have got to
16 establish, you know, a standard for which would allow us
17 to have a hearing in this particular matter. We did not
18 get a hearing in this particular matter. The only hearing
19 that we had was whether Investigator or Captain Dennis was
20 qualified to testify in this particular case. So, again,
21 we renew those motions and we ask that you set aside this
22 verdict, allow my client to, I guess, remain on bond. I
23 am not sure if this is qualified for an appeal bond or
24 anything along those lines. But I think some of the
25 issues in this particular case, Your Honor, really warrant

1 additional scrutiny in light of that additional testimony
2 from Mr. Chapman that now we know this is not a secure box
3 that this item is kept in.

4 THE COURT: I think I remember the testimony
5 regarding the secured area was that it was a drop box, the
6 road deputies drop drugs seized at traffic stops and small
7 things in a drop box for which the narcotics custodian
8 would then retrieve and then put it into evidence, secure
9 area. And that Mr. Chapman described the former area as a
10 room within a room that was locked and only had one key to
11 it. You are calling it a lockbox, I think it was drop box
12 in a secure room with shelves. And that is what I heard
13 and I understood there was only one key, one custodian,
14 one person and that was Bouknight then, now Chapman. I
15 see that distinguishes, consistent with my ruling, I
16 allowed the chain to come in, I allowed the search warrant
17 and I found it to be consistent with what Detective Dennis
18 observed on the scene consistent with the affidavit
19 Bouknight presented to the Magistrate, the search warrant
20 was properly issued, properly executed. And there was a
21 reasonable basis for that search warrant to be issued.
22 And I am not going to disturb the jury verdict. I believe
23 it was a factual dispute, once the admissibility was ruled
24 on it is admissible, it goes to weight. That is my ruling
25 and I am not going to disturb the jury's verdict and set

1 it aside because that would be reversing all of the
2 admissibility and chain rulings that I have made thus far.
3 So, respectfully I decline to grant you a new trial or
4 grant your client a new trial. Anything else?

5 MR. LAKE: Nothing.

6 THE COURT: Solicitor, the prior record of the
7 defendant, is this a true third?

8 MR. DANIEL: Yes sir, Your Honor, I have certified
9 copies of the indictments, sentencing sheets. Have got
10 four prior drug convictions, two of them would constitute
11 just one conviction, they are the same offense dates. But
12 distribution of crack cocaine conviction in '95 in
13 Fairfield County; another distribution of crack cocaine
14 conviction in 1995 out of Fairfield County; the same
15 incident date so that is really just one conviction, I
16 think, is how the Court would interpret that. I will pass
17 this up, Your Honor. We can make that a part of the
18 record as well. And then we have two more convictions.
19 One is a distribution of crack cocaine in 2005 and that is
20 here in Newberry. The offense date on that is February
21 20th, 2004. So there would be a second conviction, I will
22 pass that up to the Court. And then we have a possession
23 with intent to distribute crack cocaine conviction,
24 offense date is February 20th, 2004. That is a PWID
25 conviction, different offense date. What Mr. Trapp was

1 convicted on today would be a true third offense for
2 trafficking crack cocaine. It carries essentially the
3 harshish penalty under the drug code, mandatory/minimum of
4 25 years. I hate to see Mr. Trapp do this kind of time
5 but we tried to work this case out. But, law enforcement,
6 he was picked up in that roundup that was recently
7 conducted in June and he has continued just to be involved
8 in drug activity since that October 8th, 2011 charge
9 originated. So, the case is what it is, Your Honor, it is
10 very simplistic from the State's point of view.

11 THE COURT: Okay. Any challenge to the prior record,
12 Mr. Lake?

13 MR. LAKE: I know, Your Honor, one of the convictions
14 goes beyond the 10 years. So, they have kind of changed
15 the laws, I haven't had a chance to look at that
16 particular portion of it. And I don't know whether the
17 Court would consider something beyond the 10 years
18 requirement as being part of the enhancing penalty. I
19 would just ask the Court, if that is not, if that is a
20 consideration that this Court treats this matter as a true
21 second and only consider the conviction from, I guess,
22 2005. And I think the other one is 1994 which would be
23 almost 20 years ago.

24 MR. DANIEL: The 10 year limitation, that is for
25 DUI's, I know. I am not so sure that same rule applies

1 for drug conviction purposes, enhancement.

2 MR. SCOTT: It doesn't for second and subsequent.

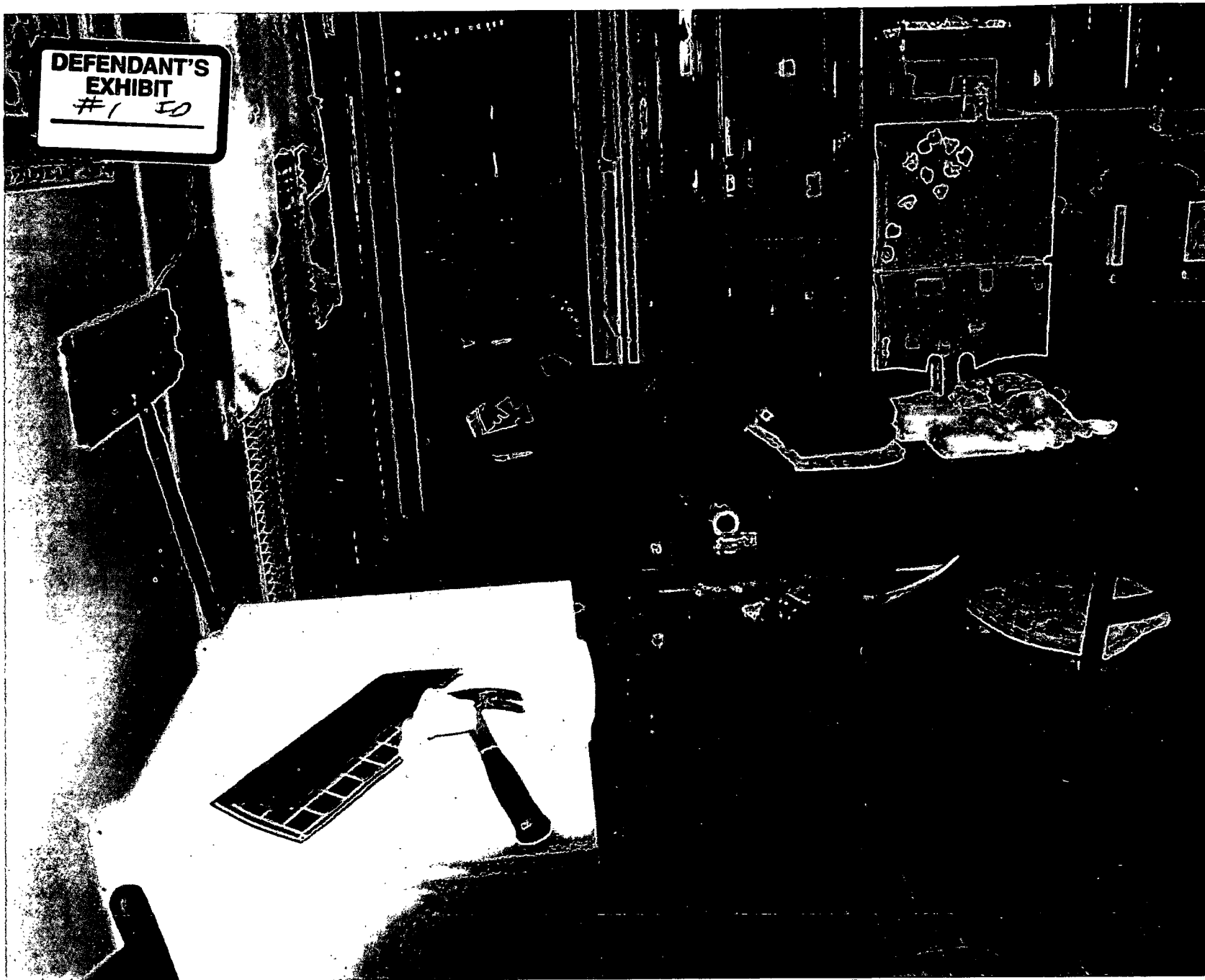
3 MR. DANIEL: Second and subsequent is what I am told,
4 Your Honor.

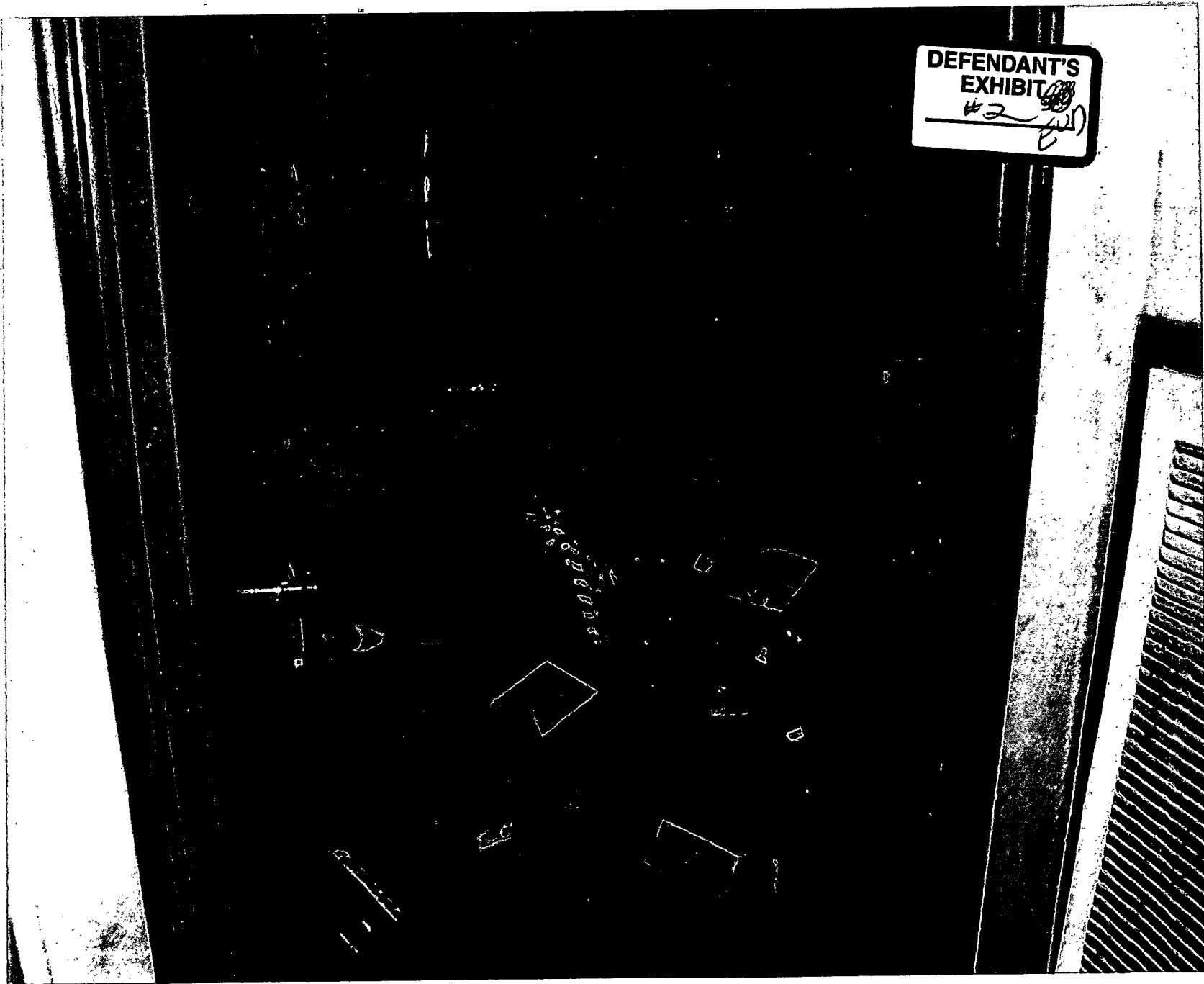
5 THE COURT: I do know that the sentence on the 2004,
6 both indictments was for distribution second, possession
7 with crack second. All right. That will make this a
8 third. Unfortunately, Mr. Trapp, that really kind of
9 confines the range of the sentence dramatically. It is
10 not my job to write the laws. Anything else you would
11 like to say, Mr. Lake?

12 MR. LAKE: Your Honor, I would ask in this particular
13 case that you sentence my client to the minimum of 25
14 years. That is not something I even want to ask for.

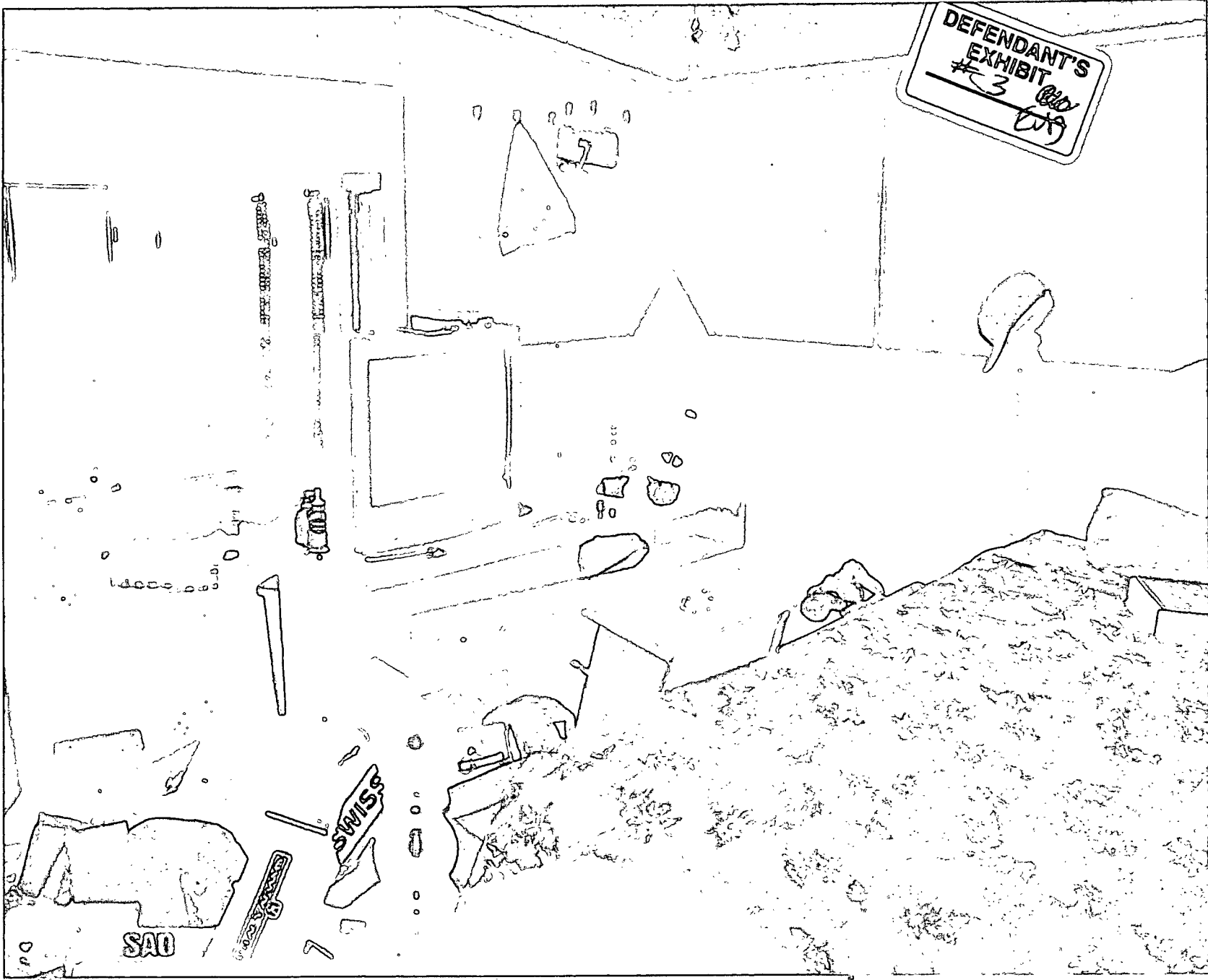
15 THE COURT: I will grant that request, I will give
16 him the minimum of 25 and \$50,000.00 dollars. I think
17 that is mandatory also. And I have checked the box, give
18 him credit for whatever time he served. I am not certain
19 what days he earned but he has earned some so he would be
20 entitled to those.

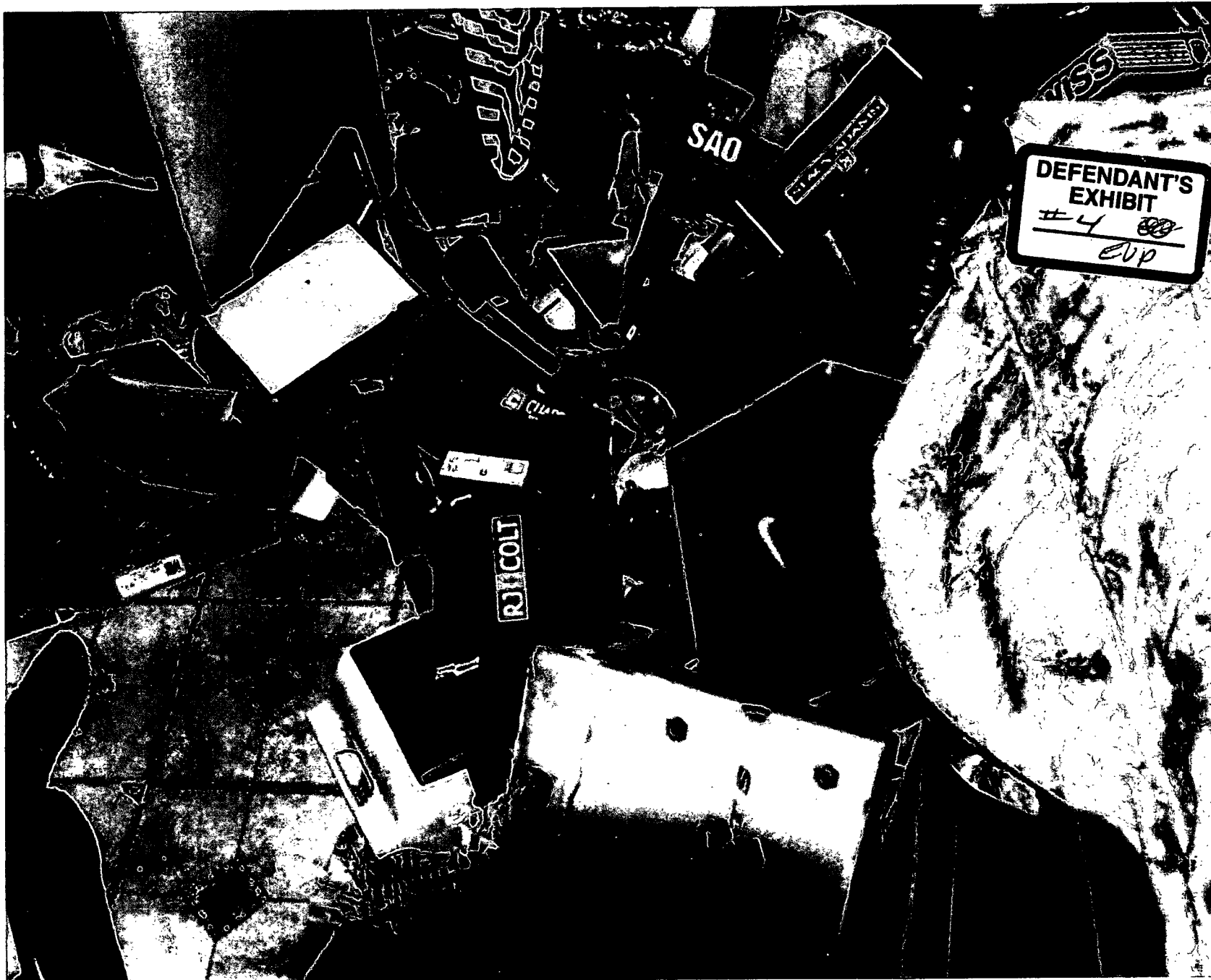
21 MR. LAKE: Your Honor, I know this is in the Court's
22 discretion and the Court may not be inclined, but would
23 the Court allow him a certain amount of time to kind of
24 get his affairs in order. You are talking about really a
25 significant sentence. He doesn't have any family right





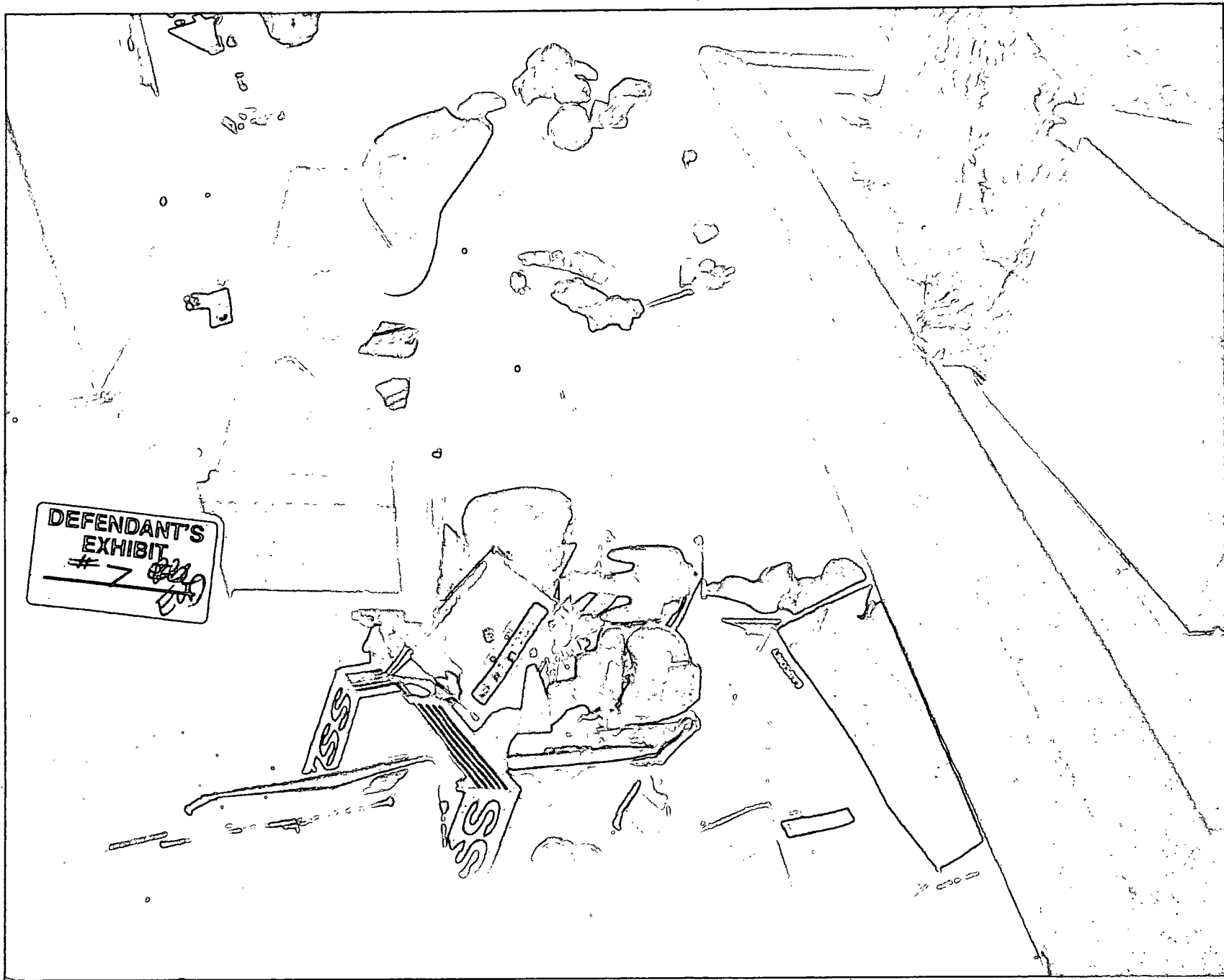
DEFENDANT'S
EXHIBIT
#2

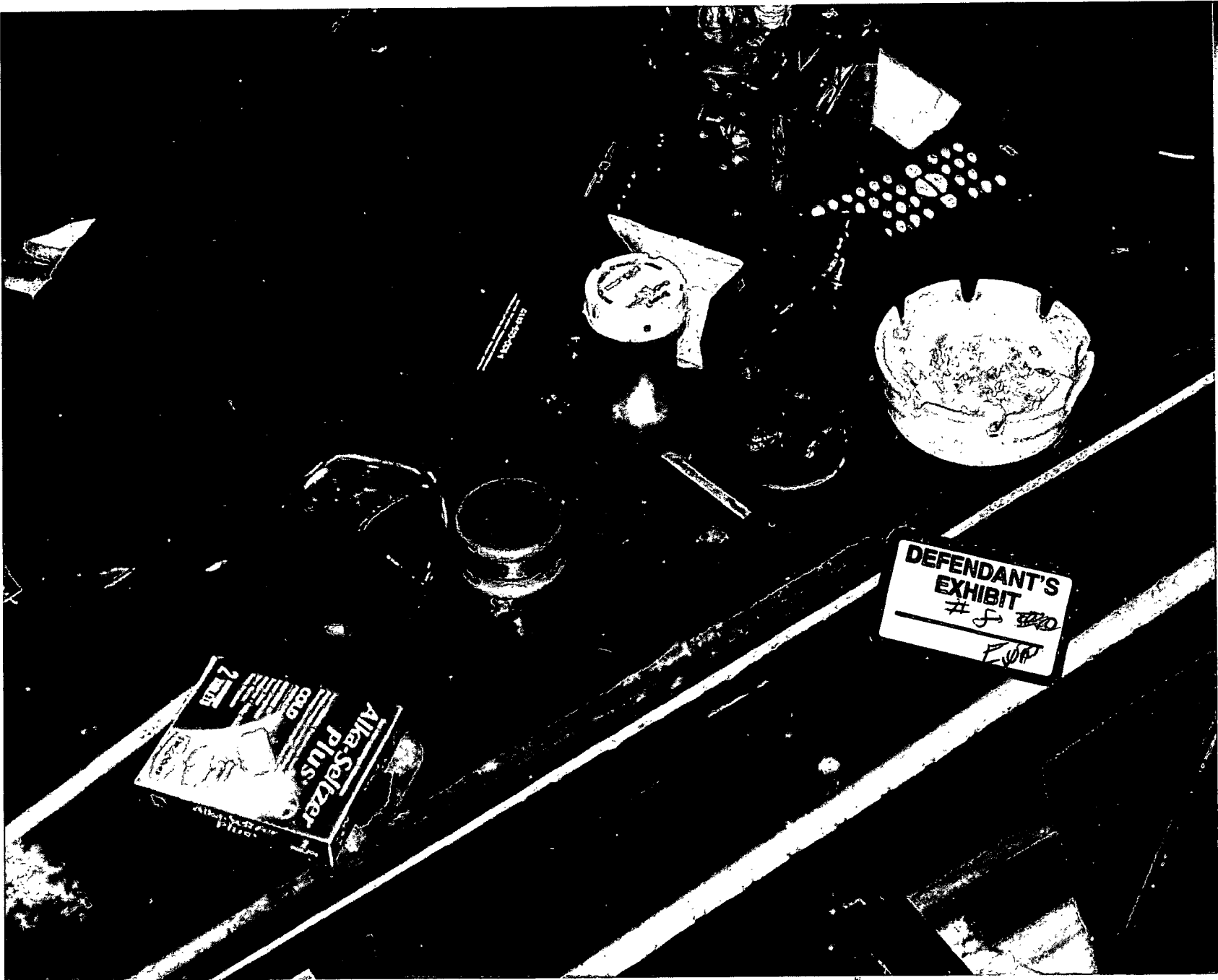


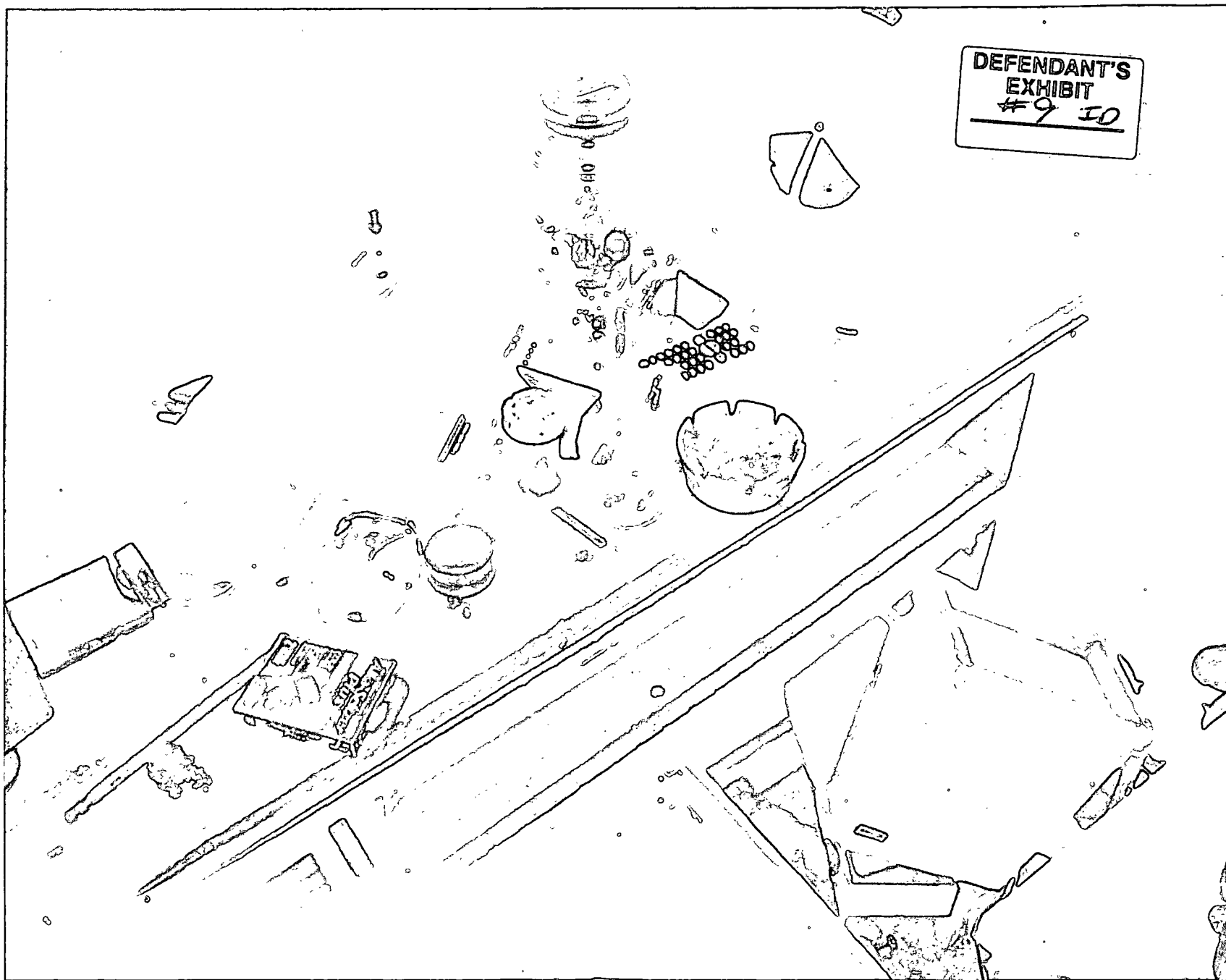












STATE OF SOUTH CAROLINA

County/Municipality of NEWBERRY



SEARCH WARRANT

Date 10/09/2011

Officer INV. NICK BOUKNIGHT

00000000320

Date Printed: 10/09/2011 01:06:50 AM

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

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

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

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

THE RESIDENCE TO BE SEARCHED IS A BEIGE SINGLE WIDE TRAILER THAT IS LOCATED AT 91 LITTLE RANCHES ROAD IN NEWBERRY, SOUTH CAROLINA. THE RESIDENCE HAS GREEN TRIM ON TOP AND BOTTOM. THERE IS A WOOD FRONT PORCH ON THE RESIDENCE. THE FRONT DOOR HAS A SILVER STORM DOOR WITH A GOLD COLOR 91 ON THE TOP LEFT CORNER OF THE DOOR. BEHIND THE RESIDENCE THERE IS A OUTBUILDING MADE OF PLYWOOD. THE VEHICLES LOCATED ON THE PROPERTY ARE A WHITE AND GREEN EL CAMINO WITH SOUTH CAROLINA TAG NUMBER HFX891 WHICH ALSO HAS A GRAY PRIMER IN REAR PANEL, BLACK HONDA ACCORD WITH SOUTH CAROLINA TAG NUMBER 290, A BLACK TRAILBLAZER WITH SOUTH CAROLINA TAG NUMBER HKZ 289, A GREEN AND GRAY CHEVY TRUCK WITH SOUTH CAROLINA TAG NUMBER DWC 351, A GRAY TOYOTA COROLLA WITH SOUTH CAROLINA TAG NUMBER HKU 7957, PRIMER GRAY CHEVY TRUCK WITH NO TAG, A VEHICLE THAT IS COVERED ON THE REAR OF THE PROPERTY WITH A TARP, AND A PONTIAC GREEN VAN WITH SOUTH CAROLINA TAG NUMBER DQG 305.

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

DESCRIPTION OF PROPERTY

ANY AND ALL QUANTITIES OF ILLEGAL NARCOTICS TO INCLUDE BUT NOT LIMITED TO MARIJUANA, COCAINE, CRACK COCAINE, OR ANY OTHER ILLEGAL NARCOTICS. THIS SEARCH SHALL INCLUDE PARAPHERNALIA TO INCLUDE BUT NOT LIMITED TO ANY EQUIPMENT, PRODUCT, OR MATERIAL OF ANY KIND WHICH IS PRIMARILY INTENDED OR DESIGNED FOR USE IN MANUFACTURING, COMPOUNDING, CONVERTING, CONCEALING, PRODUCING, PROCESSING, PREPARING, INJECTING, INGESTING, INHALING, OR OTHERWISE, INTRODUCING, INTO THE HUMAN BODY A CONTROLLED SUBSTANCE. THIS SEARCH IS ALSO TO INCLUDE ANY CURRENCY, PAPERS, OR DOCUMENTS COMMONLY ASSOCIATED WITH THE UNLAWFUL SALE OR BUYING OF PRODUCTS USED TO MAKE ILLEGAL NARCOTICS. THIS SEARCH SHALL INCLUDE ALL VEHICLES ON THE PROPERTY AND ANY STORAGE TYPE BUILDINGS OR SAFES ON THE PROPERTY. THIS SEARCH SHALL INCLUDE ALL TELEPHONES LOCATED ON THE PROPERTY AND THE DATA THAT IS ON THE PHONES SUCH AS ALL INCOMING/OUTGOING CALLS OR TEXT MESSAGES AND ANY OTHER INFORMATION ON THE PHONES. ALSO INCLUDED IN THE SEARCH SHALL BE ANY FIREARMS OR AMMUNITION.

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

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

MAGISTRATE RON HALFACRE

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

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

Newberry

, S.C.

10-9-11

Ron Halfacre

(L.S.)

Signature of Judge

SCAA/513
(3-78)

Date Printed: 10/09/2011 01:06:50 AM

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

AFFIDAVIT

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

DESCRIPTION OF PROPERTY SOUGHT

ANY AND ALL QUANTITIES OF ILLEGAL NARCOTICS TO INCLUDE BUT NOT LIMITED TO MARIJUANA, COCAINE, CRACK COCAINE, OR ANY
OTHER ILLEGAL NARCOTICS. THIS SEARCH SHALL INCLUDE PARAPHERNALIA TO INCLUDE BUT NOT LIMITED TO ANY EQUIPMENT,
PRODUCT, OR MATERIAL OF ANY KIND WHICH IS PRIMARILY INTENDED OR DESIGNED FOR USE IN MANUFACTURING, COMPOUNDING,
CONVERTING, CONCEALING, PRODUCING, PROCESSING, PREPARING, INJECTING, INGESTING, INHALING, OR OTHERWISE, INTRODUCING,
INTO THE HUMAN BODY A CONTROLLED SUBSTANCE. THIS SEARCH IS ALSO TO INCLUDE ANY CURRENCY, PAPERS, OR DOCUMENTS
COMMONLY ASSOCIATED WITH THE UNLAWFUL SALE OR BUYING OF PRODUCTS USED TO MAKE ILLEGAL NARCOTICS. THIS SEARCH SHALL

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

THE RESIDENCE TO BE SEARCHED IS A BEIGE SINGLE WIDE TRAILER THAT IS LOCATED AT 91 LITTLE RANCHES ROAD IN NEWBERRY,
SOUTH CAROLINA. THE RESIDENCE HAS GREEN TRIM ON TOP AND BOTTOM. THERE IS A WOOD FRONT PORCH ON THE RESIDENCE. THE
FRONT DOOR HAS A SILVER STORM DOOR WITH A GOLD COLOR 91 ON THE TOP LEFT CORNER OF THE DOOR. BEHIND THE RESIDENCE
THERE IS A OUTBUILDING MADE OF PLYWOOD. THE VEHICLES LOCATED ON THE PROPERTY ARE A WHITE AND GREEN EL CAMINO WITH
SOUTH CAROLINA TAG NUMBER HFX891 WHICH ALSO HAS A GRAY PRIMER IN REAR PANEL, BLACK HONDA ACCORD WITH SOUTH CAROLINA
TAG NUMBERGQU 290, A BLACK TRAILBLAZER WITH SOUTH CAROLINA TAG NUMBER HKZ 289, A GREEN AND GRAY CHEVY TRUCK WITH
SOUTH CAROLINA TAG NUMBER DWC 351, A GRAY TOYOTA COROLLA WITH SOUTH CAROLINA TAG NUMBER HKU 7957, PRIMER GRAY CHEVY
TRUCK WITH NO TAG, A VEHICLE THAT IS COVERED ON THE REAR OF THE PROPERTY WITH A TARP, AND A PONTIAC GREEN VAN WITH

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

1.) THAT THE AFFIANT IS A POLICE OFFICER CERTIFIED IN SOUTH CAROLINA, EMPLOYED BY THE NEWBERRY COUNTY SHERIFF'S
OFFICE, AND IS AUTHORIZED TO MAKE SEARCHES AND SEIZURES; 2.) THAT THE AFFIANT HAS NUMEROUS HOURS OF TRAINING AND
EXPERIENCE IN THE AREA OF NARCOTICS AND NARCOTIC INVESTIGATIONS; 3.) THAT ON 10/09/2011 OFFICERS WITH THE NEWBERRY
COUNTY SHERIFF'S OFFICE RESPONDED TO 91 LITTLE RANCHES ROAD IN NEWBERRY COUNTY FOR A COMPLAINANT OF A BREAK IN TO
THE RESIDENCE AND A LARCENY OF APPROXIMATELY SEVEN THOUSAND DOLLARS OF U.S. CURRENCY; 4.) ONCE ARRIVING AND
OFFICERS STARTED PROCESSING THE SCENE A BOTTLE CONTAINING A QUANTITY OF A WHITE ROCK LIKE SUBSTANCE BELIEVED TO BE
CRACK COCAINE AND A RAZOR BLADE WITH A WHITE RESIDUE ON IT WAS OBSERVED IN PLAIN VIEW IN A BEDROOM OF THE RESIDENCE;
5.) THAT TOBY ALEXANDER TRAPP IS THE COMPLAINANT OF THE BREAK AND CLAIMS THE BEDROOM WHERE THE SUBSTANCE WAS
LOCATED IS HIS; 6.) THAT TRAPP DOES HAVE A PRIOR CRIMINAL HISTORY FOR ILLEGAL NARCOTICS.

Sworn to and Subscribed before me

this 9 day of Oct, 2011.

Signature of Judge

(L.S.)


AffiantAddress P.O. BOX 247NEWBERRY SC 29108Phone 321-2211

Date Printed: 10/09/2011 01:06:50 AM

RETURN

I received the attached Search Warrant 10/09/11 0124, and have executed it as follows.
On 10/09/11 at 0124 o'clock AM, I searched
(the person) described in the warrant and (the premises)

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

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

> Pictures taken by Robert Spreng.
> 2 plastic bags with white solid substance found on floor in bedroom in front of dresser.
> Pill bottle on dresser with white solid substance.
> CD case scale.
> Spoon & razor blade w/ residue.
> straw

This inventory was made in the presence of Robert Spreng
AND NICK Bouknight

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

SWORN to before me this _____
day of _____,

Signature of Judge (L.S.)

Robert Spreng
(Signature of Officer Executing Warrant)

Date Printed: 10/09/2011 01:06:50 AM

Additional Printouts for Search Warrant 000000000320

Description of Premises:

THE RESIDENCE TO BE SEARCHED IS A BEIGE SINGLE WIDE TRAILER THAT IS LOCATED AT 91 LITTLE RANCHES ROAD IN NEWBERRY, SOUTH CAROLINA. THE RESIDENCE HAS GREEN TRIM ON TOP AND BOTTOM. THERE IS A WOOD FRONT PORCH ON THE RESIDENCE. THE FRONT DOOR HAS A SILVER STORM DOOR WITH A GOLD COLOR 91 ON THE TOP LEFT CORNER OF THE DOOR. BEHIND THE RESIDENCE THERE IS A OUTBUILDING MADE OF PLYWOOD. THE VEHICLES LOCATED ON THE PROPERTY ARE A WHITE AND GREEN EL CAMINO WITH SOUTH CAROLINA TAG NUMBER HFX891 WHICH ALSO HAS A GRAY PRIMER IN REAR PANEL, BLACK HONDA ACCORD WITH SOUTH CAROLINA TAG NUMBER 290, A BLACK TRAILBLAZER WITH SOUTH CAROLINA TAG NUMBER HKZ 289, A GREEN AND GRAY CHEVY TRUCK WITH SOUTH CAROLINA TAG NUMBER DWC 351, A GRAY TOYOTA COROLLA WITH SOUTH CAROLINA TAG NUMBER HKU 7957, PRIMER GRAY CHEVY TRUCK WITH NO TAG, A VEHICLE THAT IS COVERED ON THE REAR OF THE PROPERTY WITH A TARP, AND A PONTIAC GREEN VAN WITH SOUTH CAROLINA TAG NUMBER DQG 305.

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Reason for Affiant's Belief:

1.) THAT THE AFFIANT IS A POLICE OFFICER CERTIFIED IN SOUTH CAROLINA, EMPLOYED BY THE NEWBERRY COUNTY SHERIFF'S OFFICE, AND IS AUTHORIZED TO MAKE SEARCHES AND SEIZURES; 2.) THAT THE AFFIANT HAS NUMEROUS HOURS OF TRAINING AND EXPERIENCE IN THE AREA OF NARCOTICS AND NARCOTIC INVESTIGATIONS; 3.) THAT ON 10/09/2011 OFFICERS WITH THE NEWBERRY COUNTY SHERIFF'S OFFICE RESPONDED TO 91 LITTLE RANCHES ROAD IN NEWBERRY COUNTY FOR A COMPLAINANT OF A BREAK IN TO THE RESIDENCE AND A LARCENY OF APPROXIMATELY SEVEN THOUSAND DOLLARS OF U.S. CURRENCY; 4.) ONCE ARRIVING AND OFFICERS STARTED PROCESSING THE SCENE A BOTTLE CONTAINING A QUANTITY OF A WHITE ROCK LIKE SUBSTANCE BELIEVED TO BE CRACK COCAINE AND A RAZOR BLADE WITH A WHITE RESIDUE ON IT WAS OBSERVED IN PLAIN VIEW IN A BEDROOM OF THE RESIDENCE; 5.) THAT TOABY ALEXANDER TRAPP IS THE COMPLAINANT OF THE BREAK AND CLAIMS THE BEDROOM WHERE THE SUBSTANCE WAS LOCATED IS HIS; 6.) THAT TRAPP DOES HAVE A PRIOR CRIMINAL HISTORY FOR ILLEGAL NARCOTICS.

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2 Spoon & razor blade w/ residue.
2 straw

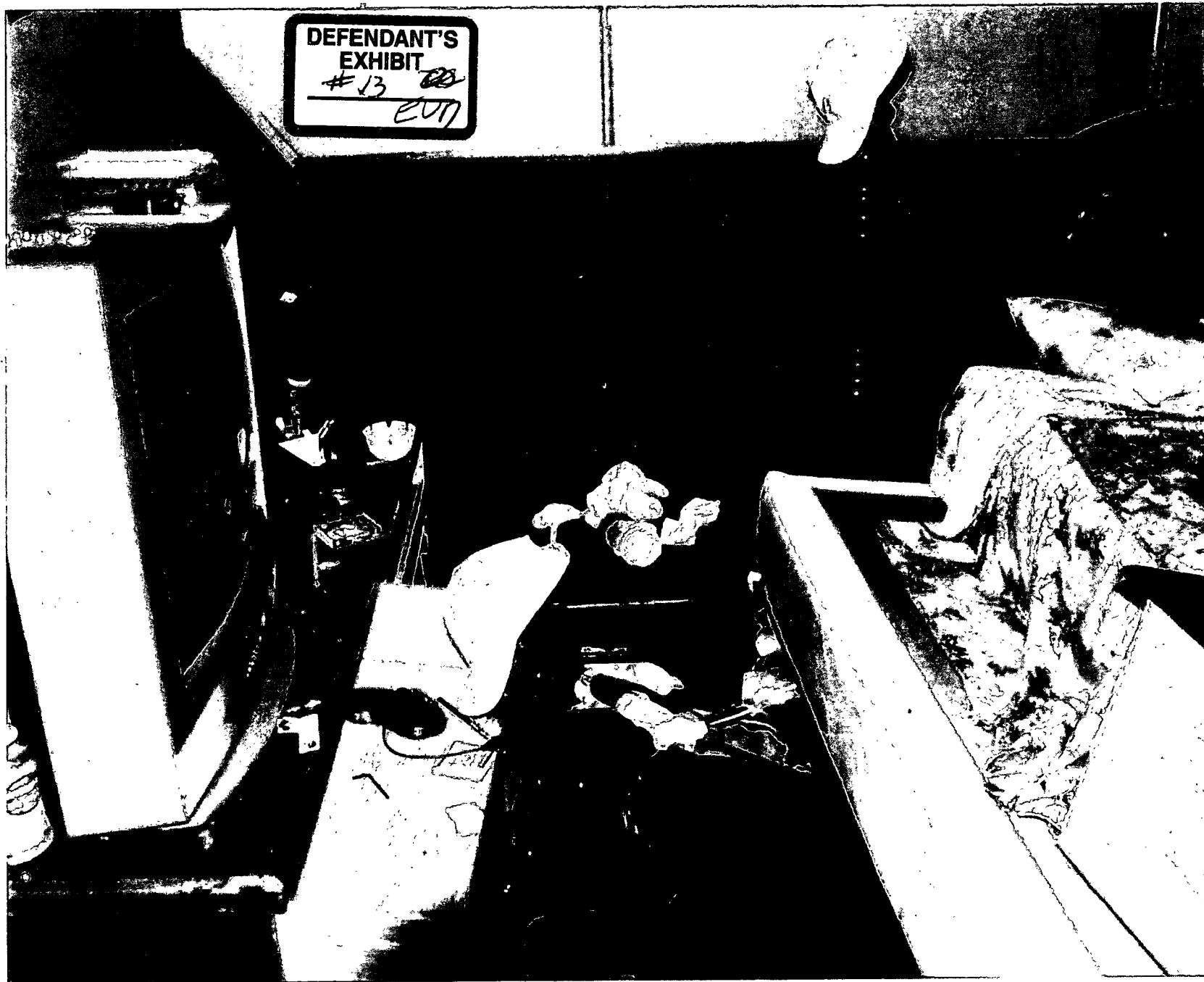
This inventory was made in the presence of Robert Spreng
AND Nick Bouknight

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

SWORN to before me this 10th
day of Oct 2011
Robt Helgeson (L.S.)
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)

Date Printed: 10/09/2011 01:06:59 AM





DEFENDANT'S
EXHIBIT
#16 IO

SAO

CONTROL NO. B215934

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM B (RULE 6)

CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

(Initial Custody)

This is to certify that I Nick Bocknight am employed by

(Name)

Newberry County Sheriff's Office and stationed at

(Name of Agency or Department)

AB

10-9
(Date)

11

I seized from

Tooby Alexander Trapp

(Name)

pursuant to

Search Warrant

(State Whether Subject to a Warrant, Lawful Arrest or Otherwise)

at or near

91 Little Patches Road Newberry SC 29108

(Place Where Seized)

the following substance(s) or container(s):

(Describe substance or container with sufficient particularity to distinguish it.)

① plastic baggy containing a quantity of a white cookie-like substance
② plastic baggy containing a quantity of a white cookie substance
③ orange pill bottle containing a quantity of white cookie substance
④ scale containing a quantity of a white residue on it
⑤ Spoon with a quantity of white residue on it
⑥ quantity of a white residue

On

10-21

(Date)

11

I made delivery of the above described

substance(s) or container(s) to

SLED

(Name)

of

SLED

(Law Enforcement Agency)

in substantially the same condition

as when I received it.

Nick Bocknight

(Signature)

Place:

Date:

Sworn before me on this _____ day of _____

Notary Public for South Carolina

My Commission expires: _____

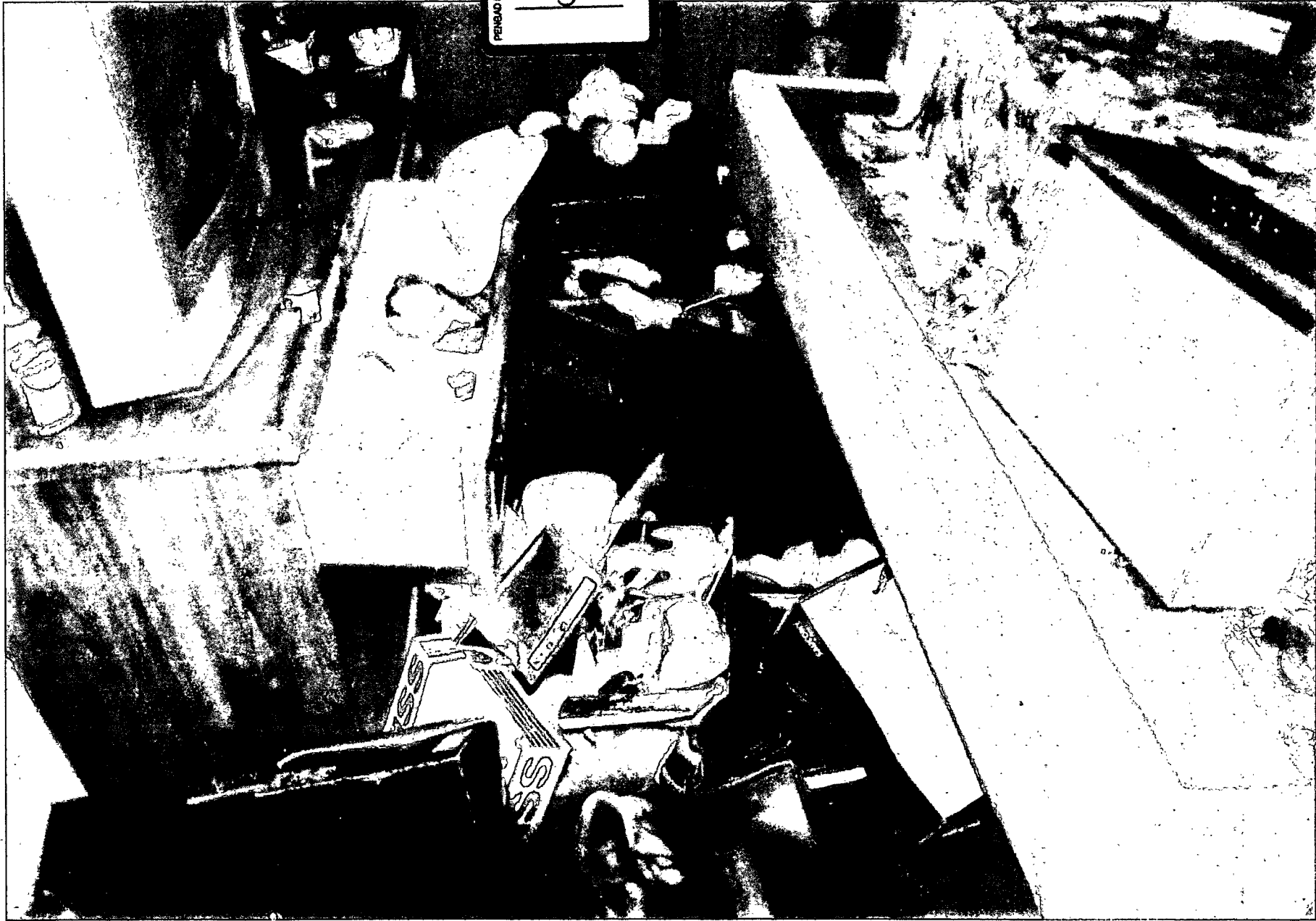
Initial Custody Form
Please Start with this Form

EV8815ED, FORM 1, 3/99

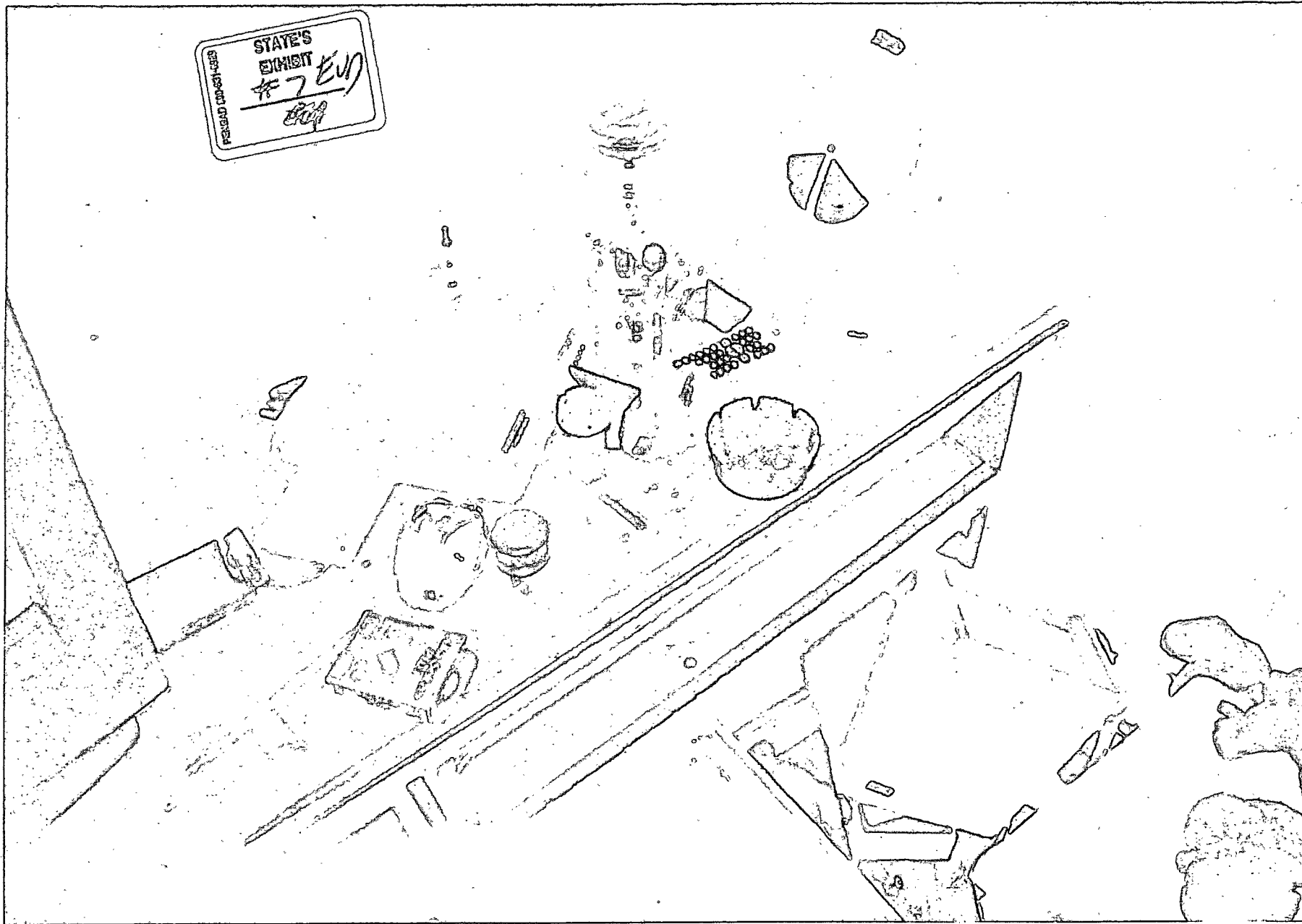


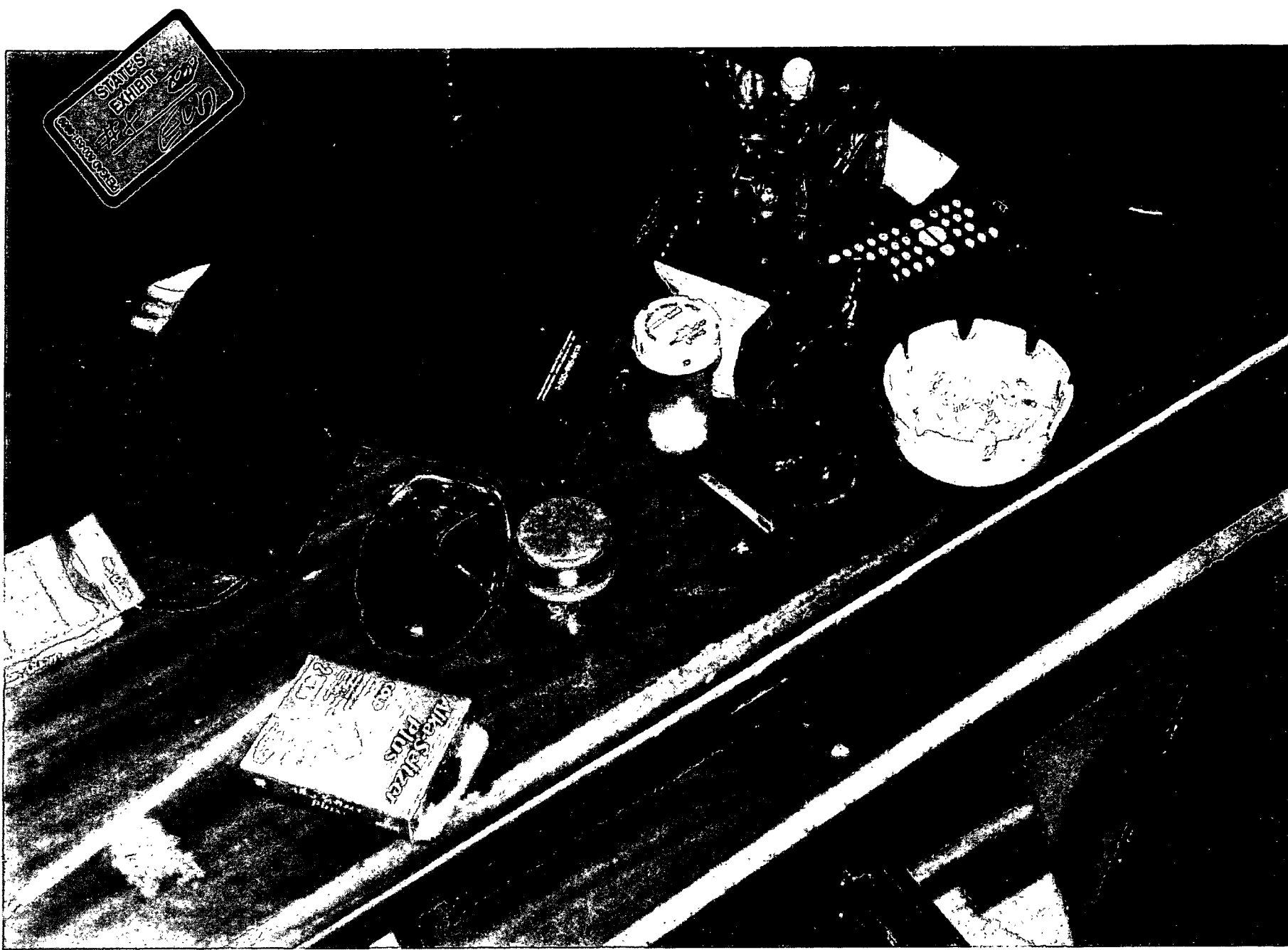
STATES
EXHIBIT
#4

STATE'S
EXHIBIT
#5 IN



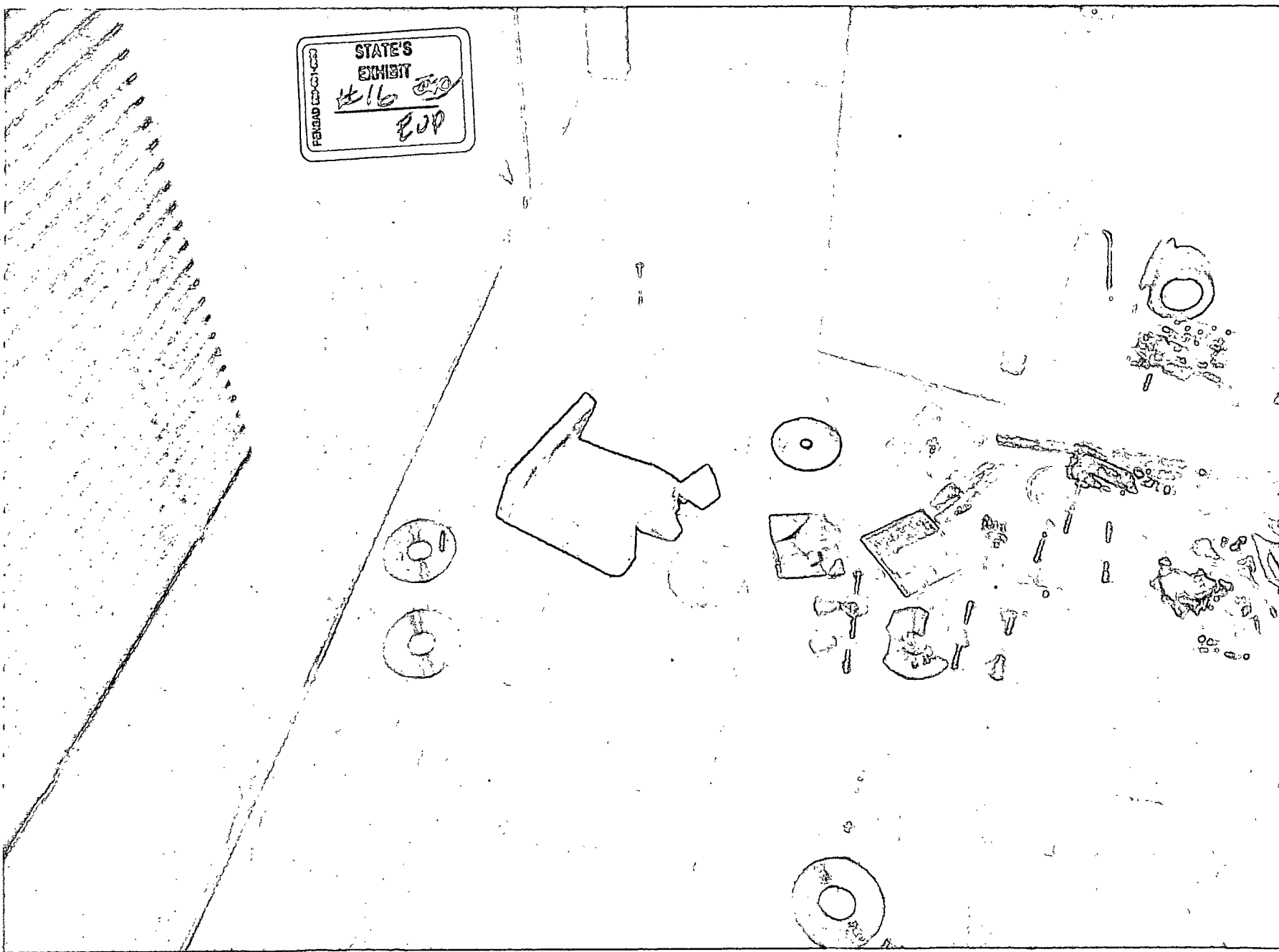






PENGLAD 800-631-0886
STATE'S
EXHIBIT 520
11 EUP







STATES
EXHIBIT
4-15-20
EJN



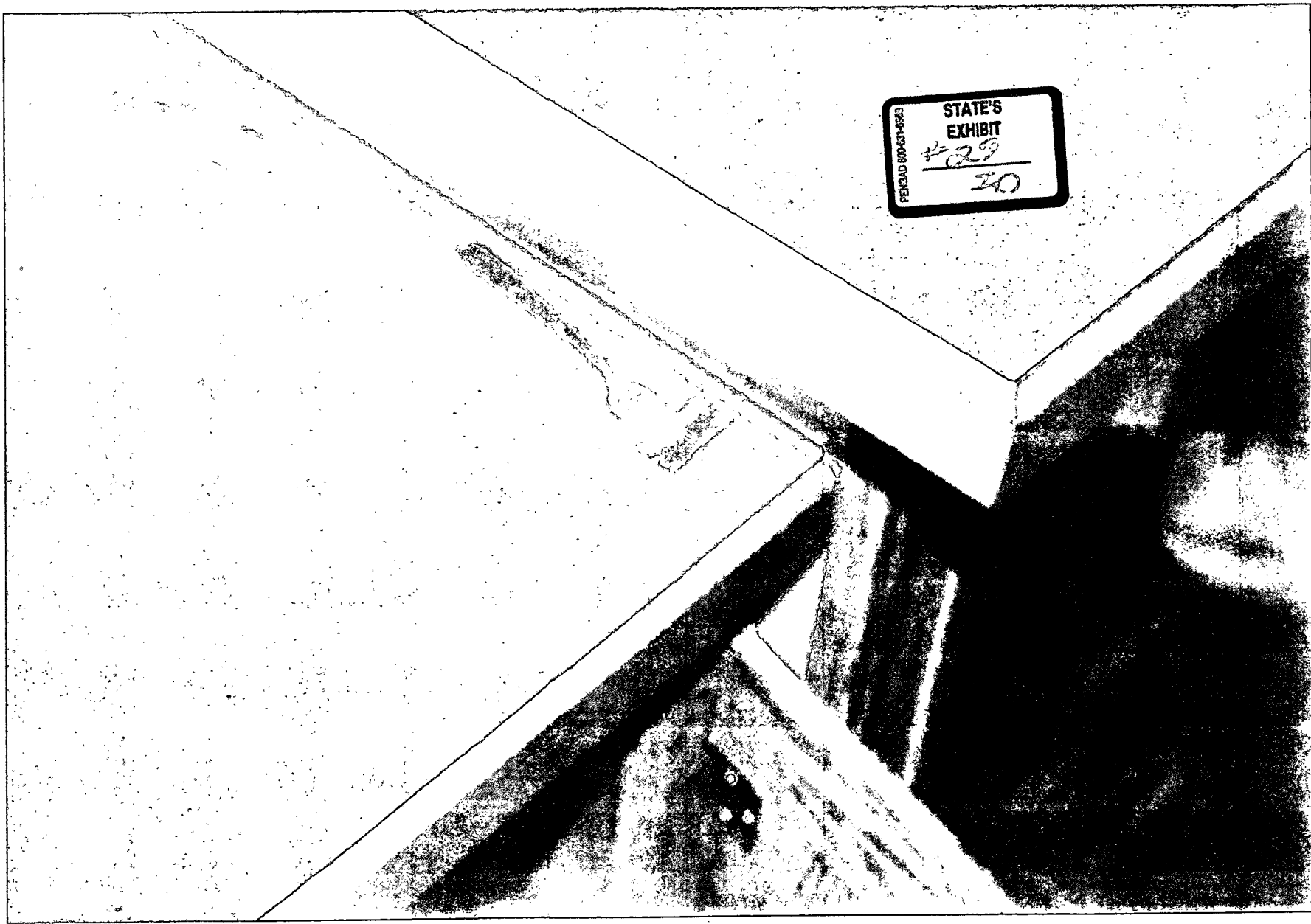


STATE'S
EXHIBIT
20
EWD









STATE'S
EXHIBIT
#29
30

Tooby, Trapp Case # 2014-002358

NEWBERRY COUNTY SHERIFF'S OFFICE

Case: 11-9384 Location: N-05
 Officer Code: 053
 Offense:
 Description: BEST KIT #L11-11971



NEWBERRY COUNTY SHERIFF'S OFFICE

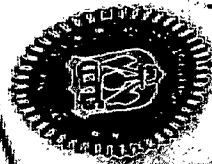
Case: 11-9384

Location: N-05
 Officer Code: 053
 Offense:
 Description: BEST KIT #L11-11971

NEWBERRY COUNTY SHERIFF'S OFFICE

Case: 11-9384

Location: N-05
 Officer Code: 053
 Offense:
 Description: BEST KIT #L11-11971



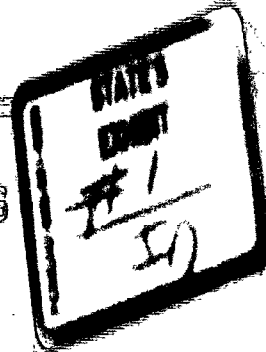
AGENCY NAME
 PRINT NAME OF PERSON SEALING BOX
 SIGNATURE OF PERSON SEALING BOX

DATE
 TIME



NEWBERRY COUNTY SHERIFF'S

EVIDENCE LOG IN



Evidence Data

10/8/11/10/9/11

OBJECT BOUKNIGHT

Location Evidence Room

Case # 11-9364

Typed Name Trapp, Crick, Corbin

Trapp

Tooby

10/8/11/10/9/11

10/8/11/10/9/11

10/8/11/10/9/11

10/8/11/10/9/11

Description of Evidence

2 razor blades - pill bottle containing a quantity of a white substance - pipe - 2 plastic baggies containing

A quantity of a white cookie like substance - spoon with a white residue - 2 small white bags containing

2 small white bags

Tooby, Trapp Case # 2014-002358



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF NEWBERRY
STATE VS.
TOMMY ALEXANDER TRAPP
AKA:
Race: B Sex: M Age: 35
DOB: [REDACTED] SS#: [REDACTED]
Address: 91 LITTLE RANCH RD.
City, State, Zip: NEWBERRY, SC 29108
DL# SID#

INDICTMENT/CASE#: 2004 -GS- 36 - 150
A/W#: 1-316331
Date of Offense: 2/20/2004
S.C. Code §: 44-53-375
CDR Code #: 0 1 1 1 1 3
☐ CASE RESTORED
SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: PAID CRACK, 2ND (0-28 YRS AND

in violation of §44-53-375 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 3

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed 2 years and/or to pay a fine of \$; provided that upon the service of 2 days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 6/28/05

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: MAY 14 2004

§14-1-206 (Assessments 107.5%) \$

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$

§56-5-2995 (DUI Assessment) \$12 \$

§35.13 (Public Def/Prob) \$500 \$

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00

§50-21-114 (BUI Breath Test Fee) \$50 \$

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 75.00

3% to County (if paid in installments) \$ 6.75

TOTAL \$ 231.75

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

to report - July 1, 2005

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

urrti Lominack

WARRANT NUMBERS

-316331 1-316334 1-316332 1-316333

James M. Mc **TRUE BILL**
15/04 Foreman of the Grand Jury

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

April Term, 2004

Indictment # 04GS36- 150

THE STATE

vs.

- a) TOBY ALEXANDER TRAPP
- b) SHAWN SIMS

Commitment 7/6/05 (a)

INDICTMENT FOR

- 1) POSSESSION OF ICE/CRACK/CRACK COCAINE WITH INTENT TO DISTRIBUTE
- 2) POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE

I, TOBY ALEXANDER TRAPP, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY PLEAD _____ GUILTY TO THE CHARGE(S) OF:

THIS 29th DAY OF June A.D. 2005

ATTEST:

Toby Alexander Trapp
DEFENDANT'S SIGNATURE

CLERK OF COURT, NEWBERRY, S.C.

I, SHAWN SIMS, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY PLEAD _____ GUILTY TO THE CHARGE(S) OF:

THIS _____ DAY OF _____ A.D. _____

ATTEST:

DEFENDANT'S SIGNATURE

CLERK OF COURT, NEWBERRY, S.C.

I, Jackie S. Bowers, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of the original on file in this office.

MAY 14 2014

Jackie S. Bowers
Clerk of Court

**THE STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY**

INDICTMENT FOR

1. POSSESSION OF ICE/CRANK/CRACK COCAINE WITH
INTENT TO DISTRIBUTE
2. POSSESSION OF COCAINE WITH INTENT TO
DISTRIBUTE

At a Court of General Sessions, convened on the 5th day of April, 2004, the Grand Jurors of Newberry County present upon their oath:

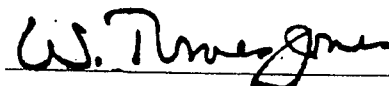
COUNT ONE

That TOBY ALEXANDER TRAPP, and SHAWN SIMS, aiding, abetting, and assisting one another, did in Newberry County, state aforesaid, on or about the 20th day of February, 2004, wilfully, unlawfully and knowingly possess with intent to distribute a quantity of Ice/Crank/Crack Cocaine, to wit: Crack, a Schedule II controlled substance under provisions of Title 44, Chapter 53, Article 3 of the South Carolina Code of Laws, 1976, as amended

COUNT TWO

That TOBY ALEXANDER TRAPP, and SHAWN SIMS, aiding, abetting, and assisting one another, did in Newberry County, state aforesaid, on or about the 20th day of February, 2004, wilfully, unlawfully and knowingly possess with intent to distribute a quantity of Cocaine, a Schedule II controlled substance under provisions of Title 44, Chapter 53, Article 3 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


C. Thurgood

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF NEWBERRY
STATE VS.
TOMMY ALEXANDER TRAPP
AKA:
Race: B Sex: M Age: 35
DOB: [REDACTED] SS#: [REDACTED]
Address: 91 LITTLE RANCHES RD
City, State, Zip: NEWBERRY, SC 29108
DL# [REDACTED] SID# [REDACTED]

INDICTMENT/CASE#: 2004 -GS- 36 - 149
AW#: 1-316320
Date of Offense: 2/20/2005
S.C. Code §: 44-63-375
CDR Code #: 0 1 1 1 1 2
☐ CASE RESTORED
SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: DIST CRACK, AND CO-254
in violation of § 44-63-375 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 2
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years
and/or to pay a fine of \$ 0; provided that upon the service of 25 days/months/years and/or payment
of \$ 0; plus costs and assessments as applicable*; the balance is suspended with probation for 3
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 6/28/05
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ South Carolina, 500.00 by certify that this is a true PTUP
Payment Terms: copy of the original on file in this office. days/hours Public Service Employment
☐ set by SCDPPPS
Recipent: MAY 14 2014
*Fine: Clerk of Court \$ 00
§14-1-206 (Assessments 107.5%) \$ 00
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ 00
§56-5-2995 (DUI Assessment) \$12 \$ 00
§ 35.13 (Public Def/Prob) \$500 \$ 00
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100
§50-21-114(BUI Breath Test Fee) \$50 \$ 00
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 75
3% to County (if paid in installments) \$ 6
TOTAL \$ 231
SPECIAL CONDITIONS:
☐ Obtain GED
☐ Attend Voc. Rehab. or Job Corp.
☐ May serve W/E beginning [initials]
☒ Substance Abuse Counseling [initials]
☒ Random Drug/Alcohol Testing [initials]
☐ Fine may be pd. in equal, consecutive weekly/monthly
prmts. of \$ 00 beginning [initials]
\$ 00 paid to Public Defender Fund
Other: Report - July 1, 2005
☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Elyse P. Hall
Clerk of Court/ Deputy Clerk
Court Reporter: [Signature]

PRESIDING JUDGE [Signature]
Judge Code: 01 01 61 2
Sentence Date: 6/28/05

116
WITNESSES

Garrett Lominack

WARRANT NUMBERS

316330

James M. Motte **TRUE BILL**
4/5/14 Foreman of the Grand Jury
Date:

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

April Term, 2004

Indictment # 04GS36-149

THE STATE

VS.

TOBY ALEXANDER TRAPP

Commitment 7/6/05

INDICTMENT FOR

DISTRIBUTION OF CRACK COCAINE

I, TOBY ALEXANDER TRAPP, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY PLEAD _____ GUILTY TO THE CHARGE(S) OF:

THIS 28th DAY OF June A.D. 2005

ATTEST:

Toby Trapp
DEFENDANT'S SIGNATURE

CLERK OF COURT, NEWBERRY, S.C.

I, Jackie S. Bowers, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of the original on file in this office.
MAY 14 2014
Jackie S. Bowers
Clerk of Court

THE STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

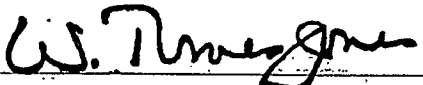
INDICTMENT FOR
DISTRIBUTION OF CRACK COCAINE

At a Court of General Sessions, convened on the 5th day of April, 2004, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That TOBY ALEXANDER TRAPP, did in Newberry County, state aforesaid, on or about the 20th day of February, 2004, wilfully, unlawfully and knowingly distribute a quantity of Crack Cocaine, a Schedule II controlled substance under provisions of Title 44, Chapter 53, Article 3 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

WITNESSES

Keith Lewis ✓

ARREST WARRANT NO. D332172

ACTION OF GRAND JURY

True bill

Jay Stephens
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 93-GS-20- 446 NA

The State of South Carolina,

County of FAIRFIELD

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 1993

THE STATE

vs.

Toby A. Trapp

10,000.00

Jury Panel 20

BW 9-28-93

BW-2/6/95

Indictment for
Unlawful Drugs

CDR - 294

2-24-93 Hood

THIS COURT THE DEFENDANT
DO TO ONE PRISONER TO THE CAR OF TWO PRISONERS
AND ENTERS THE FOLLOWING PLEA PLEAD GUILTY

Dist Crack Cocaine
1st

THIS 21 DAY OF Feb A.D. 95

DEFENDANT Toby Trapp

ATTORNEY Deane Anderson

CLERK OF COURT, FAIRFIELD COUNTY, S.C.

I, Betty Jo Beckham, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.

5/20/14 Betty Jo Beckham
Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

INDICTMENT FOR UNLAWFUL DRUGS

At a Court of General Sessions, convened on September 27, 1993,
the Grand Jurors of Fairfield County present upon their oath:

COUNT ONE — POSSESSION

That _____ did in _____ County
on or about _____, knowingly and intentionally possess a quantity
of _____, a controlled substance under
provisions of §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended, such posses-
sion not having been authorized by law.

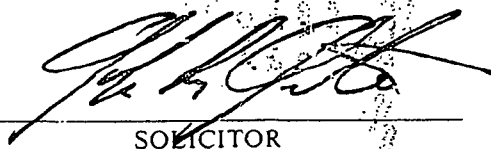
COUNT TWO — POSSESSION WITH INTENT TO DISTRIBUTE

That _____ did in _____ County on
or about _____, possess with intent to distribute a quantity of
_____, a controlled substance
under provisions of §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended,
such possession not having been authorized by law.

COUNT THREE — DISTRIBUTION

That Toby Trapp did in Fairfield County ^{8.3.1}
on or about January 28, 1993, distribute to one undercover informant
a quantity of crack cocaine (0.07 grams), a controlled substance
under provisions §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended, such
distribution not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


SOLICITOR

STATE OF SOUTH CAROLINA
VS

Toby TRAPP

State recommends
concurrent

COUNT NO: _____

CASE NO: 9.3 GS-20- 446

WARRANT NO: D332172

CHARGE: DIST. CRACK
COCAINE 1st.

The sentence of the Court is that Toby TRAPP, the defendant named in this indictment be confined to the State Board of Corrections/Fairfield County Detention for a term of 13 years (and) ~~he~~ pay a fine of \$ 25,000.00 : provided that upon the service of _____ (and) (or) payment of \$ _____ plus (pay) (waive) cost and assessments as applicable *, the balance is suspended and the defendant is placed on probation for _____ (months) (years).

RESTITUTION: (Yes) (No)

PHYSICAL INJURY \$ _____

HEARING HELD OR WAIVED ON: _____

(and) (or)

PROPERTY DAMAGE \$ _____

PAYABLE TO CLERK FOR (VICTIM) _____

TOTAL \$ _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: _____

Concurrent to 93-364

DATE: Feb. 7, 1995

WINNSBORO, S.C.

Paul E. Short, Jr.
Presiding Judge

Dorcas Anderson
Clerk of Court

Date of Birth: _____

Social Security: _____

Drivers License: _____

ATTORNEY FOR DEF: B. J. S.

ADDRESS: Rt 1 Box 42
Blair SC 29815

MJF

BAW

*COST AND ASSESSMENTS:

FINE \$ 25,000.00

NON WAIVABLE \$ _____

NOT WAIVED \$ _____

TOTAL \$ 41,715.00

COPY RECEIVED BY: _____

I, Betty Jo Beckham, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.

5/20/14 Betty Jo Beckham
Clerk of Court

WHITE - Clerk

PINK - Detention

YELLOW - Probation Dept.

BLUE - Defendant's Copy

WITNESSES

/ Keith Lewis

Darryl Burnett

ARREST WARRANT NO. D332171

ACTION OF GRAND JURY

True bill

Deey Mathews
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 93-GS-20-364 BP

^{NA}
The State of South Carolina,

County of FAIRFIELD

COURT OF GENERAL SESSIONS

JULY TERM 1993

THE STATE

vs.

A.
Toby Trapp

B.W 9-28-93

Indictment for
Unlawful Drugs

CDR - 294

NOTY COMES THE DEFENDANT(S) Toby Trapp
IN his OWN PROPER PERSON TO THE BAR OF THIS COURT
AND ENTERS THE FOLLOWING PLEA Guilty PLEAD GUILTY
Distribution Crack Cocaine
THIS 7 DAY OF Feb A.D. 19 95
DEFENDANT Toby Trapp
ATTEST:
Douglas Anderson
CLERK OF COURT, FAIRFIELD COUNTY, S.C.

I, Betty Jo Beckham, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.

5/20/14 Betty Jo Beckham
Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

INDICTMENT FOR UNLAWFUL DRUGS

At a Court of General Sessions, convened on July 26, 1993,
the Grand Jurors of Fairfield County present upon their oath:

COUNT ONE — POSSESSION

That _____ did in _____ County
on or about _____, knowingly and intentionally possess a quantity
of _____, a controlled substance under
provisions of §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended, such posses-
sion not having been authorized by law.

COUNT TWO — POSSESSION WITH INTENT TO DISTRIBUTE

That _____ did in _____ County on
or about _____, possess with intent to distribute a quantity of
_____, a controlled substance
under provisions of §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended,
such possession not having been authorized by law.

COUNT THREE — DISTRIBUTION

That Toby Trapp did in Fairfield County
on or about January 28, 1993, distribute to one undercover informant
a quantity of crack cocaine (0.20 grams), a controlled substance
under provisions §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended, such
distribution ~~not~~ having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


SOLICITOR

STATE OF SOUTH CAROLINA

VS

COUNT NO: _____

CASE NO: 93 GS-20- 364

WARRANT NO: D332171

CHARGE: DIST CRACK

COCAINE 1st

Toby TRAPP

*State recommends
concurrent*

The sentence of the Court is that Toby TRAPP, the defendant named in this indictment be confined to the State Board of Corrections/Fairfield County Detention for a term of 13 years

(and) ~~(or)~~ pay a fine of \$ 25,000.00 : provided that upon the service of _____ (and)

~~(or) payment of \$ _____ plus (pay) (waive) cost and assessments as applicable *~~, the balance is

~~suspended and the defendant is placed on probation for _____ (months) (years)~~

RESTITUTION: (Yes) (No)

PHYSICAL INJURY \$ _____

HEARING HELD OR WAIVED ON: _____

(and) (or)

PROPERTY DAMAGE \$ _____

PAYABLE TO CLERK FOR (VICTIM) _____

TOTAL \$ _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: _____

Concurrent to 93.446

DATE: Feb 7 1995

WINNSBORO, S.C.

Paul G. Short, Jr.
Presiding Judge

Debra G. Anderson
Clerk of Court

Date of Birth [REDACTED]

Social Security [REDACTED]

Drivers License [REDACTED]

ATTORNEY FOR DEF: P.D.

ADDRESS: Rt 1 Box 46
Blair

*COST AND ASSESSMENTS: FINE \$ 25,000.00
NON WAIVABLE \$ _____
NOT WAIVED \$ _____
TOTAL \$ 41,715.00

COPY RECEIVED BY: _____

I, Betty Jo Beckham, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.

5/29/14 Betty Jo Beckham
Clerk of Court
WHITE - Clerk PINK - Detention

YELLOW - Probation Dept.

BLUE - Defendant's Copy



NEWBERRY COUNTY SHERIFF'S OFFICE

EVIDENCE LOG IN

Evidence Data

Incident Date	10/8/11/10/9/11	Officer	BOUKNIGHT	
Location in Evidence Room		Case #	11-9364	Type Of Crime
				Traff. Crack Cocaine
Suspect ☒ Last Name	Trapp	First Name	Toaby	Middle Initial
Victim ☐				A
Suspect ☐ Last Name		First Name		Middle Initial
Victim ☐				
Suspect ☐ Last Name		First Name		Middle Initial
Victim ☐				

Description of Evidence

-2 razor blades -pill bottle containing a quantity of a white substance -pipe -2 plastic baggies containing A quantity of a white cookie like substance -spoon with a white residue -scale with a quantity of a white Residue on it

Chain Of Custody

Name	Date	
1) BOUKNIGHT	10-9-2011	
2)		
3)		
4)		
5)		
6)		

Court Information

Magistrate Court Yes ☐ Date
No ☐

Circuit Court Yes ☒ Date
No ☐

Family Court Yes ☐ Date
No ☐

Comments

USE BALLPOINT PEN AND PRESS FIRMLY, PRINT ALL INFORMATION
EXCEPT WHERE SIGNATURE IS REQUIRED

SLED DRUG ANALYSIS REQUEST

LAB NO. _____ CONTROL NO. B215831
COUNTY. Newberry WARRANT NO. _____

INCIDENT

Contributing Agency ORI SCO 360000 Contributing Agency Case No. 11-9364
New Case ☒ Additional Evidence ☐ Case No. _____
Type of Crime Trafficking Crack Cocaine
Incident Date 10-8-11 / 10-9-11
Incident Address 91 Little Ranches Road
Newberry SC 29108

Report should be mailed to:
Nick Bouknight Env
Name of Individual Receiving Report Rank
Newberry County Sheriff's Office 803-321-2211
Department Telephone No.
520 Wilcox Road
Street Address or Post Office Number
Newberry SC 29108
City State Zip Code

SUBJECTS

<u>Trapp</u> LAST	<u>Tooby</u> FIRST	<u>Alexander</u> MIDDLE	Race <u>B</u> Sex <u>M</u> DOB <u>1-6-70</u>
			DL, SS or FBI No. <u>250-11-0928</u>
			Race _____ Sex _____ DOB _____
			DL, SS or FBI No. _____
			Race _____ Sex _____ DOB _____
			DL, SS or FBI No. _____

EVIDENCE

The items submitted below will be examined with your assurance that the submitted specimens have not been nor will be submitted to any other laboratory or agency for Technical or Scientific examination.

Specimens submitted for examination: _____
① plastic baggy containing a quantity of a white crack substance ② plastic baggy containing a quantity of a white crack substance ③ orange pill bottle containing a quantity of white crack substance ④ scale containing a quantity of a white residue on it ⑤ spoon with a quantity of white residue on it ⑥ quantity of a white residue

Nick Bouknight
PRINT Name of Requesting Officer

[Signature]
SIGNATURE Of Requesting Officer

EV8SLED: DAR.1 3/99

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALL
Governor



MARK A. KEEL
Chief

Inv. Nick Bouknight
Newberry County Sheriff's Office
P.O. Box 247
Newberry, SC 29108

DRUG ANALYSIS
October 28, 2011
SLED LAB: L11-11971
Your Case No: 119364
Incident Date: 10/9/2011
[S] Toaby Trapp

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

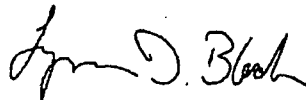
- Sub # 1 On October 21, 2011, items were received in B215834 from Inv. Nick Bouknight of the Newberry County Sheriff's Office.
- Item: 1.1** Manila envelope (1) containing plastic bag containing rock substance.
RESULTS:
Cocaine Base (Crack) (C-II) found, 10.0 grams (154.3 grains).
- Item: 1.2** Manila envelope (2) containing plastic bag containing rock substance.
RESULTS:
Cocaine Base (Crack) (C-II) found, 7.3 grams (112.6 grains).
- Item: 1.3** Manila envelope (3) containing orange plastic bottle containing rock substance.
RESULTS:
Cocaine Base (Crack) (C-II) found, 4.0 grams (61.7 grains).



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

- Item: 1.4** Manila envelope (4) containing black plastic digital balance containing...
- Item: 1.4.1** Powder substance.
RESULTS:
Cocaine (C-II) found, less than 0.1 grams.
- Item: 1.4.2** Plant substance.
RESULTS:
Marijuana (C-I) found, less than 0.1 grams.
- Item: 1.5** Ziploc bag (5) containing silver metal spoon containing powder substance.
RESULTS:
Cocaine (C-II) found, less than 0.1 grams.
- Item: 1.6** Ziploc bag (6) containing rock substance.
RESULTS:
Cocaine Base (Crack) (C-II) found, less than 0.1 grams.

Chemical Analyst



Lynn D. Black

cc: Newberry County Solicitor's Office



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

FORM A

REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)

I, Lynn D. Black, am a Chemical Analyst employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 11 years and 8 months experience as a Chemical Analyst. During that period, I have been qualified as an expert witness and testified in court no less than 105 times. I have received the following training as a chemical analyst.

B.S. Chemistry, Kentucky Wesleyan College, Owensboro, KY, 1984
Certificate of Medical Technology, University of Louisville, Louisville, KY, 1986
M.S. Forensic Science, Marshall University, Huntington, WV, 1998
Training in Forensic Drug Analysis, Georgia Bureau of Investigation, 1999
Forensic Chemist, Georgia Bureau of Investigation, Decatur, GA, 1998-2007
Drug Enforcement Administration, Forensic Chemist Seminar, 2000
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2009
SC Law and Legal Training, South Carolina Criminal Justice Academy, 2009

Sub # 1 On October 21, 2011, items were received in B215834 from Inv. Nick Bouknight of the Newberry County Sheriff's Office.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test	☒ Gas Chromatography
☒ Microscopic Exam	☒ Mass Spectroscopy
☒ Infrared Spectroscopy	☐ Liquid Chromatography
☐ Ultraviolet Spectroscopy	☒ Physical Test
☐ Visual Examination	☐ Published Literature

See Drug Analysis Report L11-11971 for Results.

Chemical Analyst



Lynn D. Black

Date: October 28, 2011



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Indictment No.: 2012-GS-36-0267

RECEIVED

NOV 16 2015

SC Court of Appeals

The State, ... Respondent,

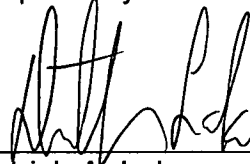
v.

Toaby Alexander Trapp, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8311
Attorney for Appellant