

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

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Appeal from Laurens County  
Honorable Donald B. Hocker, Circuit Court Judge  
Appellate Case No 2016-000729  
\_\_\_\_\_

The State, ..... Respondent,

vs.

Terrance Edward Stewart, ..... Appellant.

\_\_\_\_\_  
Return to Motion to Dismiss  
\_\_\_\_\_

Terrance Edward Stewart, the Appellant above named, would respectfully show to the Court as follows:

In June of 2015, the Laurens County Grand Jury indicted the Appellant for trafficking in heroin, one count of distribution of heroin and one count of possession of oxycodone with intent to distribute for an incident that occurred on January 22, 2015. On March 25, 2015, Matt Veal, the chief investigating officer in the Laurens County charges testified in United States District Court at the federal sentencing hearing of Terrance Edward Stewart.

At this hearing Mr. Veal testified as to the facts and circumstances that led to the charges being placed against Mr. Stewart. The Honorable Henry M. Herlong, Jr., after hearing the testimony ruled that he believed Officer Veal and found that Mr. Stewart had in fact committed the drug charges in Laurens County. Exhibit A, Hearing dated March 25, 2015 at 59, ll 10-13; at

66, ll 16-25 to 67, ll 1-15. As a result of the finding that Mr. Stewart had committed the exact same acts for which he was indicted in this case, Judge Herlong departed from the recommended sentence. He did an upward departure and sentenced Mr. Stewart to 145 month in prison

Prior to the trial in this case Mr. Stewart filed a Motion to Dismiss the indictment based upon the fact that as the federal judge had found Mr. Stewart guilty of the exact same crime for which he was being prosecuted in the General Session Court for Laurens County, then the prosecution was barred under S. C. Code § 44-53-410. The trial judge for the General Session Court of Laurens County, denied the motion and this appeal followed.

Appellant agrees that the right to appeal is governed by S. C. Code § 14-3-330. In a state action involving double jeopardy, the right of a citizen to be free from another prosecution is involved. The right to be free from a trial is significantly different from the right to have an improper conviction reversed on appeal. As the United States Supreme Court has said “Moreover, the very nature of a double jeopardy claim is such that it is collateral to, and separable from the principal issue at the accused's impending criminal trial, i. e., whether or not the accused is guilty of the offense charged. In arguing that the Double Jeopardy Clause of the Fifth Amendment bars his prosecution, the defendant makes no challenge whatsoever to the merits of the charge against him. Nor does he seek suppression of evidence which the Government plans to use in obtaining a conviction.” *Abney v. United States*, 431 U. S. 651, 659 (1977). Recognizing the uniqueness of a double jeopardy argument, the denial for the right should be immediately appealable.

Appellate recognizes that *State v. Miller*, 289 S.C. 426, 346 S.E.2d 705 (1986) is arguably against the Appellant. First, Appellant would point out that *Miller* did not discuss in

any detail the statute that gives a criminal defendant the right to appeal. Nor did the Court discuss in any detail the uniqueness of the double jeopardy argument in the *Miller* case. Furthermore, the cases cited in *Miller* are not sound authority for the proposition that a double jeopardy argument is not appealable. In the case, the Court stated “ Consistent with this rule, an order denying a double jeopardy claim is not immediately appealable.” *State v. Miller*, 289 S.C. 426, 427, 346 S.E.2d 705, 706 (1986). The Court then cites several cases which do not squarely stand for that proposition. In *State v. Byars*, 79 S.C. 174, 60 S.E. 448, 448 (1908) the Court said “This is no new question to this court, for we have held that a final judgment is essential in the hearing of an appeal. The prisoner has never been sentenced. The sentence is a final judgment.” The issue presented did not involve double jeopardy. In *State v. McKettrick*, 13 S.C. 439, 439 (1880) the Court said “the presiding judge refused to sentence him, as an appeal was to be taken.” This hardly is a double jeopardy argument. *State v. Burbage*, 51 S.C. 284, 28 S.E. 937 (1898) merely held that a motion to quash an indictment is not appealable, but reached merits of defendant’s case. In *State v. Byars*, 79 S.C. 174, 60 S.E. 448 (1908) the State appealed the granting of a new trial. Again, hardly support for the proposition that the uniqueness of double jeopardy is applicable. In no case cited by the *Miller* court did the case conduct an analysis of the wording of the statute.

Nor did the Court in *Miller* correctly interpret the *Abney* decision. The United States Supreme Court in *Abney* said “Finally, the rights conferred on a criminal accused by the Double Jeopardy \*\*2041 Clause would be significantly undermined if appellate review of double jeopardy claims were postponed until after conviction and sentence. To be sure, the Double Jeopardy Clause protects an individual against being twice convicted for the same crime, and that

aspect of the right can be fully vindicated on an appeal following final judgment, as the Government suggests. However, this Court has long recognized that the Double Jeopardy Clause protects an individual against more than being subjected to double punishments. It is a guarantee against being twice put to trial for the same offense.” *Abney v. United States*, 431 U.S. 651, 660-661 (1977). Thus, the United States Supreme Court gave constitutional importance to any appeal from a denial of Double Jeopardy. *See, also, Texas v. Robinson*, 641 S.W.2d 552, 555 (1982)([T]he protection afforded by the Double Jeopardy Clause ... encompass[es] a “right not to be tried” which must be upheld prior to trial if it is to be enjoyed at all.” (Internal citations omitted)). Thus, the order below is not a judgment on the merits, but involves an issue completely independent of the merits. As such, it is an intermediate order that is appealable under S. C. Code 14-3-330(1).

The Appellant at the Court below urged that the enforcement of S.C. Code § 44-53-410 is in effect a request for an injunction asking that the State be enjoined from prosecuting the Appellant. A denial of an injunction is also appealable under S. C. Code § 14-3-330(3), an issue not addressed in *Miller*.

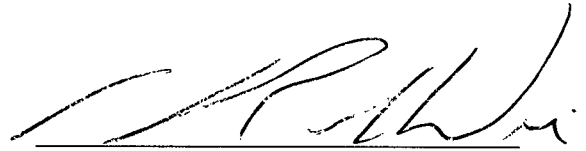
In the event this Court feels bound by the *Miller* decision, the Appellant requests that this Court directly refer this case to the South Carolina Supreme Court pursuant to South Carolina Appellate Court Rule 204(b).

#### CONCLUSION

The right of a defendant to be free from successive punishment is also the right to be free from being tried twice for the same act as provided by statute in South Carolina. The right becomes

almost meaningless if the only way to vindicate the right is to be tried twice for the same act before an appeal can be heard.

May 4, 2016



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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

UNITED STATES OF AMERICA,	)	
	)	March 25, 2015
-versus-	)	
	)	Greenville, SC
TERRANCE EDWARD STEWART,	)	
	)	6:14-400-4
Defendant.	)	

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE HENRY M. HERLONG, JR.  
SENIOR UNITED STATES DISTRICT JUDGE, presiding

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

For the Government:	E. JEAN HOWARD, AUSA US Attorney's Office 55 Beattie Place, Ste. 700 Greenville, SC 29601
For the Defendant:	LAWRENCE W. CRANE, ESQ. 101 Whitsett Street Greenville, SC 29601
Court Reporter:	KAREN E. MARTIN, RMR, CRR 300 E. Washington Street Room 304 Greenville, SC 29601

The proceedings were taken by mechanical stenography and  
the transcript produced by computer.

Karen E. Martin, RMR, CRR  
US District Court  
District of South Carolina

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**GOVERNMENT'S EXHIBITS**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>ID</b>	<b>EVD</b>
1	SLED Lab Report - Controlled Buy	3	56
2	SLED Lab Report - Search Warrant	3	56

All exhibits were returned to the Government.

1 Wednesday, March 25, 2015

2 (WHEREUPON, Government's Exhibits Nos. 1 and 2 were  
3 marked for identification only prior to court.)

4 MS. HOWARD: Your Honor, the next case for  
5 sentencing is United States vs. Terrance Edward Stewart,  
6 Docket No. 6:14-400. He's represented by Larry Crane.

7 THE COURT: Mr. Stewart, are you ready for  
8 sentencing at this time?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And have you had enough time to  
11 discuss this matter with your attorney?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you satisfied thus far with the  
14 representation of your attorney?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any complaints of your  
17 attorney or anyone else in connection with this case?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you and your attorney  
20 thoroughly reviewed the Presentence Report?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Crane, are there any objections  
23 to the report?

24 MR. CRANE: Yes, sir, Judge.

25 THE COURT: I'll hear from you.

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District of South Carolina

3

4

1           **MR. CRANE:** Well, Judge, we object to the drug  
2 weights as found in Paragraph 79, Paragraph 91, Paragraph  
3 95, and Paragraph 52. And also, there was a revised  
4 Presentence Report wherein the probation took away his two  
5 points for acceptance of responsibility and we object to  
6 that.

7           **THE COURT:** I'll hear from the Government.

8           **MS. HOWARD:** Your Honor, we have witnesses we  
9 can present as to that.

10          **THE COURT:** All right.

11          **MS. HOWARD:** Just initially, Your Honor, as to  
12 Paragraph 52, which involves some conduct which he has  
13 been sentenced for in state court, however, if you look at  
14 Paragraph 151, that was -- he was not given any criminal  
15 history points for that conviction; neither was he given  
16 any kind of enhancement or criminal history points because  
17 it was -- he was on probation during this period of time.

18          **THE COURT:** Well, let's look at 52. What I'm  
19 looking at is just factual.

20          **MS. HOWARD:** Paragraph 52 is where he was  
21 arrested, Your Honor, and charged with 9.05-grams of  
22 methamphetamine and \$1,143.

23          **THE COURT:** Well, he says that didn't happen.

24          **MR. CRANE:** No, it did happen. It was my  
25 understanding from the --

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District of South Carolina

5  
1 THE COURT: You said you objected to the  
2 findings in 52.

3 MR. CRANE: No, we object to the drug weights  
4 being included in his drug weight calculations.

5 THE COURT: Oh, I see. So his total drug  
6 weights then, and 52 is just one of them?

7 MR. CRANE: Yes, sir.

8 THE COURT: So let me ask about 52. You object  
9 to the 9.05-grams of methamphetamine?

10 MR. CRANE: Being included in the federal drug  
11 weight, yes, sir.

12 THE COURT: And the currency, I guess they  
13 converted the currency?

14 MR. CRANE: Yes, sir.

15 THE COURT: Okay.

16 MS. HOWARD: All right, Your Honor.

17 THE COURT: Do you want to present evidence?

18 MR. CRANE: When I calculated it, it was  
19 included in. If I calculated it wrong --

20 MS. HOWARD: Your Honor, I'll be glad to take  
21 those weights out, those 9-grams. And then he could get  
22 the criminal history points -- the three additional  
23 criminal history points added to his criminal history.  
24 You can't have it both ways.

25 THE COURT: I don't know what y'all are talking

1 about.

2 MS. HOWARD: Okay. Your Honor, Paragraph 52.

3 THE COURT: Yes.

4 MS. HOWARD: And then we have Paragraph 151.

5 THE COURT: I'm sorry. 151?

6 MS. HOWARD: Yes, sir. Paragraph 151 is the  
7 conviction in state court for Paragraph 52. And he got no  
8 criminal history points for that.

9 THE COURT: Why?

10 MS. HOWARD: Because we used that in the weight.  
11 If he doesn't want us to use that in the weight, that's  
12 fine. And we would just --

13 THE COURT: So you say he was convicted of that.

14 MS. HOWARD: He was convicted of that, yes, sir.

15 THE COURT: They just didn't in state court come  
16 up with an amount.

17 MS. HOWARD: This was the --

18 THE COURT: Is he agreeing there was some amount  
19 of drugs but not that total amount or what? I mean, what  
20 is it in 52 that you're objecting to?

21 MR. CRANE: He's agreeing that he had 9.05-grams  
22 of methamphetamine. But from the inception of this case,  
23 it was my understanding the Government, the United States  
24 Government was not going to pursue that as part of the  
25 calculation for the drug weight.

1           **THE COURT:** Well, if you're talking about -- we  
 2 get into these dynamics. What happens is the Government  
 3 is the Justice Department and they prosecute cases. Part  
 4 of the Court is the US Probation Office. And once  
 5 somebody pleads guilty, they are charged with the  
 6 responsibility of going out and gathering facts to give to  
 7 the sentencing judge to figure them under the guidelines.

8           And they have to -- and what they do typically  
 9 is sometimes they talk to officers and the Government and  
 10 the defense lawyer and they look at the case file, and  
 11 they're reporting to me what they're finding. So when you  
 12 say you didn't think the Government was going to count  
 13 it --

14           **MR. CRANE:** I'm talking about.

15           **THE COURT:** Let me say this delicately. Whether  
 16 the prosecutor wants to count it or not, it's not her  
 17 responsibility.

18           **MR. CRANE:** I understand that.

19           **THE COURT:** Unless the Court accepts it, and she  
 20 says we shouldn't. I look at the probation officer to  
 21 report to me what he thinks the facts are in this case.

22           **MR. CRANE:** Yes, sir.

23           **THE COURT:** So I'm just trying to explain what  
 24 I'm looking at. So -- and I responded to that by you  
 25 saying you didn't think the Justice Department was going

1 to pursue that against him.

2 MR. CRANE: That's correct, Judge. In other  
3 words, if we had made --

4 THE COURT: Well, the probation office says that  
5 52 is accurate and that happened.

6 MR. CRANE: Yes, sir. And we agree that  
7 happened.

8 THE COURT: Well, okay.

9 MR. CRANE: What I'm saying, Judge, had he made  
10 an exception to that, it was my understanding from the  
11 inception that the Government would not have presented  
12 evidence to you to include that in the drug weight.

13 THE COURT: If they want to withhold evidence,  
14 that's really -- I don't mean that in the wrong kind of  
15 way, if they don't want to present evidence. And if it's  
16 contested, that's -- to continue my story, that's the way  
17 this happens. The defense lawyer says that didn't happen.  
18 Probation officer told the Court this happened. Defense  
19 lawyer says it didn't happen. I look to the Government.  
20 Do you have proof of that? If the Government doesn't put  
21 up any proof, you prevail. If the Government puts up --  
22 that's the way. But to say we didn't think they were  
23 going to claim it, she says they were going to claim it.

24 MS. HOWARD: Absolutely, Your Honor. We were  
25 prepared -- as, Your Honor, a little bit of background.

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District of South Carolina

9  
1 As you recall, this case was going to trial. The jury was  
2 in the jury room and we were getting ready to call the  
3 jury in when he said he wanted to plead guilty.

4 THE COURT: Okay. Let's go back and talk about  
5 52.

6 MR. CRANE: Judge, he'll accept the weight.

7 THE COURT: Okay. So he withdraws his objection  
8 to 52?

9 MR. CRANE: Yes, sir.

10 THE COURT: Now, let's go to the next one. What  
11 other objection do you have? I wrote them down as you  
12 read them. The first one you said was 79. I'd have to  
13 look and see what that is.

14 MR. CRANE: 79 a co-defendant who gave  
15 statements after being arrested five separate times and  
16 finally gave statements against several individuals and  
17 included a quantity of drug weight on my client which we  
18 disagree with.

19 MS. HOWARD: Your Honor, we have him present and  
20 ready to testify.

21 THE COURT: All right. Let's set him aside and  
22 bring up the witness.

23 MS. HOWARD: All right. Jeffrey Newman. I  
24 think we have him right outside, Your Honor.

25 THE CLERK: If you'll raise your right hand to

1 be sworn, sir.

2 JEFFREY NEWMAN, after being duly sworn,  
3 testified as follows:

4 THE CLERK: Step around to the witness box,  
5 please.

6 DIRECT EXAMINATION

7 BY MS. HOWARD

8 Q Would you state your name, please?

9 A Jeff Newman.

10 Q Mr. Newman, you were charged in this indictment with  
11 Terrance Stewart and with others, correct?

12 A That's correct.

13 Q And you entered a plea of guilty; is that right?

14 A I did.

15 Q And as part of your guilty plea, you entered into a  
16 plea agreement; is that right?

17 A That's correct.

18 Q And as part of that plea agreement, you agreed to  
19 testify if the Government called upon you to do so; is  
20 that right?

21 A That's correct.

22 Q And were you present on the morning when Terrance  
23 Stewart was going to trial?

24 A I was.

25 Q Okay. And you were prepared to testify at that time?

1 A I was.

2 Q All right. Then you understood he pled guilty?

3 A That's correct.

4 Q All right. How do you know Terrance Stewart?

5 A I only had one dealing with him personally. I met  
6 him through the phone through a mutual customer of ours.  
7 She had given me his number, I guess, with his permission  
8 or whatever. And that's how that happened.

9 Q Well, she gave you the number for what purpose?

10 A So I could get in touch with Cheddar to buy some ice.

11 Q Ice. Is that methamphetamine?

12 A That's correct.

13 Q Okay. And were you dealing in methamphetamine.

14 A I was.

15 Q All right. And were you dealing with large  
16 quantities of methamphetamine?

17 A I was.

18 Q And were you looking for -- who was your supplier of  
19 methamphetamine?

20 A Um, originally?

21 Q Yes.

22 A A Mexican.

23 Q All right. Anybody else in this conspiracy?

24 A Correct, Cheddar.

25 Q All right. And how -- you said that you dealt with

1 him personally on one occasion.

2 A (Nods head.)

3 Q All right. What do you mean by that?

4 A Well, the first time that I called his phone or  
5 whatever and I set up to meet, I met a guy on Pine Knoll  
6 in a little house behind a house who I thought was Cheddar  
7 and I bought an ounce of ice from him. And then I came  
8 back and talked with a girl named Brianna and described  
9 Cheddar and she said, "That's not Cheddar." And so --

10 Q Why did you think that he was Cheddar?

11 A Because I was calling Cheddar's phone.

12 Q All right. And did you continue to call that phone  
13 number?

14 A Yes, I did.

15 Q Okay. And what happened when you would call that  
16 phone number?

17 A I would be directed where to go to pick up the ice.

18 Q All right. And who were you talking to when you  
19 called that number?

20 A I assumed I was talking to Cheddar.

21 Q Okay. Did you ask for Cheddar?

22 A Yes.

23 Q All right. And were you aware of other people that  
24 were dealing with Cheddar?

25 A I was.

1 Q Okay. And was he known throughout the community  
2 as -- the methamphetamine community as selling large  
3 quantities of methamphetamine?

4 A He was.

5 Q All right. So tell me about the next time you dealt.

6 A The next time I called that same number and was asked  
7 to go to Mark III -- I think it's Mark III. It's off  
8 Grove Road. It's a trailer park -- and was directed to go  
9 to a trailer in the back. I went into the trailer and  
10 there was a couple of white guys and a black guy in there.  
11 And that still wasn't Cheddar. But we did the  
12 transaction. I left.

13 Q How much did you buy at that point?

14 A It was either a half ounce or an ounce, I can't  
15 remember exactly.

16 Q All right. And what happened after that?

17 A After that, I had called that number again and was  
18 directed to go to McArthur Street. And I bought from some  
19 individuals there. And the individual there was the same  
20 individual that I had originally met at Pine Knoll. And,  
21 I don't know, something happened to him. He went back to  
22 Detroit or somewhere. That's what I was told or whatever.  
23 And then I called that number again and I was directed to  
24 go back to Mark III. And that was when I actually met  
25 Cheddar for the first time.

1 Q All right. And did he represent himself as Cheddar?

2 A Yes.

3 Q Okay. And what did you talk about at that time?

4 A Um, the price I was paying from him was more than  
5 what I was used to paying for or whatever. And I let him  
6 know that I had a line on it. My guy was out at the time,  
7 but I could get it to him for like a thousand or \$1,100 an  
8 ounce versus the 14 or \$1,500 I was paying him.

9 Q All right. And did y'all talk about drug  
10 transactions back and forth?

11 A Yes.

12 Q Okay. And did you actually buy from him at that  
13 time?

14 A I did, I purchased an ounce of methamphetamine.

15 Q An ounce of methamphetamine?

16 A That's correct.

17 Q All right. And again, it was that same number; is  
18 that right?

19 A That's correct.

20 Q Okay. And did you review these telephone numbers  
21 prior to the trial?

22 A I did.

23 Q Okay. And during a one-month period of time, would  
24 you dispute that there was 83 contacts or 81 contacts with  
25 your number?

1 A I know that it was over 30. I don't remember --

2 Q You don't remember how many it was but it was  
3 definitely over 30 --

4 A Uh-huh.

5 Q -- between you and Cheddar's number?

6 A That's correct.

7 Q All right. So, in all, how much methamphetamine  
8 would you have purchased from Cheddar by calling that  
9 number?

10 A At least five ounces.

11 Q At least five ounces. And this was during what  
12 period of time?

13 A That would be between, I would say, November of 2012  
14 up until September -- no, even after September. Um, up  
15 until November of 2013. Wait a second. Yeah, November --  
16 from November 2012 up until November of 2013.

17 Q All right. And you said that it was at least five  
18 ounces of methamphetamine?

19 A That's correct.

20 Q Okay. Was his methamphetamine good quality?

21 A It was.

22 Q All right. Did the price get better as you bought  
23 more?

24 A No.

25 Q Why was his price so much higher?

1 A I don't know. Like, when I went to McArthur Street,  
2 when I bought an ounce, I was given, like, 16 bags of --  
3 individual bags. Instead of it being an ounce bagged up,  
4 it was 16 bags equaling an ounce.

5 Q Okay. You mentioned McArthur Street. You mentioned  
6 the Mark trailer park. Was there any other location you  
7 purchased from?

8 A Pine Knoll.

9 Q Pine Knoll.

10 A Over behind Wade Hampton High School.

11 Q Okay. And what kind of places were these?

12 A Just, um, the place over at Pine Knoll is like a  
13 little house behind a house. And the one on McArthur  
14 Street, it was a house that had, you know, several people  
15 staying in there. And then the trailer I went to on Mark  
16 III, I don't know what it was. When I actually met  
17 Cheddar, I actually picked him up on the road in to Mark  
18 III.

19 Q Was it your understanding that Cheddar was the one  
20 who ran these locations?

21 A Yes.

22 Q All right. And he was responsible for the drug sales  
23 from there?

24 A Yes. He actually had -- the person there actually  
25 called him there one time to confirm my price because it

1 was cheaper than what most people were paying.

2 Q All right.

3 MS. HOWARD: I don't have any further questions,  
4 Your Honor.

5 THE COURT: You may examine.

6 MR. CRANE: Thank you, Judge.

7 CROSS-EXAMINATION

8 BY MR. CRANE

9 Q Mr. Newman, when did you first debrief with the  
10 Government? When did you first give them a statement?

11 A Um, in Spartanburg County Detention Center. No, I  
12 guess Spartanburg -- over in Spartanburg.

13 Q I know, but when was that?

14 A What day?

15 Q If you can remember.

16 A I don't know.

17 Q Was it November of 2013?

18 A I actually met with an investigator from the county  
19 sheriff's department and my lawyer over at Spartanburg  
20 City Police. And then the US Attorney and Investigator  
21 Parrish came to Spartanburg County and met with me, but  
22 I'm not sure of the date.

23 Q Okay. Well, let me ask you. During the summer of  
24 2013, were you not arrested July 30th for drugs?

25 A I was.

1 Q You got out on bond?

2 A That's correct.

3 Q You got arrested again with a search warrant in  
4 September?

5 A That's correct.

6 Q You got out on bond. You got arrested again because  
7 you sold to someone?

8 A They had a search warrant.

9 Q They had another search warrant. You got arrested  
10 again, so that's three times. Did you get out on bond  
11 again?

12 A No.

13 Q You didn't get out on bond again?

14 A I got out -- I did eventually get out on bond, but I  
15 sat there awhile.

16 Q You sat there awhile. But isn't it a fact that even  
17 when you get out on bond you got arrested in 2014 for  
18 drugs, didn't you?

19 A In 2014?

20 Q Yes, sir, January 2014, according to the records that  
21 the agents have. Didn't you get rearrested?

22 A I was arrested for rental car violation and I had  
23 drugs on me, so, yeah.

24 Q Okay. So you get arrested three times, out on bond.  
25 You get arrested for a search warrant. And at that time

19

1 start talking about your dealings, right?

2 A I started -- I actually talked about my dealings in  
3 September the 13th when I was arrested.

4 Q 2013. So you talked to them, give some information,  
5 and then some three months later end up getting arrested  
6 again with drugs on you?

7 A That's correct.

8 Q So you didn't get out of the game either, did you?

9 A No.

10 Q Okay. When you told the agents in September of 2013,  
11 who did you tell them you were primarily dealing with?

12 A Who did I tell them I was primary dealing with?

13 Q Yeah, that you were buying most of your narcotics  
14 from.

15 A At that time I think it was Joe and Sikeo.

16 Q Winfrey and Sikeo Butler?

17 A Yes.

18 Q And how much -- do you recall how much you told them  
19 you were getting?

20 A Probably half ounce every couple days.

21 Q Half ounce every couple days. All right. And you  
22 also told them at that time -- when you gave these  
23 statements in September, you weren't sworn, were you?

24 A No.

25 Q All right. This is the first time you've been sworn

1 to give statements?

2 A That's correct.

3 Q Now, when you got arrested -- when you were arrested  
4 this last time with the search warrant, they found a  
5 quantity of heroin sufficient to put you in state prison  
6 for 25 years minimum, didn't they?

7 A No, sir.

8 Q When did they find that much narcotics?

9 A That was in November.

10 Q Oh, I'm sorry. So you -- so you got arrested in  
11 September, talked to the agents, got arrested in November  
12 and they found a large quantity of drugs?

13 A That's correct.

14 Q All right. So that's four and then got arrested in  
15 January again. So when you got arrested in November, they  
16 found, how much was it, 30-grams or so of heroin?

17 A 28, 30-grams.

18 Q 28? And for that in state court you can get up to 25  
19 years minimum, can't you?

20 A I guess, I mean --

21 Q Okay. And that's when you started giving all this  
22 information, isn't it?

23 A No, I actually gave the information in September the  
24 13th.

25 Q Okay. But kept dealing and putting drugs out on the

21

1 street, right?

2 A Yeah, I was also actively using at the time.

3 Q I understand. Now, let's get to your information

4 about Mr. Stewart. You indicated that -- when did you

5 meet him?

6 A When did I meet him?

7 Q Yes, sir.

8 A I met him at Mark III sometime around -- between

9 December and January of 2012 or the beginning of 2013.

10 Q December 2012, January 2013, somewhere in there?

11 A No. Let's see.

12 Q I'm not trying to trick you. I thought that's what

13 you said.

14 A Yeah. The dates are confusing. And I had -- I

15 actually had Nicole Piper in the car with me when I met

16 Cheddar, so it would have had to have been prior to the

17 arrest in -- on July the 30th. So it would have been

18 either in January of 2012 or December of 2011.

19 Q Would it surprise you to learn that he didn't even

20 come from Detroit until August of 2012?

21 A August of 2012?

22 Q 2012.

23 A I could be wrong on my dates, but Nicole was with me.

24 Q If you could be wrong about your dates, couldn't you

25 also be wrong about whether or not you bought all those

1 narcotics from him?

2 A I know I bought from him personally one time.

3 Q One time. Okay. And when you say you bought from  
4 him personally one time, how much did you buy from him?

5 A An ounce.

6 Q One ounce. All right. And when was that? Do you  
7 remember when that was?

8 A It would have had to have been in -- where was we  
9 staying? Sometime in 2012, maybe...

10 Q You were arrested the first time I think in July of  
11 2013.

12 A Yeah. It was before then.

13 Q Before then. So sometime from December 2012 to  
14 July 2013, is that fair?

15 A I'm going to say after January -- it was probably  
16 after January 2012, sometime before July of -- a few  
17 months before. I would say -- July -- I was arrested in  
18 July. Maybe a month or two prior to that.

19 Q Okay. Now, from whom did you get his phone number?

20 A From Star (phonetic).

21 Q Who?

22 A Star, Christin Reese.

23 Q Star?

24 A Yes.

25 Q Okay. And where did you get that phone number from

22

1 her? Where were you when you got that number?

2 A At the hotel on Congaree, at the Comfort Inn and  
3 Suites.

4 Q And the phone number that Star gave you, did she  
5 identify who it was or did she say you could buy dope from  
6 this guy or what?

7 A She said -- another girl named Sunny was buying her  
8 dope from Cheddar. And she had asked me if I could  
9 find -- because I had just started messing with the  
10 methamphetamines at the time -- that Cheddar was looking  
11 for a connection for the methamphetamines and wanted to  
12 know if I would be willing to sell any -- any quantity.  
13 And at that time I wasn't. So I ended up going back to  
14 her, asking her and Star. They both were prostituting out  
15 of that hotel. And they both were buying drugs from me.  
16 And they said they were buying drugs from Cheddar. Sunny  
17 was buying heroin from Cheddar supposedly. And Star was  
18 buying some crack from Cheddar.

19 Q Okay. You don't have any independent knowledge of  
20 any of that, do you?

21 A No.

22 Q All right. So you get a phone number from Star and  
23 you call the phone number. But yet, you never met the  
24 person that answered the telephone, did you?

25 A I thought -- originally, I thought I met him when I

1 went to Pine Knoll. But then when I described the person  
2 to someone who actually knew Cheddar, they said that  
3 wasn't Cheddar.

4 Q So you bought narcotics from someone at Pine Knoll  
5 that was not Cheddar?

6 A Right.

7 Q All right. Is that the same guy that you said  
8 eventually, you think, went back to Florida?

9 A Detroit.

10 Q Went back to Detroit?

11 A Yeah.

12 Q Do you know what his name was?

13 A I can't remember. He had a nickname.

14 Q Do you know what he looked like?

15 A Yeah, he was a smaller, smaller guy, skinny, maybe  
16 might have called him 2-4 or something. I don't know.

17 Q 2-4?

18 A Yeah.

19 Q And then the second time -- second time you bought  
20 half to an ounce and where was that?

21 A That was at Mark III.

22 Q That wasn't Cheddar either?

23 A No.

24 Q The third time at McArthur Street; is that right? Is  
25 that -- who was that?

1 A Huh?

2 Q The third time?

3 A The third time? That was the same dude from Pine

4 Knoll.

5 Q All right. So on these different purchases, the best

6 you can recall, you purchased one ounce from Mr. Stewart?

7 A That's correct.

8 Q The rest of them you're saying came from someone else

9 that claimed to know Mr. Stewart?

10 A That was answering his phone or was being directed by

11 his phone.

12 Q Answering a phone with a phone number that you were

13 told belonged to Mr. Stewart, right?

14 A Uh-huh.

15 Q Okay. Now, do you know William Winfrey and Goolsby?

16 A I do.

17 Q Did they have their own operation?

18 A What do you mean?

19 Q All right. I'll rephrase it. Was Mr. Stewart -- let

20 me rephrase it again. Do you know whether Mr. Stewart

21 shared the proceeds from his dealings with Winfrey or

22 Goolsby?

23 A No, I don't know if he shared the proceeds.

24 Q Okay. So it wasn't -- Goolsby and Winfrey and

25 Stewart and maybe someone else weren't in a big group

1 where they all pooled their money and bought dope and made  
2 money together, were they?

3 A I did see Mr. Stewart and Joe, I don't know if  
4 Mr. Goolsby were there that day meeting with -- at the  
5 Bi-Lo up above my house on Summit Drive --

6 Q Right.

7 A -- to purchase drugs. But I don't know if they were  
8 buying them together or individually.

9 Q Right. Okay. Now, when you got arrested  
10 November 12th of 2013 and they found I think it was about  
11 14-grams of heroin, wasn't it? Do you remember that? You  
12 told them that you got this stuff from Floyd?

13 A Yeah.

14 Q Who is Floyd?

15 A That's another dealer.

16 Q What?

17 A Another heroin dealer.

18 Q Okay. But -- and that was basically -- after that  
19 arrest is when you started giving some information, isn't  
20 it?

21 A I gave information on both arrests.

22 Q On what?

23 A On both arrests.

24 Q I understand. But it wasn't until after that arrest  
25 that you started giving information, correct?

1 A No.

2 Q Why did you start giving information?

3 A To be honest with you, I was using drugs. And I knew  
4 what I was doing was wrong. And I don't know, when they  
5 came in there, I mean, I didn't -- I not only gave them  
6 information on other people, I gave it on myself. I mean,  
7 it was almost like I was unburdening myself with, you  
8 know, some of the, you know, misgivings I had about what I  
9 was doing, you know. I was caught and, you know, I just  
10 basically told them, you know, these are my drugs. This  
11 is what I was doing. I told them who I was getting them  
12 from.

13 Q And did you have misgivings about having to do 25  
14 years in the state penitentiary?

15 A At the time I wasn't even thinking about the time.

16 Q You weren't thinking about that. Have those state  
17 charges been adopted by the federal government?

18 A They have.

19 Q So you're not going to do 25 years in the state  
20 penitentiary, are you?

21 A I don't know what I'm going to do, sir.

22 Q What type of sentence do you think you're going to  
23 get?

24 A 15 to 18 years.

25 Q And have you been promised assistance by way of a

1 downward departure if you cooperated with the feds?

2 A I haven't been promised anything.

3 Q Okay. All right. Thank you, sir.

4 MR. CRANE: Nothing further, Judge. Thank you.

5 MS. HOWARD: Can I just clarify one point?

6 REDIRECT EXAMINATION

7 BY MS. HOWARD

8 Q You mentioned that you -- the Bi-Lo above your house  
9 you saw Joe, is that William Winfrey?

10 A Yes.

11 Q You saw him with Cheddar, Stewart?

12 A Yeah. I don't remember if Mario was with them or  
13 not. The only reason that I remembered that Cheddar was  
14 with them was because that was the first time that I had  
15 seen Joe and Cheddar together. And I asked somebody else,  
16 I said, "That's Cheddar, isn't it?" Because that's who I  
17 had met at Mark III and I was wanting to confirm that that  
18 was actually Cheddar.

19 Q And you said that they were buying drugs at that  
20 time?

21 A Getting marijuana.

22 Q They were getting marijuana. Okay. Did you ever buy  
23 any heroin from Cheddar?

24 A I bought it from McArthur Street. And I bought  
25 supposedly some heroin through Floyd from Cheddar.

1 Q All right. Was it good heroin?

2 A It was, but it wasn't worth what I paid for it.

3 Q All right. So Cheddar was your meth man; is that  
4 right?

5 A He was basically my fallback meth man. His prices  
6 were high but it was good. And if I couldn't get it  
7 anywhere else, that's where I would go.

8 Q All right.

9 MS. HOWARD: Nothing else, Your Honor.

10 THE COURT: You may step down. Thank you.

11 As to the objection, there's substantial  
12 evidence to support Paragraph 79, was it? Yes.

13 What's your next objection?

14 MR. CRANE: Judge, I'm sorry. What did you say?

15 THE COURT: I overrule your objection as to  
16 Paragraph 79.

17 MR. CRANE: Might I be heard briefly?

18 THE COURT: I've heard --

19 MR. CRANE: I'm sorry, Judge?

20 THE COURT: Go ahead.

21 MR. CRANE: Well, first off, they say it's six  
22 ounces and this man testified no more than five. And he  
23 testified it was only one from my client and four from --

24 THE COURT: Directly from your client.

25 MR. CRANE: Excuse me?

1 THE COURT: Directly from your client.  
2 MR. CRANE: Yes, sir. And the other four --  
3 THE COURT: I agree with you, there's only  
4 evidence of five ounces in the light most favorable to the  
5 defendant.  
6 MR. CRANE: Okay.  
7 THE COURT: Anything further?  
8 MR. CRANE: No, sir.  
9 THE COURT: All right. I need a recalculation  
10 on that.  
11 I'll hear you on your next objection.  
12 MR. CRANE: Judge, it was Paragraph 95.  
13 THE COURT: All right. Let me look at it.  
14 MS. HOWARD: Your Honor, I believe it was 91.  
15 MR. CRANE: I'm sorry. Is it 91? I was one  
16 ahead of me. 91, that's correct.  
17 THE COURT: What's your objection?  
18 MR. CRANE: To the drug weight. We disagree  
19 that my client is responsible for that much drug weight.  
20 MS. HOWARD: Your Honor, we have Joseph Caston  
21 who is ready to testify.  
22 THE COURT: All right.  
23 MS. HOWARD: I see him right out there, Your  
24 Honor.  
25 THE CLERK: Place your left hand on the Bible

1 and raise your right hand to be sworn.

2 JOSEPH CASTON, after being duly sworn, testified  
3 as follows:

4 THE CLERK: Thank you. If you'll step around to  
5 the witness stand, sir.

6 DIRECT EXAMINATION

7 BY MS. HOWARD

8 Q State your name, please.

9 A Joseph Reed Caston.

10 Q Mr. Caston, why are you here today?

11 A Because I was subpoenaed. I got a subpoena. I got  
12 tracked down by the federal officer and subpoenaed to show  
13 up to court.

14 Q All right. And were you also present the morning  
15 that Mr. Stewart was supposed to go to trial?

16 A Yes, ma'am.

17 Q And you were prepared to testify at that time?

18 A Yes, ma'am, I was subpoenaed then as well.

19 Q All right. So you're not here today of your own free  
20 will then?

21 A No.

22 Q All right. Do you know the defendant, in this case,  
23 Terrance Stewart?

24 A Yes, ma'am.

25 Q How do you know him? What do you call him?

1 A Cheddar.

2 Q Cheddar? All right. And how do you know Cheddar?

3 A I know him through some friends.

4 Q All right. And what do -- what do you -- you know

5 him through some friends. What do you and your friends do

6 with Cheddar?

7 A I would buy heroin.

8 Q Heroin?

9 A Yes, ma'am.

10 Q All right. And were you using heroin?

11 A Yes, ma'am.

12 Q And were you also selling heroin?

13 A To a certain extent, yes, ma'am.

14 Q To support your habit?

15 A Yes, ma'am.

16 Q All right. And when was this?

17 A The last couple years.

18 Q And how did you meet Cheddar?

19 A I can't remember exactly, but it was through friends.

20 Q Through friends. All right. Where did you go to

21 meet him?

22 A Different places. Like, I would meet him, like -- I

23 usually wouldn't meet him. I would meet somebody, like,

24 at the Superlodge or at -- what's that, Pine Knoll or

25 something like that.

1 Q What was at Pine Knoll?

2 A It was a trap house I guess you would call it.

3 Q A trap house?

4 A Yeah.

5 Q Okay. And what's a trap house?

6 A Where they sell dope out of.

7 Q All right. And who operated that trap house on Pine

8 Knoll?

9 A There was this dude named -- he had -- Rocko was

10 written -- I'm assuming it was Cheddar's.

11 Q Why did you assume it was Cheddar's?

12 A Because it was his dope.

13 Q All right. How did you know it was his dope?

14 A Because it was the same dope that I was getting from

15 him.

16 Q All right. How would you get in touch with Cheddar?

17 A I'd call the phone and tell them tell me where to go.

18 Q And they would tell you where to go?

19 A Yes, ma'am.

20 Q And where would they direct you?

21 A To wherever they -- like McArthur Street or something

22 like that.

23 Q McArthur Street?

24 A Yes, ma'am, or Pine Knoll.

25 Q Or Pine Knoll.

1 A One or the other.  
2 Q Okay. Was there any other location?  
3 A Unless we met at a gas station or something like  
4 that.  
5 Q Okay. But it was Pine Knoll or McArthur?  
6 A Yes, ma'am.  
7 Q All right. And you said it was heroin?  
8 A Yes, ma'am.  
9 Q How much were you purchasing from Cheddar?  
10 A Well, I had a habit. So I'd get like a gram or two  
11 maybe just to support my habit and I would sell some, just  
12 to...  
13 Q A gram or two how often?  
14 A About every day.  
15 Q Every day. So you bought a gram or two of heroin  
16 every day for what length of time?  
17 A For a good while, maybe about a year or two.  
18 Q All right. Do you recall earlier saying it was two  
19 years in a statement?  
20 A Well, it was about that time -- about -- well,  
21 because it was -- there was different people but, yeah,  
22 about two years probably because I've known him for --  
23 since 2012, so, yeah.  
24 Q All right. And prior to you buying your heroin from  
25 Cheddar, who were you buying it from?

1 A There was this guy that I knew in Fleetwood Manor and  
2 I was getting it from different folks.

3 Q Were you ever buying it from William Winfrey? Joe?

4 A I had before, yes, ma'am.

5 Q All right. And did you buy it from Joe before you  
6 bought it from Cheddar?

7 A Yes, ma'am.

8 Q Okay. Did Joe ever introduce you to Cheddar?

9 A I want to say my ex-brother-in-law introduced me to  
10 Cheddar.

11 Q All right. Did you ever see Joe and Cheddar  
12 together?

13 A From time to time, yes, ma'am.

14 Q All right. And what were they doing there together  
15 when you observed them?

16 A It just depends, usually they were just talking.

17 Q Would there be drugs involved?

18 A Well, there was always drugs.

19 Q And what kind of drugs?

20 A Heroin. That was my thing, that's what I was  
21 addicted to was heroin, so that's mainly what I saw.

22 Q Did you ever see them with large quantities of  
23 heroin?

24 A Like what would you consider a large quantity?

25 Q More than the gram or two that you were buying?

1 A Oh, yes, ma'am.

2 Q And how much would you see?

3 A I can't put an exact number on it. But, you know, it  
4 was enough to last me probably a month.

5 Q So at least an ounce then?

6 A Possibly. I mean, I'm not sure because I didn't  
7 never, you know, see it, like, weighed.

8 Q Did you also buy from Rio?

9 A Yes, ma'am.

10 Q Okay. Is that Jamario Goolsby?

11 A Yes, ma'am.

12 Q All right. And what about -- we talked about William  
13 Winfrey. Okay. But who did you buy -- who did you buy  
14 the most from?

15 A Probably Cheddar or Rio.

16 Q And did Cheddar and Rio like each other?

17 A Well, Rio would talk junk about him but they, I mean,  
18 you know, they just -- they -- he talked junk, but I guess  
19 they liked each other.

20 Q Were they kind of in competition?

21 A I'd imagine so. I mean, I don't know. I mean, I  
22 liked them both but...

23 Q Did one of them have better dope than the other?

24 A Oh, yeah.

25 Q And who had the better dope?

1 A Cheddar had the better dope, hands down.

2 Q All right.

3 MS. HOWARD: I don't have any further questions,  
4 Your Honor.

5 THE COURT: You may examine.

6 CROSS-EXAMINATION

7 BY MR. CRANE

8 Q Mr. Caston, when did you say you started -- when did  
9 you say you met Mr. Stewart?

10 A Back in 2012 I'm guessing. I actually met him over  
11 at my ex-brother-in-law's house.

12 Q Do you remember what month of 2012?

13 A August, September maybe. It was toward the end of  
14 the summer.

15 Q August or September of 2012. And do you remember  
16 when you gave a statement to the Government?

17 A It was when they had -- they had caught -- they had  
18 said -- they caught me and pulled over -- when I rented  
19 those cars, they had caught me with some, some drugs and  
20 basically had me dead to rights.

21 Q Was that in November of 2013?

22 A No, that was in -- yeah, that might be. I can't  
23 remember exactly.

24 Q Okay. So if you met Mr. Stewart in August or  
25 September of 2012 and you got caught November of 2013,

1 from the time you met him until the time you gave the  
2 statement is about 15 months, correct?

3 A Yeah, I guess so. Yes, sir.

4 Q Now, do you remember telling -- and who else did you  
5 buy heroin from? Was it Goolsby and Winfrey?

6 A Yeah.

7 Q And as the US Attorney said to you, and as you  
8 indicated, Goolsby and Winfrey and Stewart were not  
9 partners but rather in competition with each other; is  
10 that correct?

11 A Yes, sir.

12 Q Okay. And do you remember telling the agents that  
13 you purchased about a gram a day every day from Goolsby  
14 for one year?

15 A Yes, sir. I purchased at least a gram every day from  
16 Goolsby, from, you know, every day, maybe two, Cheddar,  
17 everybody, I mean, because I got a bad habit.

18 Q How much were you paying for those grams?

19 A Anywhere from 120, 150.

20 Q All right. Do you also recall saying that you  
21 purchased one to two grams of heroin from Winfrey every  
22 day?

23 A I'd say it was every other day, one person or the  
24 other. I would get it from one person or the other,  
25 whoever I could get ahold of first. Any way you slice it,

1 I was getting one to two grams a day, period.

2 Q You weren't get more than one or two grams a day?

3 A Sometimes, if I could afford it. But I was getting

4 it from one person or the other, hands down.

5 Q Did you get any heroin from Laron Winfrey?

6 A From who?

7 Q Laron Winfrey. You told the agents that you did?

8 A What's his --

9 Q Laron Winfrey.

10 A Slim?

11 Q Excuse me?

12 A Slim?

13 Q I don't know the name.

14 A I had back in the past but I hadn't in a while. I

15 mean, he stopped selling.

16 Q All right. Well, the calculations I have from what

17 the Government's supplied to me is that you spent over

18 \$300,000 a year for heroin. Does that sound right?

19 A Yeah, but it's not all my money.

20 Q Excuse me?

21 A It wouldn't be all my money.

22 Q Was it \$300,000?

23 A It was a good bit. If you don't believe me, you can

24 ask my dad.

25 Q All right. But needless to say, if during that time

1 period, did you buy heroin every day for those 15 months  
2 from Mr. Stewart?

3 A Not every day.

4 Q Okay. Out of those 15 months that you knew him  
5 before you gave your statement, how many days of that 15  
6 months did you buy from Mr. Stewart?

7 A I don't know how to -- I mean, I don't recall.

8 Q There's 365 days in a year plus --

9 A How am I supposed to remember that though?

10 Q Excuse me?

11 A How am I supposed to remember what days out of the  
12 year I bought from who? I mean, I was in a stupor after I  
13 bought it anyway.

14 Q Well, did you buy from Mr. Stewart every other day  
15 or, you know, every three days or do you remember?

16 A I can't recall that. I mean, it was from one person  
17 or the other. But yes, I bought from them. I bought  
18 from -- I don't know what you're trying to ask. I can't  
19 calculate that.

20 Q I'm trying to ask you this. You said you bought from  
21 one or the other, but they weren't together, were they?

22 A No.

23 Q All right. So if you bought an amount from William  
24 and an amount from Goolsby and an amount from Stewart.

25 The judge needs to know how much Stewart sold you during

Karen E. Martin, RMR, CRR  
US District Court  
District of South Carolina

1 that 15 months.

2 A I can't recall exactly. I mean, I know that I would  
3 buy a gram or two. And then, like, it's whoever I could  
4 get ahold of first, I mean...

5 Q All right. If we took -- would it be safe to say  
6 that on an average, you know what an average is?

7 A Yeah.

8 Q Okay. On an average, during that 15 months that you  
9 knew Mr. Stewart, would you have bought from him about  
10 every other day?

11 A Yeah, probably.

12 Q Okay. So if we've got 365 plus 90 is 455 and divide  
13 that in half, that's about 227 days.

14 A I guess so.

15 Q At one to two grams a day; is that correct?

16 A Yes, sir.

17 Q Okay.

18 MR. CRANE: Nothing further. Thank you.

19 THE COURT: Anything further?

20 MS. HOWARD: Just to clarify.

21 REDIRECT EXAMINATION

22 BY MS. HOWARD

23 Q How long were you buying from Terrance Stewart,  
24 Cheddar?

25 A Since the day I met him.

1 Q All right. Was that 15 months or two years or three  
2 years?

3 A It was from the day I met him until -- and then after  
4 I got out of jail, I still bought from him. So...

5 Q When was the last time you bought from him?

6 A I can't recall.

7 Q Has it been in the last month?

8 A Oh, no.

9 Q When -- has it been in the last three months?

10 A No. I've been clean for, like, the last probably six  
11 months.

12 Q All right.

13 THE COURT: Let me just ask you this to clarify  
14 something if you remember. You were asked just now by the  
15 defense attorney when you first started buying from  
16 Cheddar and he said until you were arrested --

17 THE WITNESS: Yes, sir.

18 THE COURT: -- was something like 15 months; is  
19 that right?

20 THE WITNESS: About 15 months.

21 THE COURT: Did you -- after you were arrested,  
22 did you ever buy from him?

23 THE WITNESS: Um, not from him personally. But  
24 from some -- from somebody, this dude that used to stay  
25 over by the M and M Store.

1 THE COURT: So once you were arrested -- or you  
2 gave a statement when you were arrested?

3 THE WITNESS: Yeah, when they came and pulled me  
4 out and all that.

5 THE COURT: So that didn't stop you from buying  
6 drugs?

7 THE WITNESS: No. I actually got off when I --  
8 I've been clean about six months.

9 THE COURT: So once you were arrested, you  
10 didn't buy anymore drugs?

11 THE WITNESS: No, I still bought drug.

12 THE COURT: Well, that's what I was asking. You  
13 got out on bond.

14 THE WITNESS: Yes, sir -- no, no. I was in  
15 there until I got -- until -- I had to serve because I  
16 violated house arrest.

17 THE COURT: All right. You were arrested and  
18 you were in prison.

19 THE WITNESS: Yes, sir.

20 THE COURT: For how long?

21 THE WITNESS: For four months.

22 THE COURT: Four months?

23 THE WITNESS: Yes, sir.

24 THE COURT: When you got out, did you start  
25 buying drugs again?

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THE WITNESS: Yes, sir.

THE COURT: Okay. For how long?

THE WITNESS: Maybe a few months because I'm on probation.

THE COURT: That's all right. You may step down.

I'll hear from you.

MR. CRANE: I'm sorry, are you through?

MS. HOWARD: Your Honor, as to that objection, I believe what the report says attributes 1,095-grams of heroin. And I think that that is every day for three years. That's what it would be. That would be reasonably foreseeable to Stewart that Caston was purchasing from Stewart and also from William Winfrey. He saw them together with drugs he said at the Bi-Lo.

THE COURT: Well, I know but I'm talking about Stewart right now. And I believe he testified, when he first started testifying, he said one to two grams every day for one to two years. And then later he said, well, he would buy them from different people.

MS. HOWARD: Yes, sir. As I recall the testimony, it was from these trap houses that Cheddar -- he would call the same number that was Cheddar's dope. And that that's -- Your Honor, I would -- the 1,095 may be overstating --

1 THE COURT: I don't have confidence in the  
2 number. I know that's a cumulative weight.

3 I'll hear from you, Mr. Crane.

4 MR. CRANE: Your Honor, as the Assistant US  
5 Attorney said, I believe the number 1,095 is the three  
6 individuals going back three years. And this fellow just  
7 testified he's only known -- he only knew my client for  
8 about 15 months. So to go back three years and include  
9 the other two individuals, I would submit, is  
10 inappropriate.

11 Calculating as I did, of course, I may calculate  
12 low, but trying to give the benefit of the doubt to the  
13 United States of America, if we -- if he said on an  
14 average every other day one or two grams, I took half of  
15 365 at one to two grams -- well, half -- every other day  
16 would be about 227 days. At one gram a day, that's  
17 227-grams. If we throw an extra gram in there for half of  
18 those days, then we have got another 130-grams. I would  
19 submit 340-grams of heroin, if we believe this fellow is  
20 appropriate, not 1,095.

21 MS. HOWARD: And, Your Honor, I would submit  
22 that his testimony was more that he bought every day, and  
23 one to two grams, and he said for two years. And then it  
24 wasn't just for the 15 months, because then he purchased  
25 again once he got out of prison.

1 MR. CRANE: But he also said they were not  
2 connected. So it's not reasonably foreseeable for my  
3 client to know with these other two guys who aren't  
4 connected with him are going to be doing.

5 THE COURT: Give me a moment.

6 MR. CRANE: Yes, sir.

7 (Pause)

8 THE COURT: I agree with you, Mr. Crane. You  
9 came up with a figure of what, 340 or something?

10 MR. CRANE: 340.

11 THE COURT: I came up with 341. And what I did  
12 was 90 days plus 365 divided by 2 times 1.5, one to two  
13 grams. I'm going to have the probation officer calculate  
14 it at 340.

15 MR. CRANE: Thank you, Judge.

16 THE COURT: Now, what's your next objection?

17 MR. CRANE: Your Honor, the next objection was  
18 No. 5, it has to do with five grams of heroin.

19 THE COURT: Paragraph No. 5?

20 MR. CRANE: I'm sorry, Paragraph 95.

21 THE COURT: 95.

22 MR. CRANE: William Grubbs.

23 THE COURT: Does the Government have a witness?

24 MS. HOWARD: Your Honor, we do not have  
25 Mr. Grubbs present for this. We do have the investigator

1 who took the statement from him.

2 THE COURT: Okay. Bring him forward.

3 He's already under oath. Please resume the  
4 witness chair.

5 KYLE PRICE, after being duly sworn in a previous  
6 hearing, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. HOWARD

9 Q Investigator Price, did you interview a William  
10 Grubbs on December 30th of 2013?

11 A Yes, ma'am.

12 Q Okay. And as a result of that interview, did you  
13 make a report on that?

14 A I did a written synopsis of the interview.

15 Q All right. And in that written synopsis, did William  
16 Grubbs give you information about Terrance Stewart?

17 A Yes, ma'am.

18 Q And what did he tell you about the amount of heroin  
19 that he was getting from Terrance Stewart?

20 A If I could, if I could review my statement?

21 Q Yes.

22 A He stated that he was able to get a 5-for-5 deal,  
23 meaning 5 grams of heroin for \$500, but he could also get  
24 an ounce of heroin for \$2,400.

25 Q All right.

1 A He goes on further to say that he sells  
2 methamphetamine. And he goes on further to say that also  
3 he says if he could get any type of weight of heroin, just  
4 larger amounts, five ounces or more, it might take a  
5 couple days for Stewart to get the dope.

6 Q Okay. And that was from Stewart?

7 A Yes, ma'am.

8 Q Okay.

9 MS. HOWARD: I don't have any further questions.

10 THE COURT: Wait a minute. Help me out here.  
11 Based on 95, what calculation was used against this  
12 defendant?

13 THE PROBATION OFFICER: On Paragraph 95?

14 MS. HOWARD: Paragraph 95, it was 5-grams of  
15 heroin. And I think that was just -- that's exactly what  
16 he obtained, that's what he had gotten from him. But he  
17 could have gotten more from him and they discussed a  
18 price.

19 THE COURT: Oh, I thought I heard him say he  
20 could get 5 at a time. So he just said he obtained 5.

21 MS. HOWARD: He obtained 5-grams but he could  
22 get an ounce for \$2,400, and that's how much he could get  
23 from him. But he'd actually obtained from him --

24 THE COURT: Wait a minute. He said that Stewart  
25 was the only one that was consistent with his dope.

1 Grubbs said he obtained 5-grams of heroin for \$500 and  
2 would get an ounce for \$2,400 from Terrance Stewart. I'm  
3 lost here. Did he say he got an ounce for \$2,400? Do you  
4 recall?

5 THE WITNESS: I don't recall, Judge. I'm just  
6 reading based off the statement how it's worded. But I do  
7 not recall.

8 BY MS. HOWARD

9 Q And what did you put in your statement?

10 A In the statement, the exact verbiage, it says, "He  
11 stated that Cheddar is the only one that is consistent  
12 with his dope. He stated that he gets a 5-for-5 deal,  
13 meaning 5-grams of heroin for 500. He stated that he  
14 could get an ounce of heroin for about 2400.

15 THE COURT: That doesn't mean he got it.

16 MS. HOWARD: That's right, Your Honor.

17 THE COURT: So you only attributed the 5 ounces  
18 {verbatim}?

19 THE PROBATION OFFICER: That's correct.

20 THE COURT: You may examine.

21 MR. CRANE: Thank you, Judge.

22 CROSS-EXAMINATION

23 BY MR. CRANE

24 Q Was he sworn when he was gave this statement?

25 A No, sir, he was at the jail.

1 Q Okay. Is there any independent information from  
2 anybody other than him that Terrance Stewart sold him  
3 5-grams of heroin?

4 A No, sir.

5 Q Okay.

6 MR. CRANE: Thank you. Nothing further.

7 THE COURT: You may step down. Thank you.

8 MS. HOWARD: Let me ask one other question.

9 REDIRECT EXAMINATION

10 BY MS. HOWARD

11 Q All right. You said was there any other information.  
12 Were you aware of the telephone records at that time in  
13 this case?

14 A Yes, ma'am.

15 Q Okay. And were there telephone records that matched  
16 up between William Grubbs and Terrance Stewart? Do you  
17 remember?

18 A I don't recall. I don't remember the exact phone  
19 records.

20 MS. HOWARD: All right.

21 THE COURT: You may step down.

22 I overrule your objection to that.

23 MR. CRANE: Okay. Thank you, Judge.

24 THE COURT: If they only gave him 5-grams,  
25 they're giving him a tremendous benefit of the doubt.

1 Because it appears that he got an ounce from him. But he  
2 only got 5-grams more than one time and more than an ounce  
3 more than one time.

4 But you only accounted for 5 grams?

5 THE PROBATION OFFICER: That's right because  
6 that was the only confirmed amount we could get. He said  
7 he could -- the way I took it is he got 5-grams for \$500,  
8 but if he wanted an ounce --

9 THE COURT: That's giving him the benefit of the  
10 doubt.

11 What's your next objection?

12 MR. CRANE: I believe on the revised report they  
13 took away the two points for acceptance of responsibility.  
14 We would simply submit that he pled guilty. When  
15 interviewed, he accepted his responsibility.

16 They are alleging that he was re-arrested, which  
17 he was, for narcotics. And we would submit that at this  
18 point it's simply an arrest, not a conviction. Whether or  
19 not he's going to be found guilty of that, we don't know.

20 So based on that, we would submit that the two  
21 points were taken away because he said that he falsely  
22 would not accept basically the drug weights. Well, he did  
23 accept the drug weights. And you've now ruled that he was  
24 appropriate in not accepting the drug weights. So I would  
25 hope that that would go by the wayside. But we can't get

1 around the fact that he was re-arrested for narcotics  
2 offenses, although he hasn't been convicted. If that is  
3 sufficient to take away the two points, then we don't need  
4 to have any testimony. But that's basically what  
5 happened. We would submit that's not sufficient under the  
6 notes of the guidelines.

7 MS. HOWARD: Your Honor, we have the officer  
8 here to testify, just if he can just testify briefly as to  
9 that arrest.

10 THE COURT: Okay.

11 MS. HOWARD: We'd call Sergeant Matt Veal.

12 THE COURT: Come forward and be sworn, please.

13 THE CLERK: Place your left hand on the Bible  
14 and be sworn.

15 MATT VEAL, after being duly sworn, testified as  
16 follows:

17 THE CLERK: And your last name is Veal?

18 THE WITNESS: V-E-A-L.

19 DIRECT EXAMINATION

20 BY MS. HOWARD

21 Q Sergeant Veal, you're with the Laurens County  
22 Sheriff's Department; is that correct?

23 A Yes, ma'am.

24 Q And you are a sergeant there in narcotics?

25 A I'm the sergeant in narcotics, yes, ma'am.

1 Q All right. And are you familiar with Terrance  
2 Stewart?

3 A Yes, ma'am.

4 Q Okay. And on January 20th of this year, did you  
5 obtain a search warrant --

6 A We did.

7 Q -- for Terrance Stewart?

8 A Yes, ma'am.

9 Q And what was the probable cause for that search  
10 warrant?

11 A We did a controlled buy with a confidential informant  
12 from Mr. Stewart at his residence, purchased a quantity of  
13 heroin from Mr. Stewart.

14 Q Okay. And when was that?

15 A That was on the -- I believe it was the 21st of  
16 January of this year. Yes, it was the 21st of January.

17 Q That was the actual -- the date that you purchased?

18 A Let me review. The search warrant was signed on the  
19 21st. We executed the search warrant on the 22nd. So we  
20 bought on the 21st. We bought the day before we executed  
21 the search warrant.

22 Q All right. Okay. And when you executed the search  
23 warrant, what address was that?

24 A What arrest?

25 Q What address? I'm sorry.

1 A It was at 35 Hue Circle in Fountain Inn, Laurens  
2 County.

3 Q All right. Were you personally there at the search?

4 A Yes, ma'am, I was.

5 Q Okay. And when you went in, what did you find?

6 A Found numerous items. We found a bag containing  
7 23.83-grams of what was tested from the State Law  
8 Enforcement Division as heroin and fentanyl. We also  
9 found a bag with 56 Oxycodone tablets. We also found  
10 money, a weapon. The home was in deplorable conditions.  
11 He was charged with the weapon. He was charged with the  
12 unlawful neglect towards a child.

13 Q Who was in the home when you went in for the search?

14 A Him and a Tondalay Coleman (phonetic), which I  
15 believe was his girlfriend at the time.

16 Q All right. And were there any small children there?

17 A There were two children -- two small children in the  
18 home.

19 Q Two minor children?

20 A Yes, ma'am. I'm trying to find their birthdays.

21 Q You don't need to say the...

22 A There was a three year old and five year old in the  
23 residence.

24 Q All right. Where -- you said you found a gun?

25 A Yes, ma'am.

1 Q Okay. And where was that gun located?

2 A It was located -- he lives in a single-wide mobile  
3 home. And they have a -- there's an for the washer and  
4 dryer. It was located above the washer and dryer when you  
5 go in the back door.

6 Q Okay. And what about the drugs, where were they  
7 located?

8 A They were located on top of the refrigerator in the  
9 kitchen.

10 Q All right. I'm going to show you Government's  
11 Exhibit No. 1 and ask you if you can identify this  
12 exhibit?

13 A That is the lab report from the State Law Enforcement  
14 Division.

15 Q Okay. And is this from the drug buy?

16 A Yes, ma'am, that is the -- where we submitted four  
17 Ziploc baggies of powdered substance to them.

18 Q All right. Okay. And I'm going to show you  
19 Government's Exhibit No. 2. Are you familiar with this  
20 document?

21 A That is another SLED report, State Law Enforcement  
22 Division, for the drugs found during the search warrant.

23 Q All right.

24 MS. HOWARD: And at this time I'd move  
25 Government's Exhibits 1 and 2 into evidence.

1           **MR. CRANE:** No objection, Judge. I've seen  
2 them.

3           (WHEREUPON, Government's Exhibits Nos. 1 and 2 were  
4 admitted into evidence.)

5           **Q**     So Government's Exhibit 1 is the buy?

6           **A**     Yes, ma'am.

7           **Q**     And Government's Exhibit 2 is the drugs that were  
8 found in the house; is that correct?

9           **A**     Yes, ma'am.

10          **Q**     Okay. And Government's Exhibit No. 2, in addition  
11 to -- is that 22.83-grams of heroin?

12          **A**     23.83-grams that was a confidence level of 99.7  
13 percent.

14          **Q**     Okay. And then Oxycodone?

15          **A**     Yes, ma'am. It was 56 white tablets that we did not  
16 find a prescription for.

17          **Q**     Okay. That was my question. Was there a  
18 prescription?

19          **A**     No, ma'am, we did not find one.

20          **Q**     The children that were in the house, were they --  
21 what happened to them?

22          **A**     The girlfriend or the child's mother also was  
23 arrested and charged with unlawful neglect. And the  
24 children were placed in Emergency Protective Custody in  
25 the Department of Social Services.

1 MS. HOWARD: I don't have any further questions,  
2 Your Honor.

3 MR. CRANE: Thank you, Judge.

4 CROSS-EXAMINATION

5 BY MR. CRANE

6 Q Officer, on the controlled buy, was that a  
7 confidential informant?

8 A Yes, sir, it was.

9 Q And at this point do you know whether or not  
10 Mr. Stewart has been provided a preliminary hearing in  
11 state court?

12 A I do not know if he has or not.

13 Q Do you know whether or not he's been adjudicated  
14 guilty of these charges yet?

15 A I think they're still pending.

16 Q They're still pending?

17 A Yes, sir.

18 Q When he -- when the search warrant was executed, did  
19 he indicate that there was no narcotics in the house?

20 A He did indicate there was none.

21 Q But yet you said you found some in the house?

22 A Yes, sir.

23 Q And did he indicate that if you found a gun, someone  
24 had left it there New Years?

25 A He indicated that someone had left it there.

1 Q Okay. And maybe you said it, where was the gun  
2 found?

3 A It was located above the washing machine in the --  
4 right in front of the back door when you walk into a  
5 single-wide mobile home, there was a washer and dryer and  
6 it was on a shelf above it.

7 Q All right. Where were the narcotics found?

8 A On top of the refrigerator in the kitchen area.

9 MR. CRANE: Thank you. Nothing further.

10 THE COURT: You may step down. Thank you, sir.

11 THE WITNESS: Thank you, sir.

12 THE COURT: I'll hear from you on this.

13 MR. CRANE: I would reiterate, Judge, he hasn't  
14 been convicted. He has been arrested. He may or may not  
15 ever get convicted. It's inappropriate because he did in  
16 fact indicate to the probation when he was asked about  
17 what he did, he acknowledged what he did. And we would  
18 submit --

19 THE COURT: He acknowledged that he was selling  
20 drugs?

21 MR. CRANE: When he -- after he pled guilty and  
22 went to them, he told them what he had done as a result of  
23 what he pled guilty to.

24 THE COURT: I was talking about the Laurens  
25 County drugs.

1 MR. CRANE: No, no, no, no. He didn't tell  
2 them. He hasn't given them a statement. I don't  
3 represent him in Laurens County. I was given a copy of  
4 the report.

5 THE COURT: The question is not whether he's  
6 been convicted, the question is whether he's been dealing  
7 drugs subsequent to his plea.

8 MR. CRANE: I don't know. I mean, I don't  
9 represent him.

10 THE COURT: Well, you don't know, but I make a  
11 finding that I believe this officer. And I believe that  
12 he was -- and my finding is he was dealing drugs and had a  
13 weapon in possession in the presence of children.

14 MR. CRANE: Okay.

15 THE COURT: So he rightfully has lost his  
16 acceptance of responsibility.

17 Now I'll go to your next objection.

18 MR. CRANE: Judge, I think that's it.

19 Isn't it?

20 That's all.

21 THE COURT: Okay. Come forward.

22 Do you have a recalculation on the drug amount?

23 THE PROBATION OFFICER: Yes, sir.

24 (WHEREUPON, the Court spoke privately to the  
25 probation officer.)

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**THE COURT:** I am informed that based on my rulings in favor of you on the reduced drug amounts, that he would be a Total Offense Level of 28.

**MR. CRANE:** Judge, roughly my calculations indicate the same.

**THE COURT:** Okay.

Now, are there any further objections? I think I asked you and you said none.

**MR. CRANE:** Not from me, Judge.

**THE COURT:** And Mr. Stewart, do you have any further objections to anything in the Presentence Report?

**THE DEFENDANT:** I don't have any objections.

**THE COURT:** The Court having ruled on the objections which have been made, the Court having reviewed the report, including the guideline calculations contained in the report, accepts the report, including the guideline calculations. The Court will accept the guidelines as advisory only.

This matter involves -- this charge involves a statutory five years to 40 years, supervised release of at least four years. He has a Total Offense Level of 28, Criminal History Category of III. His range is 97 to 121 months imprisonment, four years supervised release. He does not have the financial ability to pay a fine. And for that reason, a fine will not be imposed. Special

1 assessment requirement is \$100.

2 For sentencing purposes, I'll hear from you.

3 MR. CRANE: Thank you, Judge. Mr. Stewart is a  
4 single person. He does have six children. He has a GED.  
5 He, while in Spartanburg, has actually completed a Work  
6 Keys class over there. So he's trying to do something  
7 while he's incarcerated. He's been incarcerated since  
8 January.

9 We would ask that you go along with the  
10 guidelines and ask that you tend to sentence him towards  
11 the lower range. He exercised his right to challenge some  
12 of the drug weights, that's what he asked me to do from  
13 the start. And I believe he's got something to say to  
14 you, Judge.

15 THE COURT: Sure. I'll be glad to here from  
16 you, sir.

17 MR. CRANE: By the way, his mom and brother are  
18 back here, Judge.

19 THE COURT: And where are they from?

20 THE DEFENDANT: Illinois, but they live here  
21 now.

22 THE COURT: Oh, they live here now.  
23 I'll hear from you at this time, Mr. Stewart.

24 THE DEFENDANT: I just want to say -- I want to  
25 apologize and say that when I moved down here in August of

62  
1 2012, I didn't move down here in the pursuit of a career  
2 in drugs or nothing.

3 I had just got out of jail February 2012. I  
4 moved back to Detroit. I was living with my brother and  
5 his wife. The conditions was bad. We was squatting. Me  
6 and my brother used to go out and cut grass for, like, \$8  
7 a yard just to try to get some money.

8 After August the 7th, my daughter and during my  
9 fiance's birthday, I couldn't do nothing for them. I  
10 heard from my -- I talked to my friend William who told me  
11 he had a studio that he was opening up and a car wash down  
12 here. So I figured they was doing pretty good and I moved  
13 down here.

14 Once I got down here and I seen what was going  
15 on, not even from the time I moved down here, I moved  
16 away. I moved from Greenville to Fountain Inn, like, I  
17 just separated myself. I am not saying I wasn't bad in  
18 doing stuff myself. But I separated myself from what they  
19 was doing. I wasn't -- that wasn't my intent. I just got  
20 caught up again and started doing wrong again and I  
21 apologize. But I just want to get back home with my  
22 family. And I'm sorry.

23 MR. CRANE: Judge, I don't know if his mom  
24 wanted to say something or not. Do you want to hear from  
25 her?

1 THE COURT: If you want her to speak briefly,  
2 I'll hear from her.

3 MR. CRANE: Do you want to say something?

4 THE MOTHER: I just wanted to say --

5 THE COURT: What's your -- I've got to put your  
6 name on the record. What your name, please, ma'am?

7 THE MOTHER: Gloria Stewart.

8 THE COURT: Thank you. I'll hear from you.

9 THE MOTHER: He's my oldest son. He's a good  
10 guy. He's always trying to help and look out for his  
11 children and family, always trying to help somebody. He  
12 tries to work and do good. And he's just a real model  
13 son. And he, you know, he don't try to get into no  
14 trouble.

15 THE COURT: Thank you.

16 THE MOTHER: Thank you.

17 THE COURT: There's nothing like a mother's love  
18 for a son. And she says you're a good fellow. And what  
19 that means to me is when you've been around her, you  
20 showed her respect and you've been good to her. What I  
21 see here is you came down to South Carolina and you've  
22 been a major drug dealer. And I don't -- pardon? You're  
23 shaking your head no.

24 THE DEFENDANT: No, I'm not. I'm listening.  
25 I'm sorry.

1 THE COURT: What is it you want to deny that you  
2 did? You already lost your acceptance of responsibility.  
3 I don't guess you can lose that anymore. What did you  
4 plead guilty to?

5 THE DEFENDANT: I pled guilty to a conspiracy.

6 THE COURT: To sell drugs.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you sold a bunch of drugs.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Now we're on -- okay. And  
11 then you got -- you pled guilty and you went back to  
12 Laurens County and started selling drugs again. You don't  
13 have to answer that because that's still pending. But  
14 that's the evidence I heard and that's what I'm seeing  
15 here.

16 And not only that, you had drugs in Laurens  
17 County around little children again. That's the second  
18 time today I've had -- there's no evidence that they had  
19 drugs in their system like the previous defendant. But  
20 you have a gun and you -- anyway I will depart from this.

21 MS. HOWARD: Your Honor, if I could just briefly  
22 say something?

23 THE COURT: Yes.

24 MS. HOWARD: I think this case is the best case  
25 I've ever seen for an upward variance under the 3553(a)

1 factors. This defendant has not shown any respect for the  
2 law. To be -- to plead guilty and then go right back out  
3 and get on bond and sell drugs again, have more drugs in  
4 his house, that shows no respect for the law.

5 I think an upward variance from the guideline  
6 range is appropriate in this case based upon that factor  
7 alone. And the other factors, considering the nature and  
8 circumstances of this offense and his criminal history, I  
9 think all point towards an upward variance in this case.

10 MR. CRANE: May I respond briefly?

11 THE COURT: Sure.

12 MR. CRANE: Judge, the nature of the offense and  
13 his criminal history are all taken into account by the  
14 guidelines. I wasn't put on notice that we were having a  
15 motion for an upward variance. I don't know that I'm  
16 entitled to one. But I would submit to you that he came  
17 in here, he successfully challenged the drug weight, which  
18 is his right to do. I ask that you not hold that against  
19 him.

20 THE COURT: I guarantee you I will not hold that  
21 against him.

22 MR. CRANE: Yes, sir. I don't represent him on  
23 Laurens County, so I feel a little bit at a loss as to  
24 what the officer testified to. He was arrested. The  
25 children were there. There's been no testimony that they

1 tested positive for drugs.

2 THE COURT: I made that finding. There's no  
3 evidence that the children tested positive for drugs.  
4 They were merely present according to the testimony.

5 MR. CRANE: Yes, sir. We would ask that you not  
6 do an upward variance.

7 THE COURT: I understand that. I would not do  
8 an upward variance except for the Laurens County conduct,  
9 which I am going to depart upwards for that reason.

10 It smacks in the face of anything proper when a  
11 person, who is charged with being a major drug dealer,  
12 like he was, and comes in and pleads guilty, and  
13 subsequent to that, goes right back out, starts dealing --

14 This was subsequent to his guilty plea, right?

15 MS. HOWARD: That is correct, Your Honor.

16 THE COURT: And he goes right back out in  
17 another county with a firearm. He's a felon who didn't  
18 even have the right -- he's committing a serious federal  
19 offense just to have a firearm present, even if there were  
20 no drugs, but he's dealing drugs. They did an undercover  
21 -- they've got evidence, what the testimony is, they've  
22 got evidence there was drugs -- that he was selling drugs  
23 out of there. They send in a confidential informant.  
24 They buy drugs. They get a search warrant and they find  
25 drugs. They find children. They find a weapon.

1           It's a rarity to find somebody that thumbs his  
 2 nose at the justice system like he has. I know his momma  
 3 loves him and he's a good boy to her. But he's a major  
 4 drug dealer. And even after he gets charged with a  
 5 serious federal offense, pleads guilty, is awaiting  
 6 sentencing, goes out and becomes a drug dealer in Laurens  
 7 County, just moves one county down from Greenville County.  
 8 So for that reason I will depart downward {verbatim}. And  
 9 I've stated my reasons for it.

10           I've looked at those factors under 3553(a). I  
 11 don't find that a guideline sentence is appropriate and  
 12 that's why I'm going to vary upward. Had he not committed  
 13 the Laurens County, I would be looking under the  
 14 circumstances of this case of an upward part of the  
 15 guideline for his conduct in any event.

16           So it is the Sentence of the Court that he be  
 17 committed to the custody of the Bureau of Prisons for a  
 18 period of 145 months, that's 120 months plus 24 for the  
 19 variance, and pay \$100 special assessment fee which is due  
 20 immediately.

21           Then he's placed on supervised release for a  
 22 term of four years with special conditions as follows. He  
 23 shall submit to random drug testing as administered by the  
 24 US Probation Officer. He shall participate in the  
 25 employment program as directed by the probation officer

Karen E. Martin, RMR, CRR  
 . US District Court  
 District of South Carolina

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until he's released from the program by the officer.

That's the end of the sentence. You do have a right to appeal this sentence. If you cannot afford the costs of appeal, you can apply to proceed without the payment of costs and apply to have an attorney appointed to represent you.

That's all.

MR. CRANE: Thank you, Judge.

MS. HOWARD: Thank you, Your Honor.

\*\*\*

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Karen E. Martin*  
s/Karen E. Martin

*7/7/15*  
5/27/2015

\_\_\_\_\_  
Karen E. Martin, RMR, CRR

\_\_\_\_\_  
Date

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

MAY 06 2016

SC Court of Appeals

Appeal from Laurens County  
Honorable Donald B. Hocker, Circuit Court Judge  
Appellate Case No 2016-000729

The State, ..... Respondent,

vs.

Terrance Edward Stewart, ..... Appellant.

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynam who, after being duly sworn, deposes and says that she is the legal assistant for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on May 4, 2016, she did deposit in the United States Mail with proper postage affixed thereto, a copy of Return to Motion to Dismiss in the above case addressed to Mark R Farthing, Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina, 29211.

SWORN to and Subscribed

*Sandy Traynam*

before me this 4 day

of May, 2016.

*Abby Wise Hester* (L.S.)  
Notary Public for South Carolina  
My Commission expires: 11/30/22

LAW OFFICE OF  
**C. RAUCH WISE**  
Attorney & Counselor at Law  
305 Main Street  
Greenwood, SC 29646  
email rauchwise@gmail.com

C. Rauch Wise

Telephone  
(864) 229-5010  
Facsimile  
(864) 229-2665

May 4, 2016

Jenny Abbott Kitchings, Clerk  
SC Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**  
MAY 06 2016  
SC Court of Appeals

Re: State v. Terrance Edward Stewart, 2016-000729

Dear Ms. Kitchings:

Enclosed herewith is the original and six copies of the Motion to File Out of Time and Return to Motion to Dismiss concerning the above referenced matter, together with the original Affidavit of Service.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/mjh

cc: Mark R. Farthing