

21083

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County

Maite Murphy, Circuit Court Judge

THE STATE

-VS.-

STANLEY L. WRIGHT

Defendant

Appellate Case No.:

2013-002090

RECORD ON APPEAL

Sonya Chachere-Compton
Valerie V. Vie
5682 Palazzo Way, Suite 102
Douglasville, Georgia 30134

C. Andrew Carroll
Carroll Law Firm, LLC
44Marksfield Drive, Suite C
Charleston, SC 29407

ATTORNEYS FOR APPELLANT

ALAN WILSON
Attorney General
WILLIAM M. BLITCH, JR.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803)734-3727

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit
P.O. Box 1880
Bluffton, SC 29910
(843)255-5893

ATTORNEY FOR RESPONDENT

See ex. Attached

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CHARGE TO THE JURY:

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1 To prove possession the State must prove beyond a
2 reasonable doubt that the Defendant had both the power and
3 the intent to control the disposition or the use of the
4 cocaine possession may be either actual or constructive.

5 Actual possession means that the cocaine was in the
6 actual physical custody of the Defendant. Constructive
7 possession means that the Defendant had dominion and
8 control or the right to exercise dominion or control over
9 either the cocaine itself or the property on which the
10 cocaine was found.

11 Mere presence at the scene where the drugs were found
12 is not enough to prove possession. Actual knowledge of the
13 presence of the cocaine is strong evidence of the
14 Defendant's intent to control it's disposition or use. The
15 Defendant's knowledge and possession may be inferred when
16 the substance is found on the property under the
17 Defendant's control. However this inference is simply an
18 evidentiary fact to be taken into consideration by you with
19 the other evidence in the case and to be given the weight
20 you decide it should have. Two or more persons may have
21 joint possession of a drug.

22 Deliver means to actually constructively or attempt to
23 transfer the drug. Distribute means to deliver other than
24 by administering or dispensing a drug. Deliver means to
25 actually constructively or attempt to transfer a drug. A

CHARGE TO THE JURY:

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1 transfer can involve an exchange for money, a barter, or a
2 gift. There does not have to be anything given in exchange
3 for the drugs for a transfer to constitute distribution.

4 Manufacture means to produce, prepare, concert,
5 process, plant, cultivate, grow, or harvest a drug
6 naturally or chemically. Manufacturing includes any
7 packaging or repackaging of the drug or labeling or
8 relabeling of the drugs container.

9 Intent may be shown by acts and conduct of the
10 Defendant and other circumstances which you may naturally
11 and reasonably infer intent. In determining whether the
12 Defendant had the intent to distribute the cocaine, you may
13 consider the circumstances surrounding the Defendant's
14 alleged possession. You may consider the amount of the
15 substance alleged to have been possessed, the manner in
16 which it was allegedly possessed, the place where it was
17 allegedly possessed, and other factors which you consider
18 to be important. You must find that the Defendant did not
19 intend to have the cocaine solely for his own use.

20 Possession of more than one or more grams of cocaine
21 creates an inference that the Defendant possessed the
22 cocaine with intent to distribute it. This inference does
23 not relieve the State from proving beyond a reasonable
24 doubt that the Defendant had the intent to distribute. It
25 is simply an evidentiary fact to be taken into

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1 consideration by you along with the other evidence in the
2 case and to be given the weight you decide it should have.

3 The Defendant is charged with possession of a weapon
4 during the commission or attempt to commit a violent crime.
5 The State must prove beyond a reasonable doubt that the
6 Defendant was in possession of a firearm or visibly
7 displayed what appeared to be a firearm during the
8 commission of a violent crime. A firearm means any machine
9 gun, automatic rifle, revolver, pistol, or any weapon which
10 is designed to or may be readily converted to expel a
11 projectile. In order to find the Defendant guilty of
12 possession of a weapon during the commission of a violent
13 crime, you must first find the Defendant guilty of either
14 committing a violent crime, or attempting to commit a
15 violent crime.

16 Trafficking in cocaine two hundred grams or more but
17 less than four hundred grams is a violent crime. The State
18 must prove beyond a reasonable doubt that the weapon
19 furthered, advanced, or helped in the commission of the
20 crime.

21 Ladies and gentlemen, the term verdict is actually
22 Latin for to speak the truth. And in the jury room you
23 will have the three indictments with you as well as a
24 verdict form. And on the verdict form you will have the
25 possible verdicts and make no meaning as to in which order

CHARGE TO THE JURY:

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1 they are placed guilty or not guilty. We could have just
2 as easily flipped flopped and just one - one had to go
3 before the other.

4 As you make your determination on each of the
5 indictments, Mr. Foreperson, you must sign, circle your
6 verdict, and it must be a unanimous verdict from all of
7 you, and you circle the verdict and then, Mr. Foreman, if
8 you would sign and date the bottom of the verdict form.
9 And also on each indictment on the front portion where it
10 says verdict, Mr. Foreperson, if you would write the
11 verdict on each of the indictments as to what your verdict
12 is and also sign and date that as well.

13 Please do not begin your deliberations yet. You will
14 be escorted to the jury room but you are not allowed to
15 deliberate until we make sure you have all of the exhibits
16 and matters that are properly before you. And also, I ask
17 after your service in this trial has been concluded, you
18 may have the right - you have the right to either refuse or
19 discuss the verdict and as you have deliberated you are
20 free to terminate those discussions at any time. You don't
21 have to discuss it with anybody, that is solely in your
22 discretion and your choice. If you choose to terminate
23 those conversations with someone and they pursue that
24 discussion against your wishes please contact the Clerk of
25 Court's Office.

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1 At this point please retire to your jury room and do
2 not begin deliberations. After you have - Hold on one
3 second. After you have reached a verdict though, Mr.
4 Foreperson, if you would knock on the door to let the
5 bailiff know that you've reached a verdict and then we will
6 receive your verdict. Thank you.

7 (JURY EXITS COURTROOM TO START DELIBERATIONS AT 03:59
8 P.M..)

9 THE BAILIFF: The jury is clear, Your Honor.

10 THE COURT: Thank you.

11 Any exceptions or additions from the State or the
12 Defense as to the jury charges?

13 SOLICITOR SHELTON: Actually, Your Honor, and I
14 apologize for not catching this ahead of time, I scanned it
15 and I apologize for not finding it. At the end you
16 actually gave a charge of possession with intent to
17 distribute cocaine and I don't think when you just started
18 - I'm at the bottom of Page 14.

19 THE COURT: Did we not take that up?

20 SOLICITOR SHELTON: It says in determining whether the
21 Defendant had the intent to distribute the cocaine you can
22 consider the circumstances surrounding the Defendant's
23 alleged possession. You may consider the amount of the
24 substance alleged to have been possessed and other factors
25 and so on. You must find the Defendant did not intend to

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1 have the cocaine solely for his own use, possession of one
2 or more grams of cocaine creates an inference that the
3 Defendant possessed the cocaine with the intent to
4 distribute it.

5 Again, the State apologizes for not catching that
6 ahead of time and obviously we wish we would have but the
7 State would ask for a curative instruction and a recharge
8 on striking that language that's - the statute toward a
9 definition of possession with intent to distribute cocaine
10 and recharging on possession - I mean trafficking cocaine.
11 The reason for this is that simple possession knowing,
12 actual or constructive possession of more than two hundred
13 grams of cocaine is trafficking in cocaine. There is no
14 burden for the State to show that they possessed it with
15 the intent to distribute it under the trafficking statute
16 and that this charge creates a burden upon the State.

17 THE COURT: All right, show me again. I just found
18 the actual correct charge again. What page were you
19 looking at?

20 SOLICITOR SHELTON: Page 14. And then at the bottom
21 of Page 14 the last paragraph. Unless it's the old version
22 I have.

23 THE COURT: I think you have an old version. We redid
24 it and my - Do you want to look at mine?

25 SOLICITOR SHELTON: Yes. Thank you.

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1 Right underneath manufacture.

2 THE COURT: Okay.

3 SOLICITOR SHELTON: It's right at the top of Page 15.

4 THE COURT: What? In determining - where that
5 paragraph starts?

6 SOLICITOR SHELTON: That all the way through to
7 possession of a weapon during the commission or attempt to
8 commit a violent crime is the definition of possession with
9 the intent to distribute cocaine and not trafficking.

10 THE COURT: Yeah we need to take that out. I'm sorry
11 we didn't catch that.

12 SOLICITOR SHELTON: I'm sorry I didn't catch it.

13 Thank you for showing it to me.

14 THE COURT: What we'll do is we'll take that portion
15 out, make that a second Court's Exhibit and I'll just
16 recharge the jury on that. Do you want me to just recharge
17 them on that one?

18 MR. CHAPLIN: Yes.

19 SOLICITOR SHELTON: Yes. And I would ask that
20 trafficking be recharged because just to clarify the
21 record. Well I guess you're asking to recharge them yes,
22 the one trafficking.

23 THE COURT: Right. I mean you don't want anything
24 else recharged?

25 MR. JOHNSON: No.

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1 THE COURT: Just the trafficking?

2 MR. CHAPLIN: We're fine.

3 MR. JOHNSON: That would be fine with that.

4 THE COURT: All right. So we'll keep this as Court's
5 Exhibit One so it shows what we're redacting and then we'll
6 do Court's Exhibit Two with the redacted language.

7 SOLICITOR SHELTON: And further more upon that...

8 Mr. Chaplin and Mr. Johnson.

9 MR. CHAPLIN: Excuse me.

10 SOLICITOR SHELTON: I do not know if maybe you would
11 keep it back still in but the delivered, distribute,
12 manufacture language is really for the possession with the
13 intent to distribute charge cause those are separate
14 elements. It's also separate elements of trafficking but
15 there are also other definitions in trafficking that are
16 not included in that charge with specific cause possession
17 with the intent to distribute is deliver, distribute, or
18 manufacture the drug is the definition of that statute so
19 we would ask for that language to be stricken.

20 MR. CHAPLIN: Well, Your Honor, no.

21 MR. JOHNSON: No.

22 MR. CHAPLIN: Go ahead.

23 MR. BROWN: I would rather, Your Honor, we try
24 striking too much the jury would be extremely confused.
25 You can say that I gave you the wrong instructions as far

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1 as the charge, and take out that last part, the first part
2 that we agreed to. And then the jury can look at that all
3 they want but if it's not related to anything they have
4 it's not gonna change anything.

5 THE COURT: I agree. I think we're drawing too much
6 attention to it. I think what we'll do is just recharge
7 the trafficking cocaine and take out that last portion as
8 you requested.

9 MR. BROWN: I mean it's unfortunate we missed it. We
10 had it --

11 SOLICITOR SHELTON: And the one last thing that I will
12 show you is that on the trafficking cocaine charge, again I
13 apologize for not catching this in advance. I was focusing
14 on the more defense oriented situations and that's a
15 lesson learned. Deliver: If you read the trafficking
16 cocaine charge here the Defendant is charged with
17 trafficking cocaine. The State must prove beyond a
18 reasonable doubt that the Defendant knowingly sold,
19 manufactured, cultivated, delivered, purchased, brought
20 into this state, provided financial assistance, or
21 otherwise aided, abetted, attempted or conspired to sell,
22 manufacture, cultivate, deliver, purchase, or bring into
23 this state, was knowingly in actual or constructive
24 possession. Knowingly attempt to come in actual or
25 constructive possession of cocaine.

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1 I don't know. I need to look at the statute and see
2 if there is an or between the second and third line up
3 right here state and then comma or was knowingly and
4 actual.

5 THE COURT: I gotcha. That might must be a typo.

6 SOLICITOR SHELTON: I think there is an or there.

7 MR. CHAPLIN: There is no - You got Court
8 Administration.

9 MADAME COURT REPORTER: What did you say, John?

10 THE COURT: If you pull up the statute let's see if
11 there is an or in there.

12 SOLICITOR SHELTON: I have the statute in my power
13 point and I copied and paste from that statute.

14 Its Section 44-53-370(e) e as in egg (2).

15 MADAME COURT REPORTER: We'll make that one --

16 THE COURT: We'll just keep this.

17 MADAME COURT REPORTER: Leave this one Four and make
18 the next one Five?

19 THE COURT: Right.

20 MADAME COURT REPORTER: Okay.

21 THE COURT: I prefer it as One and Two.

22 (WHEREUPON: COURT'S EXHIBITS NUMBER FIVE, IDENTIFIED
23 AND MARKED, RECEIVED INTO EVIDENCE.)

24 SOLICITOR SHELTON: I apologize, Judge, again for not
25 catching that.

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1 THE COURT: That's okay. We all were kind of rushed
2 during lunch.

3 SOLICITOR SHELTON: I would just ask that the language
4 be --

5 (PAUSE.)

6 THE COURT: To begin on the bottom of Page 11.
7 Correct?

8 SOLICITOR SHELTON: Yes.

9 THE COURT: And it stops - You just want the
10 trafficking portion from the to where the State must also
11 prove beyond a reasonable doubt that two hundred grams or
12 more but less than four grams - you want the whole
13 possession and actual possession and constructive
14 possession you want the whole thing?

15 SOLICITOR SHELTON: I think if we're gonna recharge on
16 the - I think we should recharge the entire trafficking
17 portion charge if we're going to recharge. The State would
18 prefer that.

19 MR. CHAPLIN: And, Your Honor, whatever you prefer to
20 do.

21 THE COURT: I just want to make sure we're all on the
22 same page so your Page 14 at the top after it says
23 manufacturing.

24 MR. CHAPLIN: We just don't - we don't have one, Your
25 Honor.

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1 THE COURT: Why don't you come up here and look?

2 Starting on Page 11 of the proposed charge from
3 trafficking cocaine through the top of Page 14 to right
4 here?

5 SOLICITOR SHELTON: Correct.

6 THE COURT: Correct? Mr. Johnson, do you agree?

7 MR. JOHNSON: That's fine.

8 THE COURT: Okay.

9 MR. JOHNSON: That's fine.

10 THE COURT: You ready for the jury?

11 SOLICITOR SHELTON: Yes, Your Honor. Thank you.

12 MR. CHAPLIN: The Defense is ready.

13 THE BAILIFF: The jury is entering, Your Honor.

14 (JURY REENTERS COURTROOM AT 04:24 P.M..)

15 THE BAILIFF: Your Honor.

16 THE COURT: Thank you.

17 Ladies and gentlemen of the jury, I am going to
18 recharge you the one portion of the jury instruction once
19 again. And this portion is regarding the trafficking
20 cocaine charge.

21 The jury instruction on that charge is the defendant
22 is charged with trafficking in cocaine. The State must
23 prove beyond a reasonable doubt that the Defendant
24 knowingly sold, manufactured, cultivated, delivered,
25 purchased, brought into this state, or provided financial

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1 assistance, or otherwise aided, abetted, attempted, or
2 conspired to sell, manufacture, cultivate, deliver,
3 purchase, or bring into this state, or, was knowingly in
4 actual or constructive possession or knowingly attempted to
5 become in actual or constructive possession of cocaine.

6 The State must also prove beyond a reasonable doubt
7 that the amount of the cocaine or any mixture containing
8 cocaine was two hundred grams or more but less than four
9 hundred grams. To prove possession the State must prove
10 beyond a reasonable doubt that the Defendant had both the
11 power and the intent to control the disposition or use of
12 the cocaine. Possession may be either actual or
13 constructive.

14 Actual possession means that the cocaine was in the
15 actual physical custody of the Defendant.. Constructive
16 possession means that the Defendant had dominion and
17 control or the right to exercise dominion or control over
18 either the cocaine itself or the property on which the
19 cocaine was found.

20 Mere presence at the scene where the drugs were found
21 is not enough to prove possession. Actual knowledge of the
22 presence of cocaine is strong evidence of the Defendant's
23 intent to control its disposition or use. The defendant's
24 knowledge and possession may be inferred when the substance
25 is found on the property under the defendant's control.

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1 However this inference is simply an evidentiary fact to be
2 taken into consideration by you along with the other
3 evidence in the case to be given the weight you decide it
4 should have. Two or more persons may have joint possession
5 of the drug.

6 To deliver means to actually constructive or to
7 attempt to transfer the drug. Distribute means to deliver
8 other than be administering or dispensing a drug. Deliver
9 means to actually constructively or attempt to transfer the
10 drug. A transfer can involve an exchange for money, a
11 barter or a gift. There does not have to be anything given
12 in exchange for the drugs for a transfer to constitute a
13 distribution.

14 Manufacture means to produce, prepare, convert,
15 process, plant, cultivate, grow or harvest a drug naturally
16 or chemically. Manufacturing includes any packaging or
17 repackaging of the drug or labeling or relabeling of the
18 drugs container.

19 Ladies and gentlemen, that concludes the charge on the
20 trafficking cocaine. You will have the jury instructions
21 that are applicable for you to consider with you in the
22 jury room for your deliberations. Once again please retire
23 to your jury room. Do not begin deliberations until you
24 receive the evidence and the verdict forms along with the
25 instructions and Bailiff Bob instructs you to being. Make

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1 sure you knock on the door when you're done deliberating.

2 Thank you.

3 (JURY RETIRES TO DELIBERATE AT 04:29 P.M..)

4 THE COURT: Mr. Jay, can you grab the alternate at
5 well.

6 MR. JAY: Yes, sir.

7 THE BAILIFF: The jury is clear, Your HOnor.

8 THE COURT: Thank you.

9 Any exceptions or additions on the charge from either
10 the State or the Defense?

11 SOLICITOR SHELTON: Not from the State. Thank you.

12 MR. CHAPLIN: Not from the Defense, Your Honor.

13 THE COURT: Then we'll be at ease for a moment.

14 (COURT AT EASE AT 04:30 P.M..)

15 (COURT BACK IN SESSION AT 04:53 P.M..)

16 THE COURT: I want to let you all know that the
17 demolition with the renovations at the courthouse, they are
18 about to begin work unless I tell them to stop. My concern
19 is I don't want them to interfere at all with the jury's
20 deliberations. It's too noisy and if it distracts them in
21 any way whatsoever we'll order them to stop.

22 Are you all okay if we send the bailiff in to let the
23 jury know that if it in anyway bothers them or disturbs
24 them to let us know and we'll make them stop? Is that okay
25 with the State to send --

1 SOLICITOR SHELTON: I don't have a problem with that,
2 the State doesn't.

3 MR. CHAPLIN: That's fine with us as well, Your Honor.

4 THE COURT: Okay.

5 MR. CHAPLIN: Because I heard in about ten minutes
6 they're gonna crank up.

7 THE COURT: Right. I just don't want it to be too
8 distracting or disturbing to the jury. We'll make them
9 stop if it gets loud.

10 SOLICITOR SHELTON: Thank you, Your Honor.

11 THE COURT: Thank you all.

12 (COURT IN RECESS AT 04:55 P.M..)

13 (COURT BACK IN SESSION AT 05:11 P.M..)

14 THE COURT: You may be seated.

15 We have a question from the jury but actually I think
16 it's a simple fix. I'll let you read what the question is
17 but basically the jury needs clarification on possession of
18 a weapon during the commission of a violent crime. And
19 does the mere presence of the gun qualify or does the State
20 have proof that it - used to in furtherance of the advance
21 of the crime.

22 My position is that they have the law, they have the
23 exact charge on what they are supposed to do. I would
24 suggest just to write you have the law as to what you have
25 to find and give that to the jury instead of bringing them

1 back out and recharge them on it.

2 Are you all okay with that?

3 MR. CHAPLIN: We're in agreement, Your Honor.

4 SOLICITOR SHELTON: Yes, Your Honor.

5 THE COURT: All right. So I'm just gonna make this a
6 Court's Exhibit and write it on the back and send it back
7 to the jury.

8 SOLICITOR SHELTON: Thank you, Your Honor.

9 MR. CHAPLIN: Thank you, Your Honor.

10 THE COURT: If I can have a pen.

11 So I'm gonna word it "you have the law with you as to
12 the elements necessary."

13 SOLICITOR SHELTON: Yes. A matter of fact its that
14 way already. I'm sorry, go ahead.

15 THE COURT: I mean any suggestion.

16 MR. CHAPLIN: Your Honor, obviously you charged it,
17 you charged it and they have everything like you said back
18 there already. What they have there they need to obviously
19 run with it.

20 SOLICITOR SHELTON: I would say if you - I would
21 submit to the Court just a simple instruction that you are
22 to follow the law as I charged you and as you have with
23 you.

24 THE COURT: Any objection to that?

25 MR. CHAPLIN: No.

1 THE COURT: If you all want to look at exactly what I
2 wrote to make sure you have no ---

3 SOLICITOR SHELTON: Yes, Your HOnor.

4 THE COURT: --- questions and we'll mark it as a
5 Court's Exhibit.

6 (WHEREUPON: COURT'S EXHIBIT NUMBER SIX, IDENTIFIED
7 AND MARKED, RECEIVED INTO EVIDENCE.)

8 SOLICITOR SHELTON: Yes.

9 THE COURT: Any objections?

10 SOLICITOR SHELTON: No.

11 MR. CHAPLIN: No.

12 THE COURT: We will be at ease.

13 (COURT AT EASE AT 05:15 P.M..)

14 (COURT BACK IN SESSION AT 06:17 P.M..)

15 THE COURT: I think the jury has reached a verdict.

16 We sent notice to them the work crew has stopped
17 working so we'll have some peace and quite in here while we
18 receive the verdict. We will hold off one minute until
19 they finish before we bring the jury in.

20 Anything else before we bring the jury in?

21 SOLICITOR SHELTON: Not from the State. Thank you,
22 Your Honor.

23 MR. CHAPLIN: Not from the Defense, Your Honor.

24 THE COURT: Thank you.

25 For the members of the audience, please be mindful

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1 that no outburst or any signs of emotion when the jury's
2 verdict is read. If you feel that you cannot control your
3 emotions I'm going to ask you to go ahead and step out of
4 the courtroom now because that will not be tolerated okay.

5 THE BAILIFF: Your Honor, the jury is entering.

6 (JURY REENTERS COURTROOM AT 06:20 P.M..)

7 THE BAILIFF: All right, Your Honor, they are seated.

8 THE COURT: Thank you.

9 Mr. Foreman, have the members of the jury reached a
10 verdict?

11 MR. FOREMAN: Yes, ma'am, we have.

12 THE COURT: Would you please hand it to Mr. Bob
13 please.

14 (VERDICT RECEIVED UP BY THE COURT.)

15 THE COURT: Mr. Foreman, I just see on one where you
16 did not sign on the indictment. Was that an over sight?

17 MR. FOREMAN: I thought I did.

18 THE COURT: I'll hand that back to you.

19 Oh did you put it on there?

20 MR. FOREMAN: Yes, ma'am.

21 THE COURT: I'm sorry. I didn't see it.

22 MR. FOREMAN: Signed in the same place on all three of
23 them.

24 THE COURT: Right. I see your signature but the
25 actual verdict as you did on the other - -

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1 MR. FOREMAN: Oh I'm sorry.

2 THE COURT: No that's okay. Thank you.

3 MR. FOREMAN: Picked the wrong one didn't I.

4 THE COURT: Thank you.

5 Madame Clerk, would you please publish the verdict.

6 MADAME CLERK: The State of South Carolina versus
7 Stanley Wright as to the Indictment alleged possession with
8 intent to distribute marijuana, we the jury find the
9 Defendant guilty.

10 As to the Indictment alleging trafficking in cocaine,
11 we the jury find the Defendant guilty.

12 As to the Indictment alleging possession of a firearm
13 during the commission of a violent crime, we the jury
14 unanimously find the Defendant guilty, signed by Foreperson
15 Daniel Kane.

16 Mr. Kane, is this your verdict?

17 MR. FOREMAN: Yes, ma'am, it is.

18 MADAME CLERK: If all of you will please raise your
19 right hand.

20 THE COURT: Let the record reflect that all jurors
21 raised their right hand.

22 (ALL JURORS AFFIRMED BY RAISING RIGHT HAND.)

23 THE COURT: Ladies and gentlemen of the jury, thank
24 you so much for your service this will conclude your jury
25 service for the week. If you would retire to your jury

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1 room I will be there in two seconds to briefly chat with
2 you.

3 MR. CHAPLIN: Your Honor, we definitely want to poll
4 the jury if you - I was gonna mention it.

5 THE COURT: You want to individually poll them?

6 MR. CHAPLIN: Yes.

7 THE COURT: Certainly we can do that.

8 MADAME CLERK: As I call your name would you please
9 stand please.

10 Daniel Kane, was this your verdict?

11 MR. KANE: Guilty.

12 MADAME CLERK: Is this still your verdict?

13 MR. KANE: Yes, ma'am.

14 MADAME CLERK: Thank you.

15 Mark Thomas.

16 Was this your verdict?

17 MR. THOMAS: Yes, ma'am.

18 MADAME CLERK: Is it still your verdict?

19 MR. THOMAS: Yes, ma'am.

20 MADAME CLERK: John Christensen.

21 Was this your verdict?

22 MR. CHRISTENSEN: Yes.

23 MADAME CLERK: Is it still your verdict?

24 MR. CHRISTENSEN: Yes.

25 MADAME CLERK: Michael Lavelle.

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1 Was this your verdict?
2 MR. LAVELLE: Yes, ma'am.
3 MADAME CLERK: Is it still your verdict?
4 MR. LAVELLE: Yes, ma'am.
5 MADAME CLERK: Thank you, sir.
6 David Hahn.
7 Was this your verdict?
8 MR. HAHN: Yes, ma'am.
9 MADAME CLERK: Is it still your verdict?
10 MR. HAHN: Yes, ma'am.
11 MADAME CLERK: Nicholas Dzendzel.
12 Was this your verdict?
13 MR. DZENDZEL: Yes, ma'am.
14 MADAME CLERK: Is it still your verdict?
15 MR. DZENDZEL: Yes, ma'am.
16 MADAME CLERK: Dominic Dasher.
17 Was this your verdict?
18 MR. DASHER: Yes.
19 MADAME CLERK: Is it still your verdict?
20 MR. DASHER: Yes.
21 MADAME CLERK: Landon Terhune.
22 Was this your verdict?
23 MR. TERHUNE: Yes.
24 MADAME CLERK: Is it still your verdict?
25 MR. TERHUNE: Yes.

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1 MADAME CLERK: Daniel Woodfill.
2 Was this your verdict?
3 MR. WOODFILL: Yes, ma'am.
4 MADAME CLERK: Is it still your verdict?
5 MR. WOODFILL: Yes, ma'am.
6 MADAME CLERK: Meredith Crocker.
7 Was this your verdict?
8 MS. CROCKER: Yes.
9 MADAME CLERK: Is it still your verdict?
10 MS. CROCKER: Yes.
11 MADAME CLERK: William Brady.
12 Was this your verdict?
13 MR. BRADY: Yes.
14 MADAME CLERK: Is it still your verdict?
15 MR. BRADY: Yes.
16 MADAME CLERK: And Jolene Buchanan.
17 Was this your verdict?
18 MS. BUCHANAN: Yes, ma'am.
19 MADAME CLERK: Is it still your verdict.
20 MS. BUCHANAN: Yes, ma'am.
21 MADAME CLERK: Thank you.
22 THE COURT: Once again, ladies and gentlemen, thank
23 you. This does conclude your jury service. Return to your
24 jury room and I'll be there to chat with you in just one
25 minute. Thank you so much.

SENTENCING:

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1 (JURY EXCUSED AT 06:26 P.M..)

2 THE BAILIFF: The jury is clear, Your Honor.

3 THE COURT: Thank you.

4 Anything further from the State or the Defense before
5 we proceed to sentencing?

6 SOLICITOR SHELTON: Your Honor, the State is printing
7 off sentencing sheets right now down stairs. Ms. Concannon
8 is going to go get them.

9 THE COURT: Thank you.

10 SOLICITOR SHELTON: Thank you.

11 MR. JOHNSON: Your Honor, just for the record, we'd
12 like to renew our objections and ask for a directed verdict
13 not withstanding the judgment.

14 THE COURT: Thank you, Mr. Johnson. I respectfully
15 deny your motion.

16 MR. JOHNSON: Thank you, Your Honor.

17 THE COURT: We will be at recess until we receive the
18 sentencing sheets and we'll be right back.

19 SOLICITOR SHELTON: Thank you, Your Honor.

20 (COURT AT EASE AT 06:27 P.M..)

21 (COURT BACK IN SESSION AT 06:35 P.M..)

22 THE COURT: Everybody ready to proceed?

23 SOLICITOR SHELTON: Yes.

24 MR. JOHNSON: You want him to come around in front?

25 THE COURT: Sure.

SENTENCING:

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1 (ATTORNEYS AND DEFENDANT APPROACH THE BAR.)

2 THE COURT: Happy to hear from counsel.

3 MR. CHAPLIN: Thank you, Your Honor.

4 Your Honor, my client and Mr. Johnson's client is
5 thirty-one years old. Sitting in the courtroom from the
6 family his mom, his dad, his grandma, aunt, the mother of
7 three of his kids, girlfriend, numerous individuals are in
8 the courtroom. Most of them have been with us for most of
9 the whole period of time. Your Honor, the kids age are
10 five, ten, and twelve. He is a life long resident of
11 Hilton Head. Graduated from Hilton Head High. Not just
12 attended but actually graduated. And he works at Land's
13 End Tavern on Hilton Head as a cook. He's been cooking -
14 He's thirty-one now, he's been preparing food for almost
15 fifteen years.

16 Your Honor, I say all this to say that unfortunately
17 there are guidelines and there are statutes that the
18 legislature happened to imposed and unfortunately I can't
19 stand here and beg you for a sentence that I think would be
20 appropriate for his actions based on the fact that
21 obviously the statute itself puts me at a number which is
22 the mandatory minimum so, Your Honor, that negates a whole
23 lot of conversation.

24 I would like to say, Your Honor, based on his limited
25 prior record, based on him having three kids, based on him

SENTENCING:

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1 living here as a life long resident, also working,
2 attending - graduating from Hilton Head High as well, Your
3 Honor, I'm asking the court to impose the mandatory minimum
4 and to run the other two charges concurrent to that
5 mandatory minimum.

6 I can stand here a lot longer again and say a whole
7 lot more meaning that he obviously this day he knew he
8 would get his day in court at one point in time and it
9 came. Where we are now is just like I'm standing here now
10 he always been a man about everything he's ever done from
11 day one when I met him he hasn't changed on lick since the
12 till now. Meaning that he said hey you know I know that I
13 made wrong I know obviously things occurred and I must
14 stand where I need to stand at and that's where we are now.

15 Obviously he wanted the best representation he could
16 get and his family helped him be able to reach that goal.
17 But again, Your Honor, I'm asking that you impose the
18 mandatory minimum across and run the other charges
19 concurrent.

20 THE COURT: Thank you, Mr. Chaplin.

21 MR. CHAPLIN: Thank you.

22 THE COURT: Anything further from the Defense?

23 MR. CHAPLIN: Not at this time, Your Honor.

24 THE COURT: Any of them wish to address the Court?

25 MR. CHAPLIN: No thank you.

SENTENCING:

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1 THE COURT: Solicitor, does he have a prior record?

2 SOLICITOR SHELDON: He does. He has a possession of
3 marijuana, simple possession from 2002. He has a
4 possession of marijuana and open container from 2004. He
5 was - He pleaded guilty to possession with intent to
6 distribute cocaine in 2006, that was pled down from a
7 trafficking charge, he received probation for that charge.
8 And then in 2009 after failing a drug test he had probation
9 revocation when they did - when probation came into the
10 home to visit and found possession with intent to
11 distribute levels of marijuana at his home along with a
12 large sum of money. And that charge, possession with
13 intent to distribute marijuana is still pending in our
14 office. That occurred while he was on probation.

15 Your Honor, candidly his record is not the worst we've
16 ever seen, however, what his record shows is there is
17 absolutely no affect on his prior record on his actions.
18 Also, Your Honor, the State would like to state to the
19 Court that this has never been a case where he has shown
20 any inclination to ever plead guilty.

21 The jury has reached their verdict and it was a
22 unanimous verdict obviously on all three counts and the
23 evidence and the State's position was extremely clear in
24 this case. We attempted plea negotiations before and he
25 has never accepted responsibility which that is not his

SENTENCING:

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1 responsibility to do and we're not trying to give any
2 inference to that whatsoever or have the Court subject
3 itself to any inference of that or that we believe there is
4 an inference of that cause we take our duty to prove cases
5 beyond a reasonable doubt and the presumption of innocence
6 very seriously.

7 However we also take into consideration defendants
8 when evidence is there and when the jury speaks their
9 willingness to come forward and take responsibility and
10 that's why we offered plea negotiations and plea deals and
11 all the like. This never happened in this case and there's
12 absolutely no punishment for that. He has every right to a
13 jury trial. However based on his prior record, based on
14 everything in this case and specially because of the
15 firearm involved, Your Honor, the State is not gonna ask
16 for a consecutive sentence of thirty-five years but the
17 State does think that the firearm topped with the firearm
18 charge of thirty years is appropriate but obviously defer
19 to the strong wisdom of the Court.

20 MR. CHAPLIN: Your Honor, lastly I would like to chime
21 back in on one issue. I don't know, the prosecutor went
22 into the fact of them not accepting a plea and I guess that
23 might a been with the other attorney and here we go. He
24 can't speak on it and I can't speak on it either. I know
25 what has transpired in the few months that I've been

SENTENCING:

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1 involved with the case and I'm just speaking on my dealings
2 with him for the few months I've been representing him.

3 Again he is entitled to his day in court and everyone
4 is. And I think that's why you all - obviously Your Honor
5 has so much to do. In turn I'm just saying, Your Honor,
6 that based on his limited record, based on the amount of
7 time that we're talking about I think twenty-five years far
8 exceed the number where the other two charges can be ran
9 concurrent. And I'm just asking for that based on the fact
10 of what he had with his kids as well as his family and
11 others involved.

12 THE COURT: Thank you, Mr. Chaplin.

13 MR. CHAPLIN: Thank you, Your Honor.

14 THE COURT: Mr. Wright, I understand that you're
15 previous criminal record isn't extremely extensive, however
16 you have been afforded opportunities in the past to turn
17 your life around, to not be involved in the drug trade, and
18 that concerns me because you haven't taken the advantage of
19 those opportunities.

20 The fact of the matter is that you are a father,
21 you're educated, and you have a job. There is no reason
22 for you to be involved in this business. And this drug
23 trade business is huge cancer on our society. It takes a
24 toll on businesses and lives and quite frankly your
25 children. I'm concerned that your children were at that

SENTENCING:

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1 house where you have all these drugs. At least outside in
2 the car. And that's a huge disservice to your children and
3 to your family.

4 The sentence of this court will be on Indictment No.-
5 for the trafficking cocaine obviously the sentence of the
6 Court will be twenty-five years and a fine of One Hundred
7 Thousand Dollars.

8 On the charge for possession of a weapon during the
9 commission of a violent crime that charge the sentence of
10 the Court is five years.

11 Possession with intent to distribute marijuana you're
12 sentenced for a period of ten years.

13 Possession with intent to distribute marijuana that
14 charge will run concurrent to the trafficking charge.

15 The possession of a weapon during the commission of a
16 violent crime will run consecutive to the trafficking
17 charge. Thank you.

18 MR. JOHNSON: Thank you, Your Honor.

19 SOLICITOR SHELDON: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (COURT AT EASE AT 06:46 P.M..)

22 (COURT BACK IN SESSION AT 06:51 P.M..)

23 THE COURT: All right, court is back in session.

24 Mr. Wright, on the indictment for possession with
25 intent to distribute marijuana the sentencing range is

SENTENCING:

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1 different from what the court had thought, so your actual
2 sentence on Indictment 2011-GS-07-1851 for that charge will
3 be for a term of five years rather than ten years.

4 MR. CHAPLIN: Thank you, Your Honor.

5 MR. JOHNSON: To run concurrent, Your Honor.

6 THE COURT: That runs concurrent to the trafficking
7 one which is Indictment 2011-GS-07-1852 but 2011-GS-07-1853
8 the weapons possession charge that is consecutive.

9 MR. JOHNSON: Thank you, Your Honor.

10 MR. CHAPLIN: Thank you.

11 (COURT ADJOURNED AT 06:52 P.M..)

12 (END OF TRANSCRIPT OF RECORD.)
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CERTIFICATE OF REPORTER

State of South Carolina)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 11th and 12th days of August, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 2-27 / 2014

WITNESSES

Heroux/BCSO

ARREST WARRANT NUMBER

J349644

ACTION OF GRAND JURY

Burt Wolf
Foreperson of Grand Jury
Date:

NOV 17 2011

VERDICT

Guilty

Foreperson of Petit Jury
Date: *9/18/13*
INDICT

Daniel F. Kern

DOCKET NO. 2011GS0701851

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

vs.

Stanley Wright

Indictment for

PWID Marijuana

SC Code: 44-53-0370(b)(2)
CDR Code:0186

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0701851

At a Court of General Sessions, convened on November 17, 2011, the Grand Jurors of Beaufort County present upon their oath:

PWID Marijuana

That in Beaufort County, South Carolina, on or about August 31, 2011, the Defendant, Stanley Wright, unlawfully did possess with intent to distribute, dispense, or deliver a quantity of marijuana, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, or deliver marijuana, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended

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



WITNESSES

Heroux/BFT

ARREST WARRANT NUMBER

J349645

ACTION OF GRAND JURY

Bruce Wolf
Foreperson of Grand Jury
Date:

NOV 17 2011

VERDICT

Guilty

Foreperson of Petit Jury
Date: *9/18/13*
INDICT

DOCKET NO. 2011GS0701852

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

vs.

Stanley Wright

Indictment for

Drugs / Trafficking in cocaine, 200 g or more,
but less than 400g

SC Code: 44-53-0370(e)(2)(d)
CDR Code: 0288

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant:

I
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

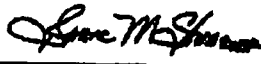
INDICTMENT
2011GS0701852

At a Court of General Sessions, convened on November 17, 2011, the Grand Jurors of Beaufort County present upon their oath:

Drugs / Trafficking in cocaine, 200 g or more, but less than 400g

That in Beaufort County, South Carolina, on or about August 31, 2011, the Defendant, Stanley Wright, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine, in excess of 200 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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



WITNESSES

Heroux/BCSO

ARREST WARRANT NUMBER

J349646

ACTION OF GRAND JURY

Burt Wolf
Foreperson of Grand Jury
Date:

NOV 17 2011

VERDICT

Guilty

Foreperson of Petit Jury
Date: 9/18/13
INDICT

DOCKET NO. 2011GS0701853

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

vs.

Stanley Wright

Indictment for

**Weapons / Poss. weapon during violent crime,
if not also sentenced**

SC Code: 16-23-0490
CDR Code: 0549

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

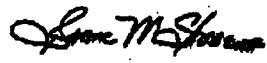
INDICTMENT
2011GS0701853

At a Court of General Sessions, convened on November 17, 2011, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sentenced

That in Beaufort County, South Carolina, on or about 2011-08-31, the Defendant, Stanley Wright, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of Trafficking in Cocaine, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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



WITNESSES

Heroux/BCSO

ARREST WARRANT NUMBER

J349647

ACTION OF GRAND JURY

Brent Webb
Foreperson of Grand Jury
Date:

NOV 17 2011

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2011GS0701854

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

vs.

Stanley Wright

*Nolk pros w/ leave.
4/19/2013*

Indictment for

PWID Marijuana within proximity of school

SC Code: 44-53-0445(B)(1)
CDR Code:0107

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0701854

At a Court of General Sessions, convened on November 17, 2011, the Grand Jurors of Beaufort County present upon their oath:

PWID Marijuana within proximity of school

That in Beaufort County, South Carolina, on or about August 31, 2011, the Defendant, Stanley Wright, unlawfully did distribute, sell, purchase, manufacture, or possess with intent to distribute Marijuana, a controlled substance, within a one-half mile radius of the grounds of Barker Field; all in violation of Section 44-53-445, Code of Laws of South Carolina (1976, as amended).

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



WITNESSES

Heroux/BCSO

ARREST WARRANT NUMBER

J349648

ACTION OF GRAND JURY

Brent W. H.
Foreperson of Grand Jury
Date:

NOV 17 2011

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2011GS0701855

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

vs.

Stanley Wright

Nak Proff w/ leave

9/19/2013

[Signature]

Indictment for

Trafficking Cocaine w/in 1/2 mile of school or park

SC Code: 44-53-0445(B)(1)
CDR Code:0107

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0701855

At a Court of General Sessions, convened on November 17, 2011, the Grand Jurors of Beaufort County present upon their oath:

Trafficking Cocaine w/in ½ mile of school or park

That in Beaufort County, South Carolina, on or about August 31, 2011, the Defendant, Stanley Wright, unlawfully did distribute, sell, purchase, manufacture, or traffic in Cocaine, a controlled substance, within a one-half mile radius of the grounds of Barker Field; all in violation of Section 44-53-445, Code of Laws of South Carolina (1976, as amended).

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



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STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

State of South Carolina,)
vs.) Case Nos.: 2011-GS-07-1851,
Stanley Wright,) -1852, -1853-, -1854 & -1855
Defendant.)

TRANSCRIPT OF PRETRIAL
VOLUME I OF II
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON MAY 22, 2013

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

A P P E A R A N C E S

For the State:

BENJAMIN T. SHELTON
Prosecuting Attorney
14th Judicial Solicitor's Office
P. O. Box 1880
Bluffton, South Carolina 29901
(843) 255-5916
bshelton@bcgov.net

For the Defendant:

SAMUEL C. BAUER
Bauer & Metro
38-A New Orleans Road
P. O. Box 7965
Hilton Head, South Carolina 29938
(843) 842-5297
sbauer@bauerlawfirm.com

State versus Stanley Wright
Pretrial, May 22, 2013
Volume I of II

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Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

State versus Stanley Wright
Pretrial, May 22, 2013
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1 The above-styled cause came on for hearing on
2 the 22nd day of May, 2013, at 10:56 a.m., before Judge
3 Kristi Lea Harrington, presiding over the General
4 Sessions Court for the County of Beaufort, when the
5 following proceedings were had and entered of record, to
6 wit:

7 PROCEEDINGS

8 VOLUME I OF II

9 THE COURT: Where is your client?

10 MR. BAUER: Your Honor, I was told he already
11 crossed the Broad River Bridge and is on his way here.

12 THE COURT: That means nothing to me. So how
13 long?

14 MR. BAUER: Oh, sorry. He should be here any
15 minute, your Honor.

16 THE COURT: All right. Thank you.

17 MR. BAUER: Would you like to have a hard
18 copy --

19 THE COURT: I have it.

20 MR. SHELTON: May I approach, your Honor? I
21 just handed Mr. Bauer a copy of State v. Hatcher, that's
22 for the secondary motion of the chain --

23 THE COURT: All right.

24 MR. SHELTON: -- that I'm sure your Honor is
25 familiar with.

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 Official Court Reporter for the State of South Carolina

State versus Stanley Wright
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1 (Document is handed to the Judge.)

2 MR. BAUER: Your Honor, I'll step out in the
3 hallway and see if I can catch my client as he's coming
4 up the stairs.

5 THE COURT: Okay.

6 (Mr. Bauer exits the courtroom 10:58 a.m.)

7 (Time is 11:08 a.m., the Defendant is present
8 in the courtroom with his counsel.)

9 THE COURT: All right. Mr. Shelton, are you
10 ready?

11 MR. SHELTON: Yes.

12 Mr. -- the guy's been outside the door the
13 whole time. Obviously, now, is not there. So he's
14 going -- my investigator is going to get him and bring
15 him in the courtroom right now, the first witness.

16 But I can begin on the record, if you'd like,
17 and call the case.

18 THE COURT: Please do.

19 MR. SHELTON: Thank you.

20 The State calls State versus Stanley Wright on
21 this -- for a pretrial hearing in anticipation of trial
22 tomorrow. The State, for the purposes of this hearing,
23 is going forward on Indictment Number 2011-GS-07-1851,
24 same abbreviation -1852, -1853, -1854, and -1855. The
25 charges related to those Indictments, respectively, are,

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State versus Stanley Wright
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1 your Honor, possession with intent to distribute
2 marijuana; trafficking in cocaine, more than 200 grams
3 and less than 400 grams; possession of a weapon during
4 the commission of a violent crime; possession of a
5 weapon with intent to distribute marijuana -- excuse me,
6 possession with intent to distribute marijuana in the
7 proximity -- one mile -- half-mile proximity of a
8 school, park, or playground; and same charge for
9 trafficking cocaine.

10 Your Honor, today the State -- obviously, it's
11 the State's burden to prove -- to admit all evidence.
12 And in this case, the evidence was initially observed
13 during a protective -- not really a protective sweep, a
14 sweep for the safety of a victim in a residence, as my
15 Brief indicates. And this testimony today is going to
16 be in reference to that. As soon as I can get the first
17 officer in here.

18 THE COURT: All right. Mr. Bauer, you
19 represent Mr. Wright?

20 MR. BAUER: Yes, your Honor.

21 THE COURT: And you filed a motion to suppress
22 the evidence; is that correct?

23 MR. BAUER: Your Honor, this originally
24 happened when the State filed a motion seeking
25 declaratory judgment as to the admissibility of the

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Official Court Reporter for the State of South Carolina

State versus Stanley Wright
Pretrial, May 22, 2013
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1 evidence. That hearing was continued for today.

2 MR. SHELTON: And, again, the State, depending
3 on the outcome of this hearing, intends to call this
4 case for trial tomorrow morning, for a jury trial.

5 Deputy Jason Collier is the first witness.

6 THE WITNESS: Jonathan.

7 MR. SHELTON: Jonathan Collier. I'm sorry.

8 THE DEPUTY CLERK OF COURT: Sir, would you
9 place your left hand on the Bible and raise your right
10 hand for me, please?

11 (The oath is administered by the Deputy Clerk
12 of Court, and the witness answers as follows:)

13 THE WITNESS: Yes, ma'am.

14 THE DEPUTY CLERK OF COURT: Please be seated.
15 State your name and spell it for the Court,
16 please.

17 THE WITNESS: My name is Jonathan Allen
18 Collier.

19 Did you say spell it?

20 THE DEPUTY CLERK OF COURT: Yes.

21 THE WITNESS: J-o-n-a-t-h-a-n, C-o-l-l-i-e-r.

22 MR. SHELTON: Thank you, your Honor.

23 JONATHAN ALLEN COLLIER,

24 having been first duly sworn by the Deputy Clerk of
25 Court to tell the truth, the whole truth, and nothing

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Official Court Reporter for the State of South Carolina

State versus Stanley Wright
Pretrial, May 22, 2013
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1 but the truth, was examined and testified upon his oath
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. SHELTON:

5 Q Apologize for saying your name wrong.

6 A That's okay.

7 Q What's your rank now?

8 A I'm a sergeant.

9 Q With what -- with who?

10 A The Beaufort County Sheriff's Office.

11 Q What were you doing within the Beaufort County
12 Sheriff's Office, if anything, on August 31st, 2011?

13 A I was a corporal on road patrol.

14 Q Where were you on road patrol?

15 A Southern division, on the south side.

16 Q And for purposes of the Court understanding
17 Beaufort County and the different divisions, would you
18 please say what the southern division is and what it
19 encompasses?

20 A Southern division is pretty much everything
21 south of the Broad River Bridge.

22 Q And what does the Broad River do in Beaufort
23 County?

24 A It separates northern and southern Beaufort
25 County.

Reported By:
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Official Court Reporter for the State of South Carolina

State versus Stanley Wright
Pretrial, May 22, 2013
Volume I of II

1 Q Is there any way to get from northern Beaufort
2 County to southern Beaufort County without essentially
3 crossing the Broad River?

4 A No, sir, not that I know of.

5 Q So the Sheriff's Office division is separated
6 north and south?

7 A Yes.

8 Q And you were a corporal on the south side.

9 And what part of the south side were you --
10 what encompasses the south side that you would actually
11 patrol in?

12 A It depends. It changes on a daily basis. It's
13 either Hilton Head or Bluffton.

14 Q Okay. And those are the two areas on the south
15 side of Beaufort County?

16 A Yes.

17 Q Now, do you remember where you were patrolling
18 on August 31st, 2011?

19 A On Hilton Head.

20 Q And do you remember ever receiving a call from
21 the Mitchellville area?

22 A Yes.

23 Q What was that call in reference to?

24 A The call was in reference to a 911 hang-up.

25 Q A 911 hang-up. Who did you receive the call

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1 from?

2 A Dispatch.

3 Q And approximately what time did you receive the
4 call?

5 A It was near the end of my shift. I was on day
6 shift, so maybe sometime around 5:30 or 6:00-ish. I
7 don't really recall. I just know it was near the end of
8 my shift.

9 Q Would anything refresh your memory?

10 A An incident report.

11 Q Do you have that incident report with you?

12 A I have a supplemental, but it doesn't have the
13 times on it.

14 Q All right. And so you remember it being
15 towards the end of your shift; is that correct?

16 A Yes, sir.

17 Q Now -- I apologize.

18 Did you receive any other information as you
19 were responding to the call?

20 A I know dispatch was trying to call the number
21 back --

22 Q Uh-huh.

23 A -- that the call was received on. And
24 that's. . .

25 Q And do you know whether they were able to get

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1 that caller on the phone?

2 A I don't remember if they got the caller on the
3 phone a second time or not.

4 Q Okay. When you arrived on the scene, did you
5 know -- before you arrived on the scene, did you know
6 what type of call it was?

7 A Yes. Based on what we were given from
8 dispatch, it was a 911 hang-up from a female caller that
9 sounded distressed on the phone.

10 Q Okay. And what address did you actually
11 respond to?

12 A 219 Mitchellville Road.

13 Q Is that in Beaufort County?

14 A Yes, sir.

15 Q Now, when you arrived, what do you see?

16 A When I arrived on scene, I saw
17 Deputy Sheriff Archbell standing in -- outside in front
18 of the residence at 219 speaking with Mr. Wright.

19 Q And did you see any vehicles?

20 A There was one vehicle in the driveway in the
21 front, yes.

22 Q There was one vehicle in the driveway?

23 A Yes.

24 Q What did you do next?

25 A I listened for a second as -- or for -- I don't

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1 remember how long it was -- a couple of minutes, while
2 Deputy Sheriff Archbell spoke with Mr. Wright and just
3 listened to the conversation.

4 Q What did you determine that conversation to be
5 about? What is Mr. Wright saying?

6 A From what I recall, there was some sort of an
7 altercation at the house. According to what I remember
8 him saying, it was just verbal, and that was -- and that
9 she was not there anymore. She had left the scene.

10 Q Did you see any female there?

11 A No, I did not.

12 Q Did you see into the house?

13 A No, sir.

14 Q What was the front door -- where was the front
15 door?

16 A It was directly -- it was directly behind
17 Deputy Archbell and Mr. Wright, just up -- I think there
18 were two or three stairs, four stairs.

19 Q Was it opened or closed?

20 A I believe it was closed.

21 Q What did you decide to do at that time?

22 A Deputy Archbell asked Mr. Wright if -- for
23 consent to come in and check to make sure that there was
24 nobody in the house, a victim that was in need of our
25 assistance. He said he didn't want us to come in the

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1 house. At which time, I stepped in and made
2 decision to do a protective sweep of the house

3 Q Why did you do that?

4 A Because I needed to make sure that --

5 MR. BAUER: Objection, your Honor, subject to
6 the intent, it's not -- it's not relevant to the
7 determination of Fourth Amendment due process on the
8 search.

9 THE COURT: Overruled.

10 You may answer.

11 MR. SHELTON: Thank you.

12 Q (By Mr. Shelton) Why'd you do that?

13 A I did that to make sure that nobody was inside
14 of the house in need of our assistance or medical
15 assistance.

16 Q And why did you make that determination?

17 A Because we were unable to locate the female
18 half of this -- of this incident.

19 Q How long did it take you to respond to the
20 scene?

21 A It took me -- I want to say anywhere from maybe
22 eight to ten minutes to get there.

23 Q And did you leave as soon as you got the
24 dispatch?

25 A Yes.

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1 Q And what, again, for the Court's information,
2 was it -- was all the information you had, to your
3 knowledge, when you made that decision, facts?

4 A The information that I had from dispatch was a
5 911 hang-up with a female caller that sounded as if she
6 was in distress and the phone line disconnected.

7 Q And do you know whether they were able to get
8 back on the phone with her?

9 A I don't recall if they were or not. I don't
10 remember.

11 Q Did you see any female outside the scene?

12 A No, sir.

13 Q Did you know who the subject was in reference
14 to the call?

15 A No, sir.

16 Q And what was the address?

17 A 219 Mitchellville Road.

18 Q Okay. And at that point, you decided to do
19 what again?

20 A Conduct a protective sweep of the house for
21 possible victims.

22 Q Now, did you do it immediately?

23 A Once I made the decision, yes, sir, it was
24 immediate.

25 Q And who all was on scene at that point?

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1 A At that point, it was myself, Deputy Archbell,
2 and Deputy Irving, Sally Irving (phonetic).

3 Q Okay. So a third officer was on the scene?

4 A Yes.

5 Q What did Ms. Irving do?

6 A She stayed with Mr. Wright while
7 Deputy Archbell and I conducted the sweep.

8 Q Why did you do it with three people?

9 A For officers' safety, just to make sure that we
10 didn't have someone walking in behind us through rooms
11 and just to -- mainly for officers safety.

12 Q Why did Ms. Irving stay with -- why was it
13 important for Ms. Irving to stay with Mr. Wright?

14 A So he didn't try to, A, leave the scene, or, B,
15 come in behind us in any of the rooms with us not
16 knowing.

17 Q Why did you sweep the house with two people?

18 A That's how we train, I mean, for officer
19 safety.

20 Q So describe the sweep room-by-room,
21 step-by-step.

22 A Well, when we entered the house -- I don't
23 recall how all the rooms were laid out. But what I do
24 remember is going in the house and going to the right --

25 Q Uh-huh.

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15
A -- start -- beginning to the rooms -- in the
rooms to the right. And then just slowly working our
way around to the left side of the house.

4 Q What was your actual behavior going through the
5 rooms? How did you go through the rooms together?

6 A I think we entered most of them together, but I
7 don't recall if we entered every room together. It just
8 kind of depends sometimes.

9 Q My point is, are you walking through, are you
10 moseying through; what is your behavior?

11 A Oh, yeah. I mean, we're -- we're not just
12 moseying. I mean, we're in there for a purpose just to
13 try to locate persons.

14 Q And who are you trying to locate?

15 A Female victim.

16 Q And what do you look into, if anything, to
17 locate the victim?

18 A Look in any place that could -- a person could
19 be placed or hide.

20 Q And where would those places include?

21 A Rooms, under beds, closets, cabinets, anything
22 big enough for -- a person could reasonably fit into.

23 Q Did you look in drawers?

24 A No. No, sir.

25 Q Did you look in opaque mason jars?

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1 A No, sir.

2 Q Did you look in cabinets that couldn't fit a
3 person?

4 A No, sir.

5 Q Did you ever look in the master bedroom or
6 master bathroom?

7 A Yes, sir.

8 Q And what did you find, first of all, in the
9 master bedroom, if anything? See -- not find, but see?

10 A In the master bedroom --

11 Q Or anything attached thereto?

12 A -- there was a closet in one of the -- one of
13 the rooms, it had a pistol on the shelf.

14 Q Okay. Did you touch the pistol?

15 A No, sir.

16 Q What did you do next?

17 A We continued our sweep to the left and went
18 into -- I guess it was the master bathroom, attached to
19 the bedroom.

20 Q And what did you see inside the master
21 bathroom?

22 A While in the bathroom, we checked in the
23 cabinets underneath the sink.

24 Q And why did you check in that cabinet?

25 A Because it appeared as though it was big enough

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1 for a person or body to fit in -- to be fit into.

2 (Document shown to defense.)

3 Q (By Mr. Shelton) I'm going to approach you
4 with what's been previously marked as State's Exhibit
5 Number 1. Do you recognize this picture?

6 (Document is handed to the witness.)

7 A Yes, sir.

8 Q What is it?

9 A It's a picture of the bathroom sink and cabinet
10 that we looked into.

11 Q What do you see in that picture?

12 A Cabinet door open. Looks like a purple Crown
13 Royal bag or some sort of purple bag and a clear Ziploc
14 with a green substance in it.

15 Q And was the door open when you went in?

16 A No, sir.

17 Q Who opened the door to the cabinet?

18 A I did.

19 Q And what did you -- describe what you did and
20 what you saw.

21 A When I opened it, and I -- right in the front,
22 as you see in the picture, there was a clear bag of what
23 I suspected to be marijuana, because you could see
24 through the clear plastic.

25 Q Did you touch it?

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1 A No, sir.

2 Q Did -- how quickly did it take you to determine
3 whether it was suspected marijuana?

4 A As soon as I opened the cabinet. I mean, you
5 could -- it was just right there in the front.

6 Q Did you see anything else?

7 A Yes, sir. There was also a purple Crown Royal
8 bag that the top was partially opened far enough to
9 where you could see a little bit of a white powder
10 substance in the top of it.

11 Q And what did you -- did you suspect that to be
12 anything at all?

13 A I suspected it to be cocaine, powder cocaine.

14 Q And how long did it take you to make that
15 determination?

16 A Just when I saw it.

17 Q Immediately?

18 A Yes, sir.

19 Q Did you touch it?

20 A No, sir.

21 Q Did you manipulate it in any way?

22 A No, sir.

23 Q What did you do next?

24 A We backed out from the bathroom and continued
25 our sweep of the residence, left everything where it

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1 was, and continued to check the rest of the residence to
2 make sure that the victim was not in there.

3 Q Did you know Stanley Wright before this day?

4 A No, sir.

5 Q Did you ever find the victim in the residence?

6 A No, sir.

7 Q When you left out of the scene, was the victim
8 on scene, when you got out of the residence, during the
9 sweep?

10 A No, sir.

11 Q What did y'all do with Mr. Wright after you
12 left the residence?

13 A I believe he was in the front living room with
14 Deputy Irving as we came back into the living room, and
15 we -- all four of us went outside; at which time, he was
16 placed in handcuffs and detained.

17 Q What was he detained for?

18 A The possible drugs.

19 Q And what else did you do after that?

20 A We secured the scene to where nobody could come
21 in or go out, and I notified my supervisor. At which
22 time, the drug task force -- at the time, it was the
23 drug task force, now drug investigative service -- was
24 notified, and they responded to the scene and assumed
25 the investigation.

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1 Q Did anyone enter the residence a
2 were waiting for the drug task force?

3 A No, sir.

4 MR. SHELTON: Beg the Court's indulgence.

5 THE COURT: Take your time.

6 MR. SHELTON: Thank you.

7 Q (By Mr. Shelton) Did you have any knowledge of
8 a car our victim was driving, if any?

9 A No, sir.

10 Q You said you did see a car at the residence,
11 though?

12 A Yes, sir.

13 Q Why did -- how long would it have taken for you
14 to get a warrant typically? I know you can't say
15 specifically on that day, but typically how long does it
16 take for you to retrieve a warrant?

17 A Could have been anywhere from two to four
18 hours, five hours.

19 Q Two to four hours?

20 A Yeah, two to four.

21 Q And how long do you estimate you were on the
22 scene before you performed the protective sweep to
23 search for the victim?

24 A I would say probably less than ten minutes.

25 Q And while you're doing the sweep, were you only

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1 looking for the victim, or were you looking for anything
2 else?

3 A We were only looking for a victim.

4 Q Were there any other concerns you had?

5 A No, sir. The main concern was just locating
6 the other half of this altercation.

7 MR. SHELTON: Okay. One moment, your Honor.

8 Q (By Mr. Shelton) Now, you understood this to
9 be a domestic violence situation?

10 A Yes.

11 Q Have you responded to domestic violence calls
12 before?

13 A Yes, sir.

14 Q Can you testify from your experience what the
15 typical nature of a domestic violence calls are?

16 MR. BAUER: Objection, your Honor. Irrelevance
17 on this. This is a search that he's testified --

18 THE COURT: Overruled. I'm going to allow it.
19 Thank you.

20 You may answer.

21 THE WITNESS: Repeat the question.

22 Q (By Mr. Shelton) Will you please -- based on
23 your training and experience --

24 How long have you been a police officer now?

25 A Be nine years in October.

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1 Q Have you responded to domestic violence calls
2 before?

3 A Yes.

4 Q Do you have any idea how many?

5 A No, sir. A bunch.

6 Q A bunch?

7 A Yes, sir.

8 Q I ask you specifically to tell the Court about
9 the general nature of your -- from your experience,
10 based on your experience of domestic violence calls?

11 A Domestic violence calls are very serious. I
12 mean, we take them -- they're priority calls, and --

13 Q What is a priority call?

14 A One that's -- I mean, basically, it's a higher
15 importance than other calls, but not all other calls. I
16 mean, you've got to take them as they come. It just
17 kind of depends. But you go into domestics always with
18 your guard up expecting -- you know, expecting the
19 worst.

20 Q What do you mean by "the worst"?

21 A Just you never know what you're going to walk
22 into. You know, it's -- you never know if someone's
23 going to be inside with weapons or still fighting or
24 hiding or -- you just don't know.

25 Q And when you first respond to a domestic

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1 violence call, what is your priority in doing?

2 A Priority is trying to make contact with the
3 parties involved and, you know, get them separated, and
4 make sure that nobody's injured and whether or not -- in
5 a perfect scenario, where they can't, you know, hear or
6 see each other while we're interviewing them.

7 Q And you said Mr. Wright was outside?

8 A Yes, sir.

9 Q And the door was closed?

10 A Yes, sir.

11 Q Describe this house briefly. Could you see
12 into the windows?

13 A I don't remember. I don't know if they had
14 blinds or shades or if they were opened or closed.

15 Q Could you see through the door?

16 A No. I mean, I didn't look through
17 the -- through the door. I don't -- I don't remember if
18 you could or not.

19 Q Okay. Do you remember being able to see into
20 the house?

21 A Not while we were outside, no, sir.

22 Q Okay. And you've already testified that you
23 could not locate the victim when you got on scene?

24 A That's correct, yes.

25 Q And the knowledge that you had at the time was

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1 that a victim had called, or potential victim, and it
2 was a distress call, and it was a hang-up?

3 A That's correct.

4 MR. SHELTON: Thank you. Those are all the
5 questions I have for you. Please answer any questions
6 that Mr. Bauer has.

7 THE WITNESS: Yes, sir.

8 THE COURT: Mr. Bauer?

9 CROSS-EXAMINATION

10 BY MR BAUER:

11 Q Officer Collier, when you arrived on scene,
12 Mr. Wright was outside of the residence, wasn't he?

13 A Yes, sir, that's correct.

14 Q Did you hear anybody calling for help inside
15 the residence?

16 A No, sir.

17 Q Did you hear any thrashing around or noise
18 coming from inside the residence?

19 A No, sir.

20 Q Did Mr. Wright appear to be covered in blood or
21 appear to be freshly out of a scuffle?

22 A No, sir.

23 Q You had information that it was a 911 hang-up
24 and a distressed female?

25 A Yes, sir.

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1 Q Did dispatch inform you that the 911 call was
2 that he allegedly kicked my car?

3 A I don't recall that. I'm not saying it didn't
4 happen. I don't recall it.

5 Q Was the alleged victim's car still at the
6 residence?

7 A I didn't know what she was driving, so I didn't
8 know. We didn't know if it was or not.

9 Q Did Mr. Wright inform you that the victim had
10 left?

11 A Yes, sir.

12 Q Did he tell you that she was at the ball field?

13 A I believe he said that she might be at the ball
14 field.

15 Q Okay. Which was a 30-second drive from his
16 house, wasn't it?

17 A Yes, sir.

18 Q He offered to take you there and show you where
19 she was; didn't he?

20 A I don't recall him offering to take us there,
21 no, sir.

22 Q But he informed you that she might be at the
23 ball field?

24 A Yes.

25 Q You didn't get a call about someone being

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1 stabbed or punched or hit; just a 911 hang-up and a
2 woman who sounded distressed?

3 A From what I recall, yes, that is correct.

4 Q Did you know the alleged victim's name?

5 A No, sir, not at the time.

6 Q When did you learn that the alleged victim
7 might be Erin Parlagreco?

8 A I don't remember. I don't remember him saying
9 her name while I was there before we went in. I think
10 it might have been after the fact. Maybe -- I -- I
11 honestly can't remember when I learned that it was
12 Erin Parlagreco. I don't remember that.

13 Q And understanding your concern that there might
14 have been a victim, other than the 911 call through your
15 dispatch, you had no other evidence to go on at that
16 time, did you?

17 A No, sir, not at the time.

18 Q Okay. And until you found the suspected drugs,
19 you had no reason to arrest -- no probable cause to
20 arrest Mr. Wright; did you?

21 A No, sir.

22 Q And he was not under arrest at the time that
23 you performed the search?

24 A No, sir, he was not.

25 Q And the reason you wanted to do the search,

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1 that you're referring to as a protective sweep, was just
2 to make sure the victim wasn't in the house?

3 A Yes, sir, that's correct.

4 MR. BAUER: I have no further questions of this
5 witness.

6 REDIRECT EXAMINATION

7 BY MR. SHELTON:

8 Q For the record, you knew it was a domestic
9 situation; correct?

10 A Yes, sir.

11 MR. SHELTON: Thank you.

12 MR. BAUER: No Recross.

13 THE COURT: Sergeant, you may step down. Thank
14 you.

15 THE WITNESS: Thank you.

16 MR. SHELTON: State calls Mitchell Archbell.

17 Judge, beg the Court's indulgence? Is it all
18 right -- I'm sorry, Mr. Bauer -- for Deputy Collier to
19 leave? He was up all night working overnight.

20 THE COURT: Any objection?

21 MR. BAUER: No objection, your Honor.

22 THE COURT: All right. Thank you.

23 THE DEPUTY CLERK OF COURT: Would you place
24 your left hand on the Bible and raise your right hand,
25 sir?

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1 THE WITNESS: Yes, ma'am.

2 (The oath is administered by the Deputy Clerk
3 of Court, and the witness answers as follows:)

4 THE WITNESS: Yes, ma'am.

5 THE COURTROOM DEPUTY CLERK: Please be seated.
6 State your name and spell it for the Court,
7 please.

8 THE WITNESS: Mitchell Archbell. I work for
9 the Beaufort County Sheriff's Office.

10 MITCHELL ARCHBELL,
11 having been first duly sworn by the Deputy Clerk of
12 Court to tell the truth, the whole truth, and nothing
13 but the truth, was examined and testified upon his oath
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. SHELTON:

17 Q Thank you, Deputy Archbell. What's your rank?

18 A I'm a PFC.

19 Q What is a PFC?

20 A Patrolman first class.

21 Q Now, what --

22 THE COURT: Deputy, did you spell your last
23 name?

24 THE WITNESS: Oh, I'm sorry. It's
25 A-r-c-h-b-e-l-l.

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1 THE COURT: Thank you.

2 MR. SHELTON: Sorry. Thank you, Judge.

3 Q (By Mr. Shelton) Patrolman first class. What
4 was your rank August 31st, 2011?

5 A I was a deputy sheriff at that time.

6 Q Is that above or below patrolman first class?

7 A Below.

8 Q Now, how long were you out of the academy at
9 that point?

10 A It had only been a couple of months at that
11 point.

12 Q Now, where was your patrol area in that summer?

13 A That particular day, I was working what we call
14 Five Bravo; it's the northern part of Hilton Head
15 Island.

16 Q And Five Bravo stands for?

17 A That's one of two areas. You got Area 5, which
18 is all Hilton Head Island.

19 Q Uh-huh.

20 A And Five Alpha is the southern half; Five
21 Bravo's the northern half.

22 Q And do you remember getting a call for 219
23 Mitchellville Road at any time?

24 A Yes.

25 Q When I say "call," what does that mean to you?

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1 A We were dispatched to 219 Mitchellville Road.
2 Q Do you remember what that dispatch was about?
3 A It was domestic of some sort.
4 Q And how do you know that?
5 A That's the way it came out as. It's -- when it
6 dispatches 10-16, which is ten code for domestic.
7 Q Okay. So 10-16 is domestic?
8 A Yes.
9 Q Do you remember what time you received that
10 call?
11 A It was approximately 1735, I believe.
12 Q And how do you know that?
13 A By the dispatch records.
14 Q Now, 1735, meaning 5:35?
15 A Yes.
16 Q Now, do you remember where you were exactly
17 patrolling when you received that call?
18 A Exact location, no. I was on 278 somewhere.
19 That's all I remember.
20 Q And describe 278 for the Court.
21 A It's going to be William Hilton Parkway. It's
22 one of the main streets on Hilton Head Island.
23 Q And how far -- when you received the call,
24 approximately how far away, if you remember, were you
25 from the actual incident location?

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A good probably five to ten minutes, I'd say.

And the incident location is where again?

219 Mitchellville Road.

Did you respond?

5 A Yes.

6 Q Did you receive any updates from dispatch while
7 you were responding?

8 A Yes, I did.

9 Q And what was that update?

10 A They updated stating that they could hear a
11 male subject in the background while they were talking
12 to the victim.

13 Q Uh-huh.

14 A Say he sounded aggressive or agitated. And
15 also they continuously updated me while I was going
16 there.

17 Q And what do those updates contain?

18 A One of the updates was they could hear a
19 struggle take place, and they had lost contact with the
20 victim. And another update was that -- I apologize.
21 The other update was that they were trying to make
22 contact with the victim again and lost -- the victim did
23 pick up the phone again, but as soon as they did, then
24 the phone immediately disconnected.

25 Q When you arrived on scene, do you know whether

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1 they had contact with the victim?

2 A At that point, they did not.

3 Q Okay. How do you know that?

4 A Because they continuously said that -- or they
5 said, again, that they tried two more times. And they
6 couldn't make contact with her.

7 Q Do you know whether the victim was driving any
8 vehicle?

9 A I do not.

10 Q When you arrived on scene -- first of all,
11 before we get to the actual location, talk about
12 arriving on scene and the process of finding the
13 location.

14 A The actual location was kind of hard to find
15 because it was a residence behind a couple of other
16 residences, so I kind of had to drive down someone
17 else's driveway to get to the residence. It was back --
18 they said there was a residence out by Mitchellville
19 Road, and the residence was behind that one.

20 Q And did you confirm what address it was when
21 you arrived on scene?

22 A Yes, I did.

23 Q Did you know who the potential suspect was
24 before you arrived on scene?

25 A No.

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1 Q Now, when you arrived on scene, describe what
2 you saw.

3 A I saw the trailer, and there was a vehicle out
4 front. As I was walking out of my patrol car up to the
5 door, I saw --

6 Q Would you describe the vehicle?

7 A I apologize.

8 Yes. It's -- it was a tan vehicle, later
9 identified as a Cadillac.

10 Q Sorry. I didn't mean to interrupt you.

11 You said you were walking forward. Go ahead.

12 A There was a male subject that -- unknown male
13 subject walking towards the front door of the residence.
14 I was able to make contact with him at that point. And
15 whenever I did make contact with him, he immediately
16 shut the door behind him. And I was able to identify
17 him at that point.

18 Q Who did you identify him as?

19 A Stanley Wright.

20 Q Do you recognize him in the courtroom?

21 A Yes, I do.

22 Q Will you identify him for the Judge?

23 A Yes. There.

24 MR. SHELTON: Thank you. He's identified the
25 Defendant, your Honor.

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1 THE COURT: Can you tell me what he's wearing?

2 THE WITNESS: He's wearing a green shirt.

3 THE COURT: Thank you.

4 MR. SHELTON: Thank you, your Honor.

5 Q (By Mr. Shelton) Now, please describe for the
6 Court any behavioral characteristics you observed of
7 Mr. Wright.

8 A Well, like I said, as soon as I made contact
9 with him, he stepped out and abruptly shut the door
10 behind him. And while I was speaking with him, he was
11 looking back at the door and you could see that he was
12 nervous, breathing heavy, and just, to me, appeared to
13 be nervous in general.

14 Q What did you do next?

15 A At that point, I interviewed him. You know, he
16 told me that -- what was going on, his side of the
17 story. And I was waiting for other officers to arrive
18 at that point.

19 Q Did other officers arrive?

20 A Yes.

21 Q And before we go into that, tell the Court,
22 please, what he told you and what you generally talked
23 about.

24 A He said that -- is it all right if I look at my
25 report?

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1 Q Can I see it to show defense counsel before you
2 do that, so he knows what you're looking at to refresh
3 your memory?

4 (Document is shown to Mr. Bauer.)

5 MR. BAUER: No objection for using it for the
6 purposes of refreshing his recollection.

7 THE COURT: Thank you, Mr. Bauer.

8 MR. SHELTON: Thank you.

9 Q (By Mr. Shelton) And would this help refresh
10 your recollection and memory?

11 A Yes, sir.

12 Q Okay. Thank you.

13 And what is that, for the record, that you're
14 referring to?

15 A This the original incident report.

16 Q Okay. Thank you. And who wrote that?

17 A I did.

18 Q Thank you.

19 A Mr. Wright stated that he and his children's
20 mother, Ms. Parlagreco, had a verbal altercation at the
21 residence prior to us responding. He said that she had
22 come to the residence and started an altercation and
23 threw a soda on his vehicle.

24 Q Threw a soda on his vehicle?

25 A And he said that he just recently purchased

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1 that vehicle.

2 Q Did he say anything about how he felt about
3 that?

4 A Not to my recollection.

5 Q Okay. What did you -- what do you remember
6 next?

7 A At that point, Corporal Collier arrived on
8 scene, and we weren't -- dispatch wasn't able to make
9 contact with the victim still. So we didn't know
10 what -- where the victim was, if she was injured, or
11 anything else. So at that point, we conducted a
12 protective sweep of the residence.

13 Q Now, do you remember him saying beforehand that
14 he became agitated? And you can refresh your memory
15 with your notes.

16 A I apologize.

17 Yes, actually, Mr. Wright stated that he did
18 become agitated because he had just bought the vehicle,
19 and Ms. Parlagreco threw a soda on it.

20 Q Okay. Now, did you at any point ask him for
21 consent to search the house?

22 A Yes.

23 Q "Him" being Mr. Wright.

24 A Yes.

25 Q And what did he say?

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1 A He said no.

2 Q And when did you ask that? What else was going
3 on at that time?

4 A I asked him right before Corporal Collier
5 walked up to us whenever I was waiting on the -- waiting
6 on backup still.

7 Q And what did Corporal Collier do once he walked
8 up to you?

9 A He said that we do need to do a protective
10 sweep of the house and make sure she's not injured
11 inside.

12 Q Did you do it immediately?

13 A Yes. As soon as -- I apologize, as soon as we
14 had someone to stand with Mr. Wright, which was
15 Corporal Irving; and she arrived right after
16 Corporal Collier, so it was near about immediately as
17 soon as he arrived.

18 Q Why did you do that?

19 A Because at this point, we don't know if he's a
20 suspect or what at this point. So we're not going to do
21 a protective sweep of a residence with a possible
22 suspect behind us and we're not paying attention to him.

23 Q And did you both perform the protective sweep?

24 A Yes.

25 Q Why?

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1 A Officer safety, because we don't know what's in
2 the house or anything else. We don't know if there's
3 other suspects in the house, someone trying to harm us,
4 or anything else.

5 Q Now, describe the sweep step-by-step as best as
6 you can remember and what you looked into --

7 A I remember --

8 Q -- if anything. I'm sorry.

9 A I remember as soon as we entered the residence,
10 I believe it was the living room that we walked into, I
11 immediately smelled a strong odor of marijuana inside
12 the residence. We entered whatever room was straight
13 ahead. I can't recall what room it was, but I know we
14 wrapped around to the right checking all the cabinets
15 and everything that a person could be placed in or
16 someone could be hiding in.

17 Q Now, describe as you're going through what you
18 and Collier were actually doing physically.

19 A We're doing it real slow, actually, because,
20 like I said, we don't know if there's someone in the
21 residence. So we're clearing each room before we kind
22 of go in it. And once we go into the room, we're
23 checking underneath the beds and closets and cabinets
24 that someone could be hiding or placed in at that point.

25 Q Did you look in any drawers?

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1 A No.

2 Q Did you look in any small containers?

3 A No.

4 Q Did you look in any shoeboxes?

5 A No.

6 Q Please tell me if you remember anything about a
7 bedroom closet, first.

8 A We did go into, I believe, the first bedroom
9 closet. Again, all I remember is that there wasn't
10 anyone in it --

11 Q Okay.

12 A -- at this point.

13 Q All right. And then what's the next thing you
14 remember?

15 A That we continued searching -- or doing our
16 sweep of that bedroom. And then once we got done with
17 the right side of the house, that's when we came back
18 through the living room and finished our sweep to the
19 master -- I believe it was the master bedroom and that
20 area.

21 Q And what did you see in there, if anything?

22 A When we went to the master bedroom, we checked
23 under the bed and closets, and there was nothing. So we
24 went into the bathroom that was attached to it, and I
25 checked in the cabinet to the right. Corporal Collier

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1 was on my left --

2 Q What is the size of the cabinet to the right?

3 A It was taller than I am. And -- I don't know,
4 probably, this wide.

5 Q Was it large enough for someone to be inside
6 of?

7 A Yes.

8 Q And then what was Corporal Collier doing?

9 A He looked underneath the vanity, I believe it
10 was, to the left.

11 MR. SHELTON: May I approach the witness, your
12 Honor?

13 THE COURT: You may.

14 MR. SHELTON: Thank you.

15 Q (By Mr. Shelton) Sorry. I want to take this
16 away.

17 A Sorry.

18 To the left, underneath the back master sink,
19 is -- it was a large sink. And then whenever he did, I
20 turned around, because I was done checking mine -- I
21 turned around, and at that point, I noticed what he
22 observed underneath there, a green leafy substance in a
23 bag, a large quantity of it. There was also a Crown
24 Royal bag that was partially opened.

25 Q What'd you recognize that to be?

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1 A To me it looked like it was cocaine, in the
2 Crown Royal bag. The other, it looked to be marijuana.

3 Q How long did it take you to determine that?

4 A Immediately.

5 Q Did you do anything with it, or did
6 Corporal Collier do anything with it?

7 A No. He left it there.

8 Q I'm going to hand you what's been previously
9 marked as State's Exhibit Number 1 and ask you if you
10 recognize it.

11 (Document is handed to the witness.)

12 A Yes.

13 Q What is it?

14 A This is the master vanity that we -- that I was
15 just recently describing.

16 Q And is it a fair and accurate depiction of that
17 vanity?

18 A Yes, it is.

19 MR. SHELTON: Move into evidence as State's
20 Exhibit 1.

21 MR. BAUER: No objection.

22 THE COURT: State's 1 into evidence without
23 objection.

24 (State's Exhibit Number 1 is admitted into
25 evidence.)

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1 MR. SHELTON: Thank you, your Honor.

2 May I hand this to your Honor?

3 (Document is handed to the Court.)

4 Q (By Mr. Shelton) What did you do after seeing
5 what you suspected to be cocaine and marijuana?

6 A We continued our sweep of the residence at that
7 point.

8 Q And did you find the victim?

9 A No.

10 Q Did you find anyone?

11 A No.

12 Q When you finished your sweep, did you know the
13 location of the victim?

14 A No.

15 Q Did you do anything to try to verify where the
16 victim was?

17 A Once we came back out?

18 Q Uh-huh.

19 A Yes. We were still attempting to make contact
20 with her. There were other officers attempting to make
21 contact with her, I should say.

22 Q Did they ever -- did the victim ever arrive on
23 scene?

24 A Yes.

25 Q At what point?

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1 A Is it all right if I look at my notes real
2 quick?

3 Q Certainly, if it will help refresh your
4 recollection.

5 A It will.

6 It was -- the victim arrived back on scene
7 after the drug task force arrived there.

8 Q How long did it take drug task force to arrive
9 there?

10 A I can't honestly say. I can't remember.

11 Q Was it immediate?

12 A No. It took a while for -- because we had
13 to -- or Corporal Collier contacted Staff Sergeant Hoy
14 (phonetic). And at that point, Staff Sergeant Hoy had
15 to contact the drug task force, and then they sent
16 someone out there.

17 Q What did you do with Mr. Wright in the
18 meantime?

19 A As soon as I exited the residence, just because
20 I definitely knew what the marijuana was --

21 Q Uh-huh.

22 A -- he was placed in handcuffs and advised of
23 his Miranda Rights at that point.

24 Q Okay. What did you place him in handcuffs
25 for?

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1 A Because, initially, just because of what we
2 found, he was going to be charged with the marijuana.

3 Q Uh-huh.

4 A And I did write him a ticket for the simple
5 possession of marijuana, because we didn't know -- we
6 didn't touch it or anything, so we didn't know how much
7 there was.

8 Q Uh-huh.

9 A At a later time, that ticket was actually
10 voided out, and there was other charges.

11 Q Now, again, when you went into the house, what
12 are you looking for?

13 A For the victim.

14 Q And where did you look?

15 A In any place that someone could either be
16 hiding or have been placed. Some place big enough
17 for --

18 Q What do you mean by "having been placed"?

19 A Some place big enough for a body to be placed
20 in.

21 Q What do you mean "be placed in"?

22 A Any cabinets that are big enough, underneath
23 beds --

24 Q Sergeant, let me rephrase my question. What do
25 you mean -- what do you mean by "be placed in"?

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1 A I mean, if they're injured or -- if,
2 unfortunately, someone does die in it, then the suspect
3 could place them somewhere.

4 Q Okay. Now, you were shortly out of the academy
5 at that point; correct?

6 A Yes, sir.

7 Q How many calls had you gone on at that point?

8 A I can't honestly -- I can't give an actual --

9 Q I mean, a bunch, or a few?

10 A No, it wasn't a bunch. I think I was only out
11 of the academy two or three months.

12 Q Two or three months out of the academy at that
13 point. Did Corporal Collier have more, or less,
14 experience than you did?

15 A More.

16 Q And how many domestic violence situations have
17 you responded to?

18 A The -- again, I can't give an accurate amount,
19 but a few.

20 Q A few?

21 A Yeah.

22 Q Were you trained in domestic violence at the
23 academy?

24 A Yes.

25 Q What do they train you for the -- to be the

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1 nature of domestic violence cases?

2 A They can change at any moment. Some can be
3 calm, and others can be -- you arrive there, and they're
4 beating up on each other. You never know until you get
5 there. They're always different.

6 Q As an officer, what are your priorities when
7 you respond to a possible domestic violence situation?

8 A The safety of the people involved, officer
9 safety, and I should say find out, you know, if someone
10 is injured or find the primary aggressor in it.

11 Q And you said the safety of the people involved?

12 A Yes.

13 Q What knowledge did you have as far as the
14 people involved when you arrived on scene?

15 A Not -- the only knowledge I had was what
16 dispatch told me while I was responding.

17 Q And, again, what is that?

18 A That they had received a phone call for a
19 domestic, and while we were responding --

20 Q And who was the phone call -- was it a male or
21 female?

22 A It was female.

23 Q Okay.

24 A And while responding, that they were on the
25 phone with the victim, and they could hear a male

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1 suspect in the background acting -- or sounded to act
2 aggressive. They sounded like -- sounded like a
3 struggle take place and the phone disconnected. And
4 they tried to make contact with the victim, and they
5 were able to successfully, but as soon as they made
6 contact, the phone went dead again. And they tried
7 multiple times after that, and they didn't have any luck
8 in contacting the victim.

9 Q And what was the address?

10 A 219 Mitchellville Road.

11 Q And that's where you found Mr. Wright?

12 A Yes.

13 MR. SHELTON: Beg the Court's indulgence?

14 THE COURT: Take your time.

15 MR. SHELTON: Thank you, your Honor.

16 Q (By Mr. Shelton) Do you know if anyone else
17 went into the house between the time you finished your
18 sweep and the time drug task force exercised -- excuse
19 me -- executed the search warrant?

20 A No. We did set a perimeter around the house
21 so that no one else could enter.

22 MR. SHELTON: Those are all the questions
23 that I have. Please answer any questions that Mr. Bauer
24 has.

25 THE WITNESS: Yes, sir.

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CROSS-EXAMINATION

1

2 BY MR. BAUER:

3 Q When you arrived on the scene, did you observe
4 any evidence of a struggle?

5 A No.

6 Q Was Mr. Wright's clothing torn?

7 A No.

8 Q Was it bloody?

9 A No, sir.

10 Q Did you hear any calls for help?

11 A No, sir.

12 Q Did you hear any noises at all coming from
13 inside the residence?

14 A No.

15 Q You were worried somebody might be in there?

16 A Yes, sir.

17 Q What evidence did you have that someone was in
18 there?

19 A The only evidence that we had was what we heard
20 while we were responding.

21 Q Okay. Did Mr. Wright tell you that
22 Ms. Parlagreco had left?

23 A Is it all right if I look at my notes real
24 quick?

25 Q (Moves head up and down.)

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1 A Yes.

2 Q Did he tell you that she had gone to the ball
3 field?

4 A I don't recall him telling me that.

5 Q Were you present when Mr. Wright was discussing
6 Ms. Parlagreco's whereabouts with Officer Collier?

7 A Somewhere on scene, yes. I wasn't standing
8 right next to him.

9 Q Did Mr. Wright tell you what kind of car
10 Ms. Parlagreco was driving when she left?

11 A No.

12 Q Did you ask?

13 A I did not.

14 Q Did you do anything to attempt to verify or
15 dispel Mr. Wright's version of what happened, that she
16 had left?

17 A At the time, I couldn't because I was
18 just -- it was just one-on-one. I mean, Mr. Wright was
19 there, and then I was there. So I'm not going to stand
20 there on the phone, for officer safety reasons, while he
21 could possibly be a suspect.

22 Q But then Officer Collier arrived and Officer
23 Irving arrived; correct?

24 A Yes.

25 Q Then there were three officers?

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1 A Yes.

2 Q Did any of the officers do anything to verify
3 Mr. Wright's version of what happened, that
4 Ms. Parlagreco had left?

5 A I do not know if they did.

6 Q Did you see them do anything?

7 A No.

8 MR. BAUER: I have no further questions for
9 this witness.

10 MR. SHELTON: Very briefly, your Honor.

11 REDIRECT EXAMINATION

12 BY MR. SHELTON:

13 Q I believe you already testified to this, but,
14 to your knowledge, do you know whether law enforcement
15 dispatch was trying to get in touch with the victim?

16 A Yes. They said that they attempted multiple
17 times and could not.

18 Q And did you know whether they were still
19 attempting while you were at the scene?

20 A I'm not sure if they were or not, because --

21 Q Okay.

22 A -- we were dealing with other stuff at that
23 time.

24 Q And at that time, you knew that multiple
25 attempts had been made?

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1 A Yes.

2 Q And that they were unsuccessful?

3 A Yes.

4 Q You have got a little bit more experience now;
5 correct?

6 A Yes, sir.

7 Q Now, typically -- obviously, you don't know
8 whether people are telling you the truth or a lie all
9 the time just based on the facts; right?

10 A Yes, sir.

11 Q Do you accept, as a law enforcement officer,
12 everything that someone tells you is the truth?

13 A No.

14 Q Why is that?

15 A Because people lie to us.

16 Q Do people lie to you a lot?

17 A Yes.

18 MR. SHELTON: Thank you.

19 THE COURT: Recross?

20 MR. BAUER: No Recross, your Honor.

21 THE COURT: All right. Deputy, you may step
22 down.

23 Is the deputy free to leave?

24 MR. SHELTON: I would ask that he would be,
25 your Honor.

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1 MR. BAUER: No objection.

2 THE COURT: You're free to leave. Thank
3 you.

4 THE WITNESS: Thank you, ma'am.

5 MR. SHELTON: Thank you, your Honor.

6 The State calls Melanie Smith.

7 (Mr. Shelton is showing pre-marked exhibits to
8 Mr. Bauer.)

9 THE DEPUTY CLERK OF COURT: Would you place
10 your left hand on the Bible and raise your right hand,
11 please?

12 THE WITNESS: Sure.

13 (The oath is administered by the Deputy Clerk
14 of Court, and the witness answers as follows:)

15 THE WITNESS: I do.

16 THE DEPUTY CLERK OF COURT: Please be seated.
17 State your name and spell it for the Court,
18 please.

19 THE WITNESS: My name is Melanie Smith; that's
20 S-m-i-t-h.

21 MELANIE SMITH,
22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon her oath
25 as follows:

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1 DIRECT EXAMINATION

2 BY MR. SHELTON:

3 Q Thank you, Ms. Smith.

4 I should call you -- what is your job title?

5 A Master Sergeant, and I'm the communication
6 coordinator at the dispatch center.

7 Q At the dispatch center. Describe to the Court
8 what the dispatch center is and where it's located.

9 A It's located at 2001 Duke Street in this
10 complex above the Sheriff's Department. We receive all
11 incoming calls and traffic for all the responders in the
12 county and dispatch all the responders in the county.

13 Q You say "responders"; who are responders?

14 A Fire -- fire, police, and EMS.

15 Q Thank you. And I'm going to try to slow down.
16 I'm going to ask you to slow down a little bit for the
17 court reporter.

18 A Sorry.

19 Q Oh, no problem. I do the same thing.

20 Now, is there a separate 911 call center on
21 Hilton Head Island?

22 A There is a Hilton Head call center. It's
23 called 209. They dispatch for fire and EMS only on
24 Hilton Head, and they do take some of the phone calls
25 that come in there.

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1 Q And when you call 911 on Hilton Head Island,
2 where does it typically go?

3 A It normally goes to the center on Hilton Head.
4 They determine if it's a fire, police -- I'm sorry, fire
5 emergency or a police emergency. If it's a police
6 emergency, they have the capability to do a -- what's
7 called a one-button transfer, where they just transfer
8 the call straight to us, and we get all the information,
9 and then we take the call from there.

10 Q Okay. And is that typically -- does that
11 happen often?

12 A Yes.

13 Q So there's -- basically, there's a call that
14 comes in first to Hilton Head Island, and it's from
15 Hilton Head Island oftentimes?

16 A Right.

17 Q And then -- just trying, for the Court's
18 understanding, to then -- they transfer it dispatch-to-
19 dispatch to Beaufort County dispatch, which is --

20 A Correct.

21 Q -- in this complex?

22 A Correct.

23 Q And I say "dispatch." It's 911 communications?

24 A Correct.

25 Q Now, what are some of your job roles at 911

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1 communications?

2 A My job role is I am in charge of the national
3 crime information center information for the law
4 enforcement. I'm also the records custodian. I answer
5 requests for tapes or recordings or reports.

6 Q And you say you're the records custodian.
7 Describe that in a little bit more detail, please.

8 A Like I said, I handle all the -- I maintain the
9 CAD reports. I maintain --

10 Q What's a CAD report?

11 A I'm sorry. I'm sorry. CAD report is our
12 computer-aided dispatch. That's the computer program we
13 use to input the information and record all of the
14 information so when we're talking to officers or
15 citizens, everything's typed into that. So we get
16 reports out of that.

17 Q Is that CAD report automated?

18 A It's -- everything's automated. So it's got
19 timestamps in it. The dispatchers learn commands, and
20 they type in the commands. It automatically does the
21 stuff. So if you put in a call -- if you get a call
22 from a citizen, you put in the address and what type of
23 call it is or what type of request, like I said, police,
24 fire, EMS, and it automatically knows who -- it will
25 recommend who to dispatch, timestamps everything, gives

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1 you the location, so stuff like that.

2 Q Now, when you say it's automated, what are some
3 of the things it automatically enters in?

4 A It automatically enters the patrol area so
5 you'll know who -- what officer to send. It
6 automatically enters the dates, the times. There are
7 certain commands, if you -- a prime example is if I
8 dispatch an officer, so I've selected an officer to send
9 to the citizen, and I'll hit a command, and it'll
10 automatically put on there that that person was
11 dispatched to that call. If the officer gets on scene
12 and arrives, what we call arrive on scene, we'll -- the
13 dispatcher will put a command, and it'll automatically
14 put in there that they have arrived on scene.

15 Q And so the dispatcher is in charge of
16 type -- hitting that they arrived on scene, and that's
17 automatically stored?

18 A Correct.

19 Q Is there any record of this?

20 A Correct.

21 Q Is there a record of this?

22 A Yes, there is.

23 Q And how do you retrieve those records?

24 A Through the computer-aided dispatch, the CAD
25 reports. Once I figure out -- you can go in and look at

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1 the dates and the times and the incident locations, and
2 that correlates with an event number that the CAD
3 automatically produces, and then everything is
4 correlated with that CAD event number or report number.

5 Q And what is the event number, typically?

6 A It's usually the date in a certain format, and
7 then numbered sequentially starting at midnight. So
8 it'd be one, two, whatever. So you'd have -- like a
9 prime example, for today, an event today would be
10 20120522 -- I'm sorry, 20130522, and then whatever event
11 number it is, like I said, starting at one at 12 o'clock
12 that morning.

13 Q And for each event number, you say all the data
14 that's entered by the dispatcher and call takers is
15 entered automatically?

16 A Yes.

17 Q And then where is that information stored?

18 A It's on the hard drive in our computer system
19 at MIS.

20 Q Who has access to that?

21 A It's whoever we've granted permissions. We
22 grant the permissions with the CAD. So it'd be the
23 agencies that we work with, their dispatchers.

24 So the dispatchers have access to all the
25 information. The agencies we work with only have access

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1 to their information. So a prime example, someone with
2 the Sheriff's Department, if their access level was at
3 the same -- was granted, they could access their
4 information only.

5 Q Now, can anyone change the information in the
6 hard drive?

7 A They can't change the information unless you're
8 an administer. There's only two people that can change
9 it. And they can't change it; they can only delete it.
10 So it's only access or delete.

11 Q And do you have a record of whether it's
12 deleted or not?

13 A Yes.

14 Q Can you tell if something's deleted or not?

15 A Yes.

16 Q Who else --

17 A Either the whole record is deleted or nothing.

18 Q The whole record of the actual report?

19 A Right.

20 Q Event number or nothing?

21 A Right.

22 Q So if there is an event number in existence,
23 it's the total event number?

24 A Right.

25 Q Now, you said there were administrators. Who

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1 are the administrators?

2 A There's our CAD administrator, and then I have
3 that permission, also, as a records custodian.

4 Q And as records custodian, who has authority to
5 actually get the CAD reports in paper form, retrieve
6 them? Who has that authority?

7 A Actually, anyone can request those.

8 Q Uh-huh.

9 A I just -- the -- the agency that --

10 Q I apologize. Let me rephrase my question.

11 A Oh, who can pull the reports?

12 Q Who can personally pull them?

13 A It's anyone who has granted that access, so --
14 the administrators can do that, and some of the
15 officials with the different departments that we work
16 for, have access to pull the reports.

17 Q And you are an administrator?

18 A Correct.

19 Q And who keeps custody over the actual hard
20 drive itself?

21 A That's our department, and it's maintained by
22 the Beaufort County Information Management System [sic].
23 They have a contract with us.

24 Q And do you have knowledge of that contract?

25 A Yes.

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1 Q Do you have knowledge of the system?

2 A Yes.

3 Q And you regularly pull these reports?

4 A Yes.

5 Q Thank you.

6 (Document is shown to Mr. Bauer.)

7 MR. BAUER: No objection.

8 MR. SHELTON: Thank you, your Honor. Thank you

9 Mr. Bauer.

10 Q (By Mr. Shelton) I'm going to --

11 MR. SHELTON: May I approach, your Honor?

12 THE COURT: You may.

13 MR. SHELTON: Thank you.

14 Q (By Mr. Shelton) -- hand you what's been

15 previously marked State's Exhibit 4 and 5. I want you

16 to describe to the Court what those are.

17 A The first one, Number 5 -- no, I'll do Number 4

18 first. I'm sorry. Number 4 is the event log for the

19 Sheriff's Department, Event 201108310543. And this is a

20 printout of all the actions that were done in the

21 computer on this certain event. So every --

22 Q Now -- sorry. Go ahead.

23 A -- from the time it was dispatched to the time

24 the officers cleared. So the beginning of the event to

25 the end of the event, it's got all the actions the

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1 dispatcher took.

2 Q And do you know the -- that event number, what
3 the location is referring to?

4 A The location is 219 Mitchellville Road.

5 Q And do you know the date and time?

6 A The date was August 31st, 2011, and the time
7 was 1735.

8 Q And 1735, being 5:35?

9 A 5:35 p.m.

10 Q And how do you know that?

11 A You can tell by reading by the report. The
12 first line has a location. Also it indicates the time
13 and the event number.

14 Q And this is a regularly conducted record that
15 you all -- you keep in normal course of the business
16 of 911 communications?

17 A Correct.

18 Q And you are one of the administrators who keeps
19 custody over these records?

20 A Correct.

21 MR. SHELTON: Your Honor, at this point, the
22 State would move State's Exhibit Number 4 and 5 into
23 evidence.

24 MR. BAUER: No objection for purposes of this
25 hearing.

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1 THE COURT: State's 4 and 5 into evidence
2 without objection.

3 (State's Exhibit Numbers 4 and 5 are admitted
4 into evidence.)

5 Q (By Mr. Shelton) Now, looking specifically at
6 the record, can you tell when officers were first
7 dispatched by looking at that record to Mitchellville
8 Road -- 219 Mitchellville Road?

9 A Yes.

10 Q And what does it indicate that the dispatch is
11 referring to?

12 A They responded to what we coded as a
13 domestic --

14 Q Okay.

15 A -- which, basically, we code any call that we
16 get for requests, if we know it's involving a male and a
17 female subject, or if we can hear something in the
18 background with a female subject and a male subject, we
19 just go ahead and code that as a domestic. So it's --
20 was put in as a domestic at 219 Mitchellville Road.

21 Q And is there a remarks section?

22 A Yes.

23 Q And what does that remarks section refer to?

24 A The original remark is, it says, on CB, which
25 is shorthand for "on call back."

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1 Q Uh-huh.

2 A Reference to domestic, male half kicked 17's
3 vehicle and damaged -- "17" being the code we use for
4 complainant. Erin Parlagreco is 10-17, meaning Erin
5 Parlagreco is the person that called in.

6 Q And what time was that?

7 A At seven -- I'm sorry, 1733 is when we actually
8 started the input of the call.

9 Q Okay. And can you tell when the first officer
10 was actually dispatched?

11 A Let's see.

12 Q I apologize.

13 A Okay.

14 MR. SHELTON: I apologize, your Honor.

15 Q (By Mr. Shelton) Before we do that, do you
16 have that information, and what does the call type say?

17 A The first call type is a 911 hang-up.

18 Q Okay.

19 A Because we originally received that as a 911
20 hang-up, meaning someone called in the 911 and hung up,
21 and we didn't get any information.

22 Q And then the next call type you have --

23 A Is the domestic.

24 Q -- is the domestic?

25 A Right.

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1 Q And then let's talk about the third call type
2 and when someone was dispatched and how you know that.

3 A They were actually dispatched as a domestic.

4 Q And what time was the first dispatch?

5 A At 1735. They dispatched the first officer at
6 1735.

7 Q And do you know what would have been told to
8 that officer as he was dispatched?

9 A The dispatcher who dispatched would have read
10 the information on there, so they would have been
11 known -- they would have been told to go to a domestic.
12 When we called back, we could hear a male half kicking
13 the person's door, the vehicle door.

14 Q Now, can you tell when the first unit actually
15 was en route?

16 A The first unit advised he was en route at 1736.

17 Q And now let's go to -- briefly, before we move
18 on with this record, to Exhibit Number 5. Can you tell
19 who the first officer was that was actually en route?

20 A Yes. Let's see. The first officer en route
21 was call sign Bravo 87, or Mitchell Archbell.

22 Q Mitchell Archbell.

23 A Uh-huh.

24 Q You said Bravo 87?

25 A Yeah.

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1 Q What does that refer to?

2 A That's his call sign. It's a number assigned
3 by the department they work for that we use to
4 communicate with them.

5 Q Now, on Exhibit Number 5, that I referred to,
6 it says CAPS. What does that stand for, at the top?

7 A At the top?

8 Q Yeah.

9 A Oh, CAPS is -- well, we use the CAD. It's
10 a -- it's an acronym in the computer-aided dispatch for
11 the program that the officers use to pull reports.

12 Q Correct. And C-A-P-S, what does that stand
13 for?

14 A I'm not sure what the actual acronym stands
15 for.

16 Q So it's not CAD, but they're --

17 A Yeah.

18 Q And how is the CAPS report different from CAD
19 reports?

20 A They come from the same thing. There's
21 different modules in our system. One is CAPS, which the
22 officers use to fill in information. There's also like
23 what's called an ECAD, which the dispatcher uses.
24 There's also what's called JAMS, which the jail uses.
25 They're just different modules in the system where they

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1 input the information, but it all goes in the same
2 reports.

3 Q So you say the officers actually input this
4 information?

5 A They could.

6 Q They could.

7 A They could.

8 Q Okay. So you can tell from -- and does that
9 unit, Bravo 87 you say, at -- dispatched from the CAPS
10 report, match the same time and unit that was dispatched
11 and responded in the CAD report?

12 A Let me double check, but -- yes.

13 Q Okay.

14 A Yes. Uh-huh. Same times.

15 Q Can you tell who the next officer was to be --
16 that responded?

17 A The next officer dispatched was call sign Bravo
18 91, which I have to refer to this other report to get
19 that.

20 Q Okay.

21 A That was Sally Irving.

22 Q Sally Irving?

23 A The second dispatch -- officer dispatched.

24 Q Now, let's focus on who responded first. Can
25 you tell who responded and at what time first?

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1 A Responded? As en route, or arrived on scene?

2 Q Well, actually arrived on scene.

3 A Arrived on scene?

4 Q Uh-huh.

5 A Let me look at the report. It's got first that
6 Bravo 87, which is Archbell, arrived. But then he
7 called back and said he actually wasn't on scene. And
8 then he called back a few seconds later saying he
9 actually was on scene.

10 Q And what time did he actually confirm that he
11 was on scene?

12 A He confirmed that he was on scene at 1747 and
13 40 seconds, which would have been 5:47 p.m.

14 Q And what about -- who was the next person to
15 arrive, according to the log?

16 A According to the log, that was Bravo 37, whose
17 call sign is Jonathan Collier.

18 Q And what time did he arrive?

19 A He arrived at 1749 and 44 seconds, or
20 5:49 p.m.

21 Q So that'd be two minutes' difference?

22 A Correct.

23 Q Now -- and what time did Irving arrive,
24 according to this record?

25 A Let's see. It's got her arriving at 1801 and

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1 27 seconds, which would be 6:01 p.m.

2 Q Okay. Now, let's talk about the call detail a
3 little bit more. Are you able to tell -- what is an
4 update, first of all?

5 A An update? Normally, what happens, the call
6 taker, or the person talking to the person, is getting
7 more information. She types updates, or more
8 information into the computer, and that's automatically
9 updated to the dispatcher, and the dispatcher would
10 relay that to the officer.

11 Q And what -- and are there any updates in this
12 case?

13 A The first update, the call taker had the line
14 disconnected, male half heard getting aggressive in the
15 background. 10-17, which is the code for the
16 complainant, initially wanted to come to the Hilton Head
17 office to make a report. And then it says, Unable to
18 get the caller back on the line. So the line
19 disconnected, and the call taker's trying to call the
20 caller back.

21 Q And what time did that come in?

22 A That came in at six -- I'm sorry, 1736 and 56
23 seconds, which was --

24 Q 1736 and 56 seconds?

25 A Right.

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1 Q And according to the event log, could you tell
2 whether any officers were still en route and hadn't
3 arrived at the scene at that point?

4 A Yes. No one was on -- correction. No one had
5 arrived on scene at that time.

6 Q Okay. Are you able to tell whether -- how many
7 times that they attempted to call the victim back?

8 A Just by this report, just the two times.

9 Q Now, are you able -- is there any confirmation
10 of the victim being on scene?

11 A Not by this report. Just that she was
12 there -- that was the address that she gave --

13 Q Uh-huh.

14 -- that -- the dispatcher, and that she was
15 telling the dispatcher -- correction. -- the call

16 that she originally wanted to go to the Hilton
17 office and just meet someone there.

18 Q Uh-huh.

19 A But I -- you can't tell from here where she is.

20 Q Now, the record, when you see that update
21 line: 17. 17 initially wanted to come to make a

22 in background; 17 initially wanted to come to make a
23 re

24 THE COURT REPORTE. Can you please slow down?

25 MR. JHELTON: I apologize.

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1 I need to take my own advice.

2 Q (By Mr. Shelton) Line disconnected; male half
3 getting aggressive in the background; 17 initially
4 wanted to come to HHO, which would be the Hilton Head
5 office, to make report; unable to get caller back on
6 line, by two.

7 A On Exhibit Number 5, it's on Page 4 about
8 halfway down.

9 Q Uh-huh.

10 A And on Exhibit Number 4, it's on Page 9 about
11 halfway down.

12 Q And who created that?

13 A That was created by Lashawn Jefferson Delaney.

14 Q Now, if you go down on that Exhibit Number --
15 on Page 9 of Exhibit Number 4 --

16 A Uh-huh.

17 Q -- can you -- is there a notified message from
18 Unit B91?

19 A Yes.

20 Q What does it say?

21 A It says, Trying to locate other half at the
22 ball field.

23 So she told the dispatcher -- excuse me, she
24 told the dispatcher that she was going to the ball field
25 to try to find the other half.

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1 Q And who was that?

2 A The other half?

3 Q No. B91?

4 A Oh, B91 is Sally Irving.

5 Q Okay. And that came in at what time?

6 A She advised that at 18:01:13, which was
7 6:01 p.m.

8 MR. SHELTON: Beg the Court's indulgence?
9 (Respite.)

10 MR. SHELTON: Your Honor, for the purposes of
11 this hearing, if I may, since -- the State has the 911
12 calls ready to submit into evidence. However, the
13 State's position is, is what's relevant to what the
14 officers knew at the scene. So the 911 calls are really
15 irrelevant. If the Court would like the State to admit
16 the 911 calls, we happily will do so; however -- if that
17 would help in making your determination. However, the
18 State does not intend to admit them at this time.

19 THE COURT: What's your position as to the
20 playing of the 911 calls?

21 MR. BAUER: Your Honor, the objective facts on
22 the scene are what was -- what the 911 call was. The
23 fact that the State doesn't want you to hear what
24 actually happened in the call is important, because when
25 the male is heard getting aggressive --

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1 THE COURT: So do you want to --

2 MR. BAUER: Yes, your Honor, we want those
3 heard.

4 THE COURT: All right.

5 MR. SHELTON: And, actually, we're fine with
6 you hearing it. We just don't think it's relevant. But
7 we're happy to put it into evidence. It's not that we
8 don't want you to hear it, if you think it helps.

9 THE COURT: All right. If Mr. Bauer wants me
10 to hear it, I'll be more than happy to --

11 MR. SHELTON: Absolutely.

12 THE COURT: -- take that into consideration.

13 MR. SHELTON: Okay. So -- thank you. And I've
14 sent this to Mr. Bauer.

15 THE COURT: So I assume that Mr. Shelton
16 doesn't need to lay the foundation?

17 MR. BAUER: No, your Honor.

18 THE COURT: You're not objecting to the 911
19 calls?

20 MR. SHELTON: Okay. Thank you.

21 MR. BAUER: No. She's the records custodian.

22 Q (By Mr. Shelton) Okay. So Exhibit Number 3 --
23 first of all, I'll just ask, for the purposes of the
24 record, that you recognize it and identify it for the
25 record.

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1 A Yes. This is a recording of the 911 calls for
2 Event Number 20110831- --

3 THE COURT REPORTER: I'm sorry. Event?

4 THE WITNESS: 201108310543 for the Sheriff's
5 Department, a domestic at 219 Mitchellville Road.

6 Q (By Mr. Shelton) Thank you.

7 And is that the call that we're here on
8 today -- for today?

9 A Yes.

10 Q Thank you.

11 A Yes.

12 Q And how do you know that's what it is?

13 A This is the recording I made and the markings
14 that I put on it to identify it. And I made this on
15 January 3rd of 2013.

16 Q Okay. Thank you.

17 (Document is handed back to Mr. Shelton.)

18 MR. SHELTON: State moves Exhibit Number 3 into
19 evidence without objection.

20 MR. BAUER: Without objection.

21 THE COURT: You may publish.

22 MR. SHELTON: For the purposes of this hearing,
23 your Honor, of course.

24 (State's Exhibit No. 3 is admitted into
25 evidence.)

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1 (The 911 communication call is played for the
2 Court.)

3 Q (By Mr. Shelton) Do you recognize Master
4 Sergeant Smith on voices in that 911 call, any of them?

5 A The first female voice I know is a dispatcher
6 from Hilton Head, but I don't know her name.

7 Q Okay.

8 A The other dispatcher that called back is
9 Lashawn Jefferson Delaney.

10 Q Thank you. Lashawn Jefferson Delaney?

11 A Uh-huh.

12 Q And just for the Court's information, the two
13 people that are talking back and forth at the beginning,
14 would that be dispatch-to-dispatch, what we were talking
15 about earlier?

16 A Correct. Those are the radio transmissions.

17 Q So the call originally came into Hilton Head,
18 and then it was transferred?

19 A Right.

20 Q Thank you.

21 A Correct.

22 MR. SHELTON: Beg the Court's indulgence?

23 Q (By Mr. Shelton) And just, again, to clarify,
24 what do officers being dispatched to the scene
25 actually -- do they hear that recording?

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1 A No, they don't hear any of that. The only
2 information they get is from the dispatcher who gets the
3 information from the original call taker.

4 Q And all that information is seen in updates in
5 these two dispatch reports that you have in front of you
6 there, entered as Court's -- State's Exhibits?

7 A Correct.

8 Q And the last update, again, was seen on Page 9
9 of the CAD report about a little over halfway down the
10 line -- line, that came in at 17:36:56, Line
11 disconnected; male half heard getting aggressive in the
12 background; 17, which is the victim, initially wanted to
13 come to HHO, which is Hilton Head office, to make a
14 report; unable to get her -- get caller back on line, by
15 two?

16 A Correct.

17 Q And that's the information officers would have
18 had responding to the scene?

19 A Correct.

20 Q And when did the first officer arrive on scene?

21 A The first officer arrived -- actually arrived
22 on scene at 17:47:40, or 5:47 p.m.

23 MR. SHELTON: Thank you.

24 Those are all the questions that I have.

25 Please answer any questions Mr. Bauer has.

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1 MR. BAUER: I have no questions for this
2 witness.

3 THE COURT: You may step down. Thank you.
4 Call your next witness.

5 MR. SHELTON: The State would call
6 Kathy Jones-Gooding from Hilton Head Communications.

7 THE DEPUTY CLERK OF COURT: Would you place
8 your left hand on the Bible and raise your right hand,
9 please, ma'am.

10 (The oath is administered by the Deputy Clerk
11 of Court, and the witness answers as follows:)

12 THE WITNESS: I do.

13 THE DEPUTY CLERK OF COURT: Please be seated.
14 State your name and spell it for the Court,
15 please.

16 THE WITNESS: Kathleen Jones-Gooding,
17 K-a-t-h-l-e-e-n, J-o-n-e-s, hyphen, G-o-o-d-i-n-g.

18 KATHLEEN JONES-GOODING,
19 having been first duly sworn by the Clerk of the Court
20 to tell the truth, the whole truth, and nothing but the
21 truth, was examined and testified upon her oath as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. SHELTON:

25 Q Is it Ms. Jones-Gooding?

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1 A Yes. Or Kathy.

2 Q Okay. Ms. Jones-Gooding, where do you work?

3 A I work for Hilton Head Island Fire and Rescue.

4 Q And what is your role there?

5 A I'm a communications manager.

6 Q And what is -- what are some of the

7 responsibilities you have?

8 A I oversee the day-to-day operations of the

9 communication center. I am the custodian of our logging

10 recorder and tapes for calls working on our CAD.

11 Q And when you say "communication center,"

12 describe the communication center and what role it has.

13 A Sure. We are a primary public safety answering

14 point for the city -- or the town of Hilton Head Island,

15 which means all 911 calls placed on the island are

16 routed through our center. If they're fire or medical

17 emergencies, then we would handle them. Police

18 emergencies, we transfer to Beaufort County for law

19 enforcement.

20 Q And where is the Beaufort County center?

21 A It's here in Beaufort, the city of Beaufort.

22 Q And how does that transfer take place?

23 A We have a one-button transfer that we would

24 hit, unless we had to call the caller back, and then we

25 would have to flash them over into a regular seven-digit

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1 on ten-digit transfer.

2 Q Do you keep paper records of your calls that
3 come in?

4 A If they are our calls, we do. If they're a law
5 enforcement call, we do not necessarily create an event.
6 We would transfer them.

7 Q And then the event is created by Beaufort
8 County?

9 A That is correct.

10 Q So there are no -- would be no log from Hilton
11 Head Island communications for an event in your system?

12 A Correct. That is correct.

13 Q Do you keep anything?

14 A We do keep our recordings.

15 Q Okay.

16 (Document is shown to Mr. Bauer.)

17 MR. BAUER: No objection.

18 Q (By Mr. Shelton) I'm going to hand you what's
19 been previously marked as State's Exhibit Number 2,
20 without objection; I just want you to identify it and
21 establish what it is for the Court, if you don't mind.

22 A It was a tape that I created of the phone calls
23 that came in to our center and the radio traffic.

24 Q How do you know that?

25 A That's my writing with the date and how I would

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1 have identified it as the call.

2 Q And you say "of a recording," what is the
3 recording of, and what's the dates and times, specific,
4 and where?

5 A So that's when the call came in to the Hilton
6 Head Island center. And it came in, obviously, on 8-31,
7 and --

8 Q 8-31 being?

9 A August 31st of 2011.

10 -- and then was processed by our center. When
11 the call was disconnected, then we would have called
12 back, so that recording is also part of that. And then
13 notifying Beaufort County via radio.

14 Q And do you know what address that is in
15 reference to?

16 A 219 Mitchellville.

17 Q Road?

18 A Road.

19 Q That's on Hilton Head Island?

20 A That is correct.

21 Q And about what time?

22 A It was about 5:30, to the best of my
23 recollection.

24 Q And on that CD, how many recordings are
25 actually on that?

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1 A There is two files, but there are three --
2 there are two phone calls and then one radio traffic.

3 MR. SHELTON: Okay. State would --

4 Q (By Mr. Shelton) And you're the records
5 custodian of this recording?

6 A That's correct.

7 Q You're able to pull it on your own?

8 A Correct.

9 MR. SHELTON: State would move Exhibit Number 2
10 into evidence, your Honor.

11 MR. BAUER: No objection.

12 THE COURT: State's 2 into evidence --

13 MR. SHELTON: May I publish?

14 THE COURT: -- for the purpose of this hearing.
15 You may publish.

16 MR. SHELTON: Thank you, your Honor.

17 (State's Exhibit Number 2 is admitted into
18 evidence.)

19 Q (By Mr. Shelton) So while that's loading,
20 Ms. Jones-Gooding, just want to clarify exactly what
21 this recording is.

22 So this is the recording of the phone
23 calls that initially come to Hilton Head Island
24 communications; correct?

25 A Correct.

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1 Q Before it's transferred to Beaufort dispatch?

2 A Correct.

3 Q So any transfer to Beaufort dispatch would be
4 subsequent to this recording?

5 A Correct.

6 Q And you would have the recording of the actual
7 caller coming in?

8 A Uh-huh.

9 Q And that would be one of the files?

10 A Correct.

11 Q And then the other file would be a recording of
12 the dispatchers speaking with each other?

13 A Correct.

14 MR. SHELTON: Okay. Your Honor, I'm now
15 publishing what is marked as the file on the CD as
16 8312011119 Mitchellville Road phone.

17 (The audio is played for the Court.)

18 MR. SHELTON: Your Honor, that's the conclusion
19 of the file.

20 Play the next file, which would be marked on
21 the disc as 8312011219 Mitchellville, DISP -- D-I-S-P,
22 as in dispatch, to D-I-S-P.

23 (The audio is played for the Court.)

24 MR. SHELTON: That's the conclusion of that.

25 Ms. Jones-Gooding, will you tell the Court,

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1 during that phone call -- the first one, not the second
2 one, but the actual caller call -- so when the -- when
3 it goes dead and you hear that recording, what does that
4 indicate to you?

5 A That's a date and timestamp that is part of our
6 recording system to indicate what time that recording
7 occurred.

8 Q And does it do it every time a call comes in or
9 is dropped?

10 A It does it at intervals, regular intervals, and
11 at the start of a recording.

12 Q Okay. And, again, this is -- these recordings
13 would have been, obviously, taken, and that date and
14 timestamp is accurate, to your knowledge?

15 A Correct.

16 Q And it would have been taken before this -- any
17 calls that would have been called to or received by
18 Beaufort County dispatch?

19 A Correct.

20 Q And that second recording is actually dispatch
21 in Hilton Head Island transferring to the Beaufort
22 County dispatch?

23 A Yeah. The second recording that you played is
24 the radio traffic from Hilton Head Island to a Beaufort
25 County dispatcher.

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1 Q Okay. And there's a button you press to
2 actually send it over?

3 A In that particular case, that was just a radio.
4 It -- when we attempted to transfer the phone call on
5 the first recording, it's disconnected. So there was no
6 actual transfer of the call because she had hung up,
7 which is why we contacted via radio.

8 Q So when the phone call is live, you don't have
9 any problem; you can hit it. But if it's disconnected,
10 you have to do a radio traffic call?

11 A Right.

12 Q And being disconnected, meaning that the call
13 was dropped?

14 A Right.

15 Q Or is a hang-up?

16 A Yeah. The caller disconnected or the cell
17 phone service ended for whatever reason.

18 MR. SHELTON: Thank you. Those are all the
19 questions that I have. Please answer any questions that
20 Mr. Bauer may have.

21 THE COURT: Mr. Bauer?

22 MR. BAUER: No questions for this witness.

23 THE COURT: You may step down. Thank you.
24 Call your next witness.

25 MR. SHELTON: Thank you. That concludes the

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1 witnesses we plan to call for pretrial, your Honor.

2 THE COURT: Any witnesses?

3 MR. BAUER: No, your Honor.

4 THE COURT: All right. Be happy to hear your
5 argument.

6 MR. SHELTON: Thank you, your Honor.

7 I'm going to rely partially on my Brief and
8 partially on -- not -- if that's all right? If you look
9 into my Brief and kind of look at the law in the case,
10 there isn't a ton of South Carolina case law in a
11 situation like this. But there is case, State v.
12 Abdullah, that I supplied a copy to you and is also
13 referenced in my Brief, where the facts aren't obviously
14 the same, because they never are, but are fairly
15 similar. In that case, first of all, South Carolina
16 Supreme Court established what exigencies -- a standard
17 for exigent circumstances as far as a victim being
18 located, not for a protective sweep of a house for a
19 suspect being arrested, or search incident to arrest.
20 This is for a possible location of an injured person,
21 and the language of the case speaks to that.

22 First of all, relying on my Brief, Abdullah
23 says that, Exigencies of a -- State actors to have
24 authority to search without a judge's approval when the
25 exigencies of the situation have made that course

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1 imperative.

2 And then skipping down, obviously, a warrant is
3 preferable. There are well-delineated exceptions to the
4 warrant rule where exigent circumstances are one of
5 them. In this case, what we're relying on specifically
6 is how Abdullah's is -- the language in Abdullah that
7 quotes MENSI v. Arizona that the Fourth Amendment does
8 not bar police officers from making warrantless entries
9 and searches when they reasonably believe that a person
10 within is in need of immediate aid. And, candidly,
11 that's what this case comes down to: Whether they had a
12 reasonable belief at the scene that there's a person
13 inside in need of immediate aid. Obviously, the
14 State -- first of all, before we get to the plain view
15 doctrine, argues that they do. Now, what is that belief
16 based, I believe, is the next question.

17 And if you look at actually one of the cases
18 that Defense relies upon -- it's California law, but
19 I'll use it. If you turn to -- I apologize for using
20 Leagle.com, but we don't have access to it in Lexis. If
21 you look at Page 6 in the second paragraph I provided --
22 I also provided to Mr. Bauer -- it gives a standard for
23 what information you use to base that belief on. And
24 the information, it states here in the second paragraph
25 of Page 6, is that exigent circumstances means an

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1 emergency situation requiring swift action to prevent
2 imminent danger to life or serious damage to property or
3 to forestall the imminent escape of a suspect or
4 destruction of evidence.

5 And this is where I'm really harping. There's
6 no ready litmus test for determining whether such
7 circumstances exist. And in each case, the claim of an
8 extraordinary situation must be measured by the facts
9 known to the officers.

10 That's the purpose that the State didn't intend
11 to even introduce the 911 calls. In this case, the
12 State argues that the facts known to the officers are
13 obviously the facts that were known to the officers as
14 they arrived on scene. And the reason that the State
15 moved into evidence the CAD details is that really gives
16 a -- the best record that we have of what they knew and
17 when they knew it. It shows that, minutes before the
18 first officer arrived on scene and while he was en route
19 that he was given an update that domestic in progress,
20 male subject getting aggressive in the background,
21 unable to get the female -- the caller back, by two, two
22 times.

23 He responds. What does he see? He walks to
24 the front door, a male subject answers the door,
25 abruptly shuts the door behind him. He walks up and

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1 starts to interview him, and the male suspect is
2 nervous, he's breathing heavily, he's looking back and
3 forth at the door. And he says: I don't need you here.
4 She's gone. She's not here.

5 At that point, the officer, being right out of
6 the academy, waits for backup, continues the
7 conversation. And we know through the report, the
8 backup arrived very shortly thereafter. And obviously
9 that interview continued until the third officer
10 arrived, and that is less than around ten minutes.

11 Now, he says she's at the ball field -- "he"
12 being the Defendant -- and that no one's inside.
13 Officers have no clue that that's true. Their first
14 prerogative when they come to a domestic is, first of
15 all, finding the individuals involved and making sure
16 everyone is safe. And the fear of that is obviously
17 because they don't know if someone is still being hurt,
18 if someone's dying, if someone's dead. And as far as
19 responding to the ball field, actually the CAD report
20 shows that someone actually was en route and tried to as
21 they were performing the sweep. So they were looking
22 everywhere for this victim, not just inside the house.

23 Now, Archbell, two months out of the academy
24 asked for a consent. The State has no problem with
25 that, obviously, and doesn't fault him for doing that.

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1 He doesn't understand situations the way that Collier
2 does, who had been a law enforcement officer, at that
3 time, seven years. He arrives on scene, and he says:
4 No. We got to make sure that the victim is safe.

5 And they perform a sweep of the residence. And
6 when they perform that sweep of the residence, what do
7 they look for? They look specifically for what they
8 should look for: a body, a person. They're not looking
9 for drugs. They're not looking for anything else. They
10 mentioned that marijuana smell was in the residence, and
11 they still didn't look for drugs. They still didn't
12 look in shoeboxes. They didn't look in drawers.

13 My Brief cites -- this isn't -- forgive me. I
14 can't remember the exact language, but this isn't some
15 just altogether search looking for an excuse to find
16 something. They only looked where a person may be
17 stowed or hiding. And why is it important that the
18 person may be stowed? The person could be dying or
19 dead. They don't know that at the point. And I don't
20 make light of the situation at all. But we have to
21 focus on what the officers knew as they arrived. And
22 even if we focus on the entire picture, you heard the
23 report. You heard the voices escalating at the end, and
24 you saw the multiple -- you heard the multiple callbacks
25 that were involved. I believe that makes the State's

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1 argument even stronger. But the State isn't relying on
2 that. We're relying on what the officers actually know
3 and what we can show they know. It may have started as
4 kicking a door to a car, but you can hear an actual
5 violent situation from the sound of it escalating at the
6 final communication they had with the victim in the
7 case.

8 Officer Collier testified that it would have
9 taken two to four hours, possibly, to get a warrant. If
10 you look at State v. Brown, in that case, the --
11 responding to no exigent circumstance, they said there
12 might actually have even been. They kind of speculated
13 upon that, the Court did, when they said that there may
14 have been an exigent circumstance, but the problem was
15 the officer who testified at the hearing, and it was one
16 officer, couldn't tell you where they looked and where
17 they actually found the evidence in question. And in
18 that case, you had a call of a -- someone talking about
19 a murder, and that's it. Obviously, that's a serious
20 charge, but there's no actual contact with the victim,
21 there's no actual contact with the escalating situation,
22 and there's no actual domestic or possible violent
23 situation in progress at the time.

24 In State v. Abdullah, you have a situation
25 where officers come to a scene of a reported burglary,

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1 what they know is a reported burglary, and shots fire.
2 They see bullet holes on the outside of the house, and
3 they see a subject standing inside the house. They
4 don't know if that subject is the victim or if the
5 subject is the defendant or who it is. And, in fact,
6 similar to a certain extent here, the subject said he
7 was the victim. And he told officers he was the victim.
8 And had officers relied on that, then they wouldn't
9 have -- and in the officer's exact words in that case
10 testifying, said: That we don't know if anybody else is
11 injured in the house, we don't know if we've got anybody
12 else there, so we're looking for people -- other
13 possible injured people, other possible injured
14 suspects. Those facts are very similar to the facts
15 here. They looked into a room that was dark, and they
16 turned on a light, and they saw evidence in plain view.
17 And in that case, the initial intrusion was actually
18 worse than in this case because they actually went into
19 the house before they made contact with the defendant.

20 Here, the Defendant came out, shut the door
21 behind him, acted nervous, kept looking at the door, and
22 was breathing heavily. And, again, in this case, they
23 definitely knew two parties were involved because they
24 had a female caller that they were responding to.

25 In that case, they really didn't. There was a

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1 burglary in progress argument. It could have been just
2 one party involved. And they were speculating. The
3 officers there were speculating as to whether other
4 victims may be inside the house, and they swept the
5 house on the basis of that speculation. And the supreme
6 -- the Court in South Carolina held, I don't know any
7 other word but strongly, that there is manifest exigent
8 circumstances in that case.

9 Now, to talk about some of the other cases that
10 are cited by the Defense, to bring it up. If we look at
11 the facts of those cases, they're very, very, very
12 different from the facts we have here. In People v.
13 Orman (phonetic) -- and that's California that I've
14 already mentioned -- People v. Orman talks about, in the
15 facts in that case, was the victim was already found
16 outside of the house and was located before officers
17 even went inside the house, first of all. Secondly, the
18 defendant in that case was not even the alleged domestic
19 abuser. It was a third party that lived at the
20 residence. And, thirdly, by the officer's own admission
21 in that case, that case morphed into a response to a
22 domestic where they had both the defendant and the
23 victim in custody, or knew of their whereabouts, rather.
24 It turned into quasi-consent-to-search case that really
25 is in violation of the Fourth Amendment. And a free --

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1 what we call a free fall of searching. That's exactly
2 what they did in that case. And that evidence should
3 have been suppressed in that case.

4 This is a very different situation. They did
5 not know where the victim was. When they arrived on
6 scene, it was minutes after they reported a male getting
7 aggressive in the background, cannot get the victim back
8 on the phone, by two. There's only one person present
9 there.

10 And also in Orman, they could see into the
11 residence. The front door was -- they said in Orman was
12 a screen door. They could see right through it. In
13 this case, Collier said he couldn't see into the house.

14 Now, if we talk about the flagship case of
15 Minnesota v. Olson, those facts are extremely different
16 as well. In that case, in Minnesota v. Olson, you have
17 a situation where they respond to an individual who's
18 known to them as a domestic abuser. And when they
19 respond on scene, the victim comes up to the front of
20 the house and actually makes contact with the officers.
21 They know she's safe right there. They go in to arrest
22 the defendant, and the victim actually tries to keep the
23 officers out of the house. They have no question about
24 the safety of the victim because they see the victim.
25 In -- they go into the house, and then they arrest the

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1 defendant. And in Minnesota v. Olson, the Government
2 tried to legitimate that search based on search incident
3 to arrest of Olson, of the whole house.

4 That's not the case here. This is a situation
5 like Abdullah where you have an unknown person, don't
6 know exactly who that person is yet except that you know
7 you have a possible crime in progress. A person
8 comes -- now, that person did get violent with them,
9 but, again, in Abdullah, to distinguish that, they came
10 into his house first. They didn't know whether he was
11 the victim, the suspect. The officers in that case had
12 no clue who he was. And they still swept the rest of
13 the house looking for other victims or suspects. And it
14 was okay.

15 In this case, the State submits that there is
16 no reasonable action -- there's definitely probable
17 cause to believe that someone's safety is possibly at
18 risk inside of that home. And there's no reasonable
19 action other than doing exactly what officers did. If
20 they walk away, the victim could be dead or dying
21 inside, and they don't know.

22 And someone who has to advise law enforcement
23 on what actions to take, they come to me as a lawyer,
24 the best that I can give them an answer. A hundred
25 times -- I'd tell them a hundred times to do exactly

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1 what they did. And I don't know any other reasonable
2 action to take than that. They couldn't wait for a
3 warrant. They went to the ball field to try to find the
4 victim. The victim -- they couldn't find the victim
5 until the victim responded much later back to the
6 incident location, much later than what, according to
7 Archbell, was after the drug task force arrived on scene
8 and that was, in his words, a while. It's not that they
9 just said: Okay. Well, we're going to use this as an
10 excuse to search the house. This was a good faith
11 search of a possible person in danger.

12 And that brings us to plain view. If the
13 exigencies existed that they had a reasonable belief
14 that a person was injured inside the home and there's no
15 time to search -- to secure a warrant, when they went
16 into the house, they also had a reasonable belief to
17 look in any place in that house where a victim was
18 stowed or hiding. One of those places in the house was
19 in that double vanity sink. You see a picture of the
20 vanity. I'll provide it for you. It's definitely big
21 enough for someone to be inside of. And where do they
22 look? They look exactly where they're supposed to look.
23 And I can't harp on that enough because they did a good
24 job. They looked in closets; they looked in large
25 cabinets; they didn't look in drawers; they looked under

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1 beds. And that's what all they're trained to do.
2 People can hide under beds; people can hide behind
3 furniture; people can hide in large closets. They
4 cannot hide inside, behind something in a shelf, or
5 something hanging or sitting on top of a shelf that's
6 enclosed. They can't hide in a dresser drawer. And
7 that's not what they searched here. They just searched
8 where people could be.

9 And they happened to locate contraband. And
10 what do they do with it? They saw it, they pointed it
11 out, and they kept going performing the task at hand,
12 which was trying to find the victim. They didn't
13 disturb it. They knew immediately, based on both of
14 their testimonies, what it was, and then they moved
15 out. And then they did exactly what they should do and
16 contacted their superiors, who contacted the drug task
17 force, who executed a search warrant on their behalf.

18 Thank you. If you'd like to hear any reply
19 from me, I'd be happy to give it, but I think that's my
20 argument.

21 THE COURT: Mr. Bauer?

22 MR. BAUER: Your Honor, it's clear that a
23 warrantless search of someone's home is exactly the kind
24 of intrusion that the Fourth Amendment is designed to
25 protect or to prevent. If you're going to have a legal,

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1 warrantless search, it has to get fit into one of the
2 exceptions which are pretty narrowly defined and, to
3 quote the Court, jealously guarded. It's not a
4 protective sweep. A protective sweep deals with a
5 search incident to an arrest of a home. Question is
6 whether it's exigent circumstances.

7 The 911 call, the actual conversation with the
8 alleged victim, is that: He kicked my car, describes it
9 as a gold Acura.

10 She's told by 911 to leave. She says she's
11 going to the ball field. She says she's going to go
12 make the report. She's told to leave.

13 There's a verbal altercation that's heard, and
14 the 911 dispatcher's heard to ask her: Is that him?

15 And her response is: No. That's his neighbor.

16 If we go on that, when the police arrive, there
17 is no probable cause to search. What the State is
18 trying to get you to do, is go beyond the objective
19 facts reported to a state officer, to the 911
20 dispatcher, to rely on the miscommunication from the 911
21 dispatcher -- or the lack of information provided by the
22 911 dispatcher to the police. There is no law that
23 allows that. There is no case that allows the officers
24 to rely upon a miscommunication from 911 dispatch. It
25 relies on the objective facts.

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1 Your Honor, if we look at Abdullah, why is that
2 a good search? Because dispatch tells them: It's a
3 burglary, reported burglary, and a report of shots
4 fired. When law enforcement arrives, they visually
5 confirm what they've been told. They observe bullet
6 holes in the walls and in the door. That's entirely
7 different from this case where they arrive and find
8 nothing. There is nothing to justify their suspicion
9 that they should enter, that a victim could be inside.
10 They ask him, they tell -- and Mr. Wright, as the
11 officers told you, told them that she left, told them
12 that she was at the ball field. The 911 dispatch log
13 shows that the efforts to locate the victim at the ball
14 field took place by Officer Irving, who was present
15 during the search, so it happened after the search took
16 place.

17 Your Honor, there is no case that justifies
18 this. And the Prosecutor says, I've looked in South
19 Carolina law; there isn't a case that authorizes this.
20 There is no domestic disturbance exception to the
21 warrant requirement, and the case law makes that clear.
22 I've cited those cases in my Brief. The fact that we
23 take domestic violence calls seriously is a good thing,
24 but it doesn't create an exception to the warrant
25 requirement.

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1 Good faith is not an exception to a warrantless
2 search. The Prosecutor talked about good faith. That's
3 the exception to a -- to a warrant that has a technical
4 deficiency. The question is whether there are exigent
5 circumstances, and there aren't.

6 THE COURT: All right. Anything further,
7 Mr. Shelton?

8 MR. SHELTON: I would agree that there's
9 absolutely no criminal domestic violence exigent
10 circumstance like that exception, and that's how we're
11 arguing.

12 Thank you.

13 THE COURT: The Fourth Amendment to the
14 Constitution of the United States prohibits unreasonable
15 searches and seizures. South Carolina Constitution
16 provides protection against, again, the unlawful
17 searches and seizures. Evidence that is seized in
18 violation of the Fourth Amendment must be excluded under
19 both the State and Federal Constitutions.

20 Mr. Bauer's motion on behalf of his client,
21 Mr. Wright, indicates that this -- of the drugs that are
22 found, should be excluded. Generally, a warrantless
23 search is, *per se*, unreasonable and is violative of the
24 Fourth Amendment's prohibition against unreasonable
25 search and seizures. A warrantless search will

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1 withstand the Constitutional scrutiny where the search
2 falls within one of the exceptions to the Fourth
3 Amendment exclusionary rule.

4 The State has the burden to justify a
5 warrantless search. Both the State and the Defendant
6 agree that there is no domestic violence exception to
7 the Fourth Amendment. The State contends that the
8 warrantless search in the present case fell within the
9 exception provided by the exigent circumstances
10 doctrine, and that once the officers were in the home
11 lawfully, the plain view doctrine applies. A
12 warrantless search is justified under the exigent
13 circumstances doctrine to prevent a suspect from fleeing
14 or where there is a risk of danger to police or others
15 inside or outside of the dwelling.

16 The Fourth Amendment's concern with
17 reasonableness allows certain actions to be taken and
18 certain circumstances, whatever the subjective intent.
19 In the Fourth Amendment context, I am concerned, as the
20 Court, with determining whether a reasonable officer
21 would be moved to take the action. A police officer
22 without a warrant is privileged to enter private
23 property to investigate a complaint or a report of an
24 ongoing crime.

25 Under the plain view exception to the warrant

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1 requirement, objects falling within the plain view of
2 the law enforcement officer who is rightfully and
3 lawfully in the position to view the objects are subject
4 to seizure and may be introduced into evidence.

5 Pursuant to State v. Wright -- not this
6 particular State v. Wright Defendant -- the -- two
7 elements are needed to satisfy the plain view exception:
8 the initial intrusion, which afforded the authorities
9 the plain view was lawful; and then the incriminating
10 nature of the evidence was immediately apparent to the
11 seizing authority.

12 Sergeant Collier stated that he was responding
13 to a domestic in progress, and that has been the
14 concurrent testimony that has been corroborated by all
15 the officers that have testified, and that based upon
16 his -- his reasonable belief that he was conducting a
17 sweep for a potential -- for the -- for a potential
18 victim, the other officers that were en route to the
19 ball field, and so based upon that, the cabinet -- he
20 went into the home because he could not locate the
21 caller for the 911, the cabinet that is State's Exhibit
22 Number 1, that was introduced for the purposes of this
23 hearing without objection, appeared to him large enough
24 for a person to get into.

25 As to the incriminating nature of the evidence,

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1 officer -- excuse me, Sergeant Collier stated he knew as
2 soon as he opened the cabinet what the marijuana and the
3 Crown Royal bag contained.

4 Based upon the fact that I find that the
5 deputies were lawfully in the Defendant's home pursuant
6 to the need to enter the property to investigate the
7 domestic in progress and the fact that the incriminating
8 evidence was immediately apparent, the Defendant's
9 Motion to Suppress is denied.

10 MR. SHELTON: Thank you, your Honor.

11 THE COURT: Thank you.

12 Any -- do we have any other pretrial motions?

13 MR. SHELTON: The State has a pretrial motion
14 based upon the chain of custody. I do not have the
15 witnesses available for that. I can stipulate to
16 certain facts that Mr. Bauer would approve, or I can
17 call these witnesses, try to get them here either this
18 afternoon or early tomorrow. I can tell you quickly --

19 And, briefly, Mr. Bauer wants to interrupt.

20 MR. BAUER: For purposes of a motion in a
21 preliminary matter, I don't object to the State
22 describing the facts and the chain to the Court.

23 MR. SHELTON: Okay.

24 THE COURT: All right.

25 MR. SHELTON: Thank you.

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1 In this case, we have, for your Honor's
2 information -- I don't know if you're familiar or not,
3 but --

4 THE COURT: Well, let me -- let's do it this
5 way. Mr. Bauer, what about the chain are you objecting
6 to?

7 MR. BAUER: Your Honor, as it appears, one of
8 the people in the chain is missing and not available.

9 THE COURT: All right. So link up the chain
10 for me.

11 MR. SHELTON: Thank you.

12 THE COURT: Thank you.

13 MR. SHELTON: So the chain is, your Honor --
14 first of all, the person that's missing is Renita Berry.
15 Renita Berry is a forensic chemist --

16 THE COURT: Well, let's do it this way.

17 MR. SHELTON: Link the entire chain?

18 THE COURT: Tell me who initially seized the
19 drugs.

20 MR. SHELTON: They initially seized the drugs,
21 after first seen by Collier -- he didn't seize them --
22 Deputy Ray Heroux with drug task force actually took
23 pictures of --

24 THE COURT: Spelling?

25 MR. SHELTON: H-e-r-o-u-x.

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1 -- actually seized the drugs. Ray Heroux
2 brought those drugs --

3 THE COURT: Mr. Shelton, is there going to
4 be testimony that the bathroom, at a minimum, was
5 secured --

6 MR. SHELTON: Yes.

7 THE COURT: -- and that once Sergeant Collier
8 found the drugs that nobody had access to that bathroom?

9 MR. SHELTON: Yes, your Honor.

10 THE COURT: All right. So there will be
11 testimony and then --

12 MR. SHELTON: There will be testimony to that.

13 THE COURT: So even though Sergeant Collier did
14 not touch the drugs, they were immediately, for lack of
15 a better word, seized and no -- and could not be
16 tampered with?

17 MR. SHELTON: Correct.

18 THE COURT: All right.

19 MR. SHELTON: And in that process of
20 establishing a perimeter and making sure nothing was
21 tampered with, Ray Heroux then actually received the
22 search warrant from the magistrate and served it later
23 that night. This went on all night.

24 Ray Heroux took the pictures of the drugs,
25 seized the drugs, and then actually entered -- brought

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1 the drugs to the temporary area -- evidence storage --
2 Excuse me, let me get my chain of witnesses
3 here.

4 -- on South Bend, Hilton Head Island.
5 Beaufort County Sheriff's Office has two
6 offices. At least, two main offices. One is on the
7 south -- is on Hilton Head Island, and it's the South
8 End Annex. And there's a temporary evidence storage
9 room there -- locker there. And he brought the drugs
10 there and logged them into the temporary evidence
11 storage locker there.

12 The custodian for that particular area is
13 Mr. James Padgett of the Beaufort County Sheriff's
14 Office. He's the next person in the chain. He --

15 THE COURT: Spelling of his name?

16 MR. SHELTON: P-a-d-g-e-t-t.

17 THE COURT: Thank you.

18 MR. SHELTON: He brings the drugs to the main
19 evidence storage area, which is here in Beaufort, and
20 Eileen Rios -- her spelling is E-i-l-e-e-n; last name,
21 R-i-o-s -- is the main evidence custodian there. We
22 plan to call her, as far as operating procedures and
23 where it's stored and not touched.

24 After that, Jennifer Snider (phonetic) is in
25 the chain. And she is now a road deputy. She, I

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1 believe, according to one of the chain of custody
2 files -- and I'm not sure if it was before or after --
3 took the evidence to the Beaufort County drug lab, which
4 Beaufort County has its own drug lab for forensic
5 evidence.

6 She brought it in, and Cynthia Pane (phonetic)
7 is a deputy who is a technician at that drug lab. And
8 Cynthia Pane then receives the evidence, and she logs it
9 into the drug lab to get it prepared for analysis.

10 This is where it -- where it kind of -- this is
11 the problem -- possible problem here: Renita Berry, who
12 is the forensic chemist involved, then takes the drugs
13 out of storage at the Beaufort County drug lab, tests
14 it. It was sealed when she received it. We can
15 establish that. It was in a Best Bag, and we establish
16 who's signature was on the Best Bag. We can establish
17 Renita Berry's signature as to opening it and when she
18 opened it. She has a report we can rely on to help
19 corroborate that. And we also have the bag itself for
20 the cocaine that actually corroborates that with her
21 signatures.

22 She tests it; she reseals it. It is brought
23 back to the Beaufort County evidence division, and
24 Eileen Rios is still the custodian there.

25 Thereafter, Ms. Berry now is in Kuwait, and I

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1 don't know exactly when she's going to be back. There
2 is another forensic chemist employed by Beaufort County
3 Sheriff's Office at that drug lab named Jennifer Mills.
4 Pursuant to my request, I requested that Ms. Mills
5 retrieve the cocaine in this case, brought it back to
6 the drug lab. She found that it was sealed by Renita
7 Berry. She has -- she knows Renita Berry's signature.
8 We also have Renita Berry's report as to what she did
9 with it. She unseals it, retests it, seals it again,
10 and then brings it back to evidence.

11 Now, the person missing out of the chain is
12 Renita Berry, the first forensic chemist. We can
13 establish when she had it, what she did with it when she
14 had it, and where it was. That would be through the
15 common -- through Jennifer Mills testifying to what
16 their procedures are and what they do and how they sign
17 it in and sign it out, where she --

18 THE COURT: Jennifer Mills works with?

19 MR. SHELTON: Renita Berry.

20 THE COURT: Renita Berry.

21 MR. SHELTON: And they do peer review together
22 when they both work together and that type of thing.

23 THE COURT: Is Ms. Mills able to testify she
24 was standing there during the testing?

25 MR. SHELTON: I don't believe so. She would

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1 have to rely on Renita Berry's report to show what was
2 done.

3 THE COURT: What's the process from Snider to
4 Berry?

5 MR. SHELTON: Snider to Berry would be -- it's
6 in a locked area that -- actually, I believe it's not
7 necessarily Snider to Berry, but it's actually -- would
8 be -- sorry, Cynthia Pane to Berry. And Cynthia Pane
9 issues a Beaufort County drug number to it -- drug lab
10 number to it, puts it in a storage area that she cannot
11 actually get to -- get into, and then Renita Berry would
12 have logged it out herself. We can establish when she
13 logged it out, tests it, logged it back in, and then
14 only whoever retrieved it from that, which I believe
15 would be Cynthia Pane, would then have retrieved it and
16 brought it back to evidence.

17 So we can establish where it was when Renita
18 handled it, that she is the only one who handled it, and
19 no one else had access to it. She has the signature on
20 it to establish that it was -- we know that it was
21 sealed. Cynthia Pane can testify that it was sealed
22 when she actually put it into evidence at the drug lab,
23 temporary storage for their purposes. And when she
24 received it back, it was sealed with Renita Berry's
25 signature on it.

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1 And then Jennifer Mills can testify to the
2 common way that the evidence is handled, in general,
3 while it's being tested, and that they worked side by
4 side, and they all work under the same protocol, and
5 that no one else would have touched it, other than
6 Renita Berry.

7 THE COURT: Do we have any documentation
8 that indicates that it was in the same condition when
9 Ms. Berry found it that when Ms. Pane received it?

10 MR. SHELTON: The only documentation would
11 be that -- the signature that Ms. Berry would use to
12 actually -- when she actually broke into the sealed Best
13 Bag, and that Ms. Pane put it into evidence and no one
14 else has access to that.

15 But I say "evidence." I apologize. It's kind
16 of a misconstruing on my part. It's the temporary
17 storage at the Beaufort County drug lab.

18 And documentation is a form that says
19 Cynthia Pane receives it as she finds it, and then she
20 puts a name on it, a number on it, and then she puts it
21 into evidence. And then she can't access it -- no one
22 can access it except for the forensic chemist at that
23 point. And we can establish Ms. Berry is the forensic
24 chemist, what she did with it through her form, which is
25 a business record, I would say, and then bring it in

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1 that way.

2 As far as exactly what she did with it and how
3 it was handled, I'd have to use Jennifer Mills because I
4 don't believe, candidly, that Jennifer Mills can testify
5 that she was there and she watched Renita Berry do it.
6 She can say that this report says this and this means
7 she does this, and we do this in every single case, and
8 this is what our protocol is. And when it's received
9 back to evidence, they can say that it was sealed, that
10 Renita Berry's signature was on it, and that it was
11 sealed again when they received it back.

12 And I was relying on Badger (phonetic) -- it's
13 not exactly -- excuse me, it's --

14 I've been quoting too many cases today.

15 -- Hatcher, excuse me. Relying on Hatcher --

16 It's obviously not the exact facts in Hatcher.

17 -- the State would say that we're establishing
18 the chain in this situation as much as practicable.
19 Renita Berry is in Kuwait. We'd love to get her back
20 right now to testify, but we can't. We know exactly who
21 she is, how she handled it, when she handled it. We
22 really know -- we know what she did with it. She's not
23 going to be able to testify because she's not here as
24 far as what she did with it; but we know the standards
25 and protocols the Beaufort County drug lab uses in every

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1 single case; and we know that whatever happened to it,
2 we know the approximate weight of before it was brought
3 to the drug lab and what it was eventually tested as by
4 Jennifer Mills; and we have both reports to show the
5 exact weight.

6 And we would submit that that is as practicable
7 as the State can proceed upon at this point, and that it
8 is within the realms of Hatcher, if you look at what
9 Hatcher requires.

10 THE COURT: All right. Let me have the cite
11 for Hatcher. Do you have it handy?

12 MR. SHELTON: Yeah. Actually, I think I handed
13 a copy. It's 392 S.C. 86.

14 THE COURT: Mr. Shelton, is there any
15 indication that there has been any tampering or bad
16 faith or ill motive, anything of that nature by either
17 Ms. Berry or the reason she's not here?

18 MR. SHELTON: Absolutely not.

19 THE COURT: All right. Mr. Bauer, so -- just
20 so I understand, you're asking me to make a ruling. You
21 agree with everything that the State has told me, just
22 not their conclusion; is that correct?

23 MR. BAUER: Well, I agree with the description
24 of the chain and the problem with the chain. I do not
25 agree that they can prove that the bag had not been

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1 tampered with when Ms. Berry received it, what she did
2 with it, or that she, in fact, resealed it, and locked
3 it away.

4 This is exactly the problems addressed in
5 Melendez-Diaz. It's a Crawford issue. Your Honor, this
6 link in the chain cannot be substituted by a report or
7 testimony as to what the standard procedure is.

8 THE COURT: Counsel, is there any indication
9 that there was -- has been any tampering or bad faith or
10 anything of that nature?

11 MR. BAUER: Your Honor, we're not aware because
12 we can't cross-exam the witness. This is a Crawford
13 issue. This is a person who is no longer employed -- or
14 presently available at the Sheriff's Department. . .

15 THE COURT: I can multitask. Yes?

16 MR. BAUER: There is no -- there's no way to
17 cross-examine this witness. This is a Crawford issue,
18 and it's described in the Melendez-Diaz. This is a
19 particular issue that -- where we're dealing with drugs,
20 which are fungible by nature, when we can't establish
21 the condition that the bag was received in by Ms. Berry,
22 what she did with it, when she did it, or what method
23 she took to re-secure it.

24 THE COURT: We have a note I need to address
25 with the jury. You may leave your items there. I just

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1 need to -- and Mr. Shelton you're already in place.

2 Mr. Wright, I have a jury out. They have a
3 note. I'm going to handle that matter. Please
4 understand I am able to do several things at one time.
5 I am not not paying attention. I am very much paying
6 attention to your case.

7 THE DEFENDANT: Yes.

8 THE COURT: But I also now have a situation
9 where I need to address -- so that I can address my
10 jury. And we're going to come back to you.

11 THE DEFENDANT: All right.

12 THE COURT: Thank you.

13 (A different trial matter, State versus
14 Barrett, is handled by the Judge from 1:13 p.m. until
15 1:20 p.m.; at which time, the proceedings continue as
16 follows:)

17 THE COURT: All right. Mr. Bauer?

18 MR. BAUER: Your Honor, I believe I've stated
19 my position.

20 THE COURT: I'm going to hear it one more time
21 so Mr. Wright understands that I have heard you.

22 MR. BAUER: Your Honor, the testimony -- it's
23 the Defendant's position that the testimony of Ms. Berry
24 is essential to proving this -- the chain of custody in
25 this case. We cannot rely on her report as to what

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1 happened. This is fungible goods. This presents a
2 problem which is directly recognized under Melendez-Diaz
3 and under Crawford.

4 THE COURT: All right. Mr. Shelton?

5 MR. SHELTON: I would just like to rely again
6 on Thatcher [sic], and understand on the Defense
7 Counsel's argument on Melendez-Diaz and Crawford.
8 However, we don't think that this really raises to that
9 level because of Thatcher specifically -- if you look
10 at -- I provided a copy. I think it's at -- I'll quote
11 the source. And it said -- at 392 South Carolina 86 and
12 then moving to 93, which would be on Page 4, second
13 column almost to the bottom, it says: Although Hatcher,
14 speaking of the Defendant in this case, asserts our
15 cases, all individuals must be identified without
16 exception. This appears to be an extrapolation of the
17 general observation that we're all individuals are -- in
18 the chain are, in fact, identified and the manner of
19 handling is a reasonably demonstrated is not an abuse of
20 discretion for the trial judge to submit the evidence in
21 absence of proof, tampering, bad faith, or ill motive.

22 The State says there's no evidence whatsoever
23 of tampering, bad faith, or ill motive in this case.
24 Ms. Berry is in Kuwait due to military service. We'd
25 love to have her here, but we can't. We had even

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1 speculated on doing a video conference with her, but we
2 just don't think that would be fair for the Defendant
3 either because it'd be -- I think that might be even
4 more fair than doing what we're -- less fair than doing
5 what we're doing here. That's a possibility.

6 THE COURT: Any objections to having her Skyped
7 in to testify?

8 MR. BAUER: Your Honor, it would be better than
9 what we're faced with now, but still is not as good as
10 live testimony with regard to establishing the chain of
11 someone who actually had sole possession of the goods,
12 took them out of the bag, allegedly, and did something
13 with them.

14 MR. SHELTON: And, of course, I'd have to
15 arrange that overnight with someone in Kuwait, and I
16 don't know if that's possible, but I can obviously try.
17 The reason I say that ultimately is to say that the
18 handling can be reasonably demonstrated if -- in this
19 case, and it's not an abuse of discretion to admit the
20 drugs. We know exactly what she did with it. We can
21 show that through other evidence in the case. And we
22 believe it would go to a question of weight and not
23 admissibility.

24 MR. BAUER: Your Honor, just looking at the
25 date of arrest and date of today, it hasn't seemed to be

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1 an urgent need to call this case for trial. We're
2 talking about an August of 2011 arrest. Defendant has
3 remained on bond. We have not filed a speedy trial
4 request. The Defendant doesn't object to this case
5 being tabled until Ms. Berry returns.

6 THE COURT: We don't know when that's going to
7 be. Is she in -- is she private law enforcement, or is
8 she --

9 MR. SHELTON: I believe she's actually National
10 Guard.

11 THE COURT: National Guard. So we don't know
12 when she will be returning?

13 MR. SHELTON: No. And, candidly, your Honor,
14 the reason this case hasn't been called for trial is
15 because he's out on bond, and we call jail cases first.
16 So we're doing this because we moved through so many
17 jail cases this week already. It's very important,
18 obviously for reasons like this, that we get to try this
19 case as soon as possible.

20 THE COURT: Tell me what Ms. Mills' process
21 would be; what her role in this case is.

22 MR. SHELTON: She's a forensic chemist. I
23 would say equally as qualified as Ms. Berry is. She
24 actually retested the drugs, and she would be the
25 forensic chemist testifying to -- that the drugs, in

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1 fact, are cocaine. And we're only dealing with the
2 cocaine because she actually, when my E-mail was sent to
3 her to retest it, I only mentioned one lab number. I
4 didn't realize there was a lab number for the marijuana
5 as well. So we're only moving forward on the cocaine,
6 and that's the reason for that.

7 She would testify she was working at the time
8 this took place and previous to that, and she would
9 testify to the standard operating procedures and
10 protocols that have to be in place because they're a
11 certified drug lab in order for the evidence to be
12 handled, how they do their testing, where it's stored,
13 how they take it out, where it's tested, where they test
14 cocaine, how it's sealed, where it's brought back. And
15 she can demonstrate on the Best Bag itself as to how she
16 knows that Renita Berry did this based on Renita Berry's
17 signatures and dates, and that's coupled by Renita
18 Berry's actual report that shows what her findings are.
19 Protocols and standards are very specific, and the
20 guidelines have to be followed in every case, and they
21 are. They're a certified drug lab.

22 That's what she can establish.

23 THE COURT: I'm allowing you the final word,
24 Mr. Bauer.

25 MR. BAUER: Your Honor, the standards are

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1 what's important, and that's what we cannot establish
2 without this witness, is whether or not the standards
3 were followed. The fact that the standards should be
4 followed, we don't dispute. And their witnesses can
5 testify the standards should be followed, but they
6 cannot testify that the standards were followed in this
7 case.

8 THE COURT: All right. Courts have -- as both
9 of you have talked about it -- long established that
10 fungible items such as the drugs in question that --
11 should establish a complete chain of custody as far as
12 practical, where it -- and substance that has been
13 analyzed and past through several hands, as in this
14 case, beginning with Sergeant Collier, and then tested
15 by Ms. Berry, and peer reviewed by Ms. Mills, the
16 identity of the individuals who have acquired the
17 substance, the evidence, and what was done with the
18 evidence must be not -- must not be left to conjecture
19 or speculation. If the identity of each person handling
20 the evidence is established and the manner of the
21 handling is reasonably demonstrated, there -- the
22 evidence should be admitted absent any proof of
23 tampering or bad faith or ill motive. Testimony from
24 each custodian of fungible evidence is not a
25 prerequisite for establishing a chain sufficient for its

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1 admissibility.

2 Where the evidence has established and
3 demonstrates those who have handled the evidence and
4 contrary to the manner of handling, the courts in the
5 cases that have been cited have been willing to fill in
6 the gaps of an absent witness.

7 Based upon the reason for Ms. Berry's absence,
8 the fact that there has been nothing demonstrated that
9 there have been any ill motive, there has been no proof
10 of tampering or bad faith, I'm denying your Motion to
11 Suppress the testimony -- or the report of Ms. Berry and
12 the drugs due to a failure to completely establish the
13 chain. Note your exception for the record.

14 Mr. Shelton, I would like for you to make every
15 effort that you can to see if we can establish some sort
16 of Skype --

17 MR. SHELTON: Absolutely.

18 THE COURT: -- testimony, because Mr. Bauer has
19 indicated that that would be a more suitable substitute
20 as to Ms. Berry's testimony.

21 MR. SHELTON: Thank you. I will right away.

22 THE COURT: Is there anything -- any other
23 pretrial motions?

24 MR. SHELTON: Not from the State, your Honor.

25 THE COURT: Mr. Bauer?

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1 MR. BAUER: Your Honor, since the State is not
2 going forward with the trial on the marijuana because
3 that has not been retested --

4 MR. SHELTON: Right.

5 MR. BAUER: -- we do have an evidentiary issue
6 with regard to how that's brought up in front of the
7 jury.

8 THE COURT: I'm assuming you're not going to
9 discuss the marijuana since it's not a basis --

10 MR. SHELTON: The State -- it's kind of hard
11 not to in this case, because it was found together.
12 It's very hard to tell them the suspected marijuana.
13 We're not -- I would argue *res gestae* as to finding it
14 in place, because that's the reason he was originally
15 detained, was because of the marijuana. We're not going
16 to talk -- obviously, we're not talking about --

17 THE COURT: What I understood the testimony is
18 that there was marijuana that was visible and then a
19 Crown Royal bag --

20 MR. SHELTON: Right.

21 THE COURT: -- that was open and was visibly --

22 MR. SHELTON: Right.

23 THE COURT: Is there any reason why the officer
24 can't say, that based upon his training and experience,
25 it was immediately apparent to him that it was an

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1 illegal substance and just leave it at that?

2 MR. SHELTON: Absolutely. Yeah, we can do
3 that.

4 THE COURT: Any objection to that?

5 MR. BAUER: In referring to the cocaine, I
6 think that's proper, given your rulings. I'll still
7 object during the trial --

8 THE COURT: Correct.

9 MR. BAUER: But when we're excluding reference
10 to marijuana, I don't object to that.

11 THE COURT: Correct. That way, that -- the
12 officer, there is no mention of marijuana, and it
13 becomes -- it -- it satisfies why he got the warrant --
14 secured the area and got the warrant without mentioning
15 marijuana.

16 MR. BAUER: Yes, your Honor. And given that
17 ruling, I think it'd be improper for the officers to
18 comment that they smelled what they believed to be
19 burning marijuana when they entered the premises.

20 THE COURT: Is there any reason that they need
21 to mention the burning -- what they believed to be
22 burning marijuana considering that that wasn't the
23 reason they were in the --

24 MR. SHELTON: No.

25 THE COURT: -- in the home? All right.

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1 MR. SHELTON: No.

2 MR. BAUER: Nothing further, your Honor.

3 THE COURT: All right. And we are -- you are
4 calling this case for trial tomorrow?

5 MR. SHELTON: Yes, in the morning, your Honor.

6 THE COURT: Are you prepared to call it -- are
7 you prepared tomorrow?

8 MR. BAUER: Yes, your Honor.

9 THE COURT: All right. I understand that
10 Mr. Wright is out on bond. Are you requesting any --

11 MR. SHELTON: He's appeared every time, and
12 until we actually pick the jury, I would just ask that
13 he appear back here at nine o'clock tomorrow or a bench
14 warrant will be immediately issued for his arrest.

15 MR. BAUER: No objection.

16 Your Honor, I just have a question regarding
17 the scheduling. They've also noticed me for a probation
18 revocation hearing tomorrow on one of my clients, who I
19 represented on his original charge and put in my notice
20 that I represent him on the revocation as well. I don't
21 know --

22 THE COURT: We'll attempt to call to -- you can
23 take a break and go over there and handle that matter,
24 or we can -- I'll do it during a break or whatever.

25 MR. BAUER: I think it will be a very short

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1 matter, your Honor.

2 THE COURT: However we can accommodate your
3 schedule, but you would agree with me that a jury trial
4 takes precedence over a probation violation?

5 MR. BAUER: Absolutely. And I don't object to
6 the probation revocation being continued.

7 THE COURT: There's no reason. As a judge,
8 I'll be more than happy to hear it.

9 MR. BAUER: Thank you, your Honor.

10 THE COURT: All right.

11 Mr. Wright, please stand. I just want you to
12 understand, if you don't appear, I'm calling your case
13 in the morning. Do you understand that, sir?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And if you choose not to appear, a
16 bench warrant will issue, and I -- and I will continue
17 your trial in your absence -- continue with your trial.
18 You do not -- since you have been noticed, and if you
19 choose not to appear, I will -- I will go forward with
20 your charge. Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And Mr. Bauer will just be sitting
23 at that table by himself. Do you understand that, sir?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. Mr. Bauer and

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1 Mr. Wright, it's my policy, once the State calls the
2 case for trial and we have sworn the jury, that the
3 bonds person has satisfied their commitment. So I will
4 have Mr. Wright taken into custody until the conclusion
5 of the case.

6 So, Mr. Wright, that is just my policy. It has
7 nothing to do personally with you. And so I need you to
8 be prepared for that tomorrow. Do you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Mr. Shelton has indicated that this
11 trial will likely conclude by tomorrow. But you need to
12 be prepared that during breaks that you will be taken
13 into custody. Do you understand that, sir?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. Any questions about
16 that, Mr. Bauer?

17 MR. BAUER: No, your Honor.

18 MR. SHELTON: No. Thank you, your Honor.

19 THE COURT: All right. Mr. Shelton and
20 Mr. Bauer, it's my policy prior to trial that I have a
21 pretrial conference, and so we can accomplish that.
22 Most of the issues have already been addressed, so it
23 should be very short. We can do that right now. All
24 right?

25 Mr. Wright, it's just your attorney, so I'm

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1 going to meet with your attorney concerning your trial.
2 And just my policies and preference, so that's what
3 we're going to be doing. I'll see you in the morning,
4 sir?

5 THE DEFENDANT: Thank you.

6 THE COURT: We'll have the jury brought back at
7 9:30.

8 MR. SHELTON: Thank you, your Honor.

9 THE COURT: Mr. Wright, what time do you need
10 to be here tomorrow?

11 THE DEFENDANT: 8:45.

12 THE COURT: Perfect. Thank you.

13 (The hearing of this cause adjourns at
14 1:34 p.m., on May 22nd, 2013, to begin tomorrow
15 at 9:00 a.m.)

16 (End of Volume I of II.)
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REPORTER'S CERTIFICATE

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, **ROLAYNE M. VOLPE**, Certified Court Reporter, CCR, and Registered Professional Reporter, RPR, do hereby certify that the transcript of the foregoing proceedings, Volume I of II, accurately reflects the events that occurred before me to the best of my ability at the time and place set out on the caption hereto, the witnesses having been duly cautioned and sworn, or affirmed, to tell the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken or to any attorney or counsel employed by the parties hereto, nor financially interested, directly or indirectly, in the outcome of this action.

CERTIFIED AND SIGNED on this 28th day of July, 2013.

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 Official Court Reporter for the State of South Carolina

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

A P P E A R A N C E S

For the State:

BENJAMIN T. SHELTON
Prosecuting Attorney
14th Judicial Solicitor's Office
P. O. Box 1880
Bluffton, South Carolina 29901
(843) 255-5916
bshelton@bcgov.net

For the Defendant:

SAMUEL C. BAUER
Bauer & Metro
38-A New Orleans Road
P. O. Box 7965
Hilton Head, South Carolina 29938
(843) 842-5297
sbauer@bauerlawfirm.com

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I N D E X

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E X H I B I T S

(No exhibits were offered during this portion of
the proceedings.)

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1 The above-styled cause came on for hearing on
2 the 23rd day of May, 2013, at 9:40 a.m., before Judge
3 Kristi Lea Harrington, presiding over the General
4 Sessions Court for the County of Beaufort, when the
5 following proceedings were had and entered of record, to
6 wit:

7 PROCEEDINGS

8 VOLUME II OF II

9 THE COURT: All right. We're back on the
10 record with Mr. Wright. I understand that over the
11 evening hour, you received additional information; is
12 that correct?

13 MR. SHELTON: Yes, your Honor.

14 THE COURT: Mr. Wright, is that how you come to
15 court? Is that how you come to court?

16 THE DEFENDANT: Uh, no, ma'am. A lot of stuff
17 going on this morning; a lot of stuff on my mind.

18 THE COURT: Why don't you step outside, go to
19 the restroom, and tuck your shirt in for me?

20 I took the time to get dressed and prepared for
21 you today.

22 (The Defendant steps out of the courtroom.)

23 (Respite.)

24 (The Defendant is back in the courtroom. The
25 proceedings continue as follows:)

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1 THE COURT: Thank you, Mr. Wright.

2 All right, Mr. Shelton.

3 MR. SHELTON: Yes, your Honor. May it please
4 the Court. Your Honor, yesterday in light of your
5 ruling, I, on behalf of the State, met with all the
6 chain witnesses in this case, including Ms. Jennifer
7 Mills, who is the chemist as well as a chain witness,
8 and to assure you that what I told you yesterday for the
9 chain of custody that I understood it at the time I told
10 you, that everything was accurate and prepared for the
11 trial today, and everything was substantially accurate.
12 In fact, it was accurate. The one thing for the record
13 that was inaccurate was that Renita Berry, first,
14 actually received herself, from central receiving, the
15 drugs and brought them to the drug lab, and then brought
16 them back to central receiving. The chain for
17 Ms. Snider, and Ms. -- Ms. Snider and Ms. Cynthia Pane
18 is in reference to bringing it to Jennifer Mills, not to
19 Renita.

20 But that aside, we also came into possession of
21 a form provided by chemist Jennifer Mills, that is a
22 form that they used, being the drug lab in Beaufort
23 County, on every single drug case, and it's called a
24 Beaufort County Sheriff's Office Forensic Drug
25 Identification Worksheet. And in this form, they've

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1 actually tailored this form to their protocol, and, that
2 way, they can cross-reference and look at the form and
3 they can peer review based on this form. And Ms. Berry,
4 in this form, indicates that she actually took the
5 cocaine out of the original packaging, which they always
6 do, to weigh it; and when they went to put it back into
7 the original packaging, she could not get it all back
8 into the original packaging; so, therefore, she put it
9 in a separate bag, which is a chemist bag, and put the
10 original packaging material within that bag.

11 We know from this form that she took it out of
12 evidence, temporary storage, at 10-13-2011, and
13 according to her signature on the Best Bag, that's in
14 reference to this form, she sealed it on 10-13-2011.
15 And the State was prepared to go forward using just that
16 data alone as a business record to establish the chain
17 of custody for Renita handling the evidence and what she
18 did reasonably with the evidence at the time. We can
19 establish what the approximate weight was beforehand
20 with Mr. Brewer (phonetic), and then afterwards with
21 Ms. Mills, who actually weighed it as forensic evidence
22 to be able to show that the weight was substantially the
23 same. And then Ms. Mills will also be able to testify
24 at how weight slightly changes due to humidity and other
25 factors. And that's what the State was prepared to go

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1 forward on, that's what we planned to go forward on, and
2 we still think there is an argument to being able to go
3 forward in establishing chain -- the chain of custody on
4 those facts. And that's what I brought to Mr. Bauer's
5 attention this morning in the bench conference that was
6 just spoke about.

7 THE COURT: Mr. Bauer, what's your position?

8 MR. BAUER: Your Honor, I think based on the
9 information that the Solicitor discovered last night and
10 provided to me immediately this morning, it appears that
11 Ms. Berry is not just a normal chain witness, that she
12 actually altered the packaging, she took it -- all of
13 the drugs out of a package, did something with them,
14 weighed them, and then put it in a different package.
15 It does appear from the note that she attempted to do
16 something with it in the same bag and was unable to, but
17 because the quantity, the weight, is a key element that
18 the Court must address in a trafficking charge, this is
19 not just a normal chain witness. This is a witness that
20 I would need to confront. Based on that, case hasn't
21 been called for trial, and the jury has not been
22 impaneled, I request that the case be continued. We've
23 also heard that Ms. Berry could very likely be back in
24 Beaufort County within 30 days.

25 THE COURT: All right. Based upon all of those

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1 factors and -- and, Counsel, we have had a very
2 extensive hearing yesterday to discuss from Sergeant
3 Collier to Ms. Mills what Ms. Berry's involvement, I did
4 not -- at that time, did not -- I felt that the chain
5 was established as far as practical. What concerns me
6 with this new information is that Ms. Berry not only
7 tested it, but changed the packaging. And because the
8 weight of the cocaine is an essential element in this
9 case, I'm granting your motion for continuance.

10 In no way am I changing my initial ruling as to
11 the chain, but my concern is to -- to her handling of
12 the material, the cocaine, what it was presumed to be,
13 and tested positive for cocaine.

14 We will have a conference with Judge Mullen,
15 who is the chief admin for criminal, to make sure that
16 this case is tried when Mr. Berry is back during her --
17 whatever -- for however long she will be back. I'm not
18 sure if she's just home on vacation, for leave, or
19 whatever, but we will make this a priority case.

20 Mr. Bauer, is your client on probation?

21 MR. BAUER: No, your Honor, he's not on
22 probation.

23 THE COURT: He's out on bond; is that correct?

24 MR. BAUER: Yes, your Honor.

25 THE COURT: All right. He needs to comply with

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1 all rules and conditions of bond.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Mr. Wright, if I drug test you
4 today, what's the result going to be?

5 THE DEFENDANT: Positive for marijuana.

6 THE COURT: All right. Sir, you understand
7 that that is a violation of your bond?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do I need to drug test you, or do
10 you agree today that you have violated the terms and
11 conditions of your bond?

12 THE DEFENDANT: I agree.

13 THE COURT: All right. Mr. Wright, you are not
14 free to go at this time.

15 State can file whatever appropriate motion that
16 you need to file.

17 Mr. Wright, I'm going to have a conference with
18 your attorney and with the State. Mr. Wright, you
19 understand that being out on bond is a privilege?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And I take that very seriously,
22 because you have indicated, through you bonds person,
23 that you're going to follow the rules and the
24 conditions.

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: And you understand that using
2 marijuana is a violation of those conditions?

3 THE DEFENDANT: Yes, ma'am. I haven't used it
4 in a long time. It might still be in my system, though.

5 THE COURT: You've been on bond since 2011;
6 correct?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Have you used marijuana in the
9 last 30 days?

10 THE DEFENDANT: It's probably been longer than
11 30 days.

12 THE COURT: Would you like a drug test today?

13 MR. BAUER: Can I?

14 THE COURT: You may.

15 (Mr. Bauer speaks with his client off the
16 record.)

17 MR. BAUER: Your Honor, my client indicates
18 that he does not need a drug test.

19 THE COURT: All right. Mr. Wright, you are not
20 free to go.

21 So you will need to take him into custody. He
22 can just be detained in the courtroom.

23 I think Judge Mullen is available.

24 All right. Thank you. We're at ease.

25 (The Judge steps off the bench at 9:52 a.m.,

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1 and then resumes the bench to continue this case
2 at 10:36 a.m.)

3 THE COURT: We're back on the record with
4 Mr. Wright. Mr. Shelton?

5 MR. SHELTON: Thank you, your Honor. In light
6 of Mr. Wright's admission that he is -- would test
7 positive for marijuana, thereby, obviously, having
8 smoked marijuana, the State would move to revoke his
9 bond based on him violating the good behavior portion of
10 his bond and also partaking in illegal activity, which
11 is unlawful under the laws of the State of South
12 Carolina, possession of marijuana, and would ask that --
13 move for the Court to revoke his bond immediately.

14 THE COURT: All right. Mr. Bauer?

15 MR. BAUER: Your Honor, the -- I would like
16 to -- to point out that my client was very candid with
17 the Court about his failing; and for the past two years,
18 plus, he has been appearing diligently without fail
19 every time the Court has asked him. He is not a flight
20 risk, he's from here, and he is not a danger to the
21 community. I'd ask the Court to consider keeping him
22 out on bond.

23 THE COURT: All right. Mr. Wright, I
24 appreciate your candor with the Court and -- but it is
25 my policy to inquire as to whether or not you're abiding

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1 by the rules. And you, unfortunately, for all the
2 credit that I give you for telling the truth, you were
3 not following the conditions of your bond, and for that
4 reason, I am revoking your bond.

5 I understand that based upon our conversations
6 with the chief admin judge that this case has been set
7 for a date certain?

8 MR. SHELTON: Correct, your Honor, for July
9 29th, 2013. The State's understanding.

10 THE COURT: I'm revoking your bond. If the
11 case is not tried that week, please file a motion to
12 reconsider his bond revocation. Thank you.

13 Good luck to you, Mr. Wright.

14 THE DEFENDANT: Thank you.

15 MR. SHELTON: I'll prepare an Order for you.

16 THE COURT: All right. Thank you. We're at
17 ease. I'm going to release the jury.

18 If you will hand the reports to my clerk in the
19 order that you're -- let her know the order that we're
20 going forward.

21 THE PROBATION OFFICER: Yes, ma'am.

22 (The hearing of this cause concludes at
23 10:59 a.m., on May 23, 2013.)

24 (End of Volume II of II.)

25

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifies an Other Sensitive Information in Appellate Court Filings".



Sonya Chachere-Compton
Attorney for Appellant
5682 Palazzo Way, Suite 102
Douglasville, Georgia 30134
(770) 949-1102