

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

DAN L. TEMPLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001756

APPENDIX

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S.C. SUPREME COURT

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1 State of South) In the Court of General
 Carolina) Sessions
 2)
 3 County of Oconee) Indictments Nos:
) 2013-GS-37-00184
 4) 2013-GS-37-00185
 5
 6 State of South)
 Carolina)
 7 Plaintiff,) Transcript of Record
 8 -vs-) Trial March 18-21, 2013
) (Pages 1 through 424)
 9 Dan Lavert Temple,)
 10 Defendant.)
 11 March 18, 19, 20, 21, 2013
 12 Walhalla, South Carolina
 13

14 B e f o r e:

15 The Honorable Alexander S. Macaulay, Judge; and a
 16 Jury.

17 A p p e a r a n c e s:

18 Lindsey S. Simmons, Esq.
 19 Blair S. Stoudemire, Esq. (Afternoon of March 21, 2013)
 Assistant 10th Circuit Solicitors
 Attorneys for the State

20
 21 R. Delane Rosemond, Esq.
 Attorney for the Defendant

22 Ms. Ginger Newton
 23 Probation Officer (March 21, 2013 sentencing and
 Probation violation)
 24

25 Robin Sue Hild, FCRR, RPR
 Circuit court reporter

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1 **** Start of Requested Transcript of Record ****

2 **March 18, 2013**

3 **10:40 a.m.**

4 **THE COURT:** All right. Are we ready to proceed
5 from the State?

6 **MS. SIMMONS:** Yes, Your Honor.

7 **THE COURT:** From the Defense?

8 **MR. ROSEMOND:** Yes, Your Honor.

9 **Jury Voir Dire and Selection:**

10 **THE COURT:** Very good.

11 Ladies and gentlemen, as I mentioned earlier, this
12 is a term of General Sessions Court, sometimes called
13 criminal court. Its purpose is to resolve questions of
14 alleged criminal conduct arising between the State of
15 South Carolina and the Defendant in a fashion which will
16 ensure that justice under the law is accomplished.

17 The trial of a case begins with the selection of a
18 Jury. Both the State and the Defendant are entitled to
19 Jurors who approach the case with an open mind. The
20 trial Jury must be free as humanly possible from any
21 bias, prejudice, or sympathy for either side and free
22 from any preconceived ideas on the facts of the case or
23 the law on the case.

24 Therefore, certain questions will be asked of you,
25 the Petit Jury Panel. The questions which will be asked

1 are designed to ensure that each side has a fair and an
2 impartial Jury. As I said earlier, if any person should
3 talk with you or attempt to talk with you about any case
4 scheduled for this term of court, it will be your solemn
5 duty to immediately report that matter to the Court so I
6 might take the appropriate action.

7 Now, is there any member of the Jury Panel who
8 cannot hear me or understand what I am saying? In other
9 words, am I speaking clearly and loud enough so that you
10 can hear? Would you please raise your hand? That's an
11 interesting question, because if you couldn't hear me,
12 you wouldn't know to raise your hand. But is there any
13 member of the Jury Panel who sees my lips moving but
14 cannot understand what I'm saying, if you would raise
15 your hand. (No response.) Very well.

16 Madam Solicitor, call your first case.

17 MS. SIMMONS: Thank you, Your Honor. We call
18 2013-GS-37-185, the State versus Daniel Lavert Temple,
19 for possession of a controlled substance, a Schedule I
20 through V, and 2013-GS-37-184, the State versus Daniel
21 Lavert Temple, for possession with intent to distribute
22 crack cocaine.

23 THE COURT: Ladies and gentlemen of the Petit Jury
24 Panel, the Court now directs your attention to the
25 following cases. The first case is entitled the State

1 of South Carolina versus Dan Lavert Temple, charged in a
2 Bill of Indictment Number 2013-GS-37-184 with
3 distribution of a controlled substance; and also in
4 Indictment Number 2013-GS-37-185 with possession of a
5 controlled substance.

6 Now, is any member of the Jury Panel related by
7 blood or marriage, close personal friend, or business
8 associate of the Defendant, Dan Lavert Temple? If so,
9 please stand.

10 (There was no response.)

11 **THE COURT:** And I think that what we might also do
12 is this. The State is represented by Ms. Simmons.

13 Ms. Simmons, if you would please stand, introduce
14 yourself and anyone that will be assisting you in the
15 trial of this case.

16 **MS. SIMMONS:** Thank you, Your Honor.

17 Good morning. My name is Lindsey Simmons. I am an
18 Assistant Solicitor in the Oconee Solicitor's Office. I
19 work for your elected Solicitor, Ms. Chrissy Adams.
20 Assisting me in the trial of this case will be
21 Investigator Tim Hunnicutt of the Seneca Police
22 Department.

23 **THE COURT:** All right. Very good. Thank you very
24 much.

25 Ladies and gentlemen, I realize that, you know,

1 sometimes we might recognize someone but not --
2 recognize their faces but not recognize their names. So
3 again, I'm gonna also ask Mr. Rosemond, who is
4 representing Dan Lavert Temple, to stand, introduce
5 himself and his client.

6 Mr. Rosemond?

7 MR. ROSEMOND: Thank you, Judge.

8 Good morning. I'm Delane Rosemond. I'm a lawyer
9 in Oconee County, and I have the personal pleasure of
10 representing Mr. Dan Temple in this trial on this day.

11 THE COURT: Thank you very much, sir.

12 Now, again I'll ask, is any member of the Jury
13 Panel related by blood or marriage, close personal
14 friend or business associate of the Defendant, Dan
15 Lavert Temple? If so, please stand.

16 (There was no response.)

17 THE COURT: Was any member of the Jury Panel a
18 member of the Grand Jury that found and returned the
19 indictments in this case? That would be the Grand Jury
20 for Oconee County in the year 2013. Any member of the
21 Jury Panel who was a member of the Grand Jury of Oconee
22 County for the year 2013, if you would please stand.

23 (There was no response.)

24 THE COURT: Now I'm gonna also name, call out some
25 names of potential witnesses in this case. Listen

carefully. And if they are in the courtroom, if you
would please stand when your name is called.

Cortney Wright of the Seneca Police Department,
B.J. McClure of the Seneca Police Department, Mark
Tiller of the Seneca Police Department, Mike Teramano of
the Seneca Police Department, Ray Murphy of the Seneca
Police Department, Eric Abercrombie of the Seneca Police
Department, Dwayne Kelley of the Seneca Police
Department, Melinda Nicholson of the Seneca Police
Department, Captain Kenny Washington of the Oconee
County Sheriff's Office, and Steve Pruitt of the Oconee
County Sheriff's Office, Tyrel Woodring of the South
Carolina Law Enforcement Division (stands); Agent
Meredith Lanford of the Anderson-Oconee Forensics Lab;
and Beverly Whitfield, the Clerk of Court of Oconee
County; and Ms. Crystal Henry.

Also, Mary Ramsey, Mr. Milton Ramsey, and Mr. Ben
Ramsey, and Ms. Andreanna Temple, Ms. Andreanna Temple.

Now, is any member of the Jury Panel related by
blood or marriage, close personal friend, or business
associate of any of the named potential witnesses in
this case? That would, of course, include Ms. Mary
Ramsey, Mr. Milton Ramsey, Mr. Ben Ramsey, Ms. Andreanna
Temple, Cortney Wright, Tim Hunnicutt of the Seneca
Police Department, B.J. McClure, all of these are from

1 the Seneca Police Department; Mark Tiller, Mike
2 Teramano, Ray Murphy, Eric Abercrombie, Dwayne Kelley,
3 Melinda Nicholson. Also Captain Kenny Washington of the
4 Ocone County Sheriff's Office, Steve Pruitt of the
5 Ocone County Sheriff's Office, Tyrel Woodring of the
6 South Carolina Law Enforcement Division; Agent Meredith
7 Lanford, Beverly Whitfield, or Crystal Henry.

8 Any member of the Jury Panel related by blood or
9 marriage, close personal friend or business associate of
10 any of the potential witnesses in this case, if they
11 would please stand at this time.

12 (Prospective Juror stands.)

13 THE COURT: Yes, sir. Your name, please?

14 PROSPECTIVE JUROR: David Jason Duncan.

15 THE COURT: Yes, sir.

16 PROSPECTIVE JUROR DUNCAN: I'm personal friends
17 with Tyrel Woodring.

18 THE COURT: All right. Would that in any way
19 interfere with your ability to give both the State and
20 the Defendant a fair and impartial trial in this case?

21 PROSPECTIVE JUROR DUNCAN: Yes, sir, it would.

22 THE COURT: Very good. I'm going to excuse you on
23 the trial of this case. But you can stay with us. We
24 might have some other cases for you. But you will be
25 excused.

1 By the way, that is a very candid answer, because
2 the question about being fair and impartial has two
3 reasons for it, you might say. The first, of course, is
4 that the parties, the State and the Defendant, are
5 entitled to fair and impartial Jurors. But also, none
6 of you asked to be here, and, therefore, I don't want to
7 have you undertake anything that might put you in an
8 uncomfortable situation; in other words, compromise your
9 comfort in the sense that you just don't want to have to
10 do something that might be affected by something outside
11 the actual case; in other words, friendship or something
12 like that.

13 So the question, then, can you be fair and
14 impartial, is not a reflection on your ability to be
15 fair and impartial, it's just also whether or not you
16 would be comfortable in serving on a Jury if you were
17 selected for Jury service. So your response,
18 Mr. Duncan, was perfect, and other members of the Jury
19 could respond in a like manner.

20 Has any member of the Jury Panel, either in the
21 present or in the past, ever been employed by any City,
22 County, State, or Federal law enforcement agency, to
23 include the Solicitor's Office of the 10th Judicial
24 Circuit, which is Oconee and Anderson County, as well as
25 the law enforcement agencies in Oconee County, as well

1 as the State of South Carolina? Any member of the Jury
2 Panel either presently or in the past ever been employed
3 by any City, County, State, or Federal law enforcement
4 agency, to include the Solicitor's Office for the 10th
5 Circuit, please stand at this time.

6 (Prospective Juror stands.)

7 THE COURT: Yes, sir. Your name, please.

8 PROSPECTIVE JUROR FIEST: Brian Fiest. I was
9 employed as a police officer in Ohio.

10 THE COURT: All right. Would that interfere with
11 your ability to give both the State and the Defendant a
12 fair and impartial trial?

13 PROSPECTIVE JUROR FIEST: I don't think so.

14 THE COURT: You don't think so. Are you sure?

15 PROSPECTIVE JUROR FIEST: Yes, sir.

16 THE COURT: All right. You may be seated. But you
17 are not employed at this point?

18 PROSPECTIVE JUROR FIEST: No.

19 THE COURT: Okay. Is any member of the Jury Panel
20 related by blood or marriage or close personal friends
21 with any person who is or has ever been employed by or
22 has volunteered with any City, State, County, or Federal
23 law enforcement agency? If so, please stand.

24 (Prospective Juror stands.)

25 THE COURT: Has any member of the Jury Panel --

1 Oh, yes, ma'am.

2 PROSPECTIVE JUROR: My husband was an Oconee County
3 Sheriff.

4 THE COURT: Is he currently a Deputy?

5 PROSPECTIVE JUROR: He's retired.

6 THE COURT: He's retired. And your name, please.

7 PROSPECTIVE JUROR OWENS: Nancy Owens.

8 THE COURT: And would that in any way interfere
9 with your ability to give both the State and the
10 Defendant a fair and impartial trial?

11 PROSPECTIVE JUROR OWENS: No, sir.

12 THE COURT: Very good. Thank you, ma'am.

13 (A Prospective Juror stands.)

14 THE COURT: Yes, sir.

15 PROSPECTIVE JUROR: My sister is employed with the
16 Law Enforcement Center.

17 THE COURT: And would that affect your ability to
18 give both the State and the Defendant a fair and
19 impartial trial?

20 PROSPECTIVE JUROR: No, it would not.

21 THE COURT: All right. And your name, please?

22 PROSPECTIVE JUROR: Mickey Simpson.

23 THE COURT: Very good. Thank you, sir.

24 Is any member of the Jury Panel related by blood or
25 marriage to or close personal friends with any person

1 who is or ever has been employed by or volunteered with
2 any City, County, State, or Federal victim or witness
3 assistance program? If so, please stand.

4 (There was no response.)

5 THE COURT: Now, has any member of the Jury Panel
6 ever contributed to or volunteered time with any of the
7 following organizations: Mothers Against Drunk Driving,
8 MADD; Students Against Drunk Driving, SADD; Citizens
9 Against Violence Everywhere, CAVE; victims or witnesses
10 assistance programs or any other similar organizations
11 which lobby on behalf of victims or lobby for tougher
12 sentences for criminal Defendants? If so, please stand.

13 (A Prospective Juror stands.)

14 THE COURT: Yes, ma'am. Your name, please.

15 PROSPECTIVE JUROR BARTON: I'm not sure if I heard
16 your question. Brenda Barton.

17 THE COURT: Yes, ma'am.

18 PROSPECTIVE JUROR BARTON: And I have been an
19 active member years ago of SADD and MADD.

20 THE COURT: All right. And would that in any way
21 interfere with your ability to give both the State and
22 the Defendant a fair and impartial trial?

23 PROSPECTIVE JUROR BARTON: No, it wouldn't.

24 THE COURT: Very good. Thank you, ma'am.

25 Has any member of the Jury Panel ever contributed

1 money to the Fraternal Order of Police, the South
2 Carolina Law Enforcement Association, which is SCLEA, or
3 any law enforcement organization or organization that
4 supports the police? Any member of the Jury Panel ever
5 contributed money to the Fraternal Order of Police or
6 the South Carolina Law Enforcement Officers Association
7 or any law enforcement organization or organizations
8 that supports the police? If so, please stand.

9 (There was no response.)

10 **THE COURT:** Has any member of the Jury Panel or
11 members of their immediate family or personal friends
12 ever been the victim of or a witness to a crime
13 involving cocaine, crack cocaine, heroin, or marijuana?
14 Any member of the Jury Panel or members of their
15 immediate family or a close personal friend ever been a
16 victim of or a witness to a crime involving cocaine,
17 crack cocaine, heroin, or marijuana? If so, please
18 stand.

19 (There was no response.)

20 **THE COURT:** Now, has any member of the Jury Panel
21 or members of their immediate families or close personal
22 friends ever been addicted to or had substance abuse
23 problems to cocaine, crack cocaine, heroin, or
24 marijuana, or been accused of or, and/or prosecuted for
25 possession or distribution of illegal drugs? I'll just

1 ask you to stand at this time if you think that question
2 might apply to you or if you have a question about the
3 question itself, if you would please stand.

4 Any member of the Jury Panel or members of their
5 immediate families or close personal friend ever been
6 addicted to or had a substance abuse problem involving
7 cocaine or crack cocaine or heroin or marijuana, or ever
8 been accused of or prosecuted for possession of
9 distribution of illegal drugs, if you would please
10 stand.

11 (Several Prospective Jurors stand.)

12 THE COURT: All right. The question I'm gonna be
13 asking is if you could be fair and impartial. I'm not
14 going into any of the specifics. But if you could be
15 fair and impartial with that experience.

16 And starting on the front, your name, please,
17 ma'am?

18 PROSPECTIVE JUROR KILBY: Susan Kilby.

19 THE COURT: All right. Could you be fair and
20 impartial to both the State and the Defendant in this
21 case?

22 PROSPECTIVE JUROR KILBY: Yes, I could.

23 THE COURT: Very good. Thank you, ma'am.
24 Your name, please.

25 PROSPECTIVE JUROR BALLARD: Carrie Ballard.

1 THE COURT: And could you be both fair and
2 impartial to the State and the Defendant in this case?

3 PROSPECTIVE JUROR BALLARD: Yes.

4 THE COURT: All right. Thank you, ma'am.
5 Yes, sir.

6 PROSPECTIVE JUROR HOLBROOKS: Hal Holbrooks.

7 THE COURT: And could you be both -- or would that
8 interfere in any way with your ability to give both the
9 State and the Defendant a fair and impartial trial?

10 PROSPECTIVE JUROR HOLBROOKS: No problem.

11 THE COURT: Thank you, sir.
12 Yes, sir.

13 PROSPECTIVE JUROR BOGGS: Justin Boggs.

14 THE COURT: All right. Would that in any way --
15 your experience in any way interfere with your ability
16 to give both the State and the Defendant a fair and
17 impartial trial?

18 PROSPECTIVE JUROR BOGGS: No, sir.

19 THE COURT: Very good.
20 Yes, sir. Your name, please.

21 PROSPECTIVE JUROR WILLIAMS: Charles Williams.

22 THE COURT: Yes, sir. Would that in any way
23 interfere with your ability to give -- or your
24 experience in any way interfere with your ability to
25 give both the State and the Defendant a fair and

1 impartial trial?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: All right. I'm going to excuse you on
4 the trial of this case, but I do want to thank you for
5 your answer. Just sit with us, though. But you will be
6 excused for the trial of this case.

7 Yes, sir. Your name, please.

8 PROSPECTIVE JUROR CANTRELL: Larry Cantrell.

9 THE COURT: And would your experience in any way
10 interfere with your ability to give both the State and
11 the Defendant a fair and impartial trial?

12 PROSPECTIVE JUROR CANTRELL: No, sir.

13 THE COURT: Very good. Thank you.

14 Does the nature of a drug case affect any member of
15 the Jury Panel such as or so much that you would have
16 difficulty serving as a member of a Jury on this case?
17 In other words, does any member know of any reason why
18 he or she could not give both the State of South
19 Carolina and the Defendant a fair and impartial trial?
20 If so, please stand.

21 (There was no response.)

22 THE COURT: Has any member of the Jury Panel
23 expressed an opinion about this case? If so, please
24 stand.

25 (There was no response.)

1 THE COURT: Is any member of the Jury Panel aware
2 of any bias, prejudice, or interest towards either the
3 Defendant or the State of South Carolina? If so, please
4 stand.

5 (There was no response.)

6 All right. Any further questions from the --
7 additional questions from the State?

8 MS. SIMMONS: No, Your Honor.

9 THE COURT: From the Defense?

10 MR. ROSEMOND: No, Your Honor.

11 THE COURT: Very good. Thank you.

12 The way we draw a Jury in General Sessions, or
13 select a Jury --

14 This is five and five?

15 MS. SIMMONS: Yes, Your Honor.

16 THE COURT: Is that correct, Mr. Rosemond?

17 MR. ROSEMOND: Yes, Your Honor.

18 THE COURT: Five and five.

19 The way we select a Jury in General Sessions now is
20 that we prepare a list of names, there's a random list
21 on a computer, and so the names are not the same, they
22 don't follow the same order that your Jury numbers are.
23 But these are random numbers or names. And as your name
24 is called out, if you would please come forward and
25 stand at the front here where the bailiff is standing

1 and look back on the back of the courtroom. --

2 And somebody needs to get that gate, too, if we
3 could. All right.

4 -- and the State will go first and they will either
5 say "excuse the Juror" or "present the Juror." Then it
6 will be the Defense's turn. It'll either be "excuse the
7 Juror" or "swear the Juror." And both the State and the
8 Defense will have five strikes in this case. Ultimately
9 we'll have 12 Jurors, and I'm going to also request at
10 least one alternate.

11 Is there any objection to that, or do you need
12 more, from the State?

13 MS. SIMMONS: I think one is sufficient, Your
14 Honor.

15 THE COURT: All right. Mr. Rosemond?

16 MR. ROSEMOND: No objection, Your Honor.

17 THE COURT: All right. Very good. And then those
18 strikes will be one for the State and two for the
19 Defendant.

20 All right. Let's see. Are we ready? I might note
21 that you can see back here there's a drum, that the way
22 we used to draw Jurors in General Sessions Court is that
23 each of the Jurors' names were put in a capsule and
24 those capsules were put in this drum and then we turned
25 the drum and we would have an individual, a child who

1 was too young to read or write, to reach in the drum and
2 pull out a capsule or a person who was legally blind who
3 would reach in the drum and pulled out the capsule, and
4 then they would call your name and then you would come
5 forward and then we would go through the process of
6 present or excuse or swear or excuse. But now we do it
7 by computers. When the computers work, it's very
8 efficient. Fortunately, we've got good clerks and also
9 good equipment.

10 All right. With that, Madam Clerk, if you would
11 please give us a Jury.

12 THE CLERK: I'm waiting for one more page to print.

13 THE COURT: Oh, you got one more?

14 THE CLERK: Yes.

15 THE COURT: All right.

16 THE CLERK: It's slow today.

17 Ladies and gentlemen, as I call your name, please
18 come forward.

19 Number 137, Lula Rogers.

20 (Whereupon, a White female approaches.)

21 THE CLERK: What sayeth the State?

22 MS. SIMMONS: Please present the Juror.

23 THE CLERK: What says the Defense?

24 MR. ROSEMOND: Please seat the Juror.

25 THE CLERK: Ma'am, if you would please take a seat

1 in the Jury box.

2 Number 12, Judie Bowman.

3 (Whereupon, a White female approaches.)

4 THE CLERK: What says the State?

5 MS. SIMMONS: Please present the Juror.

6 THE CLERK: What says the Defense?

7 MR. ROSEMOND: Please excuse the Juror.

8 THE CLERK: Ma'am, you have been excused from this
9 case, you may be seated.

10 Number 47, Angelia Dye.

11 (Whereupon, a White female approaches.)

12 THE CLERK: What says the State?

13 MS. SIMMONS: Please present the Juror.

14 THE CLERK: What says the Defense?

15 MR. ROSEMOND: Please excuse the Juror.

16 THE CLERK: Ma'am, you have been excused from this
17 case, you may be seated.

18 Number 74, Manuel Hunter.

19 (Whereupon, a White male approaches.)

20 THE CLERK: What says the State?

21 MS. SIMMONS: Please present the Juror.

22 THE CLERK: What says the Defense?

23 MR. ROSEMOND: Please seat the Juror.

24 THE CLERK: Sir, if you would please take a seat in
25 the Jury box.

1 Number 5, Brenda Barton.

2 (Whereupon, a White female approaches.)

3 THE CLERK: What says the State?

4 MS. SIMMONS: Please present the Juror.

5 THE CLERK: What says the Defense?

6 MR. ROSEMOND: Please excuse this Juror.

7 THE CLERK: Ma'am, you have been excused from this
8 case, you may be seated.

9 Number 15, Charles Bright.

10 (Whereupon, a White male approaches.)

11 THE CLERK: What says the State?

12 MS. SIMMONS: Please excuse the Juror from the
13 trial of this case.

14 THE CLERK: Sir, you have been excused from this
15 case, you may be seated.

16 Number 146, Mickey Simpson.

17 (Whereupon, a White male approaches.)

18 THE CLERK: What says the State?

19 MS. SIMMONS: Please present the Juror.

20 THE CLERK: What says the Defense?

21 MR. ROSEMOND: Please excuse the Juror.

22 THE CLERK: Sir, you have been excused from this
23 case, you may be seated.

24 Number 104, Jason Miller.

25 (Whereupon, a White male approaches.)

1 THE CLERK: What says the State?

2 MS. SIMMONS: Please present the Juror.

3 THE CLERK: What says the Defense?

4 MR. ROSEMOND: Please seat this Juror.

5 THE CLERK: Sir, if you would please take a seat in
6 the Jury box.

7 Number 37, Aneshia Davis.

8 (Whereupon, a White female approaches.)

9 THE CLERK: What says the State?

10 MS. SIMMONS: Please present the Juror.

11 THE CLERK: What says the Defense?

12 MR. ROSEMOND: Please seat this Juror.

13 THE CLERK: Ma'am, if you would please take a seat
14 in the Jury box.

15 Number 83, Roy Kirkwood.

16 (Whereupon, a White male approaches.)

17 THE CLERK: What says the State?

18 MS. SIMMONS: Please present the Juror.

19 THE CLERK: What says the Defense?

20 MR. ROSEMOND: Please seat the Juror.

21 THE CLERK: Sir, if you would please take a seat in
22 the Jury box.

23 Number 120, Patsy Phillips.

24 (Whereupon, a White female approaches.)

25 THE CLERK: What says the State?

1 MS. SIMMONS: Please excuse the Juror from the
2 trial of this case.

3 THE CLERK: Ma'am, you have been excused from this
4 case, you may be seated.

5 Number 48, Efrem Earle.

6 (A Black male approaches.)

7 THE CLERK: What says the State?

8 MS. SIMMONS: Please present the Juror.

9 THE CLERK: What says the Defense?

10 MR. ROSEMOND: Please seat this Juror.

11 THE CLERK: Sir, if you would please take a seat in
12 the Jury box.

13 Number 60, Howard Graham.

14 (Whereupon, a White male approaches.)

15 THE CLERK: What says the State?

16 MS. SIMMONS: Please present the Juror.

17 THE CLERK: What says the Defense?

18 MR. ROSEMOND: Please seat the Juror.

19 THE CLERK: Sir, if you would please take a seat in
20 the Jury box.

21 Number 1, Sam Abercrombie.

22 (Whereupon, a White male approaches.)

23 THE CLERK: What says the State?

24 MS. SIMMONS: Please present the Juror.

25 THE CLERK: What says the Defense?

1 MR. ROSEMOND: Please seat this Juror.

2 THE CLERK: Sir, if you would please take a seat in
3 the Jury box.

4 Number 82, Susan Kilby.

5 (Whereupon, a White female approaches.)

6 THE CLERK: What says the State?

7 MS. SIMMONS: Please present the Juror.

8 THE CLERK: What says the Defense?

9 MR. ROSEMOND: May we approach, Your Honor?

10 THE COURT: Certainly.

11 (Discussion at sidebar.)

12 THE COURT: All right. You may proceed.

13 THE CLERK: What says the Defense?

14 MR. ROSEMOND: Please seat the Juror.

15 THE CLERK: Ma'am, if you would please take a seat
16 in the Jury box.

17 Number 79, Charles Johnson.

18 (Whereupon, a White male approaches.)

19 THE CLERK: What says the State?

20 MS. SIMMONS: Please present the Juror.

21 THE CLERK: What says the Defense?

22 MR. ROSEMOND: Please seat the Juror.

23 THE CLERK: Sir, if you would please take a seat in
24 the Jury box.

25 Number 72, Carl Holden.

1 (Whereupon, a White male approaches.)

2 THE CLERK: What says the State?

3 MS. SIMMONS: Please present the Juror.

4 THE CLERK: What says the Defense?

5 MR. ROSEMOND: Please excuse the Juror.

6 THE CLERK: Sir, you have been excused from this
7 case, you may be seated.

8 Number 11, Justin Boggs.

9 (Whereupon, a White male approaches.)

10 THE CLERK: What says the State?

11 MS. SIMMONS: Please present the Juror.

12 THE CLERK: What says the Defense for cause?

13 MR. ROSEMOND: Please seat the Juror.

14 THE CLERK: Sir, if you would please take a seat in
15 the Jury box.

16 Number 26, Marty Chastain.

17 (Whereupon, a White male approaches.)

18 THE CLERK: What says the State?

19 MS. SIMMONS: Please present the Juror.

20 THE CLERK: What says the Defense for cause?

21 MR. ROSEMOND: Please seat the Juror.

22 THE CLERK: Sir, if you would please take a seat in
23 the Jury box.

24 This will be for the alternate.

25 THE COURT: All right. It's two and one.

1 THE CLERK: Number 53, Melissa Fuller.

2 (Whereupon, a White female approaches.)

3 THE CLERK: What says the State?

4 MS. SIMMONS: Please present the Juror.

5 THE CLERK: What says the Defense?

6 MR. ROSEMOND: Please seat the Juror.

7 THE CLERK: Ma'am, if you would please take a seat
8 in the Jury box.

9 THE COURT: All right. Is there any reason this
10 Jury cannot be sworn for the trial of this case from the
11 State?

12 MS. SIMMONS: No, Your Honor.

13 THE COURT: From the Defense?

14 MR. ROSEMOND: No, Your Honor.

15 THE COURT: Very good. Mr. Miller, I'm gonna ask
16 you to serve as Foreperson of this Jury, so when we come
17 back to the courtroom, if you would take the first seat
18 on the front row.

19 And, Ms. Fuller, you are the alternate, so if you
20 would always sit in the last seat on the back row.
21 Those are the only two seats I need to be able to
22 identify, the Foreman and the Alternate. Everyone else
23 can sit anywhere they want to in the Jury box. Now, we
24 don't use that last seat on the front row because it's
25 so far away from the witness stand, and it's easier for

1 you to have a better view and also you will hear the
2 witness's testimony. So do not use the last seat on the
3 front row. And then, of course, as I say, the first
4 seat on the front row will be the Foreman and the last
5 seat on the back row will be the Alternate.

6 With that I'm going to ask you to go with the
7 bailiff.

8 And if you would take them to the Jury room on the
9 fourth floor here, and then I've got to take up some
10 matters with the balance of the Jury Panel and the
11 attorneys. It will only take a few minutes, but then
12 we'll come back and I'll give you further instructions.

13 All right. If you would, please.

14 Now, I might say this. That my instructions
15 throughout the trial of the case, and this applies to
16 the Jury Panel or Petit Jury who might be called on a
17 case, my instructions throughout the trial of the case
18 is that the Jury is not to discuss the case among
19 yourselves or even permit any- -- particularly permit
20 anybody to discuss it with you.

21 The reason for that is a trial of the case has a
22 certain schedule format or a procedure that is followed.
23 You have your opening statements by the attorneys, the
24 first witness, the last witness, then you have the
25 closing argument by the attorneys, and then finally at

1 the end before it's given to you for your deliberations
2 the charge on the law, so you never know what's going to
3 be the most important part of the case: it could be the
4 first witness, the final arguments, or the charge on the
5 law, so you need to keep an open mind throughout the
6 trial of the case.

7 I'll give you further instructions about that
8 later. But the main thing is do not discuss the case
9 among yourselves in any way, personalities or anything
10 else, until it's finally given to you after you receive
11 all the testimony and evidence and you have the law and
12 arguments of Counsel.

13 All right. With that, if you would please go with
14 the bailiff.

15 (Whereupon, the Jury left the courtroom at
16 approximately 12:15 p.m.)

17 **THE COURT:** We're gonna start this tomorrow; is
18 that right?

19 **MS. SIMMONS:** Yes, Your Honor.

20 **THE COURT:** All right. For those who were not
21 drawn on the trial of this case, I'm going to excuse you
22 for the balance of the day as well as the balance of
23 tomorrow. In fact, the Clerk of Court, Ms. Whitfield,
24 has provided a mechanism for you to check in without
25 having to come here and report in each day. And so what

1 you have --

2 Do they have something with the number on it?

3 **THE CLERK:** It's on top of their letter.

4 **THE COURT:** All right. You've got the letter and
5 the number at the top. I don't know what the number is
6 myself. But does everybody have a telephone number that
7 shows, I think, like you say, on the letter they
8 received today?

9 **THE CLERK:** Yes, sir. It's big letters at the top.
10 It's 718-1058.

11 **THE COURT:** All right. Does everyone have that
12 telephone number? All right. That is an answering
13 machine that, after 6:00 a message will be put on the
14 answering machine and it will tell you what to do the
15 next day: either come in the next day or call in the
16 next day. The reason for that is, we try to make this
17 as less inconvenient as possible, and so if it's not
18 necessary for you to be here, then we give you an alert
19 to know that you don't have to call in or report the
20 next day. However, if it does say call back the next
21 day, then, of course, that's what you would do.

22 Now, this is an answering machine that will be on
23 all night. So if you don't get through the first time,
24 keep calling until you do get the message. I regret
25 that if you don't get the message from the answering

1 machine, you will have to get it from me. I'll be here
2 at 9:00 the next day, which will be Wednesday. But do
3 not call tonight, but call back tomorrow night, and that
4 would be March the 19th, Tuesday, and there will be a
5 message on the machine.

6 Now, does everybody understand what to do? Anybody
7 that does not understand? Everybody has the number? If
8 you don't have the number, raise your hand and we'll get
9 you the number.

10 Very good. I do look forward to working with you
11 this week and I thank you for your patience with the
12 Court. And do remember to call that number tomorrow
13 night, Tuesday night, not tonight. There will be a
14 message on the machine at that time. Very good.

15 Everyone else remain seated while the Jury retires
16 from the courtroom.

17 (Whereupon, the Jury Panel was excused at
18 approximately 12:20 p.m.)

19 THE COURT: I'll excuse the Jury until 10:00 in the
20 morning, Ms. Simmons?

21 MS. SIMMONS: Yes, Your Honor.

22 THE COURT: Is that agreeable to the Defendant,
23 Mr. Rosemond?

24 MR. ROSEMOND: Yes, it is, Your Honor.

25 THE COURT: And then we'll take up any matters that

1 we need to this afternoon.

2 MS. SIMMONS: Yes, Your Honor.

3 THE COURT: And we will be trying it up here on the
4 fourth floor.

5 MR. ROSEMOND: Yes, sir.

6 MS. SIMMONS: Thank you.

7 THE COURT: Ask the Jury to join us, please.

8 (The Jury entered the courtroom at approximately
9 12:22 p.m.)

10 THE COURT: All right. Let the record reflect the
11 Jury and Alternate are in the Jury box.

12 Mr. Foreman, ladies and gentlemen of the Jury,
13 there are a few matters I need to take up before we
14 start the trial of the case, and rather than just keep
15 you back there in the Jury room, I'm going to excuse you
16 and we'll start the trial, the actual trial of the case,
17 at 10:00 in the morning.

18 So if you will come back at 10:00 to the Jury room
19 that you were just in, then we'll commence the case at
20 that time. As I say, there are always some things that
21 I have to take up before we get a trial underway, and
22 rather than keep you there during that time, I'm going
23 to suggest that we give ourselves plenty of time to get
24 those what we call pretrial matters out of the way.

25 Now, you'll be going home, and I tell the Jurors,

1 this is the most difficult part of this whole case that
2 you'll have. Because you'll have, because when you go
3 home this afternoon or this evening, someone is gonna
4 ask you, Well, you what are you doing?

5 You will say, I've been drawn on a Jury.

6 And, of course, you haven't heard any of the
7 testimony or evidence, but they'll ask you, Well, what's
8 it about?

9 And you're gonna tell them, Well, I can't talk to
10 you about it.

11 They'll say, Well, why not?

12 You're gonna tell them, Because the Judge said so.

13 They will probably say something like, Well, that's
14 ridiculous.

15 But I think you understand that this is a very
16 important case to everybody involved and it needs to be
17 resolved in a proper fashion, and nobody who is not
18 sitting in that Jury box with you during the trial of
19 the case or is back in that Jury room when the case is
20 finally given to you for your deliberations can help
21 you. They will not have heard the first witness, had
22 the first bit of evidence, or any other exhibits or
23 anything of that nature. The only thing they can do is
24 confuse it.

25 And so, therefore, tell them that you cannot

1 discuss it with them. I'll be here at 8:30 in the
2 morning, and if they don't understand it, I'll be glad
3 to explain it to them. But I think that you can
4 understand this is an important case to everyone
5 involved and it needs to be resolved in a proper
6 fashion.

7 With that I'll excuse you till 10:00 in the morning
8 and just come back to the Jury room with the bailiff --

9 And also show them how to come back in the morning,
10 if you will.

11 THE BAILIFF: Yes, sir.

12 THE COURT: Very good. Thank you very much, and I
13 look forward to working with you this week.

14 (Whereupon, the Jury was excused for the day at
15 approximately 12:25 p.m.)

16 THE COURT: All right. What would the counsel
17 propose for this afternoon? It's 12:30. We could take
18 lunch now and come back.

19 MS. SIMMONS: Yes, Judge. We have a bond hearing
20 scheduled at 2:00, we have the appropriate agencies are
21 coming then. Maybe we could start these at 2:30?

22 THE COURT: Take up Motions at 2:30?

23 MS. SIMMONS: Yes, sir.

24 THE COURT: What are the Motions?

25 MR. ROSEMOND: It's a Motion to Suppress, Your

1 Honor, and --

2 THE COURT: Jackson v. Denno or evidence?

3 MS. SIMMONS: It would be -- the Defense has a
4 Motion to Suppress evidence based on a search warrant,
5 but the State also seeks to submit two oral statements
6 given by the Defendant so --

7 THE COURT: So it is a Jackson v. Denno. All
8 right. Very good.

9 MR. ROSEMOND: And a Motion to Quash. I was
10 talking to my client this morning, Your Honor. My
11 client is asking for a Motion to Quash and that would be
12 added to that.

13 THE COURT: Very good. All right.

14 MS. SIMMONS: Your Honor, we'll go ahead and
15 premark the exhibits.

16 THE COURT: If you would. And, as I say, we'll
17 start at 10:00 in the morning. But we'll come back at
18 2:00 and take up the bond, and then do your Motions this
19 afternoon. All right. Very good.

20 MS. SIMMONS: Judge, for purposes of the hearing
21 this afternoon, would you like the search warrant to be
22 marked Court's Exhibit 1?

23 THE COURT: Yes.

24 MS. SIMMONS: Okay. All right.

25 THE COURT: Well, whatever number. I don't know if

1 we have any other exhibits. But in sequential order.

2 (Marked for identification was Court's Exhibit 1,
3 search warrant.)

4 (Marked for identification were State's Exhibits 1
5 through 30, Photos.)

6 (Marked for identification was State's Exhibit 31,
7 Statement of Miranda Rights dated 7/25/12.)

8 ** End of Morning Proceedings at 11:30 a.m. **
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Afternoon Session

3:15 p.m.

(Whereupon, the following occurred outside the presence of the Jury.)

THE COURT: We're now back on the State versus Temple?

MS. SIMMONS: Yes, Your Honor.

MR. ROSEMOND: Yes, Your Honor.

(Defendant enters courtroom at 3:15 p.m.)

THE COURT: All right. We're back on the case of Dan Lavert Temple, 2012-GS-37-184 and '185.

It is my understanding that the Defendant has some Motions --

Well, does the State have any Motions?

MS. SIMMONS: Judge, we will just need to have a Jackson v. Denno hearing.

THE COURT: All right.

MS. SIMMONS: I don't object to the Defense Motions being heard first.

THE COURT: Which would you like to take up first, Mr. Rosemond?

MR. ROSEMOND: The Defense Motion, sir.

THE COURT: Very good. And I think you also said there was a Motion to Quash?

MR. ROSEMOND: Yes. I think the Clerk has the

1 Motion to Quash in front of her.

2 THE CLERK: Do you need a copy?

3 THE COURT: Yes, ma'am.

4 (Discussion off the record.)

5 (The Court conferred with the law clerk off the
6 record.)

7 (There was a pause in the proceedings while the
8 Court read the Defendant's Motion to Quash.)

9 THE COURT: All right. The Motions we're gonna be
10 taking up are the Motions to Quash?

11 MR. ROSEMOND: Yes, Your Honor.

12 THE COURT: And does it apply to -- or does it
13 address the sufficiency of both Indictments on the same
14 ground?

15 MR. ROSEMOND: They do, Your Honor, yes, sir.

16 THE COURT: All right. Let me hear from you.
17 Defendant's Motion to Quash:

18 MR. ROSEMOND: Simply, Your Honor, the Indictments
19 in this particular case, there's two Indictments. In
20 both Indictments -- and I will do the Indictment Number
21 for drug manufacturing, distribution, et cetera, of
22 cocaine base, third or subsequent offense, Your Honor.

23 And that Indictment says that (reading):

24 On or about July 25th, 2012, in Oconee County,
25 South Carolina, the Defendant, Dan Lavert Temple, did

1 possess with intent to distribute, dispense, or deliver
2 a quantity of crack cocaine, a Schedule 2 controlled
3 substance, under the provision of Section 44-53-110, *et*
4 *seq*, Code of Laws of South Carolina as Amended, or did
5 otherwise aid or abet or attempt or conspire to
6 manufacture, distribute, dispense, or deliver crack
7 cocaine, all in violation of 44-53-375.

8 Your Honor, the second Indictment, the one for
9 drugs, possession of other controlled substances, the
10 Schedule 1 through 4, second or subsequent offense, it
11 says that (reading):

12 The Defendant, Dan Lavert Temple, on or about July
13 the 25th, 2012, in Oconee County, South Carolina, did
14 knowingly or intentionally possess a quantity of Xanax,
15 a Schedule 4 controlled substance under the provision of
16 Section 44-53-110.

17 And, Your Honor, that language does not put the
18 Defendant on notice of whereby in Oconee County that
19 this incident took place. This incident took place in
20 Oconee County. It was at the Town & Country Motel, and
21 that address is 320 Bypass 123.

22 And the Statute is devoid of any language of
23 putting the Defendant on notice of where this incident
24 took place. And because it does not say the exact
25 location or on or near about the location within Oconee

1 County, the Indictments in this particular case are
2 insufficient and it lacks any subject matter
3 jurisdiction.

4 THE COURT: All right. Madam Solicitor?

5 MS. SIMMONS: Judge, I'll bring the Court's
6 attention to *Jones v. State*, 333 S.C. 6, from 1998,
7 which states that (reading):

8 The Indictment need only allege the place where the
9 crime was committed sufficiently to lay jurisdiction in
10 the Court and inform the Defendant of the County in
11 which he is charged with the violation in law. The
12 State does not require complete evidence showing the
13 location of the crime on the Indictment.

14 I believe that was the controlling case regarding
15 this issue, and it is our position that stating the
16 crime occurred in Oconee County is sufficient to confer
17 jurisdiction on the Court.

18 THE COURT: All right. Anything else -- what was
19 that cite that you had?

20 MS. SIMMONS: Your Honor, *Jones v. State*, 333 S.C.
21 6, 507 S.E.2d 324, and it is from 1998.

22 THE COURT: All right. Anything else,
23 Mr. Rosemond?

24 MR. ROSEMOND: No, Your Honor.

25

1 The Court's Ruling on Defendant's Motion to Quash:

2 THE COURT: One of the problems with my being
3 around as long as some of us have been is we have seen
4 old formalities change, I guess you would say. At one
5 time the printed Indictment in South Carolina alleged --
6 and the printed part that you have in the Indictment now
7 says "against the peace and dignity of the State of
8 South Carolina and contrary to Statute such case may be
9 provided."

10 An Indictment in that line used to say, at the
11 courthouse door, any -- at the courthouse door the
12 Defendant did, contrary to the peace and dignity of the
13 State of South Carolina and contrary to Statute in such
14 case may have provided, committed this crime or
15 committed whatever is alleged in the Indictment.

16 And that is the law because obviously the
17 courthouse door was a formality or whatever that had
18 nothing to do with the actual elements of the crime.
19 But the thing is that was where the line of cases came
20 down that says that what you have to find is
21 jurisdictional grounds for an offense.

22 The jurisdictional grounds are not only by reason
23 of the offense charged and the elements of those
24 offenses, but the venue of the offense, that it has to
25 be identifiable. And in order to get jurisdiction to

1 the Court of General Sessions of Oconee County you have
2 to allege that it occurred in Oconee County, not
3 necessarily on this side of the street or that side of
4 the street, but the street and both sides have to be in
5 Oconee County before it gets to General Sessions.

6 So we've done away with the against the peace and
7 dignity of the State of South Carolina and contrary to
8 Statute be provided at the courthouse door. So we
9 understand the actual location is not essential. It has
10 to be -- so I must -- and by the way, one of the cases
11 that we found was *State v. McCloud*.

12 And there, they were able to identify that the
13 action actually took -- I mean the incident actually
14 took place in Colleton County because the individual was
15 last seen, or the victim was last seen before her death
16 in Colleton County, even though she was also found --
17 there was evidence about her being in Beaufort County.
18 There, the -- I think her residence was actually in
19 Beaufort but she was last seen alive in Colleton County.
20 And it said (reading):

21 Under these facts we find venue is proper in either
22 Colleton or Beaufort County.

23 I'll have to deny your Motion to Quash.

24 I haven't looked at your other case yet. But --
25 the 1998 case, but is it along the same lines?

1 **MS. SIMMONS:** Judge, the State is not required to
2 prove evidence showing the exact location of the crime
3 in the Indictment.

4 **THE COURT:** All right. Very good.

5 All right, Mr. Rosemond.
6 Defendant's Motion to Suppress:

7 **MR. ROSEMOND:** Secondly, Your Honor, the Defendant
8 is asking that you suppress the drugs that were found in
9 the hotel room as a result of an unlawful Search Warrant
10 issued mainly because law enforcement didn't, number
11 one, have probable cause; number two, it didn't attest
12 to any informant's reliability; number three, the lack
13 of jurisdiction in this particular case in where a
14 County Judge signed a City Search Warrant, and the
15 issuance of the search warrant violated the Fourth
16 Amendment.

17 **THE COURT:** First, the issue that comes to my mind
18 is the one about a County Judge not having jurisdiction
19 over a City in the County. Without further elaboration
20 I can remember certain County Sheriffs that said that if
21 people didn't stop breaking the law in the County seat,
22 he was gonna have to call the law because he was the
23 County Sheriff and not the City Police. And I don't
24 think that's the law. The County Sheriff has, the
25 County Magistrate has jurisdiction.

1 MR. ROSEMOND: But the problem, Judge, is when you
2 know the City Judge will not give you a Search Warrant
3 because he doesn't think you have probable cause for
4 that and then you start Judge shopping.

5 THE COURT: Let's go to probable cause. Now, if
6 the City Judge knew that he didn't have probable cause,
7 then the County Judge knew that he didn't have probable
8 cause. Well, he just didn't exercise it, but he knew,
9 so now let's go to the probable cause. I don't know
10 what the basis of the probable cause was, but I'm gonna
11 find again jurisdiction can be decided as to where
12 somebody is located.

13 MR. ROSEMOND: Yes, sir, Your Honor, I certainly
14 understand.

15 THE COURT: By the way, where is the County
16 Magistrate's office in the Seneca Township located?
17 Ms. Simmons might know.

18 MS. SIMMONS: East North First Street in Seneca,
19 Your Honor.

20 THE COURT: So you are not saying that a Judge sits
21 in a place he doesn't have jurisdiction? I mean, if
22 he's a County Magistrate, we follow that the County
23 Magistrate doesn't have jurisdiction in the City, then
24 he would have to sit out in the County rather than the
25 City.

1 MS. SIMMONS: Judge, it's the State's position that
2 the Magistrate has County-wide jurisdiction.

3 THE COURT: I understand. But I do want to hear
4 the basis of the lack of probable cause. And what is
5 that? I mean, you said you had two. One, specificity
6 of location and something else?

7 MR. ROSEMOND: It was the informant's reliability,
8 Your Honor.

9 THE COURT: Reliability of the informant. All
10 right. You are addressing the Search Warrant?

11 MR. ROSEMOND: Yes, I'm addressing the search
12 warrant, Your Honor.

13 THE COURT: What does the Affidavit in the Search
14 Warrant say?

15 MS. SIMMONS: Your Honor, I'll be happy to pass up
16 what has been premarked Court's Exhibit 1 (handing).

17 (There was a pause in the proceedings while the
18 Court read Court's Exhibit 1.)

19 THE COURT: All right. I'm looking, I think, at
20 the Affidavit dated July the 24th, 2012. Is that the
21 one we are concerned about?

22 MR. ROSEMOND: Yes, Your Honor.

23 THE COURT: All right. Does that apply to both
24 Indictments, alleged contraband found on the premises
25 under those Indictments?

1 MR. ROSEMOND: It would apply to both Indictments,
2 Your Honor.

3 THE COURT: One Search Warrant, two Indictments.
4 All right. Well, tell me about your -- well, I'll start
5 with you, Madam Solicitor. Why do you think that is
6 sufficient --

7 MS. SIMMONS: Your Honor --

8 THE COURT: -- as far as location?
9 Is 320 a street address?

10 MS. SIMMONS: Yes, Your Honor.

11 THE COURT: 320, Bypass 123, so that's Number 320,
12 123 Bypass. And you were specifically looking at 123 in
13 that building?

14 MS. SIMMONS: Yes, Your Honor.

15 THE COURT: I find that to be sufficient.

16 MS. SIMMONS: It's known as the Town & Country
17 Motel and that's also made reference to in the
18 Indictment.

19 THE COURT: Is that in --

20 MS. SIMMONS: It's in the description in the
21 parentheses, Your Honor, the second paragraph. It
22 references the GPS coordinates, the address, and the
23 name of the establishment.

24 THE COURT: All right. And then the other one,
25 though, is as to the sufficiency of the Indictment as to

1 the reliability of the CI?

2 MR. ROSEMOND: That's correct, Your Honor.

3 THE COURT: All right.

4 (Court reads document.)

5 THE COURT: All right, Mr. Rosemond. What
6 specifically do you find --

7 MR. ROSEMOND: Your Honor, if you are looking at
8 this particular Search Warrant, it goes to informants,
9 Your Honor. And certainly the Affidavit in the Search
10 Warrant does not contain any information about the
11 reliability of the confidential informant in this
12 particular case.

13 Certainly, if you are basing a search warrant on
14 what your confidential informant did or told you or saw,
15 then you have to have some information that goes to that
16 confidential informant's reliability. That's in *State*
17 *v. Johnson*, 302, S.C., 243, 395, S.E.2d, 1967, 1990.

18 But there's nothing in the Search Warrant that goes
19 to the confidential informant's reliability. And
20 certainly because of that, Your Honor, the Judge did not
21 have that information in front of him to attest whether
22 or not this confidential informant had been reliable in
23 the past, whether or not there had been any chances of
24 unreliability, and because it doesn't have that
25 information in there, Your Honor, it doesn't meet the

1 statutory requirements for the issuance of this Search
2 Warrant in this case.

3 THE COURT: All right. Ms. Simmons.

4 MS. SIMMONS: Thank you, Your Honor. I'll bring
5 the Court's attention to *State v. Leroy Dupree*, which is
6 354 S.C. 676. And it suggests that (reading):

7 In a search warrant case, a confidential informant
8 can be probable cause, and it gives a totality of the
9 circumstances analysis which is appropriate in cases of
10 this nature.

11 Most importantly, I would also bring the Court's
12 attention to *State v. Bellamy*, that is 336 S.C. 140,
13 Justice Toal wrote the opinion holding that (reading):

14 A Magistrate had a substantial basis for concluding
15 probable cause existed to issue the search warrant even
16 though the Affidavit was weak as to the informant's
17 reliability.

18 THE COURT: Do you have that last case that you
19 referred to?

20 MS. SIMMONS: Yes, Your Honor. I can pass up my
21 copy if you would like.

22 THE COURT: I don't.

23 MS. SIMMONS: Mr. Rosemond, I hand you a copy as
24 well. (Handing to Counsel and Court).

25 THE COURT: Thank you, ma'am.

1 MS. SIMMONS: Judge, I apologize. I had written on
2 the top.

3 THE COURT: All right. (Court reads document.)
4 You wouldn't have a copy of your case with you,
5 Mr. Rosemond?

6 MR. ROSEMOND: Which case is that?

7 THE COURT: State v. Johnson. Wait a minute, I've
8 got it. (Court reads document.)

9 All right. Anything further, Mr. Rosemond?

10 MR. ROSEMOND: Yes, Your Honor. I just wanted to
11 make sure that I was clear because my client didn't
12 think I was that clear.

13 There were no controlled buys that occurred at 320
14 Bypass 123 at the Town & Country hotel. All the
15 controlled buys that they allege to have had occurred at
16 other places. Certainly, Your Honor, that doesn't tie
17 you to 320 Bypass 123.

18 And even the case that the State handed up, State
19 v. Dupree, said that the CI buy can be used if the buy
20 was properly conducted.

21 You know, certainly, Your Honor, without any
22 information that this buy was properly conducted -- and
23 that's on Page Number 8 in State v. Dupree, the first
24 full paragraph at the top -- it states (reading):

25 If the controlled buy was properly conducted, it

1 can alone provide facts sufficient to establish probable
2 cause for a Search Warrant.

3 Your Honor, we haven't established that the
4 controlled buy was properly conducted. Mr. Hunnicutt
5 hadn't said it was properly conducted. The confidential
6 informants here haven't given any testimony as to what
7 occurred on that particular day, and certainly the
8 Magistrate did not have anything other than the Search
9 Warrant in front of him as well as the attached
10 Affidavit that said that it was a controlled buy.

11 Your Honor, certainly, if you add that to the fact
12 that the Affidavit doesn't say anything about the
13 reliability of the informant, which is the critical
14 aspect of this particular case, then it is a Search
15 Warrant that should be -- well, it's a Search Warrant
16 that should be deemed to be unlawful.

17 Your Honor -- and that goes back to the other point
18 that I was trying to make earlier, Your Honor. If you
19 are a City Officer and you take this warrant to a City
20 Judge, or you know that the City Judge might have
21 problems with this warrant, you've got to find a way to
22 get around that particular problem. He's a City
23 Officer, it's in a City jurisdiction. You know that the
24 City Judge may say, I'm not gonna give you a Search
25 Warrant. Well, there's two City Judges in the City of

1 Seneca: One is Judge Singleton and the other one is
2 Judge Lloyd (phonetic). And they know that they're not
3 going to give you one, so you say, I got to figure out
4 how to get one.

5 Well, the interesting thing about that is there's a
6 Magistrate 400 yards away from the City Judge in Seneca.
7 They bypass that Magistrate in Seneca to go all the way
8 to Westminster to get a Judge that may give them a
9 Search Warrant. And when you have that type of
10 shenanigans going on, that's why you start looking hard
11 as to whether or not, number one, there's probable
12 cause, and whether or not, number two, that there's any
13 indicia of reliability as to the Search Warrant.

14 And certainly, Your Honor, it makes you wonder why
15 they bypass three judges to get all the way up to
16 Westminster to get their Search Warrant when they had
17 one judge that worked that day, and that was Judge
18 Singleton, but they don't take it to him.

19 And, Your Honor, certainly, if you add all that
20 together, then you start thinking about whether or not
21 they actually had probable cause to get this Search
22 Warrant. Without the informant's being here, we can't
23 say that the controlled buy was properly conducted
24 because we don't know what they're doing. We're just
25 assuming that it was properly conducted.

1 But the case of *State v. Dupree* says that's what
2 you have to do. And, certainly, if you have no
3 information that the controlled buy was properly
4 conducted in front of you, coupled with the fact of the
5 problems I just shared with you, the indicia of lack of
6 reliability as to the informant in this particular case.

7 THE COURT: You also talked about the indicia of
8 reliability of judicial officers, and some of them have
9 more virtue than others. I don't know if I want to go
10 into that baby.

11 MR. ROSEMOND: I have a client going for
12 distribution of third offense, Your Honor.

13 THE COURT: Again, maybe I'm mishandling your view.
14 When I was practicing law, I can remember that,
15 particularly with DUI cases in Oconee County, if you
16 were arrested at Salem for a DUI on Highway 11, they
17 took you past the Salem Magistrate, past the Walhalla
18 Magistrate, by the Seneca Magistrate, the Westminster
19 Magistrate down to the Oakway Magistrate, and for some
20 reason that they would take you all the way, that's
21 where the DUI cases were tried.

22 Now, I never did challenge the Judge there as far
23 as being, you know, fair or anything like that. But
24 obviously he was more amenable to law enforcement, at
25 least in that area. But I learned to live with it

1 because I couldn't find anything that suggested that he
2 was not proper in his decision. If he was biased or
3 prejudiced, of course, he would be subject to
4 impeachment. I think maybe that's how we determine
5 whether Judges are biased or prejudiced is if we feel
6 that there is basis for that, other than our own
7 feelings about a particular Judge, that we would bring
8 Bills of Impeachment.

9 MR. ROSEMOND: But the other problem with that is,
10 Your Honor --

11 THE COURT: I mean, I don't know. You say that two
12 minutes with Judges and a County Magistrate in Seneca
13 Township, which all are in the same jurisdiction, except
14 the Seneca Magistrate would not be county-wide.

15 MR. ROSEMOND: In the same block within each other,
16 Your Honor.

17 THE COURT: I know. But the thing is, other than
18 suggesting that, I don't find anything that suggests
19 that it was done for any other reason than there was a
20 little Judge shopping or something of that nature, which
21 happens.

22 MR. ROSEMOND: Then you turn around on the same
23 day, Your Honor, that you execute the Search Warrant and
24 you go to the Seneca Judge, and oh, guess what? We need
25 an arrest warrant for this individual.

1 THE COURT: Did the Search Warrant prove
2 successful? Now, wouldn't that Seneca Magistrate be
3 embarrassed if he had denied a Search Warrant, but yet
4 another Magistrate had provided, or did they have a
5 successful Search Warrant but also an arrest warrant?

6 There's too much -- I see where your concern might
7 be, but unestablished concern, other than not really --
8 I mean, do you have anything that says that the two
9 Magistrates and two Seneca Judges were in favor of drugs
10 being at the Town & Country Motel?

11 MR. ROSEMOND: No, Your Honor, we don't have that
12 because they were never presented with that information.

13 THE COURT: Well, then, how can you say they were?

14 MR. ROSEMOND: I didn't say they were. They would
15 not have given them the warrant. They were just never
16 presented the warrant.

17 THE COURT: That's just it. They would give them
18 if there was a basis in the warrant for issuing the
19 warrant; would they not? Unless they were in favor of
20 having, you know, controlled substances in the Town &
21 Country Motel.

22 MR. ROSEMOND: And certainly they wouldn't be in
23 favor of that, Your Honor.

24 THE COURT: That's what I'm saying. I don't know.
25 That's in essence what your argument is, that they

1 wouldn't have given a Search Warrant for an improper
2 case. And that's why you go to Westminster, or not down
3 the street, even to the County Magistrates, because you
4 wouldn't get one, because they wouldn't give you one. I
5 mean, I don't know. I think the better thing to do is
6 to look at the warrant itself and the Affidavit in
7 support of the warrant rather than indict Magistrates
8 and County and City Judges.

9 Which I have done. I have looked at the -- and as
10 now Chief Justice Toal said in the *Dupree* case,
11 Affidavits can be unartfully drawn. And this might not
12 be the best Indictment. But just looking at the case
13 here --

14 Anything else from the Defendant on this matter?

15 MR. ROSEMOND: No, Your Honor.

16 THE COURT: From the State?

17 MS. SIMMONS: Judge, just briefly I would note that
18 at 6:46 p.m., the Officer would not have had two judges
19 within the block at 6:46 p.m., and this was Judge
20 Derrick at the time.

21 THE COURT: I don't know Judges' work hours. I
22 mean, I can't -- I don't know if I can take judicial
23 notice of that. I think the better thing to do is to
24 take judicial notice of what I do have in front of me,
25 which is the Search Warrant and the attached Affidavit.

1 MS. SIMMONS: Your Honor, we would just rest on the
2 totality of the circumstances and events described in
3 the Search Warrant do give rise to probable cause.

4 THE COURT: Well, looking at *State v. Dupree*, and
5 the statement by their citing a Georgia case but saying
6 they did take all those elements that should be
7 considered (reading):

8 The controlled buy supervised by law enforcement
9 officers would alone have provided probable cause. Even
10 if an Officer cannot provide information regarding the
11 veracity of the informant or the basis of his knowledge,
12 a tip may be proved reliable if portions of the tip are
13 sufficiently corroborated.

14 Here, Officers witnessed the delivery of the
15 cocaine and confirmed the accuracy of many of the
16 informant's convictions concerning Defendant's behavior.
17 This sufficiently corroborated the informant's
18 information and showed its reliability.

19 And in this case, in Paragraph 6, it says
20 (reading):

21 Within the last 72 hours an undercover operative
22 working under the direction of the Seneca Police
23 Department was distributed a quantity of Lortabs from
24 Dan Temple at 318, 123 in Seneca. Temple was seen
25 walking to and from the Town & Country Motel.

1 Looking again at *State v. Dupree*, now at *State v.*
2 *Johnson*, (reading):

3 Although the Affidavit states that the informant
4 saw the evidence in Johnson's home within 72 hours of
5 the issuance of the warrant, it did not set forth any
6 information as to the reliability of the informant nor
7 with the information corroborating it. The Officer
8 testified he had worked with the informant on several
9 other occasions -- cases. It is not clear from the
10 record, however, whether the information was given to
11 the Magistrate. Without any information determining the
12 reliability of the informant, the inferences from the
13 facts which led to the complaint would be drawn not by a
14 neutral and detached Magistrate, as the Constitution
15 required, but instead by police officers engaged in the
16 often competitive enterprise of ferreting out crime.

17 Here, the Officer did state that he had the basis
18 for his -- and he did it in his Affidavit. I haven't
19 heard anything about any oral application of the facts.

20 So, but considering as a whole or totality of the
21 events, it does seem that the basis for the Search
22 Warrant on July the 24th, 2012, referring to various
23 incidences on July the 17th and July the 23rd and within
24 72 hours is sufficient to support the Search Warrant.

25

1 The Court's Ruling on Defendant's Motion to Suppress:

2 THE COURT: So the Motion to Suppress the
3 contraband found is denied.

4 The Motion of the Defendant is duly noted.

5 All right. Anything further from the Defendant?

6 MR. ROSEMOND: No, Your Honor.

7 THE COURT: All right. I understand you have a
8 statement?

9 MS. SIMMONS: Yes, Your Honor. For the record, can
10 we admit Court's Exhibit 1, the Search Warrant and the
11 accompanying Affidavit?

12 THE COURT: You mean as an exhibit?

13 MS. SIMMONS: As a Court's Exhibit, Your Honor.

14 THE COURT: A Court's Exhibit, it is that, I think.

15 MS. SIMMONS: Okay. Thank you, Judge.

16 THE COURT: Didn't we do that?

17 MS. SIMMONS: And, Judge, we do have a --

18 THE COURT: Yes, it's been marked as a Court's
19 Exhibit.

20 MS. SIMMONS: Thank you, Your Honor.

21 We do have a *Jackson v. Denno* matter, two separate
22 ones, that the State would like to take up at this time.

23 THE COURT: Very good.

24 MS. SIMMONS: We would like to call Captain Kenny
25 Washington.

1 Whereupon,

2 Kenneth Lee Washington

3 Having first been duly sworn, was examined and testified
4 as follows:

5 Direct Examination by Ms. Simmons:

6 THE COURT: All right. If you would please, sir,
7 give us your full name spelling your last name for the
8 record.

9 THE WITNESS: Yes, sir. It's Kenneth Lee
10 Washington, W-a-s-h-i-n-g-t-o-n.

11 THE COURT: Thank you, sir.

12 All right. You may proceed.

13 MS. SIMMONS: Thank you, Your Honor.

14 By Ms. Simmons:

15 Q. Captain Washington, where are you employed?

16 A. I'm employed with the Oconee County Sheriff's
17 Office.

18 Q. And how long have you been in law enforcement?

19 A. I've been in law enforcement for approximately 20
20 years.

21 Q. Were you involved in the investigation in relation
22 to Dan Temple that occurred on July 25th of 2012?

23 A. Yes, ma'am.

24 Q. And were you present when the Search Warrant was
25 executed in this case?

1 A. Yes, ma'am.

2 Q. Did you subsequently have an occasion to later
3 speak with Mr. Temple?

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

5 Q. Can you tell me what happened?

6 A. Yes, ma'am. On this particular day I was, I was
7 there to assist the Seneca Police Department on a Search
8 Warrant. I myself didn't actually go inside during the
9 execution of the Search Warrant. I was in another
10 vehicle. And during the execution, while they was
11 actually searching the residence or the room on this
12 particular day, I heard a banging on the patrol car
13 window.

14 At this time Mr. Temple had been placed in the back
15 of a patrol car. I myself was outside, and Mr. Temple
16 was wanting to speak with me. There was a Seneca
17 Officer who I can't remember who got my attention and
18 told me that Mr. Temple wanted to speak with me.

19 I went to him and he advised me that he wanted to
20 assist, assist me or to get some help with the charges
21 that he was being charged with.

22 I then told him that I was not the case agent on
23 this, that I was there only to assist Seneca Police
24 Department, and at this time he had started to speak
25 with me. I then pulled out my card, told him that I was

1 gonna read him his rights and read him his rights.

2 Q. Can you read me exactly what you read to him and
3 how you read it on that day?

4 A. Yes, ma'am. I keep my rights card in my wallet,
5 and I pulled it out and I read him what is here. It
6 says (reading):

7 You have a right to remain silent. Anything that
8 you say can and will be used against you in court. You
9 have a right to an attorney and have that attorney
10 present during questioning. If you cannot afford an
11 attorney, an attorney will be provided at no cost. You
12 can decide at any time to exercise these rights and not
13 answer any questions or make any statements.

14 And, of course, the bottom part is (reading):

15 Do you understand each of these rights I have
16 explained to you, and having these rights in mind, do
17 you wish to talk to us now?

18 Q. At the point you read him his rights, had you asked
19 any questions at all?

20 A. No, ma'am.

21 Q. And had he initiated contact with you?

22 A. Yes, ma'am.

23 Q. And was he -- was this in the daylight or the
24 nighttime when you read him his rights?

25 A. It was day.

1 Q. And he was in a patrol car you say?

2 A. Yes.

3 Q. Do you know if he was in handcuffs?

4 A. I can't recall if he was in handcuffs or not.

5 Q. Did you make sure that Mr. Temple understood his
6 rights?

7 A. Yes.

8 Q. Did he appear to you, based on your training and
9 experience, to be intoxicated or under the influence of
10 illegal drugs?

11 A. Yes, ma'am.

12 Q. He did appear?

13 A. No, no, he didn't appear to be.

14 Q. And have you known Mr. Temple for a number of
15 years?

16 A. Yes.

17 Q. Did you make any threats or promises in order to
18 get him to waive his rights and give you a statement?

19 A. No, ma'am.

20 Q. Did you intimidate him in any way?

21 A. No, ma'am.

22 Q. Was his waiver of rights voluntary?

23 A. Yes, ma'am.

24 Q. And did he subsequently give you a statement?

25 A. Yes, ma'am. He did give me a verbal statement.

1 Q. And can you tell me what he said after waiving his
2 rights?

3 A. After speaking with him after reading him his
4 rights, he advised me that there was some stuff that he
5 could do for me, that he was able, would be able to get
6 some more drugs. And I then advised him again that I
7 was not the case agent. And he advised me that he had
8 picked up some drugs in Pendleton the night before and
9 what he had left over was the drugs that was in the
10 room.

11 He also advised me that there was an individual
12 from Georgia, I don't know what part, he didn't mention
13 what part of Georgia, but there was an individual in
14 Georgia that he also could get some drugs from. At that
15 time that's when I went, got in contact with Officer
16 Hunnicutt and advised him that Mr. Temple wanted to talk
17 about assisting law enforcement.

18 Q. And, when Mr. Temple took responsibility for the
19 drugs in the room, did he use the word "drugs" or "crack
20 cocaine" or was there any specific language used as to
21 what type of drugs were in the room?

22 A. He, he, he actually said crack cocaine, or the
23 crack, he said "the crack."

24 Q. And did anybody -- did he discuss anything further
25 with you?

1 A. I don't recall anything. With me not being the
2 case agent, that's when I went and got in contact with
3 Mr. Hunnicutt and advised him.

4 MS. SIMMONS: Please answer any questions that
5 Mr. Rosemond might have.

6 Cross-Examination by Mr. Rosemond:

7 Q. Captain Washington, was anybody else privy to that
8 conversation?

9 A. No, sir. I think it was just myself and Mr. Temple
10 there at the vehicle.

11 Q. And at that time Mr. Temple was already in
12 handcuffs?

13 A. I don't recall if he was in handcuffs or not. He
14 was in the back of the patrol vehicle.

15 Q. He was unable to go anywhere; is that right?

16 A. That's correct.

17 Q. Now, the question about he didn't appear to be
18 intoxicated. Did you make any notes as to your
19 conversations with Mr. Temple that day?

20 A. I, I had, I made some, after I got back to the
21 office I actually did type up some notes when I got back
22 to the office.

23 Q. Did you ask Mr. Temple to sign a written
24 confession?

25 A. No, sir.

1 Q. Did you have any other type of recording device on
2 you that day?

3 A. No, sir.

4 Q. You didn't have a cell phone?

5 A. Yes, sir, I did, I had a cell phone.

6 Q. A cell phone could be used to record that
7 conversation with Mr. Temple; isn't that correct?

8 A. Yes, sir.

9 Q. And Mr. Temple, based upon your testimony, is
10 wanting to be an informant for you; is that right?

11 A. That is correct.

12 Q. And you indicated to him that you needed to stop
13 before you had that conversation with him and read him
14 his rights; is that right?

15 A. That's correct.

16 Q. Did he say to you that he understood his Miranda
17 warnings?

18 A. He shook his head after the last part of his
19 *Miranda* warning, I was asking him did he understand his
20 rights, and he did, he shook his head as though he
21 understood his rights.

22 Q. Now, you indicated that at that point he told you
23 that the crack that was left over in the room came from
24 what he picked up in Pendleton?

25 A. Yeah, the night before.

1 Q. The night before. Now, how long had you been
2 working on this case?

3 A. Oh, I -- just that morning. I actually showed up
4 to assist Seneca P.D., Police Department. Before that I
5 didn't know anything about the case.

6 Q. Now, so this conversation that you had with
7 Mr. Temple took place on July 25th, is that right, the
8 day of the Search Warrant?

9 A. Yes.

10 Q. And it was the night before that he said he went to
11 Pendleton to get some dope and that was what was left
12 over in the room?

13 A. That's correct.

14 Q. And that would have been July 24th; is that right?

15 A. Yes, the day before.

16 Q. Now, have you ever talked with Dan Temple before?

17 A. Yes. I've had numerous conversations with Dan.
18 I've had -- many years ago, but not, not right before
19 this I hadn't talked with Dan.

20 Q. And did he say anything else about any other drugs
21 in the room?

22 A. Not that I can recall. I don't, I don't remember
23 him saying anything else about any other drugs.

24 (The Defendant conferred with Counsel off the
25 record.)

1 MR. ROSEMOND: No further questions, Your Honor.

2 THE COURT: Re-exam?

3 MS. SIMMONS: Nothing, Your Honor.

4 THE COURT: All right. You may step down. Thank
5 you.

6 (Whereupon, the Witness was excused.)

7 THE COURT: Anything from the State?

8 MS. SIMMONS: Judge, we would now call Investigator
9 Tim Hunnicutt.

10 Whereupon,

11 Tim Hunnicutt

12 Having first been duly sworn, was examined and testified
13 as follows:

14 Direct Examination by Ms. Simmons:

15 THE COURT: If you would please, sir, state your
16 full name, spelling your last name for the record.

17 THE WITNESS: Investigator Tim Hunnicutt,
18 H-u-n-n-i-c-u-t-t.

19 THE COURT: Very well. You may proceed.

20 MS. SIMMONS: Thank you, Your Honor.

21 By Ms. Simmons:

22 Q. Investigator Hunnicutt, where are you employed?

23 A. Seneca Police Department.

24 Q. And how long have you been in law enforcement?

25 A. I've been in law enforcement since 2001.

1 Q. Were you working on July 25th of 2012?

2 A. Yes.

3 Q. Did you have occasion to be involved in executing a
4 Search Warrant at the Town & Country Motel related to
5 this Defendant?

6 A. Yes.

7 Q. I'm gonna show you what has been premarked as
8 State's Exhibit 31

9 MS. SIMMONS: Your Honor, may I approach the
10 Witness?

11 THE COURT: Certainly.

12 By Ms. Simmons:

13 Q. -- which is a Waiver of Rights form.

14 Did you have occasion to interview the Defendant in
15 this case on that day?

16 A. Yes.

17 Q. Was he referred to you by Captain Washington?

18 A. Yes.

19 Q. Where did you interview Mr. Temple?

20 A. At the Seneca Police Department.

21 Q. Was anyone else present?

22 A. Yes. Sergeant -- at the time it was Sergeant Tyrel
23 Woodring.

24 Q. Did you advise Mr. Temple of his rights before
25 speaking with him?

1 A. Yes.

2 Q. How did you do that?

3 A. The statement of *Miranda* rights form that we have.
4 We have the time, location, the level of education, then
5 we'll read the *Miranda* rights line by line, and if they
6 understand it, they'll initial beside each line.

7 Q. Did Mr. Temple initial beside each line in this
8 particular case?

9 A. Yes.

10 Q. And what time did this take place?

11 A. This was at 9:05 a.m.

12 Q. And you were at the Seneca Police Department?

13 A. Correct.

14 Q. Okay. When you went over line by line, did he
15 further indicate he wanted to waive his rights by
16 signing the form?

17 A. Yes.

18 Q. What room were you in at the Seneca Police
19 Department?

20 A. The Officer patrol room.

21 Q. And, when you were speaking with Mr. Temple, did
22 you deny him any comforts, like food, water, the rest
23 room, things of that nature?

24 A. No.

25 Q. And was he in handcuffs or seated?

1 A. He was handcuffed in the front.

2 Q. Did you make sure you went over the form with the
3 Defendant and went over everything line by line?

4 A. Yes.

5 Q. And you recognize that as the form you use, State's
6 Exhibit 31?

7 A. Yes, that's correct.

8 Q. Did Mr. Temple appear to understand his rights?

9 A. Yes.

10 Q. Based on your training and experience, did he
11 appear to be intoxicated or under the influence?

12 A. No, he did not.

13 Q. Did he indicate that he understood his rights?

14 A. Yes.

15 Q. Did you make any threats or promises in order to
16 get Mr. Temple to speak to you?

17 A. No.

18 Q. Did you intimidate him in any way?

19 A. No.

20 Q. Was his waiver of rights voluntary?

21 A. Yes.

22 Q. Did Mr. Temple indicate to you he wished to give a
23 statement?

24 A. Yes.

25 Q. Was it an oral or written statement?

1 A. It was oral.

2 Q. And what did Mr. Temple tell you?

3 A. He advised, he said he wanted to try to help
4 himself out and work and tell us about somebody in
5 Pendleton he can give, he could buy crack from, and also
6 in Georgia. And he also said the drugs found in the
7 room, Room 103 at Town & Country, was his he had
8 purchased the night before in Pendleton.

9 Q. And did he say how much he had spent on those drugs
10 the night before?

11 A. He said 300.

12 Q. Did he say anyone else had possession or ownership
13 of those drugs or did he totally claim responsibility?

14 A. He stated they were his.

15 Q. Did he give any of this in writing or just oral
16 statements?

17 A. This was oral.

18 Q. Okay. And did anyone else hear this statement?

19 A. Yes. Mr. Woodring.

20 Q. And was that the end of your conversation with him?

21 A. Yes.

22 MS. SIMMONS: Please answer any questions

23 Mr. Rosemond may have.

24 THE COURT: All right, Mr. Rosemond.

25 Cross-Examination by Mr. Rosemond:

1 Q. Mr. Hunnicutt, you were in the patrol room at the
2 Seneca Police Department?

3 A. Correct.

4 Q. And did Mr. Temple indicate to you that he wanted
5 to talk to you?

6 A. He advised Mr. Washington and he let me know, and I
7 had Officer Abercrombie actually transport him to the
8 Police Department so he could talk with us.

9 Q. Now, so Mr. Washington, Mr. Washington had
10 indicated to you that Mr. Temple wanted to speak with
11 you; is that right?

12 A. Correct.

13 Q. And you had him transported to the Seneca Police
14 Department?

15 A. Correct.

16 Q. And that's where this interrogation took place; is
17 that right?

18 A. That's where I spoke with him.

19 Q. Now, you presented him this Miranda waiver, is that
20 right, the waiver of rights?

21 A. That's right.

22 Q. And you went over this document with him; is that
23 correct?

24 A. That's correct.

25 Q. And did you explain to him that, what this waiver

1 of rights was?

2 A. Yes. I explained everything on the sheet.

3 Q. And you went over it from top to bottom; is that
4 right?

5 A. Correct.

6 Q. And you indicated that he initialed beside each
7 question?

8 A. Each line on there.

9 Q. Okay. And ultimately at the bottom there is a
10 signature that says Dan Temple; is that right?

11 A. That's his signature.

12 Q. And two more signatures on there is --

13 A. Mine..

14 Q. Okay. And the other one is?

15 A. Mr. Woodring.

16 Q. Now, was this conversation recorded by audio or
17 anything?

18 A. No.

19 Q. And did you ask him to write anything down as to
20 his statement?

21 A. No, I did not.

22 Q. Why not?

23 A. I just did not.

24 Q. So you just talked to him and asked him --

25 A. He was wanting to talk to us. We wasn't

1 questioning him, he wanted to talk to us. He told us
2 what he had to say and then we sent him on to the jail.

3 Q. He told you what he had to say, but you didn't ask
4 him to put it in writing?

5 A. No.

6 Q. And you just chose not to do that; is that right?

7 A. Right.

8 MR. ROSEMOND: No further questions for this
9 Witness, Your Honor.

10 THE COURT: Redirect?

11 MS. SIMMONS: Nothing, Your Honor.

12 THE COURT: All right. You may step down.

13 (Whereupon, the Witness was excused.)

14 THE COURT: Do you have the Waiver of Rights form?

15 THE WITNESS: It's right here.

16 THE COURT: Thank you, sir.

17 Yes, ma'am.

18 MS. SIMMONS: Thank you, Your Honor. We call Agent
19 Tyrel Woodring.

20 Whereupon,

21 Tyrel Woodring

22 Having first been duly sworn, was examined and testified
23 as follows:

24 Direct Examination by Ms. Simmons:

25 THE COURT: All right. If you would please, sir,

1 give us your full name for the record, spelling your
2 last name.

3 THE WITNESS: Sir, I'm Tyrel Allen Woodring,
4 W-o-o-d-r-i-n-g.

5 THE COURT: Very good. You may proceed.

6 MS. SIMMONS: Thank you, Your Honor.

7 By Ms. Simmons:

8 Q. Agent Woodring, where are you employed?

9 A. I'm employed by the South Carolina State Law
10 Enforcement Division.

11 Q. And how long have you been there?

12 A. Since November of last year.

13 Q. Back in July of 2012 were you employed by the
14 Oconee County Sheriff's Office?

15 A. Yes, ma'am.

16 Q. And how many years have you been in law
17 enforcement?

18 A. Approximately 13.

19 Q. Were you present when Investigator Tim Hunnicutt
20 interviewed the Defendant, Dan Temple, on July 25th,
21 2012?

22 A. Yes, ma'am.

23 Q. Was Mr. Temple advised of his rights?

24 A. Yes, ma'am.

25 Q. How did you do that? How was that done?

1 A. By written Miranda form.

2 Q. And what's been premarked as State's Exhibit 31, do
3 you recognize this form?

4 THE COURT: Oh, excuse me.

5 MS. SIMMONS: Thank you, Judge.

6 THE COURT: I didn't realize I had it (handing).

7 THE WITNESS: I do. This is the form that we used
8 on that day.

9 By Ms. Simmons:

10 Q. And do you recognize your signature on that form?

11 A. Yes, ma'am.

12 Q. What time did the signature on this form take
13 place?

14 A. 9:05.

15 Q. And do you recognize the signature of the
16 Defendant?

17 A. I do.

18 Q. Did you see Dan Temple, the Defendant seated at
19 Defense table, sign this waiver on that day?

20 A. Yes, ma'am.

21 Q. And was this the same Dan Temple that you had taken
22 into custody from the Town & Country Motel?

23 A. Yes, ma'am.

24 Q. Did Sergeant Hunnicutt go over this rights waiver
25 line by line with Mr. Temple?

1 A. Line by line, yes, ma'am.

2 Q. And did he initial each line indicating that he
3 understood his rights?

4 A. He did.

5 Q. At the end of that, did he sign the rights waiver?

6 A. Yes.

7 Q. And did you and Sergeant Hunnicutt witness this?

8 A. Yes, ma'am.

9 Q. Where were you when this took place?

10 A. In the patrol room at the Seneca Police Department.

11 Q. Had Mr. Temple been denied any comforts: bathroom,
12 food, or water?

13 A. No, ma'am.

14 Q. Was he seated?

15 A. He was handcuffed in the front and seated.

16 Q. Did the Defendant seem to understand his rights?

17 A. Yes, ma'am.

18 Q. Were the right steps taken to make sure that he
19 understood his rights?

20 A. Yes, ma'am.

21 Q. In your opinion did the Defendant understand his
22 rights?

23 A. Yes, ma'am.

24 Q. Did he appear able to read and write?

25 A. Yes, ma'am.

1 Q. Was he intoxicated or under the influence of
2 illegal drugs?

3 A. No, ma'am.

4 Q. And did you make any threats or promises or coerce
5 the Defendant in order to get him to sign this form?

6 A. No, ma'am.

7 Q. Did you intimidate him?

8 A. No, ma'am.

9 Q. Was this a waiver of -- a voluntary waiver of
10 rights?

11 A. Yes, ma'am.

12 Q. And, after being advised of all of these rights and
13 initialing line by line and signing the form, did the
14 Defendant indicate he wished to speak with you and
15 Investigator Hunnicutt?

16 A. Yes.

17 Q. What did he say?

18 A. Mr. Temple stated that the drugs that were found in
19 Room 103 at the Town & Country Motel in Seneca were his,
20 that he had purchased them the night before in Pendleton
21 for approximately \$300, and he wanted to further our
22 investigation and help law enforcement and advised that
23 he could buy from the dealer in Pendleton and another
24 source in Georgia.

25 Q. Was that the end of the conversation with

1 Mr. Temple?

2 A. Yes.

3 Q. At that point in time where did he go?

4 A. To jail at Walhalla.

5 MS. SIMMONS: Okay. Please answer any questions

6 Mr. Rosemond may have.

7 MR. ROSEMOND: I have no questions, Judge.

8 THE COURT: You may step down, sir.

9 THE WITNESS: Thank you.

10 THE COURT: Thank you, sir.

11 (Whereupon, the Witness was excused.)

12 THE COURT: All right. You may call your next
13 witness.

14 MS. SIMMONS: Your Honor, that is the conclusion of
15 the State's witnesses on this issue.

16 THE COURT: All right. Does the Defendant have
17 anything, Mr. Rosemond?

18 MR. ROSEMOND: Dan Temple, Your Honor.

19 THE COURT: Very good.

20 Whereupon,

21 Dan Lavert Temple

22 Having first been duly sworn, was examined and testified
23 as follows:

24 Direct Examination by Mr. Rosemond:

25 THE COURT: If you would please, sir, give us your

1 full name, spelling your last name for the record.

2 THE WITNESS: Dan Lavert Temple, T-e-m-p-l-e.

3 By Mr. Rosemond:

4 Q. Mr. Temple, do you recall speaking with Captain Ken
5 Washington on July 25th?

6 A. Yes, sir.

7 Q. And where were you, where were you at when you
8 spoke with him?

9 A. In the back of a patrol car, handcuffed in the
10 back.

11 Q. Come into the microphone a little closer so I can
12 hear you.

13 A. I said in the back of the patrol car, handcuffed in
14 the back.

15 Q. Now, tell me about that conversation with
16 Mr. Washington.

17 A. He came up to me asked me do I want to help myself.
18 I asked him what do he mean. He told me to make a buy.
19 I told him no. Then he said, he said Tim Hunnicutt
20 wanted to talk to me later on. So I stayed in the
21 patrol car, they weren't finished yet, they transferred
22 me to the Seneca Police Department.

23 Q. Before we get to the Seneca Police Department. The
24 conversation you had with Mr. Washington, did you ever
25 mention to him anything about going to Pendleton?

1 A. No Pendleton, no Georgia, none of that.

2 Q. That conversation didn't take place?

3 A. It never took place.

4 Q. Now, how long was Captain Washington at your car?

5 A. Maybe a couple of minutes. I can't really -- a
6 couple minutes. He wasn't there long because he
7 couldn't get no information.

8 Q. Now tell me about going to the Seneca Police
9 Department.

10 A. They transported me to Seneca Police Department and
11 they took me in the back room. It was Tim Hunnicutt and
12 Brandon Long. There wasn't no -- I don't remember him.
13 What's his name? Woodring?

14 Q. Woodring?

15 A. I don't remember him. It was Brandon Long and Tim
16 Hunnicutt. I never saw this Woodring. I don't remember
17 seeing him. And they just asked me did, do I want to
18 help myself, and I told them I could get charges off me
19 if I could help them in Seneca and the surrounding
20 counties because they was trying to bust someone in
21 Anderson County. And I told them I didn't want to bust
22 nobody. But I don't remember no, I don't remember, I
23 don't remember no Tyrel Woodring being at the station.
24 It was Brandon Long.

25 Q. Now let me show you what's marked as -- do we have

1 that waiver form?

2 THE COURT: Here we are.

3 By Mr. Rosemond:

4 Q. Let me show you what's been marked as State's
5 Exhibit Number 31. Have you ever seen that document
6 before with that information on it?

7 A. No, sir.

8 Q. Now, on that particular document there are
9 signatures beside lines 1 through 5. There's initials
10 beside lines 1 through 5.

11 A. Right.

12 Q. What initials do you see on there?

13 A. I see DT, DT all the way down. I don't remember
14 that.

15 Q. Okay. Well, is that your handwriting?

16 A. That isn't my handwriting.

17 Q. Now, at the bottom of that form is a signature.
18 that your signature on the bottom of that form?

19 A. No. I don't know who wrote this. I mean, I
20 honestly don't.

21 Q. Now, it's your testimony that you didn't sign that
22 form?

23 A. That's my testimony. I don't remember signing this
24 form.

25 Q. "I don't remember" and "I didn't sign it" are two

1 different things.

2 A. I didn't sign it. To my knowledge I didn't sign
3 it. Because I don't remember, I don't remember no DT
4 and all that. I don't remember that.

5 Q. Did you give any statements to Officer Hunnicutt
6 and Agent Woodring?

7 A. No. No statements to them at all. They was trying
8 to get me, they was trying to get me to make buys from
9 drug dealers because they felt like I dealt with a lot
10 of drug dealers. In the past they had asked me to help
11 bust drug dealers and I told them I wouldn't. As a
12 matter of fact, the main informant --

13 Q. Without going into that right there --

14 A. Okay.

15 Q. -- it's your testimony that you didn't make those
16 statements; is that right?

17 A. That's my testimony.

18 Q. At any time did they ask you to give them anything
19 in writing?

20 A. No. I don't remember that.

21 Q. Did you ask for any -- what, if anything, did you
22 ask for while you were in that particular room?

23 A. I don't remember. I don't think I asked for
24 nothing. I don't remember. I think I asked to go back
25 to my room or something like that, because I was

1 actually sleeping. I was in my room in bed.

2 Q. I mean, did you ask for any water or did you ask
3 for -- how long were you in there?

4 A. Down at the Police Department?

5 Q. Yes.

6 A. Probably about maybe 15 minutes, 20 at the most.

7 MR. ROSEMOND: No further questions, Your Honor.

8 THE COURT: Cross-examine?

9 MS. SIMMONS: Thank you.

10 Cross-Examination by Ms. Simmons:

11 Q. Mr. Temple, you deny telling Kenny Washington at
12 the scene that the drugs in there were yours and you
13 purchased them the night before?

14 A. I deny that.

15 Q. You deny telling Agent Woodring that they were in
16 the room? You actually deny even knowing Agent
17 Woodring?

18 A. No. What I'm saying is I don't remember him being
19 there in the room.

20 Q. So you deny Agent Woodring being present?

21 A. Yeah, I deny him being in the room with me. Tim
22 Hunnicutt was there and had me in the back room. Tim
23 Hunnicutt was sitting down in the chair and Brandon Long
24 was, I believe Brandon Long was standing up. I remember
25 them two.

1 Q. Did you see Brandon Long at the scene, at the scene
2 at the motel room?

3 A. There was a couple of them. I had just got up.

4 Q. Okay. And you deny signing the form?

5 A. Yes, ma'am.

6 Q. And you deny that that is Agent Woodring's
7 signature on the form and that he was present?

8 A. I can't deny his signature. If that's his
9 signature, it's him. But as far as him signing the form
10 in front of me, I can't remember that.

11 Q. And you don't remember signing the form?

12 A. No, ma'am.

13 Q. Okay. And, Mr. Temple, were you convicted of petit
14 larceny in 1992?

15 A. It's been so long ago now, if you got something
16 that says I was convicted of something, I was convicted
17 of it.

18 Q. Did you get seven years for distribution of crack
19 and conspiracy in proximity starting in 1997?

20 A. Yes, ma'am.

21 Q. Did you do seven years on attempted conspiracy
22 along with that?

23 A. Yes, ma'am.

24 Q. Did you get an 11-year sentence in 2004 for
25 voluntary manslaughter?

1 A. Yeah. I was attacked by another inmate and I
2 defended myself.

3 Q. Which resulted in a voluntary manslaughter
4 conviction?

5 A. Yeah. He tried to kill me.

6 MS. SIMMONS: Okay.

7 Nothing further, Your Honor.

8 THE COURT: Re-exam?

9 Redirect Examination by Mr. Rosemond:

10 Q. What time of day did they execute the Search
11 Warrant at the motel, Mr. Temple?

12 A. It was just coming daylight, I believe. Maybe
13 eight-something. I can't remember because they woke me
14 up.

15 Q. The morning hours?

16 A. It was early in the morning, I know that.

17 Q. Okay. And, when you said that you were at the
18 police station for about 15 minutes, it was still in the
19 morning; is that correct?

20 A. Yes, sir.

21 Q. You keep indicating that Brandon Long was there.
22 Why are you so sure he was there?

23 A. Because I remember when I was there, I remember
24 when I had the bond hearing with Brandon Long in front
25 of Judge Maddox, I think it was October the 22nd at the

1 bond hearing. He had testified to that he had news in
2 the community that I was selling drugs, and so that's
3 the way that I remember him, he was at the bond hearing.
4 That's why I remember Brandon Long because he was
5 sitting over there -- I mean standing along the wall.

6 Q. So Officer Long came to the bond hearing, but Agent
7 Woodring wasn't here?

8 A. I don't remember seeing him. He may have been at
9 Town & Country when it was searched, but I don't
10 remember him being in the room at all. I just remember
11 Tim Hunnicutt and Brandon Long. That's all I remember.

12 MR. ROSEMOND: No further questions, Your Honor.

13 THE COURT: All right. You may step down. Thank
14 you.

15 (Witness leaves stand.)

16 THE COURT: Call your next witness.

17 MR. ROSEMOND: That would be the Defendant's case,
18 Your Honor.

19 THE COURT: Any Reply?

20 MS. SIMMONS: No, Your Honor.

21 THE COURT: All right. What does the State say?

22 MS. SIMMONS: Judge, at this time we would move for
23 the contents of the oral admissions to Captain
24 Washington as well as Investigator Hunnicutt and Special
25 Agent Woodring be admitted, and we would move to admit

1 State's Exhibit 31, the Waiver of Rights that is signed,
2 according to the Officers' testimony, initialed line by
3 line and signed by the Defendant and witnessed by two
4 Officers.

5 THE COURT: All right, Mr. Rosemond. What do you
6 say?

7 MR. ROSEMOND: Your Honor, the Officer had every
8 opportunity to record or to codify Mr. Temple's
9 statement in writing while he was at the police
10 station -- while he was at the Town & Country.
11 Certainly there was an audio apparatus available to them
12 to record his conversation or to at least recording the
13 confession he allegedly made, as well as going to the
14 police station, Your Honor. Certainly, when you get
15 there, if a suspect gives you a confession, the first
16 thing you are told to do is to get it in writing. And
17 the reason you get it in writing is because later on you
18 can have that piece of paper that said, You gave this
19 written confession. This is your signature.

20 But the only thing they have here, Your Honor, is a
21 Waiver of Rights form that has initials on there.
22 Mr. Temple said he did not initial it, he didn't sign
23 that particular form. And ultimately, Your Honor, they
24 had every opportunity to get him to put that in writing.
25 In today's society that we live in you can record a

1 statement. If it's at the police station, they have
2 audio capabilities there, and they didn't avail
3 themselves of those opportunities.

4 And because of that, Your Honor, we would ask that
5 you deny the use of any oral statements made allegedly
6 by Mr. Temple at this particular trial.

7 THE COURT: Madam Solicitor?

8 MS. SIMMONS: We have three sworn law enforcement
9 officers with a multitude numbers of years of
10 experience. They have all testified they followed
11 Miranda to the T. Captain Washington even read it off
12 of his card. Officers Woodring and Hunnicutt used a
13 written rights waiver. If they chose not to take a
14 written statement, that's a matter of fact for the Jury
15 to determine that weight. I believe that we have
16 certainly presented enough information to prove that he
17 knowingly and voluntarily waived his *Miranda* rights, and
18 the contents of the two oral statements should be
19 admitted for the Jury's consideration.

20 THE COURT: All right. Is there anything else?

21 MR. ROSEMOND: Nothing from the Defendant, Your
22 Honor.

23 The Court's Ruling:

24 THE COURT: Although it comes down to a question of
25 credibility, particularly as to Plaintiff's Exhibit 31

1 being the Waiver of Rights that was actually initialed
2 and then signed by the Defendant, considering the
3 totality of facts surrounding the alleged statements, it
4 appears that it's uncontroverted that the Defendant was
5 at the location where the controlled substances were
6 discovered or found; that pills, controlled substances
7 had to get there some way, they had to come from someone
8 or some place. And it would be incredible that the
9 Defendant didn't know anything about them so he had
10 nothing to offer about them, but that is only for the
11 fact-finders to determine.

12 As far as the reliability or at least the use of
13 the admissibility of the oral statements, it seems to be
14 consistent with the facts that's uncontroverted, as I
15 said earlier. And after carefully considering all of
16 the evidence offered by the State and the Defendant,
17 this Court is convinced by a preponderance of the
18 evidence, at least, that the alleged incriminating
19 statements that the Defendant made that before he was
20 fully advised of his rights under the Fifth and Sixth
21 Amendments, and those rights being the right to remain
22 silent; that any statements he would give would be used
23 against him; and that he also had the right to employ or
24 select an attorney, and if he could not afford one, the
25 Court would provide him with an attorney, and that he

1 could consult with that attorney before those
2 statements.

3 Moreover, that he could interrupt and terminate the
4 statements that he was making, and that if he did so
5 advise, that the exchange would cease at that time and
6 he would have an opportunity to consult with an
7 attorney; and that the Court does further find that
8 these rights as stated or set forth in State's Exhibit
9 31 were knowingly, intelligently, and freely waived.

10 Moreover, that it was done without any duress or
11 coercion or any undue influence, without reward or
12 promise of hope of reward, without promise of leniency
13 because Captain Washington said that he was not the case
14 agent, and without any threat of injury, without
15 compulsion or inducement of any kind; and that the
16 statement or confession was the voluntary product of the
17 free and unconstrained will of the Defendant.

18 As I say, it is the Court to find these at least by
19 the preponderance of the evidence, and the Court does
20 so. However, of course the statement, even though it is
21 admitted into evidence, it's up to the Jury to determine
22 whether or not it was freely, voluntarily, knowingly and
23 intelligently made, with all the protections and the
24 waiver of those protections afforded by our
25 Constitution, but that level of proof must be beyond a

1 reasonable doubt. Not only the statement was made but
2 that it was also done freely and voluntarily with the
3 protection provided.

4 So the oral statements as made by the Defendant and
5 recited or at least proffered in the testimony today
6 will be admitted.

7 (State's Ex. # 31, Statement of Miranda rights,
8 having been previously marked for identification,
9 was received in evidence.)

10 THE COURT: As I understand it, though, just for
11 the record, it's limited pretty much to saying that the
12 Defendant -- or, first of all, that there were drugs
13 found in the room, the motel room; the Defendant had
14 obtained those drugs the night before in Pendleton, and
15 that they may have cost approximately \$300. And that's
16 pretty much the essence and limitations of any alleged
17 or purported oral statements.

18 Is that correct, Madam Solicitor?

19 MS. SIMMONS: Just with the addition that Captain
20 Washington said that he could get more from somebody in
21 Pendleton or --

22 THE COURT: And Georgia.

23 MS. SIMMONS: Yes, Your Honor, and Georgia.

24 THE COURT: All right. So it would be limited to
25 that except if someone in response to questioning would

1 amplify it, that it would have to be in response to the
2 Defendant's counsel, not the State, no amplification or
3 improvement on those proffered statements.

4 All right. Anything else?

5 MS. SIMMONS: No, Your Honor.

6 THE COURT: Anything else from the Defendant?

7 MR. ROSEMOND: No, Your Honor.

8 THE COURT: All right. We'll proceed at 10:00 in
9 the morning.

10 MS. SIMMONS: Thank you, Judge.

11 (Discussion off the record.)

12 (Court adjourned at 5:00 p.m. on Monday, March 18,
13 2013, to resume on Tuesday, March 19, 2013, at
14 10:00 a.m.)

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1 as we were waiting for one of the Jurors who had some
2 transportation problems. But we have decided to go
3 ahead, forward at this time. But I do thank you for
4 your patience.

5 Preliminary Instructions to the Jury by the Court:

6 **THE COURT:** Mr. Foreman, ladies and gentlemen of
7 the Jury, I'm sure you fully appreciate that this Court,
8 the Court of General Sessions for Oconee County, exists
9 for the purpose of resolving questions of alleged
10 criminal conduct arising between the State of South
11 Carolina and the Defendant. It is a guaranteed right of
12 every citizen that a charge of criminal conduct be
13 presented in open court according to certain Rules of
14 Procedure. The State has not only an equal right but
15 the duty to present a charge of criminal conduct in open
16 court according to the same Rules of Procedure. Each of
17 the parties, therefore, both the State and the
18 Defendant, have an equal right to the opportunity of
19 this judicial proceeding to have you as the Jury
20 selected and now sworn for the trial of this case.

21 One of the most important aspects of your duty as a
22 Jury lies essentially in the oath that you have just now
23 taken: to well and truly try and determine the facts of
24 this case. That oath in a very essential way says that
25 you are the sole judges of the facts of the case.

1 Obviously, any case tried in court will involve a
2 question about what happened or how something came to
3 happen or whom, if anyone, did anything in a particular
4 occurrence or circumstance.

5 From this point forward, then, no one concerned
6 with this trial has a right to decide any question of
7 fact in this trial or the truth of it except you, the
8 Jury. The facts, then, are for your resolution and your
9 decision and yours alone. Then it will be your duty by
10 your joint and mutual discussions to determine the truth
11 of this case by deciding the weight and the
12 believability of each part of the evidence and by
13 applying the law of the case to it.

14 Now, the Trial Judge, as the Trial Judge I am the
15 Judge of the law in the case. It is also my
16 responsibility, among other duties, to preside over this
17 trial, to rule on the admissibility of evidence offered
18 during the progress of the trial, and to state to you,
19 the Jury, the law applicable to the case. The
20 Constitution of South Carolina mandates that I as the
21 Trial Judge cannot directly or indirectly comment about
22 the facts in this case.

23 The process of a verdict, then, is simply that you,
24 the Jury, first determine what is the truth of the facts
25 and then apply to that true statement of facts the

1 principle of law applicable, and by that process
2 determine and report to this Court your final verdict in
3 this case, speaking the truth of the case as you find it
4 or determine it.

5 The Court will more fully and completely state to
6 you the principles and law applicable to the issues in
7 the case before it is submitted to you for your
8 decision. However, there are certain principles
9 applicable to the framework of every case in General
10 Sessions Court and now I will in a very basic fashion
11 outline several of these basic principles to you for
12 your guidance.

13 The Defendant has entered a plea of not guilty to
14 the charges contained in the Indictment. Now, remember,
15 the Indictment in a case is not evidence, it is simply
16 the written instrument that contains the charge or
17 charges against the Defendant and it serves as the
18 formal document by which this case is processed into the
19 court. A plea of not guilty places upon the State the
20 burden of proof in this case.

21 As to what is meant by burden of proof, the
22 Defendant is presumed in law innocent of all charges
23 contained in the Indictments. The burden of proof
24 requires the State to prove guilt beyond a reasonable
25 doubt and, therefore, consistent with that burden the

1 Defendant or the accused party shall be presumed
2 innocent, and that presumption of innocence is
3 sufficient to compel a verdict of not guilty or a
4 verdict of acquittal, unless you, the Jury, conclude
5 that the State has satisfied its obligation to prove the
6 Defendant guilty beyond a reasonable doubt.

7 Now, the term "reasonable doubt" means the kind of
8 doubt that would cause a reasonable person to hesitate
9 to act.

10 Now, the case will be opened by the Solicitor,
11 after which the same opportunity will be afforded to the
12 Defendant to make an opening statement. When all the
13 evidence has been received by the Court, counsel for the
14 State and counsel for the Defendant will state to the
15 Jury their respective positions, after which the Court
16 will more fully state the applicable law in the case.
17 Obviously, all parts are important. You do not know
18 which witness in the case will most impress you, whether
19 the first or the last witness.

20 In reaching your final conclusion you will need the
21 guidance and the judgment of the other Jurors, you will
22 need the guidance of the principles of law that will be
23 stated to you by the Court. For all of these reasons,
24 then, if we have any recess periods when you retire back
25 to the Jury room or during an overnight or meal recess,

1 I instruct you you must not undertake discussion among
2 yourselves until the case is finally given to you for
3 your deliberations, nor are you to discuss this case
4 with anyone or permit anyone else to discuss this case
5 with you. As I mentioned yesterday, you are to report
6 them so I may take the appropriate action.

7 Now, do remember the verdict in this case must be
8 the unanimous verdict of all 12 Jurors.

9 Now, there are a few other things I need to mention
10 before we begin. As I said earlier, although I am the
11 only person who can tell you what the law is, you and
12 you alone are the only ones who can determine the facts.
13 I do not have the right to indicate how I may feel about
14 the evidence presented and throughout this trial my
15 intention will be to act impartially towards each party.

16 Second, from time to time an attorney may object to
17 some bit of testimony and evidence which the other side
18 is seeking to present. As in sports or business or any
19 other structured activity, there are certain rules that
20 both sides must obey in presenting evidence. These
21 rules have a definite purpose. They ensure that the
22 information you receive is the most trustworthy and
23 reliable evidence available. An objection is the
24 procedure we use for an attorney to call a possible
25 violation of the rules to the Court's attention, and for

1 this reason you should not hold an attorney's objection
2 against his or her client, nor should you conclude from
3 my ruling on the objection that I favor one side or the
4 other.

5 Finally, I would ask that you pay the closest
6 attention possible to the evidence presented to you. I
7 will ask that you do not take notes because if the note
8 taker makes an error, those notes can be more
9 detrimental than helpful during the deliberations. The
10 time-tested system is for each of you to listen
11 carefully and I'm sure that each of you will do that.

12 Now, before we begin the trial, the reason I
13 suggest that the Jurors do not take notes, it's been my
14 experience that when we take notes, we concentrate on
15 the note rather than what's happening at the time; in
16 other words, we want to be sure that we write down what
17 we think we hear as well as a spelling and even the
18 grammar of the sentence. By doing that we are
19 distracted from what is happening, as I say, the
20 testimony of the witness, the exhibits and other
21 evidence introduced in the court. And the worst part
22 about notes is that if we make an error in those notes,
23 in other words, we think we hear something, or we don't
24 hear something that is said, then it changes the note
25 entirely. And I use the example the word "not." Either

1 we think we hear the word "not" or miss the word "not"
2 and it changes it entirely. The better system and what
3 I would suggest is, just like the verdict itself must be
4 unanimous; therefore, you must decide or determine where
5 the truth of what was said and done in the process of
6 the trial, using the joint deliberations and
7 contributions from all members of the Jury. That's how
8 you reach a verdict. Not just one person but all 12
9 coming together and by that way explain and decide which
10 is the truth of the particular question.

11 Now, having said all of that, I do take notes.
12 Now, it's not one of those things, "Do as I say, not as
13 I do." The fact is that we have different purposes in
14 this courtroom. You and you alone are the only ones
15 that can determine the facts. Therefore, you must weigh
16 or evaluate the testimony, the truth of it, other
17 evidence or the weight of it to be given in that
18 testimony and evidence.

19 I am not concerned at all about the truth of the
20 facts. I am only concerned about certain things that
21 must occur during the trial of the case. So I'm just
22 jotting down what happens, not the significance of it,
23 that's for you and you alone.

24 So with that I will now recognize the Solicitor for
25 her opening statement.

1 MS. SIMMONS: Thank you, Your Honor, may it please
2 the Court.

3 Mr. Rosemond.

4 Opening Statement on behalf of the State:

5 MS. SIMMONS: Good morning, ladies and gentlemen.
6 First of all, I want to remind you that my name is
7 Lindsey Simmons and I am an Assistant Solicitor here in
8 Ocone County.

9 And thank you for your service today. I know that
10 there are hundreds of places you would rather be than
11 here on jury duty, so I would thank you in advance for
12 your time and your attention. Mr. Rosemond and I are
13 gonna work really hard over the next couple of days to
14 present the evidence in this case in an efficient
15 manner, so it will cause minimal disruption to your
16 lives.

17 The Defendant in this case is charged with
18 possession with intent to distribute crack cocaine and
19 the possession of Xanax, which the clinical name is
20 alprazolam. I'm required to prove to you over the next
21 couple of days that the Defendant is guilty beyond a
22 reasonable doubt. At the end of this case the Judge
23 will talk to you about reasonable doubt.

24 Reasonable doubt is not beyond all doubt. It is
25 the doubt that would cause a reasonable person to

1 hesitate to act, but not beyond a shadow of a doubt. So
2 the best thing that I can give you when you are looking
3 at a case to the reasonable doubt standard, use your
4 common sense. You brought it with you when you came
5 here as Jurors, and it's the most important tool you
6 will have over the next couple days.

7 I'm required to prove to you the Defendant
8 possessed with intent to distribute crack cocaine.
9 There's a couple ways to do that under the law in South
10 Carolina. You can prove that by weight. The weight of
11 the crack cocaine is sufficient under the law in South
12 Carolina to prove intent to distribute. The Statutory
13 amount that is set forth by our Legislature is one gram.
14 You will hear testimony the amount of crack cocaine
15 found in this defendant's hotel room was 1.22 grams, so
16 point 22 grams more than is required to prove under the
17 Statute.

18 In addition, you can prove possession with intent
19 to distribute by circumstantial evidence and that can be
20 two different packages of the drugs, a large amount of
21 cash found in proximity to them, or statements the
22 Defendant may make about the drugs, or you can look at
23 the value of the drugs.

24 So all of those things are things to keep in mind
25 when we look at possession with intent to distribute

1 over the next couple of days.

2 And the Xanax charge is straight possession,
3 there's ten pills at issue here. It's just a, you can
4 be convicted in South Carolina of one or ten. It's just
5 the charge of possession of the Xanax.

6 You're gonna hear over the next day or two that law
7 enforcement, particularly Investigator Tim Hunnicutt,
8 obtained a Search Warrant from a Magistrate to search
9 the Defendant's room at the Town & Country Motel in
10 Seneca. He's gonna tell you that when they executed
11 that Search Warrant, they were not voluntarily let in
12 the room, they had to bust the door down, and they found
13 the Defendant and his girlfriend, Crystal Henry, in the
14 room.

15 You're gonna hear from Sergeant -- Investigator
16 B.J. McClure from the Seneca Police Department, and he's
17 gonna tell you that when he entered the room, the
18 Defendant was in the bed on the side closest to the
19 door, and he saw the larger amount of crack cocaine fall
20 out of the bed with the Defendant right beside it. You
21 will hear that from him and you will see photographic
22 evidence to that effect. He's also gonna tell you that
23 drugs were found on the nightstand, and that the
24 Defendant's personal effects were all over this room:
25 Social Security card, wallet, personal hygiene products

1 belonging to the Defendant, Dan Temple.

2 Tim Hunnicutt is gonna tell you how undercover drug
3 enforcement works, how search warrants are obtained, how
4 they're executed, what kind of surveillance they use to
5 establish how someone is at a location before the Search
6 Warrant is obtained.

7 His partner at the time, Courtney Wright, is gonna
8 tell you how he has photographs at the scene the day
9 before the execution of the Search Warrant.

10 You will also hear from Crystal Henry, the
11 Codefendant of Dan Temple. She was his girlfriend back
12 on July 25th of 2012 when this Search Warrant was
13 executed. She is going to tell you that while the crack
14 pipes in the room were hers, and she uses crack, that
15 the crack that was found in proximity to the Defendant
16 along the nightstand belonged to him.

17 You are also going to hear from Captain Kenny
18 Washington of the Oconee County Sheriff's Office.
19 Captain Washington is gonna tell you he was present at
20 the scene when the Search Warrant was executed. He was
21 approached by the Defendant who indicated that he wanted
22 to speak with him about what had just happened.

23 After being fully apprised of his *Miranda* rights,
24 the Defendant made incriminating statements to Captain
25 Washington stating that all the drugs in the room were

1 his and he could get more if he allowed him to, and that
2 he had purchased the drugs the night before.

3 Captain Washington was the backup investigator on
4 this case. Investigator Hunnicutt was the lead officer,
5 so he subsequently talked to the Defendant, as well. He
6 obtained a written rights waiver, a waiver of his
7 *Miranda* rights from the Defendant. He did that along
8 with SLED Agent Tyrel Woodring, and it was after that
9 rights waiver he once again claimed all the drugs in the
10 room and that he bought them for \$300 the night before
11 and again stated he could get more if they were
12 interested in him doing that. You are again gonna hear
13 incriminating statements from the Defendant in addition
14 to the fact he was found in proximity to the drugs in
15 this case.

16 You're finally gonna hear -- at the end of this
17 case you're gonna hear more about the forensics.
18 Melinda Nicholson is Evidence Custodian at the Seneca
19 Police Department. She's gonna tell you Investigator
20 Hunnicutt turned the drugs over to her. She's gonna
21 tell you she maintained integrity of the sealed evidence
22 throughout this process, she transported it to Meredith
23 Lanford, Special Agent for the Anderson/Oconee Drug Lab.
24 She is going to tell you that she conducted a chemical
25 analysis and a weight analysis on the drugs in this

1 case, and she's gonna give you the results of her report
2 and how chemical analysis is conducted.

3 That's a brief overview of where we'll be going
4 over the next couple of days. Again, I appreciate your
5 time. At the end of all the evidence I get to speak to
6 you once again at the end of the day or sometime
7 tomorrow. I'm gonna ask you to find the Defendant, Dan
8 Temple, guilty of possession with intent to distribute
9 crack cocaine and possession of Xanax. Thank you.

10 THE COURT: Mr. Rosemond?

11 MR. ROSEMOND: Thank you, Your Honor.

12 Opening Statement on behalf of the Defendant:

13 MR. ROSEMOND: Dan Temple is not guilty. Dan
14 Temple is not guilty. We're going to start a trial this
15 morning, and a trial is like a television show. And you
16 have certain segments and this is the opening credits of
17 a show. And what you are going to see throughout this
18 particular trial is certain foundations of our legal
19 system that becomes pretty important at a time like
20 this.

21 And the most important legal foundation is the
22 presumption of innocence. And what that means is
23 everybody that's charged with a crime is not guilty of a
24 crime. Sometimes if you look in the paper, in *The*
25 *Seneca Journal*, and you see those people whose names are

1 listed on that piece of paper and you say to yourself,
2 "Oh, I know they're guilty. I know where he's come
3 from."

4 But that's not what the Constitution says. The
5 Constitution says everybody who is charged with a crime
6 in America is entitled to the presumption of innocence.
7 And when you look at Mr. Temple, he is an innocent man.
8 He is an innocent man. Just because he's charged with a
9 crime, that doesn't mean he's guilty.

10 But then you have what we call the burden of proof.
11 Who has to prove to you that he's guilty? Mr. Temple
12 doesn't have to prove to you anything. Mr. Temple
13 doesn't have to offer any evidence. All the evidence
14 must come from this table and that chair. They have the
15 burden of proof to prove to you that on July 25th, 2012,
16 that Dan Temple possessed with intent to distribute
17 crack cocaine and possessed Xanax beyond a reasonable
18 doubt.

19 And let's talk about reasonable doubt. The
20 reasonable doubt is that there's certain, there are very
21 few things in life that we know for certain. But the
22 reasonable doubt is, if at the end of this trial, you
23 have some doubt, and it's a reasonable doubt that you
24 can put into your mind and say, "You know, I have a
25 reason why I think he's not guilty," then it's your duty

1 and your obligation to say, "Mr. Temple is not guilty."
2 And beyond a reasonable doubt is a word that we hear so
3 often and we kind of just put it to the side sometimes,
4 but it has to be beyond a reasonable doubt. If you can
5 find a doubt in this trial that Dan Temple is not
6 guilty, you have to find him not guilty.

7 And I submit to you, ladies and gentlemen, that you
8 will find that doubt in this trial. You will find that
9 doubt coming from the witness stand. You will find that
10 doubt coming from Investigator Hunnicutt. You will find
11 that doubt coming from Ms. Henry. "The crack pipe was
12 mine but the crack wasn't."

13 In this particular trial you have to prove -- they
14 have to prove that Dan Temple illegally possessed a
15 controlled substance with the intent to distribute to
16 somebody else. And they have to prove that to you, that
17 he had the intent to distribute those drugs to another
18 person. And I believe at the end of this trial you're
19 going to say, I have a reasonable doubt that he didn't
20 do that. If you possess drugs for yourself, you don't
21 have any intent to distribute. If you possess drugs for
22 Ms. Henry, you don't have any intent to distribute.

23 But what I'm saying to you, ladies and gentlemen,
24 is as we pass this first credit here and we move into
25 the actual show, pay close attention to the evidence

1 from that witness stand. You're gonna hear a lot of
2 evidence today, and every witness will be important,
3 their credibility will be important, whether or not they
4 have a reason to lie, whether or not they are telling
5 the truth, and it's gonna be important that we look at
6 this and withhold judgment until the end of this case.

7 It's hard to make a judgment whether or not he's
8 guilty or not guilty in the movies, but it's just like a
9 TV show, just like the *Days of Our Lives*. And that last
10 scene is awfully important on the show.

11 Thank you, ladies and gentlemen.

12 THE COURT: All right. You may call your first
13 witness.

14 MS. SIMMONS: Thank you, Your Honor. We call
15 Investigator B.J. McClure.

16 Whereupon,

17 B.J. McClure

18 Having first been duly sworn, was examined and testified
19 as follows:

20 Direct Examination by Ms. Simmons:

21 THE COURT: All right. If you would please, sir,
22 give us your full name for the record and spelling your
23 last name.

24 THE WITNESS: My name is B.J. McClure. The
25 spelling of my last name is M-c-C-l-u-r-e.

1 THE COURT: Thank you very much.

2 You may proceed.

3 MS. SIMMONS: Thank you, Your Honor.

4 By Ms. Simmons:

5 Q. Investigator McClure, where are you employed?

6 A. I'm employed at the Seneca Police Department.

7 Q. And how long have you been employed in law
8 enforcement?

9 A. Seven years.

10 Q. And what division are you currently assigned to?

11 A. Currently I'm in the Narcotics Division.

12 Q. And what kind of training and education is
13 necessary for that position?

14 A. First of all, we go through the South Carolina
15 Criminal Justice Academy, at the time it was a nine-week
16 course, I graduated from that. And I've also been to
17 numerous other trainings since then. Of course, a high
18 school diploma was one of the prerequisites.

19 Q. Have you also received additional training
20 regarding narcotics enforcement?

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

22 Q. Were you working on July 25th of 2012?

23 A. Yes, ma'am.

24 Q. And what division were you assigned to back then?

25 A. At that time I was a Staff Sergeant assigned as a

1 supervisor over the Patrol Division.

2 Q. And did you assist in the execution of a Search
3 Warrant at the Town & Country Motel that day?

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

5 Q. Do you remember what room that was?

6 A. That was in Room 103.

7 Q. Thank you. And is that in the City of Seneca?

8 A. Yes, ma'am.

9 Q. Is that in Oconee County?

10 A. Yes, ma'am.

11 Q. Okay. What did your team expect to find at the
12 Town & Country Motel?

13 A. We were briefed, according to the briefing that
14 week, from the Narcotics Investigators, Investigator
15 Hunnicutt and Investigator Wright; the expectation was
16 to find crack cocaine inside the room.

17 Q. And who did you expect to find there?

18 A. I expected to find a Dan Temple and also a Crystal
19 Henry.

20 Q. Okay. And how were you able to confirm Dan
21 Temple's identity?

22 A. At the time we went in?

23 Q. Yes.

24 A. I think he was in the bed. I've had previous
25 contact with Mr. Temple, and I did recognize him when I

1 saw him in the bed. And also Ms. Henry.

2 Q. And how did the execution of the Search Warrant
3 progress once you got there?

4 A. We had a plan of operation that we was briefed on
5 that morning. According to that plan of operation,
6 Sergeant, he was at the Oconee County Sheriff's Office
7 at that time, Tyrel Woodring, he was gonna go to the
8 motel, obtain the key to Room 103. And we was part of a
9 SWAT team, we call it the tactical response team in
10 Seneca, myself and three others, and we went by him. He
11 handed us the key.

12 We went up to the Room 103, knocked, announced our
13 presence, No one answered the door. The door was
14 unlocked. We tried to push it open. It was barricaded.
15 At that time we had a round, it was like a metal
16 tube-type thing with handles on it. The door was struck
17 with that, and it was still in resistance against the
18 door, so we just pushed our way in and went into the
19 room.

20 Q. And did you find Dan Temple and Crystal Henry
21 there?

22 A. Yes. At first I didn't see Crystal Henry. As we
23 went in Dan was laying in the bed closest to the door on
24 that side. He had his hands under the covers and
25 wouldn't show his hands. It's like a shock-and-awe-type

1 thing. We were like, "Show me your hands. Show me your
2 hands. Put your hands up." Because the hands will hurt
3 us, if it's a knife or gun or anything, it's gonna be in
4 his hands. He would not ever get his hands up.

5 I had my weapon pointed at him and I kept yelling
6 at him to get his hands up, and at that time another
7 went to get on the bed to handcuff him, and I observed
8 a, either a purplish or a bluish-color prescription
9 bottle fall out of the bed onto the floor closest to the
10 door.

11 Q. I show you what's been premarked for identification
12 as State's Exhibit 17. Let me zoom that in for you. Is
13 that a fair and accurate representation of the scene
14 that day?

15 A. Yes, that looks like the room at the Town & Country
16 Motel that day.

17 Q. And what side of the bed was Mr. Temple on?

18 A. This closest side, the side closest to me with part
19 of the mattress exposed --

20 Q. Okay.

21 A. -- that's the side closest to the door, the right
22 side where I observed him to be lying at. The blue
23 thing on the floor there, that was the bottle I observed
24 fall to the floor from the bed.

25 Q. I'm gonna show you what --

1 Mr. Rosemond (shows to Mr. Rosemond).

2 -- show you what's been premarked as State's 16.

3 Tell me a little bit about that.

4 A. That's the prescription bottle. I never picked it
5 up or anything. I just saw it fall on the floor. And I
6 informed the Investigators once they came in after we
7 did our entry into the room that I saw it laying there.
8 I sat at the door as sort of a sentry while they
9 investigated to make sure no one entered unauthorized or
10 anything. I did see when they opened it up it did
11 contain ---

12 MR. ROSEMOND: Objection, Your Honor. Assuming
13 facts not in evidence.

14 THE COURT: All right. Lay your foundation.

15 By Ms. Simmons:

16 Q. Did you keep your eyes on that bottle until the
17 time that --

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

19 Q. Until it was picked up by whom?

20 A. I think Investigator Hunnicutt picked it up.

21 Q. Did you ever see inside the bottle?

22 A. Yes. I told him -- he's the one I told about it,
23 that I saw it. And he picked it up and opened it up and
24 I saw some rock-like substance, beige-whitish color. I
25 didn't get a good look at it. Just, when he was looking

1 at it, I looked down and saw it.

2 Q. And during your canvas of the room -- I know you
3 actually didn't pick anything up -- but did you see any
4 personal items in the room?

5 A. Personal items, there were some things on the
6 stand. I can't myself recall any personal items that I
7 remembered seeing. I wasn't really looking for that. I
8 just, my part of that was just entry, secure the room so
9 the investigators could come in and conduct their
10 search. I wasn't part of the search.

11 Q. And just for purposes of scale, how far do you
12 think the bottle was from Mr. Temple in the bed?

13 A. In the bed it would have to be where he was at. I
14 didn't see it actually come out of his hand, I just saw
15 it fall to the floor from the bed. He was -- it's gone
16 there, but he was on the bed on that side of the bottle,
17 it was lying on the floor, he was laying almost right to
18 the edge of the bed up there.

19 MS. SIMMONS: Thank you. Please answer any
20 questions Mr. Rosemond might have.

21 THE COURT: All right. You may cross-examine.
22 Cross-Examination by Mr. Rosemond:

23 Q. You didn't see where that pill bottle came from,
24 did you, Mr. McClure?

25 A. That is correct, sir, I didn't see it from under

1 the bed.

2 Q. And some other officer jumped on the bed while

3 Mr. Temple was in the bed; is that right?

4 A. That's correct. He wouldn't ever get his hands up
5 and we had to secure him.

6 Q. When that weight hit the bed, that pill bottle
7 popped out, didn't it?

8 A. I'm not certain of that. I just saw it fall. I'm
9 uncertain of what events caused it to fall. I just saw
10 it fall to that side of the bed.

11 Q. Mr. Temple was in the bed, right?

12 A. Yes, sir.

13 Q. Got his covers on him; is that correct?

14 A. Yes.

15 Q. His hands underneath the covers; is that right?

16 A. Partially under the covers and I could see
17 something out from under the covers.

18 Q. And then who jumped on the bed?

19 A. That was Mike Teramano who was part of our tactical
20 response team.

21 Q. Mike Teramano is probably 5'11", 225?

22 A. He's probably more my height. I wish I was 5'11".
23 I'm 5'9".

24 Q. So you wish you could add a couple inches?

25 A. Yes, sir, you're correct.

1 Q. All right. But when Officer Teramano jumped up on
2 the bed something fell out; is that right?

3 A. Honestly, I can't recall if it was before that or
4 during that time. I just can remember -- like I said,
5 we was at a heightened state of alert, and trying to --
6 I just remember it falling from the bed is honestly all
7 I can remember.

8 Q. You don't know which side of the bed it fell from;
9 is that correct?

10 A. If you are lying in the bed, the right side closest
11 to the door.

12 Q. And that was not the side Mr. Temple was on; is
13 that right?

14 A. No. That was the side he was on.

15 Q. He was on the side of the bed closer to the door?

16 A. Closer to the door. If you're lying in the bed, it
17 would be the right side.

18 Q. Now, you indicated that you expected to find
19 Ms. Henry in the room as well; is that right?

20 A. You're correct, sir.

21 Q. Did you find her there?

22 A. We did. At first we didn't see her -- if you want
23 me to elaborate?

24 Q. Where did you find her at?

25 A. She was behind the door.

1 Q. Now, when she -- she was behind the door?

2 A. Yes, sir. When we pushed the door open ---

3 MS. SIMMONS: Objection.

4 A. --- she was standing in front of the door. It
5 pushed her to the side.

6 MS. SIMMONS: I just ask that the Witness have the
7 opportunity to answer the question before Mr. Rosemond
8 starts another one.

9 THE COURT: All right. Both sides understand, of
10 course, the way we do this is that the attorney ask the
11 question, wait till the attorney finishes his question.
12 Then you answer the question, and if you need an
13 opportunity to explain your answer, you will be
14 permitted to do that.

15 THE WITNESS: Thank you, sir.

16 THE COURT: But let's do not talk over each other
17 because the court reporter has to take down everything
18 that is said, and it's hard to take down more than one
19 person at a time.

20 THE WITNESS: Yes, sir.

21 THE COURT: Very good. And these rules apply to
22 all witnesses and all parties.

23 You may proceed.

24 By Mr. Rosemond:

25 Q. You didn't get a good look and see where the pill

1 bottle came from; is that right?

2 A. It was just that side of the bed. I couldn't
3 honestly tell you that it came from anyone's hands. It
4 just came from under the bed.

5 Q. And also that was after Teramano jumped on the bed?

6 A. I can't recall if it was during that time or before
7 that time. Everything happened pretty quick right there
8 because he wouldn't ever get his hands up. That's
9 usually cause of alarm when we do an entry like this
10 because we don't know what to expect. If there was a
11 weapon, we can't see their hands. I was yelling, "Get
12 your hands up, get your hands up" trying to -- I knew
13 somebody else was in the room, we hadn't observed her at
14 the time. A lot was going on. All I recall is I
15 remember seeing that bottle fall on that, on that side
16 of the bed.

17 Q. Did he ever get his hands up?

18 A. His hands came out when Teramano jumped on the bed
19 and that's when he was handcuffed and placed on the
20 floor, and that's the time I was looking around and saw
21 Ms. Henry behind the door. She was also ordered to the
22 floor.

23 MR. ROSEMOND: No further questions for this
24 witness, Your Honor.

25 THE COURT: Re-exam?

1 MS. SIMMONS: Nothing, Your Honor.

2 THE COURT: Very well. You may step down.

3 MS. SIMMONS: Thank you, Your Honor.

4 (Witness leaves stand.)

5 THE COURT: Call your next witness.

6 MS. SIMMONS: I call officer Cortney Wright.

7 Whereupon,

8 Cortney Wright

9 Having first been duly sworn, was examined and testified
10 as follows:

11 Direct Examination by Ms. Simmons:

12 THE COURT: If you would, sir, please give us your
13 full name, spelling your last name for the record.

14 THE WITNESS: Cortney Wright. The last name is
15 W-r-i-g-h-t.

16 THE COURT: Very good. Thank you, sir.

17 By Ms. Simmons:

18 Q. Officer Wright, where are you employed?

19 A. Seneca Police Department.

20 Q. And how long have you been there?

21 A. Since March 2010, I believe.

22 Q. And how long have you been employed in law
23 enforcement?

24 A. Since 2001.

25 Q. Were you involved in the execution of a Search

1 Warrant at the Town & Country Motel in Seneca, South
2 Carolina?

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

4 Q. And was that on July 25th, 2012?

5 A. Yes, ma'am.

6 Q. What room number at the Town & Country Inn were you
7 interested in?

8 A. 103.

9 Q. Okay. And what was your role in executing the
10 Search Warrant?

11 A. Mainly photographic evidence, documenting the
12 evidence found.

13 Q. And were you also involved in the execution of the
14 Search Warrant in this case?

15 A. Correct.

16 Q. Did you conduct the inventory and Search Warrant
17 and Return in this case?

18 A. Yes, ma'am.

19 Q. And the Return in this case, did you file it with
20 the issuing Magistrate?

21 A. That is correct, yes.

22 Q. What date -- did you sign the Return when you
23 turned it in?

24 A. Yes, ma'am, the same day we executed the Warrant,
25 on the 25th.

1 Q. And did you give the Return to the issuing
2 Magistrate?

3 A. Yes, ma'am.

4 Q. And did you deliver a copy to the Defendant?

5 A. Yes, ma'am.

6 Q. And you were in charge of photographing in this
7 case?

8 A. Yes, ma'am.

9 Q. I'm gonna show you what has been premarked as
10 State's Exhibit 1 through 15. Do you recognize these as
11 photographs you took?

12 A. Yes, ma'am.

13 Q. Okay. And when did you take these photographs?

14 A. It would have been on the 24th, the day before the
15 execution of the Search Warrant.

16 Q. Were you conducting surveillance that day?

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

18 MS. SIMMONS: Judge, at this time we would move in
19 State's Exhibits 1 through 15 and ask to publish them to
20 the Jury.

21 THE COURT: All right. Any objection?

22 MR. ROSEMOND: No objection, Your Honor.

23 THE COURT: All right. State's Exhibits Numbers 1,
24 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 are
25 admitted without objection.

1 (State's Exhibits 1 through 15 were received in
2 evidence.)

3 MS. SIMMONS: Thank you, Your Honor.

4 THE COURT: Publish those?

5 MS. SIMMONS: Yes, sir, Your Honor.

6 By Ms. Simmons:

7 Q. Officer Wright, are these photographs that you took
8 on July 24th?

9 A. Yes, ma'am, they are.

10 Q. And what is that photo?

11 A. That's a picture of Room 103 at the Town & Country
12 Motel in Seneca.

13 Q. And who was at the door?

14 A. That would be Ms. Henry.

15 Q. And another photograph of that?

16 A. Yes, ma'am, it is.

17 Q. And, based on your knowledge, who is entering the
18 room?

19 A. That would be Dan Temple.

20 Q. I'm just gonna flip through all of these. If you
21 see anything that you need to explain, feel free to do
22 so.

23 A. That would be Mr. Temple returning back to the room
24 that he had left from.

25 Q. Is that better?

1 A. Yes, ma'am.

2 Q. (Shows another photograph.)

3 A. That's the day before the execution of the Search
4 Warrant and Mr. Temple is going up to a confidential
5 informant's car.

6 Q. (Shows another photograph.) The same thing?

7 A. Yes, ma'am. That's him exiting the vehicle.

8 Q. (Shows another photograph.)

9 A. That's him walking up to the vehicle. That's him
10 returning to the hotel room.

11 Q. Just an overview?

12 A. Right.

13 Q. Are these photos a fair and accurate representation
14 of your surveillance that day?

15 A. Yes, ma'am.

16 Q. Okay. Were you also involved in photographing the
17 Search Warrant itself?

18 A. Yes, ma'am.

19 Q. Okay. I'm showing you what's been premarked as
20 State's Exhibits 6 through 30. Do you recognize these
21 items?

22 THE COURT: Any objection?

23 MR. ROSEMOND: No objection, Your Honor.

24 MS. SIMMONS: Judge, at this time we would move
25 into evidence State's 16 through 30.

1 **THE COURT:** State's Exhibits Number 16, 17, 18, 19,
2 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 are
3 admitted without objection.

4 (State's Exhibits 16 through 30 were received in
5 evidence.)

6 **MS. SIMMONS:** Thank you, Judge.

7 By Ms. Simmons:

8 Q. Officer Wright, are all of these photos of the
9 interior of the hotel room?

10 A. Yes, ma'am, they are.

11 Q. (Shows photograph.) Again at the scene?

12 A. Yes, ma'am, after we made entry. That's items
13 found inside the room. The Defendant's driver's
14 license, Social Security card, IDs, all in his name.

15 Q. (Shows another photograph.) More personal items?

16 A. Yes, ma'am. Outside of the room. Cash found and
17 the nightstand and items found in it.

18 Q. (Shows another photograph.)

19 A. That's a beige, flakey, rock-like substance and a
20 scale.

21 Q. Where was that found?

22 A. I believe that was found in the nightstand as well.

23 Q. (Shows another photograph.)

24 A. That's the pill bottle that was found at the side
25 of the bed and the contents of the pill bottle.

1 Q. (Shows another picture.)

2 A. That's a better picture showing where the rock-like
3 substance was found before we photographed it.

4 Q. (Shows another picture.)

5 A. That's the nightstand on the opposite side of the
6 bed in which Mr. Temple was found.

7 Q. Mr. Temple was found on the other side of the bed?

8 A. Correct.

9 Q. And all these photographs are a fair and accurate
10 representation of what you observed that day?

11 A. Yes, ma'am.

12 MS. SIMMONS: Please answer any questions
13 Mr. Rosemond may have.

14 THE COURT: Cross-examine?

15 Cross-Examination by Mr. Rosemond:

16 Q. Officer Wright, you conducted surveillance on July
17 24, 2012?

18 A. Yes, sir.

19 Q. And, based upon those pictures, my law office is
20 right across the street from that hotel; is that right?

21 A. Roughly, yes, sir.

22 Q. And you were taking those photos before y'all
23 executed that Search Warrant; is that correct?

24 A. Yes, sir, it is.

25 Q. And you went through a couple of those photos.

1 (Showing photograph.) Is that the right or left side of
2 the bed?

3 A. If you are standing at the foot of the bed that
4 would be the right side. Mr. Temple was found at the
5 left side if you are standing on the foot of the bed.

6 Q. He was on the left side of the bed; is that
7 correct?

8 A. Yes, sir.

9 THE COURT: If you could Mr. Rosemond identify
10 which.

11 MR. ROSEMOND: That was State's Exhibit Number 30
12 we were just looking at; is that correct.

13 A. Yes, sir.

14 Q. Looking at State's Exhibit Number 29, what is that
15 dot right there?

16 A. That would be the beige rock-like substance we
17 found.

18 Q. So that's the rock-like substance that you found on
19 the other side of the bed from which Mr. Temple was on;
20 is that right?

21 A. That is correct.

22 Q. Looking at State's Exhibit Number 27, is that the
23 same piece of rock-like substance that we spoke about a
24 few minutes ago?

25 A. Yes, sir, it is.

1 Q. Did you see Mr. Temple leave that location at any
2 time while you were doing surveillance?

3 A. As far as the grounds or the room itself.

4 Q. The grounds?

5 A. During my surveillance no, sir, he did not.

6 Q. And you only did surveillance on July 24th or had
7 you been conducting surveillance for a period of time?

8 A. That was the only time I was involved in
9 surveillance.

10 Q. Now, you said there was some cash that you found as
11 well?

12 A. Yes, sir, that is correct.

13 Q. And did you know whether or not Mr. Temple had a
14 job?

15 A. Based on his statement he did not have a job.

16 Q. When you took these particular photographs -- let
17 me show you State's Exhibit Number 23, is that the right
18 side of the bed as well?

19 A. Yes, sir, the stand next to it.

20 Q. Was your sole job doing the photographing and
21 conducting inventory?

22 A. On the day of the execution?

23 Q. On the day of the Search Warrant?

24 A. Yes, sir.

25 Q. And did you take any non drug related items out of

1 the room on your return?

2 A. Yes, sir, we did.

3 Q. What were those items that you took?

4 A. As listed on the return, \$622 cash.

5 Q. Okay?

6 A. There were I believe two crack pipes, there was
7 also Acer spiral notebook, a Gateway laptop and a
8 Samsung cell phone as well as a chore boy that's
9 typically used in glass pipes and smoking crack.

10 Q. So you removed the cell phone; is that correct?

11 A. Yes, sir, it is.

12 Q. And you removed a Gateway laptop and an Acer spiral
13 notebook; is that correct?

14 A. Yes, sir.

15 Q. And you removed also some cash; is that correct?

16 A. Yes, sir, that is correct.

17 Q. When you say you made a return what is a return
18 for?

19 A. It's to give evidence of items taken during a
20 Search Warrant, a Return given, a copy to the Defendant
21 as well as the issuing Judge.

22 Q. So you gave Mr. Temple a copy of that return; is
23 that correct?

24 A. Yes, sir, it is.

25 Q. And you also gave the issuing Judge a copy?

1 A. That's correct.

2 Q. That was Judge Derrick?

3 A. Yes, sir, it is.

4 Q. And Judge Derrick is in Westminster?

5 A. I think that's where he's based.

6 Q. He's an Oconee County Magistrate; is that correct?

7 A. Correct.

8 Q. But you are a City of Seneca Police Officer; is
9 that right?

10 A. Yes, sir, it is. As a matter of fact, he actually
11 came up to the PD that day and got a copy of the Return.

12 Q. When you say "he," I take it you mean Judge
13 Derrick?

14 A. Yes, sir, that is correct.

15 Q. Did you go in the room with everybody else or did
16 you wait from behind?

17 A. Everybody else being the TRT team?

18 Q. The TRT team.

19 A. No, sir, I did not.

20 Q. You were not part of that tactical response team?

21 A. No.

22 Q. You came in later to do your Return of the Search
23 Warrant and to collect evidence; is that right?

24 A. That is correct.

25 Q. But that crack pipe, that crack, that, the beige

1 substance you found that we talked about a few minutes
2 ago was not found on Mr. Temple's side of the bed; is
3 that right?

4 A. The single rock was not; no, sir.

5 MR. ROSEMOND: No further questions, Your Honor.

6 THE COURT: Re-exam?

7 Redirect Examination by Ms. Simmons:

8 Q. Officer Wright, your surveillance the day prior to
9 the execution of the Search Warrant, was that daytime or
10 nighttime?

11 A. It was daytime.

12 Q. And the nightstand where the single crack rock was
13 found, were Mr. Temple's personal items also found
14 there?

15 A. No, ma'am.

16 Q. Okay. And do Magistrates in this County have
17 County-wide jurisdiction?

18 A. Yes, ma'am, that is correct.

19 MS. SIMMONS: Thank you very much.

20 Recross-Examination by Mr. Rosemond:

21 Q. Officer Wright, there were no personal items from
22 Mr. Temple found on that side of the bed; is that
23 correct?

24 A. To the best of my knowledge, no, sir.

25 Q. When you say the Magistrates have a County-wide

1 jurisdiction, does the City of Seneca have a Judge?

2 A. Yes, sir, they do.

3 Q. What's his name?

4 A. Danny Singleton.

5 Q. And he's employed by who?

6 A. The City of Seneca.

7 Q. The City of Seneca. Doesn't he issue warrants?

8 A. He does.

9 Q. Search Warrants and Arrest Warrants?

10 A. Yes, he does.

11 Q. But you all went to a County Judge to get a Search
12 Warrant in this case; is that right?

13 A. Yes, sir.

14 Q. Any reason why you didn't go to your own City Judge
15 to get a Search Warrant in this case?

16 A. I wasn't the Officer that signed the Search
17 Warrant. But if I remember correctly, it was due to the
18 time of day, all the judges were out of the office at
19 that time.

20 Q. Due to the time of day?

21 A. Yes, sir.

22 Q. All right. You had been doing surveillance on this
23 facility, or this hotel on July 24th; is that right?

24 A. That is correct.

25 Q. And you did that in the morning time; is that

1 right?

2 A. I don't think it was morning time.

3 Q. What time of day did you do that surveillance?

4 A. I want to say it was afternoon.

5 Q. Okay. Did you ever leave the surveillance or were
6 you just there periodically?

7 A. My primary, I surveilled the hotel and the rooms
8 the day before.

9 Q. Now, before, when I said surveillance, are you
10 there for just a couple hours or are you there for the
11 whole 24-hour period?

12 A. I was there for just a short period of time.

13 Q. Now, July 25th was a Wednesday; is that correct?

14 A. I do not recall.

15 Q. You don't remember?

16 A. No.

17 Q. You indicated that you went to a County Judge
18 because of the time; is that right?

19 A. There again, I can't say with absolute certainty.

20 Q. You're not certain? All right. Did you surveil
21 that location later that evening?

22 A. No, sir, we did not.

23 MR. ROSEMOND: No further questions from this
24 witness, Your Honor.

25 THE COURT: Re, re-exam?

1 MS. SIMMONS: No, Your Honor.

2 THE COURT: Very well. You may step down. Thank
3 you, sir.

4 THE WITNESS: Thank you, Your Honor.

5 (Witness leaves stand.)

6 MS. SIMMONS: Judge, may this Witness be excused?

7 THE COURT: Certainly.

8 (Whereupon, the Witness was excused.)

9 THE COURT: Counsel approach, please.

10 (Discussion at sidebar.)

11 THE COURT: All right. You may call your next
12 witness.

13 MS. SIMMONS: The State calls Crystal Henry.

14 Whereupon,

15 Crystal Dawn Henry

16 Having first been duly sworn, was examined and testified
17 as follows:

18 Direct Examination by Ms. Simmons:

19 THE COURT: If you would please ma'am give us your
20 full name spelling your last for the record.

21 THE WITNESS: Crystal Dawn Henry, H-e-n-r-y.

22 THE COURT: Very good. Thank you, ma'am.

23 THE WITNESS: Uh-huh.

24 By Ms. Simmons:

25 Q. Ms. Henry, how old are you?

- 1 A. 32.
- 2 Q. What level of education have you gone to?
- 3 A. The 11th grade.
- 4 Q. Do you have a prior conviction in 2007 for petit
- 5 larceny?
- 6 A. Yes.
- 7 Q. What was your relationship with Dan Temple back in
- 8 July of 2012?
- 9 A. My boyfriend and I stayed with him.
- 10 Q. How long had y'all been together at that point?
- 11 A. A year and a half, a little over a year and a half.
- 12 Q. Did you all live together at this time?
- 13 A. Yeah.
- 14 Q. Where did you all live on July 25th of 2012?
- 15 A. Town & Country Motel in Room 103.
- 16 Q. Where did you all live prior to that?
- 17 A. The Executive Inn.
- 18 Q. Where is The Executive Inn?
- 19 A. Across the street on the other side.
- 20 Q. Okay. Your boyfriend, Dan Temple, do you see him
- 21 present in court today?
- 22 A. I do.
- 23 Q. Or your ex-boyfriend.
- 24 Can you point him out for me?
- 25 A. He's right there.

1 MS. SIMMONS: Your Honor, please let the record
2 reflect the Witness is pointing to the Defendant.

3 THE COURT: The record will so reflect.

4 By Ms. Simmons:

5 Q. Is that the same person who was at the Town &
6 Country Motel with you on July 25th?

7 A. Yes, ma'am.

8 Q. Is that in Oconee County?

9 A. Yes, ma'am.

10 Q. What were you all doing in that motel room that
11 day?

12 A. I was getting high.

13 Q. Were illegal drugs found in the room?

14 A. Uh-huh.

15 Q. Was drug paraphernalia found in the room?

16 A. Uh-huh.

17 Q. What, if any, of that belonged to you?

18 A. The crack pipe in the bed.

19 Q. Were any of the drugs that were left in the room
20 yours?

21 A. The one piece right there is what I was smoking on.

22 Q. Okay. The bottle in that room?

23 A. No, ma'am, that was not mine.

24 Q. Why were you staying at the hotel?

25 A. Me and him had split up for a while, for a couple

1 months, and I didn't have nowhere to go, and me and him
2 got back together and he placed me there in the motel
3 until I would have a place to stay.

4 Q. Having known the Defendant for over a year and a
5 half, was he known to do crack?

6 A. No. I've never seen him do no crack.

7 Q. What did he usually do with the crack he had?

8 A. Distribute it.

9 Q. The Xanax in the room, did that belong to you?

10 A. No.

11 Q. What did the Defendant do with Xanax?

12 A. He had -- I guess he had traded it or something.

13 MR. ROSEMOND: Objection, Your Honor. That calls
14 for speculation.

15 THE COURT: Restate your question.

16 MS. SIMMONS: Let me restate my question.

17 By Ms. Simmons:

18 Q. Do you know for certain how he had come in
19 possession of the Xanax?

20 A. Yes.

21 Q. How had that happened?

22 A. He had traded it for crack to someone else.

23 Q. The blue bottle that is in question, that rolled
24 off the bed, do you know for certain if that belonged to
25 the Defendant?

1 A. Yes.

2 Q. And you are here under a subpoena, correct?

3 A. Yes, ma'am.

4 Q. Why did you agree to cooperate with law
5 enforcement?

6 A. Because it's the truth. I'm being honest.

7 Q. And being honest that you are a crack user?

8 A. I was a crack user. I've been clean for almost
9 eight months.

10 Q. Have I promised you anything in exchange for your
11 testimony?

12 A. No, ma'am.

13 MS. SIMMONS: Please answer any questions

14 Mr. Rosemond may have of you.

15 Cross-Examination by Mr. Rosemond:

16 Q. Now, you said the piece of crack that they found on
17 the side of the bed was yours. You said that you were
18 smoking on it; is that right?

19 A. That's correct.

20 Q. How long had you been in the Town & Country?

21 A. A few days.

22 Q. And certainly that wasn't the only piece of crack
23 that you smoked while, is that right, you were in there?

24 A. At that moment it was the only piece of crack I had
25 to smoke.

- 1 Q. At that moment.
- 2 A. I had to buy my own drugs.
- 3 Q. You buy your own drugs?
- 4 A. I had to.
- 5 Q. Okay. And you indicated that the reason why you
6 were at the motel was because "I was getting high"; is
7 that right?
- 8 A. I mean, that's what I was doing there while I was
9 staying there was because I didn't have nowhere to go
10 and he placed me in the hotel so I would have a place to
11 stay.
- 12 Q. Okay. And the -- were you employed during that
13 time?
- 14 A. No, sir.
- 15 Q. And, but you had enough money to go buy crack; is
16 that right?
- 17 A. I didn't have enough money. I had money sometimes.
- 18 Q. And the opportunity to testify here today came
19 about because you were arrested along with Mr. Temple;
20 is that right?
- 21 A. Yes, sir.
- 22 Q. That morning at the Search Warrant you got
23 arrested, too; is that correct?
- 24 A. Yes, sir.
- 25 Q. And you got arrested with possession with intent to

1 distribute crack cocaine and you got arrested for
2 possession of Xanax; is that right?

3 A. Yes, sir.

4 Q. And you are here testifying; is that right?

5 A. Yes, sir.

6 Q. And what happened to your charges?

7 A. Actually, I went to jail, and I only recently got
8 out December the 31st. I went for a fine I didn't pay,
9 and then I ended up having to stay there because I
10 hadn't gotten bonded out, so I continued to stay in
11 there until I actually could get my lawyer to get me a
12 bond.

13 Q. What happened to your possession with intent to
14 distribute charges?

15 A. I still have them on me, yeah.

16 Q. Okay. And what happened to the possession of Xanax
17 charge?

18 A. I still have that on me.

19 Q. And certainly -- when are you going to dispose of
20 those charges?

21 A. Whenever I go to court for it.

22 Q. And that's gonna be after you testify; is that
23 correct?

24 A. I suppose.

25 Q. And the better you testify, the better deal you get

- 1 in your charges; is that right?
- 2 A. No, sir. Nobody's made no deal to me.
- 3 Q. Nobody's made no promises to you?
- 4 A. Nobody.
- 5 Q. So you are up here on your own free accord; is that
- 6 right?
- 7 A. I was subpoenaed because I was a codefendant, but
- 8 I'm being honest --
- 9 Q. So they made you come to court; is that right?
- 10 A. They subpoenaed me with a paper and said I had to
- 11 be in court to testify, and then I agreed to do this.
- 12 Q. They required you to be here. Isn't that right?
- 13 A. Yes, sir.
- 14 Q. Now, you do have these two charges on you, right?
- 15 A. Yes, sir.
- 16 Q. And have you talked with the Solicitor's Office
- 17 about your case?
- 18 A. Once. Prior to today.
- 19 Q. Okay. And you walked in there and you said, "I'm
- 20 just going to testify for you"?
- 21 A. No. They called and asked me --
- 22 Q. They called and asked you, right?
- 23 A. And I agreed to do it.
- 24 Q. Okay. And so they called to ask you to testify and
- 25 you just agreed?

1 A. Yes.

2 Q. Now, the crack on the bed was yours; is that
3 correct?

4 A. The one pill.

5 Q. And the pills were yours?

6 A. No. The pills was not mine.

7 Q. The pills weren't yours?

8 A. The pills was not mine. I had took one to see what
9 they were, and it didn't do anything to me, so I put
10 back down the bottle.

11 Q. So you took a pill --

12 A. I took a pill --

13 Q. -- that you found in the room; is that right?

14 A. I had took one of them --

15 Q. Okay.

16 A. -- along with him taking one.

17 Q. All right. So we know that you took a pill while
18 you were in the room; is that right?

19 A. Uh-huh.

20 Q. And we know that you also smoked some crack while
21 you were in the room; is that right?

22 A. Yeah.

23 Q. You never seen Mr. Temple smoke crack, have you?

24 A. He don't smoke crack.

25 Q. He don't smoke crack. All right. And the purple

1 pill bottle, what was in that purple pill bottle?

2 A. I guess it was crack cocaine.

3 Q. You guess it was crack cocaine. You mean to tell
4 me you have never been in that pill bottle?

5 A. I -- no, I never touched his stuff.

6 Q. You was a crack addict and you had crack in the
7 room but you wouldn't touch it?

8 A. I would not take it from him, no.

9 Q. Now, when did you speak with the Solicitor's Office
10 about testifying in this case?

11 A. Shortly after I had gotten out of jail. I had
12 called my lawyer and asked him when I needed to go to
13 court and then I talked with the them about that
14 afterwards.

15 Q. And on the date of July 25th, did you talk to any
16 of the officers on that day?

17 A. On the day that they come in the room?

18 Q. Yes, ma'am.

19 A. No, sir.

20 Q. You didn't want to say, "Officers, I'm sorry. I
21 made a mistake. I committed a crime. Let me talk to
22 you all" on that day?

23 A. No.

24 Q. So you waited until it was convenient for yourself
25 to talk to the Solicitor's Office about you testifying

1 against Mr. Temple; is that right?

2 A. The point of it is that it was not mine and it was
3 his, and the point of it is that I went to jail that
4 day, also, but it was not mine; I was being charged for
5 something that was not mine.

6 Q. That happened July 25th; is that correct?

7 A. Yes.

8 Q. And you haven't pled guilty before now, have you?

9 A. I haven't had no chance to plead guilty to nothing.
10 I only had a lawyer once I got into jail.

11 Q. I think Mrs. Simmons asked you about a petit
12 larceny charge you had back in 2007?

13 A. Yes, sir.

14 Q. That particular morning, where were you when the
15 police officers came in the door?

16 A. I heard them coming in the door. I got off the bed
17 and went to look out the peephole. They busted the door
18 in and busted my mouth open.

19 Q. Did they give you enough time to open the door?

20 A. I was trying to shut the door back.

21 Q. Okay. Did they give you enough time --

22 A. There was --

23 Q. I'm sorry. Go ahead and finish.

24 A. There was a chair and suitcase in front of the door
25 so I didn't hear no one knock. I don't recall hearing

1 no one knock. I don't recall hearing no one knock on
2 the door. I heard keys opening up the door, that's what
3 I heard.

4 Q. Did you hear anyone say, "Search Warrant, Sheriff's
5 Office, or Police"?

6 A. I seen that thing coming and that's when they
7 hollered that and they hit my mouth and busted me when I
8 went behind the door.

9 Q. So the police rammed the door and the door hit you
10 in the mouth; is that right?

11 A. Yes, sir.

12 Q. And they didn't give you time to come open the
13 door?

14 A. I don't know. I mean, like I said, I didn't know
15 there were no one there. I heard a key in the door. I
16 thought maybe it was the owners or something trying to
17 come in. He was in the bed naked and I was half naked,
18 so I was just trying to get the door shut back. When I
19 looked out the peephole, that's when I saw them. They
20 said "Seneca Police Department" or whatever and they hit
21 the door, and that's when the door came open.

22 Q. And that day you didn't talk to the police, is that
23 correct, July 25th?

24 A. No. Besides asking what I was being charged with.

25 Q. But you did talk to them on December the 11th,

1 2012; is that right?

2 A. Uh-huh. When I was in jail.

3 Q. That's when you were in jail?

4 A. Uh-huh.

5 MR. ROSEMOND: Let me have this marked for
6 identification.

7 (Defendant's Ex. # 1, Search Warrant dated 7/24/12,
8 was marked for identification.)

9 By Mr. Rosemond:

10 Q. Ms. Henry, about six months later you talked to the
11 police about this case, didn't you?

12 A. Yes. After I had done been incarcerated again for
13 it.

14 Q. Okay. And when you say "after I had been
15 incarcerated again for it," what do you mean?

16 A. Because I went to jail was the day he did, and then
17 I got bonded out, and then I got locked back up for the
18 same thing for going off my bond.

19 Q. Okay. Now, why did it take so long for you to give
20 a statement as to what happened that day?

21 A. Well, for the simple fact that I was his
22 girlfriend. I wasn't gonna just throw him under the bus
23 or nothing and hurt him, but I'm not going for it
24 neither. Because I heard it was trying to get switched
25 on me, and I'm not going for somebody telling that it

1 was mine when it was not.

2 Q. But one piece of the drugs found in the room was
3 yours; isn't that correct?

4 A. One piece of the drug was mine, but that's it. I
5 was smoking. I would have -- if all the other crack
6 would have belonged to me, I would have been smoking it
7 but it did not belong to me.

8 Q. Now, the night before the Search Warrant was
9 executed, you indicated in this statement that you went
10 to Pendleton; is that right?

11 A. Uh-huh.

12 Q. And the reason why you all went to Pendleton was to
13 get drugs for you; is that right?

14 A. No, sir.

15 Q. You gave Mr. Temple \$80 to drive to Pendleton to
16 get drugs?

17 A. No, sir. No, sir.

18 Q. Who all went to Pendleton to get drugs?

19 A. Me, him, and the guy that was driving.

20 Q. Who was driving?

21 A. James Walker.

22 Q. James Walker drove you to...

23 A. Pendleton.

24 Q. Pendleton to get drugs?

25 A. Not for me.

1 Q. Not for you, though?

2 A. No. I was riding.

3 Q. And did you mention James Walker's name in this
4 statement at all?

5 A. No. I didn't mention the driver or nothing. I did
6 not. I just said we went. They didn't ask specifically
7 any name.

8 Q. Are you trying to protect Mr. Walker?

9 A. No, sir.

10 Q. Do you know Mr. Walker?

11 A. I do.

12 Q. But not telling them about Mr. Walker driving you
13 to Pendleton is not the total truth; isn't that correct?

14 A. He did not drive me to Pendleton, he drove him to
15 Pendleton.

16 Q. Did you go?

17 A. I went, yes. It was not to drive me, though.

18 Q. Not telling the police that James Walker drove the
19 both of you to Pendleton isn't telling the truth; isn't
20 that correct?

21 A. Correct. But they didn't ask names so I didn't
22 specify the name.

23 Q. So, if they didn't ask you the name, you didn't
24 tell them the truth; is that right?

25 A. Okay.

1 Q. Why not just be completely honest with them?

2 A. I have been mostly, yeah.

3 Q. Mostly?

4 A. Since you said I was lying about the driver.

5 Q. So you always kind of tell the full truth when
6 someone asks you the question; is that right?

7 A. That's why I'm here now is telling the truth.

8 Q. You didn't tell the officers the truth on December
9 the 11th, 2012, did you? Yes or no.

10 A. They didn't ask for a name.

11 Q. You didn't tell them the truth on July 25th when
12 they burst into the motel room and took your piece of
13 crack. Did you say that's my piece of crack?

14 A. They didn't give me a chance -- my mouth was
15 bleeding. I didn't have a chance to say anything. I
16 didn't have an understanding or know why I was even
17 being arrested.

18 Q. Because you have in your possession crack cocaine
19 and Xanax; is that right?

20 A. In our possession.

21 Q. Now you're gonna say it was in our possession?

22 A. Because you're saying it was in my possession. I
23 had one piece of crack. The other crack was not mine.

24 Q. You are a crack addict and you only had one little
25 piece of crack; is that right?

1 A. Crack costs money if you smoke it, and I didn't
2 have money, so --

3 Q. The glass pipes found in the room, they were your
4 glass pipes; is that right?

5 A. Yes.

6 Q. The chore boys found in the room. Your chore boys;
7 is that right?

8 A. Yes, sir.

9 Q. Why not tell them on July 25th, 2012, that that
10 stuff was yours?

11 A. One piece was mine. I didn't even get charged with
12 it until 24 hours after I got to jail.

13 Q. Did you tell them on July 26th it was yours?

14 A. No. Because it was not. That pill bottle was not
15 mine. That's why it was possession with intent because
16 of the amount of it. The one piece that was there was
17 maybe a 10-or-15-dollar piece that I was smoking. Other
18 than that, there was nothing there besides the crack
19 pipes and that that was mine.

20 Q. Ms. Henry, that room was in your name, wasn't it?

21 A. No. It was in Dan's name.

22 Q. It was only in Dan's name?

23 A. They had my ID, but it was in Dan's name.

24 Q. They had your ID because it was in both your names;
25 isn't that correct?

1 A. I didn't sign nothing. He signed, I didn't.

2 Q. But they had a record of you being in the room; is
3 that right?

4 A. Yes. I'm sure they did.

5 Q. Okay. (Reading): The night before we were
6 arrested I do know he went to Pendleton to get his
7 drugs.

8 "He went." That wasn't true. Why didn't you say
9 the night before we were arrested, we went to Pendleton
10 to get drugs?

11 A. I wasn't thinking, I guess.

12 Q. You weren't thinking because you wanted to make
13 sure that all of the evidence goes against him; isn't
14 that correct?

15 A. No, sir.

16 Q. You wouldn't tell the truth here?

17 A. I mean, I was incarcerated, I was aggravated by
18 everything that was going on, I'm aggravated by the fact
19 that I was his girlfriend and stood by his side for a
20 year and a half, and then he's trying to put the charges
21 on me of something he knows he does and has been doing
22 before I ever met him. So -- that's how I met him was
23 buying drugs. So why don't you read the first part of
24 it where I put that in here?

25 Q. That (reading): I have been knowing Dan Temple for

1 almost two years?

2 A. And that I also met him by buying drugs.

3 Q. How long have you been addicted to crack?

4 A. I was for about three, two or three years, and then
5 I got clean for four years, and then got back on it
6 right before I met him. And then I've been clean for
7 almost eight months now.

8 Q. Mr. Temple was employed, wasn't he?

9 A. Yes, sir, he was.

10 Q. Mr. Temple worked at Seneca Marina at the Tiki Hut,
11 didn't he, as a cook?

12 A. A dishwasher. He might have cooked sometimes, I'm
13 not sure.

14 Q. But he had a job; is that right?

15 A. He did.

16 Q. And there was a reason why that money was there,
17 because he was employed?

18 A. Supposedly. He kept money all the time anyway,
19 so... He didn't do nothing.

20 Q. Were you employed?

21 A. No.

22 Q. Ms. Henry, are you telling this Court that the
23 reason why you are here to testify is because you want
24 to be absolutely truthful?

25 A. Yes.

1 Q. And you don't have any inducements or promises for
2 help or leniency when you get sentenced for your
3 charges?

4 A. No, sir.

5 Q. But it wasn't until I told -- or it wasn't until I
6 asked you about James Walker that you revealed that he
7 was a participant the night before; is that right?

8 A. Uh-huh. He stayed around us all the time anyways.

9 Q. He stayed around you-all all the time?

10 A. Yeah.

11 Q. The Xanax in the room was not Mr. Temple's, was it?

12 A. Yes.

13 Q. It was?

14 A. He brought it there, yes.

15 Q. You indicated -- you testified earlier that you
16 believe he had traded that Xanax for crack; is that
17 right? Were you there when that deal went down?

18 A. No. It didn't happen there.

19 Q. Okay. So you don't know --

20 A. He brought them there.

21 Q. All right. But you weren't there and you didn't
22 see an exchange for crack and Xanax, did you?

23 A. No. That's what I suppose happened because that's
24 what happened before, so...

25 Q. So you are just assuming that; is that right?

1 A. Okay, yeah.

2 Q. Ms. Henry, I'm assuming as well. I assume that the
3 better you testify, the better deal you get at
4 sentencing; is that right?

5 A. No.

6 Q. That's not correct?

7 A. I'm testifying to tell the truth.

8 Q. Finally?

9 A. To my knowledge I'm telling the truth.

10 MR. ROSEMOND: No further questions, Your Honor.

11 THE COURT: Re-exam?

12 Redirect Examination by Ms. Simmons:

13 Q. Ms. Henry, I'm gonna show you what's been premarked
14 for identification as Defense Exhibit 1. Mr. Rosemond
15 has read you portions of this statement. At this time I
16 would like you to read your complete statement.

17 A. (Reading): I have been knowing Dan Temple for
18 almost two years. I do know that he does still sell
19 crack cocaine drugs and that's how I met him. I then
20 started dating him, and he moved in with me at my
21 apartment and still sold the drugs.

22 I was using at the time, but I have been clean for
23 five months now. We had a lot of fighting in our
24 relationship, so I had left him for about three months
25 and then went back to him and started staying at the

1 hotel with him.

2 The night before we were arrested I do know he went
3 to Pendleton to get his drugs and he went to Toccoa,
4 Georgia, to get drugs, too.

5 I'm not sure about this part, but I'd known it
6 because I had heard his name before. But the man that I
7 know in Toccoa is Chino (phonetic), Chico (phonetic), a
8 medium complexion guy, in a tan Suburban, I'd seen him
9 hand the money and receive the drugs.

10 When he came back to the room -- then we did come
11 [sic] back to the room. They was his drugs, not mine.
12 The very next morning, that's when we were arrested.
13 (End of reading.)

14 Q. So, when you say that you saw he and Chino -- or
15 you think his name is Chino --

16 A. I don't know what his name -- that's what I -- I
17 just heard his name come up.

18 Q. -- that means you were with him the night before?

19 A. Yes. I was with him.

20 Q. And the James Willie Walker that's been referenced,
21 is he the closest friend of the Defendant?

22 A. Yes, ma'am.

23 MS. SIMMONS: I have nothing further.

24 Recross-Examination by Mr. Rosemond:

25 Q. Let's talk about Chino for a second. Chino lives

1 in Pendleton?

2 A. No. I'm not sure if his name's Chino, Chico,
3 something or other. I'm not sure what his actual name
4 is.

5 Q. So --

6 A. I'm not sure.

7 Q. You're not sure.

8 A. I'm going by what names I've heard him called
9 before.

10 Q. Do you still have the statement up there?

11 A. (Handing).

12 Q. I want you to read that bottom line right there,
13 please.

14 A. The very last line?

15 Q. Yes, ma'am.

16 A. (Reading): The very next morning we was arrested?

17 Q. Right after -- right before your signature.

18 A. (Reading): I have read this statement consisting
19 of one page, each page of which bears my signature, and
20 I do affirm that all facts and statements contained
21 herein are true and correct.

22 Q. But that wasn't true because you're not sure of
23 Chino's name; isn't that right?

24 A. I'm not sure if that's his name. I've heard the
25 name called.

1 Q. But you don't know whether his name is Chino,
2 right?

3 A. I'm not sure but I seen him physically buy drugs.

4 Q. But that's not what we're talking about here. We
5 are talking about whether this is an accurate statement
6 that you made. This is a false statement that you made;
7 isn't that correct?

8 A. There might be a falsehood about the name, I might
9 be mistaken over the name. Other than that, the
10 statement is true.

11 Q. Might be mistaken over the name. Okay?

12 So, when it says (reading): I do know he went to
13 Pendleton to get his drugs and that he went to Toccoa,
14 Georgia, the man at Toccoa's name is Chino.

15 So he left Pendleton and went to Georgia; is that
16 right?

17 A. Sometime within four, five, six hours apart, yeah.

18 Q. What time did he go to Pendleton?

19 A. Probably one, two in the morning. It was hours
20 before we were arrested the next morning.

21 Q. So 1:00 in the morning, somewhere thereabout --

22 A. Somewhere.

23 Q. -- James Walker drove the both of you to Pendleton
24 to buy drugs?

25 A. No. I rode. Drove him to buy drugs, not for me.

1 Q. And then James Walker drove the both of you to
2 Toccoa, Georgia?

3 A. No, not that night. He did not drive us that
4 night.

5 Q. You just said after you left Pendleton you went to
6 Toccoa, Georgia?

7 A. I didn't say James Walker drove me anywhere to
8 Toccoa.

9 Q. Okay. So, after you all got back from Pendleton,
10 who drove yourself to Toccoa, Georgia?

11 A. Some White man that he knew.

12 Q. And you went with them?

13 A. Yes. Sometimes I went, sometimes I didn't.

14 Q. But you don't know this White man's name?

15 A. I don't remember his name. I only got to see him a
16 few times. I don't remember his name.

17 Q. So what time did you go -- first of all, is there
18 anything in this statement that says anything about a
19 White man driving you to Toccoa, Georgia, that night?

20 A. No. I didn't -- they asked to put down the
21 specifics. I put down the specifics.

22 Q. That's the second thing that's not true about this
23 statement.

24 A. As far as them asking me who drove, I didn't put
25 that in there because I wasn't asked to put it. You

1 know what I'm saying? I asked how much do I have to
2 write? Because, actually, the time I've been with them,
3 I could write a book.

4 Q. You only want to write what is good for you; is
5 that right?

6 A. No. No. I wrote the main specifics of what this
7 case is about, and it's drugs.

8 Q. So let's talk about you going to Toccoa and a man
9 driving you all to Toccoa. What time did you leave -- I
10 assume Seneca -- that night?

11 A. I couldn't tell you exactly what time it was. I
12 was high all the time, so I couldn't tell you exactly
13 what time it was.

14 Q. Because you were on crack all the time, right?

15 A. Uh-huh.

16 Q. But that was just your one little piece of crack in
17 the room. But you stayed up smoking and you were high
18 all the time?

19 A. He gave me drugs, too, but I bought my own if I had
20 money, too, though.

21 Q. So when you went to Toccoa, Georgia, that night,
22 you went to do what?

23 A. I rode with him. He went to purchase drugs, I
24 suppose.

25 Q. You suppose. Would you care for some water?

- 1 A. Please. Thank you.
- 2 Q. You okay?
- 3 A. Yeah, I'm okay. Thank you.
- 4 Q. I do know that he went to Pendleton to get his
- 5 drugs and then he went to Toccoa, Georgia. But you all
- 6 went, is that right, the both of you?
- 7 A. Yes.
- 8 Q. Not "he" but "we"?
- 9 A. I guess I worded it wrong. I guess. My mistake.
- 10 Q. So this unidentified White man drove you to Toccoa.
- 11 Did you sit in the car while -- what happened in Toccoa?
- 12 A. He gets out but I stay in the car.
- 13 Q. All right.
- 14 A. I don't never get out when I go to Toccoa.
- 15 Q. So, when he got out, did he meet somebody?
- 16 A. He talked with somebody, yeah.
- 17 Q. Ms. Henry, are you sure you went to Toccoa with
- 18 him?
- 19 A. Yes.
- 20 Q. That night?
- 21 A. Yes.
- 22 Q. You are absolutely sure that the both of y'all went
- 23 to Toccoa on July the 25th?
- 24 A. Yes.
- 25 Q. That morning?

1 A. I didn't go every time -- but I -- not the 25th,
2 not the day we got locked up. We got locked up in the
3 morning. But the day before that.

4 Q. You're misunderstanding. July the 25th starts at
5 12 a.m.

6 A. Okay. It was the day before that that I went. I
7 didn't go all the time.

8 Q. Okay. Let's slow down a little bit, Ms. Henry.
9 July the 25th, 8:00 in the morning, the police kicks in
10 your door at Town & Country; is that right?

11 A. Yes.

12 Q. But according to this statement, the night before,
13 which I assume is in the early morning hours of July
14 25th --

15 A. Okay.

16 Q. -- about 1:00 in the morning --

17 A. Yes, sir.

18 Q. -- you all went to Pendleton; is that correct?

19 A. Yes, sir.

20 Q. And then you testified that you went to Toccoa with
21 Mr. Temple?

22 A. Yes, sir.

23 Q. On that night?

24 A. Yes, sir.

25 Q. Before they kicked in your door?

1 A. Yes, sir.

2 Q. And my question to you is: Are you absolutely sure
3 that you went to Toccoa that night prior to them kicking
4 in your door?

5 A. Yes, sir.

6 Q. And a White man drove you?

7 A. Yes.

8 Q. And you don't know -- what type of car was it?

9 A. A big Lincoln or something. Something like -- it's
10 a big car. A big Town Car like something.

11 Q. You stayed in the car. Did the big man stay in the
12 car with you?

13 A. The White man?

14 Q. Yes, ma'am.

15 A. Yes.

16 Q. He did. And then Mr. Temple went and met somebody;
17 is that right?

18 A. Yes.

19 Q. Did they go in a house?

20 A. No.

21 Q. Did they stand outside?

22 A. Uh-huh. By where the cars were.

23 Q. Okay. And (reading): I seen him hand him the
24 money.

25 Hand who the money?

- 1 A. The guy.
- 2 Q. You saw who hand who the money?
- 3 A. I seen him hand the money to the other guy.
- 4 Q. In Toccoa?
- 5 A. Uh-huh.
- 6 Q. What did you see him get back from the man?
- 7 A. A baggie of crack cocaine.
- 8 Q. A baggie of crack cocaine?
- 9 A. Uh-huh.
- 10 Q. So then he gets back in the car?
- 11 A. Uh-huh.
- 12 Q. And y'all go where?
- 13 A. Back to Seneca.
- 14 Q. About what time in the morning is this?
- 15 A. I'm not sure.
- 16 Q. You don't know, too high; is that right?
- 17 A. Uh-huh.
- 18 Q. But we know it was before 8:00 in the morning?
- 19 A. Yes. It was way before then.
- 20 Q. What type of baggie was it?
- 21 A. Just a regular sandwich baggie.
- 22 Q. Just a regular sandwich baggie. And it had what
- 23 you believe to be crack cocaine in it; is that right?
- 24 A. Uh-huh.
- 25 Q. I don't see a sandwich bag on the Search Warrant.

- 1 A. Uh-huh.
- 2 Q. So they didn't find it in the room?
- 3 A. I don't know. I don't know what he did with the
- 4 baggie. I just know it was in the baggie. When he
- 5 purchased it, it was in a baggie. What he did with it
- 6 after that, I don't know.
- 7 Q. Let's go back to James Walker. He didn't drive you
- 8 all to Toccoa?
- 9 A. Huh-uh. I've never rode with James Walker to
- 10 Toccoa.
- 11 Q. But James Walker drove the both of you to
- 12 Pendleton; is that right?
- 13 A. Uh-huh.
- 14 Q. And dropped you off at the hotel?
- 15 A. We went and got high for a minute and then he left
- 16 because he got mad.
- 17 Q. When you say "he," I assume you mean Mr. James
- 18 Walker?
- 19 A. Yes.
- 20 Q. He got mad at you?
- 21 A. At Dan.
- 22 Q. He got mad at Dan. So he left?
- 23 A. Uh-huh.
- 24 Q. And that's when the other guy came?
- 25 A. He, the other guy came a couple different times

1 throughout, the few days before that, too.

2 Q. The man in Toccoa named Chino, you just heard that
3 name from somebody else?

4 A. No. I heard them talking about the name.

5 Q. Okay. But you don't know whether or not Chino
6 lives in Toccoa or what?

7 A. I'm sure he does, yeah. I'm just not sure if
8 that's exactly his name, though. Chino, Chico,
9 something or other, I don't know.

10 Q. Where did the White man pick you up from?

11 A. The room.

12 Q. And he took you straight to Toccoa?

13 A. Uh-huh.

14 Q. Make any stops in between?

15 A. If we did, it wasn't but to the store maybe to get
16 a beer, if that. I can't remember. It's been a while.

17 Q. You were arrested on July 25th but you didn't give
18 that statement until December the 11th?

19 A. Nobody has ever asked me.

20 Q. You couldn't remember if it had been a while,
21 right?

22 A. No. It's just nobody had ever asked me. And then
23 when I got incarcerated, then that's when it was time to
24 do something for myself.

25 Q. You got that right: That's when it was time to do

1 something for yourself.

2 A. I'm not going down for anybody else. I'm doing it
3 for me. I'm telling the truth.

4 Q. You're telling the truth.

5 A. Uh-huh.

6 Q. Has Mr. Temple ever wrote a statement against you?

7 A. I'm not sure.

8 MR. ROSEMOND: No further questions, Your Honor.

9 THE COURT: Re-exam?

10 MS. SIMMONS: Nothing, Your Honor. We would ask
11 this witness be excused.

12 MR. ROSEMOND: No objection.

13 THE COURT: Without objection you may be excused.

14 Thank you, ma'am.

15 (Whereupon, the Witness was excused.)

16 THE COURT: Mr. Foreman, ladies and gentlemen of
17 the Jury, it's 12:45. I'm going to suggest we take a
18 break for lunch at this time.

19 How much time do you think you'll need? Just ask
20 your Jury there in the Jury box. And it's not a
21 unanimous verdict, it's a consensus. I'd say from 1:45,
22 2:00? Which one?

23 (Jury confers in Jury box.)

24 THE FOREMAN: 1:45.

25 THE COURT: 1:45, very good. One hour. And then

1 we'll come back and continue with the trial of the case.
2 Again, do not undertake discussion of the case among
3 yourselves or permit anybody to discuss the case with
4 you.

5 Everyone remain seated while the Jury retires from
6 the courtroom.

7 (Whereupon, the Jury left the courtroom at
8 approximately 12:45 p.m.)

9 THE COURT: All right. Anything from the Plaintiff
10 before we take a break?

11 MS. SIMMONS: No, Your Honor.

12 THE COURT: From the Defense?

13 MR. ROSEMOND: No, Your Honor.

14 THE COURT: All right. See you back at 1:45.

15 (A luncheon recess occurred.)
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1:58 p.m.

3 THE COURT: Anything from the State before we bring
4 the Jury back?

5 MS. SIMMONS: No, Your Honor.

6 THE COURT: From the Defendant?

7 MR. ROSEMOND: No, Your Honor.

8 THE COURT: Bring the Jury in.

9 (The Jury entered the courtroom at approximately
10 1:58 p.m.)

11 THE COURT: Let the record reflect the Jury is in
12 the Jury box.

13 Mr. Foreman, ladies and gentlemen of the Jury, I
14 apologize. We had a few technical difficulties again.
15 We'll now proceed though with the trial.

16 Madam Solicitor, you may call your next witness.

17 MS. SIMMONS: Thank you, Your Honor. We call
18 Captain Kenny Washington.

19 Whereupon,

20 Kenneth Lee Washington,
21 Having first been duly sworn, was examined and testified
22 as follows:

23 Direct Examination by Ms. Simmons:

24 THE COURT: If you would please, sir, give us your
25 full name for the record, spelling your last name.

1 THE WITNESS: Kenneth Lee Washington,

2 W-a-s-h-i-n-g-t-o-n.

3 By Ms. Simmons:

4 Q. Captain Washington, where are you employed?

5 A. With the Oconee County Sheriff's Office.

6 Q. And how long have you been in law enforcement?

7 A. I've been in law enforcement for approximately 20
8 years.

9 Q. And back on July 25th of 2012 what was your
10 capacity then?

11 A. I was the supervisor of the Oconee Sheriff's Office
12 Narcotics Division.

13 Q. And you have since been promoted to Captain?

14 A. Yes, ma'am.

15 Q. What kind of training and education do you have?

16 A. Education is I have an Associate's Degree in
17 criminal justice, I graduated from the South Carolina
18 Criminal Justice Academy, and also some special training
19 in drug enforcement which includes like the Drug
20 Enforcement Administration and also ATF undercover
21 schools and other schools which include clandestine lab
22 certification.

23 Q. Does that involve methamphetamine?

24 A. Yes.

25 Q. Were you working back on July 25th of 2012?

- 1 A. Yes, ma'am.
- 2 Q. Were you part of the execution of a Search Warrant
3 at the Town & Country Motel in the City of Seneca?
- 4 A. Yes, ma'am.
- 5 Q. And is that in Oconee County?
- 6 A. Yes, ma'am.
- 7 Q. Who were the targets of the investigation that day?
- 8 A. The target was Mr. Temple for that investigation.
- 9 Q. Do you know Dan Temple and his family?
- 10 A. Yes.
- 11 Q. And did you recognize the person at the motel as
12 Dan Temple?
- 13 A. Yes.
- 14 Q. Did you have occasion to interview Mr. Temple --
15 did you take part in the execution of the Search
16 Warrant?
- 17 A. I did not take part of the execution of the Search
18 Warrant. I was there. My role was the night before I
19 received a phone call from at the time Sergeant Woodring
20 stating that Seneca PD needed some assistance on the
21 execution of a Search Warrant. I arrived there for the
22 briefing that morning. When I arrived there, my role
23 was to play the part of coming in after the execution
24 and more or less just be in there for support.
- 25 Q. And after the execution did you have occasion to

1 come in contact with Mr. Temple?

2 A. Yes, ma'am, I did. After the TRT team executed the
3 Search Warrant, I was parked up near the bowling alley,
4 I think that's what that is, and after they executed it
5 I actually walked down to the incident location. And
6 when I walked down there at this time, Mr. Temple had
7 been placed in the back of a patrol vehicle.

8 I remember as I was standing outside of the room
9 out in the parking lot, I heard a banging, there was a
10 banging on the window of the patrol vehicle. One of the
11 patrol officers, Seneca Police Officers, actually came
12 over to me and advised me that Mr. Temple wanted to
13 speak with me.

14 I went over and I spoke to, actually to see what
15 Mr. Temple wanted. He advised me that he wanted to
16 cooperate. I then pulled out my rights card and I read
17 to him his *Miranda* warning.

18 Q. And can you read us the warnings as you did that
19 day?

20 A. Yes. Yes. I keep my *Miranda* warnings in my
21 wallet, and on that particular day I actually pulled
22 this card here from my wallet and I read him his rights,
23 which states (reading):

24 You have a right to remain silent. Anything that
25 you say can and will be used against you in court. You

1 have a right to an attorney and to have that attorney
2 present during questioning. If you cannot afford an
3 attorney, an attorney will be provided at no cost. You
4 can decide at any time to exercise these rights and not
5 answer any questions or make any statements.

6 The bottom part reads: Do you understand each of
7 these rights I have explained to you?

8 And the second part is: Having these rights in
9 mind, do you wish to talk to us now?

10 Q. What time did this take place, roughly?

11 A. It was that morning I would guess probably after
12 9:00, 9:30.

13 Q. And he was seated in the patrol car at that point?

14 A. Yes.

15 Q. And it was just you and him essentially?

16 A. Yes.

17 Q. Did you make sure that Mr. Temple understood his
18 rights?

19 A. Yes.

20 Q. Did he convey to you that he understood his rights?

21 A. Yes, he did.

22 Q. Either verbally or by gestures or...

23 A. He verbally stated that and he shook his head as
24 though he understood his rights.

25 Q. Did he appear to be intoxicated or under the

1 influence of illegal drugs?

2 A. No, ma'am.

3 Q. Did you make any threats or promises to Mr. Temple?

4 A. No, ma'am.

5 Q. And so he approached you?

6 A. Yes. He, he was in a patrol car. He had another
7 officer come over to get me.

8 Q. Did you intimidate him in any way?

9 A. No, ma'am.

10 Q. Was his waiver of rights voluntary?

11 A. Yes, ma'am.

12 Q. And did he indicate to you he wished to give a
13 statement?

14 A. Yes.

15 Q. What did he tell you about?

16 MR. ROSEMOND: Objection, Your Honor, on the basis
17 of hearsay and that he did not waive his rights.

18 THE COURT: Well, first of all --

19 Mr. Foreman, ladies and gentlemen of the Jury, two
20 objections have been made, one as to hearsay. Hearsay
21 is what the term implies as to what somebody says they
22 heard somebody say, in other words, it's the third
23 person, not the person that spoke to the person who says
24 they heard it, but it's the third person who's relating
25 their testimony.

1 The only thing is there are exceptions to the
2 hearsay when the party to a particular action makes a
3 statement. That is a statement by a party opponent and
4 that is not hearsay. In other words, the witness then
5 is just using their senses of hearing to express what
6 the person involved in a particular legal action says at
7 a different time, so that's not hearsay.

8 Now, the second thing is, and Mr. Rosemond is
9 correct about that, that this statement by the Witness
10 of an alleged statement made by the Defendant is for
11 your determination as to whether or not that statement
12 was given freely and voluntarily, knowingly and
13 intelligently, in other words, that it cannot be the
14 result of any threat, coercion, or fear; it cannot be
15 done when somebody is under the influence; and it cannot
16 be whether or not they felt like they had to make the
17 statement; in other words, it must be a voluntary
18 statement.

19 Also, the rights that they have guaranteed to the
20 individual who makes those statements are the right to
21 remain silent, the statement cannot and will not be used
22 against him in a court of law, the right to an attorney,
23 that if he does not have an attorney, an attorney will
24 be provided; and the right to consult with the attorney
25 and the right to interrupt and terminate the

1 interrogation at any time; and moreover, the
2 interrogation will cease until given an opportunity to
3 consult with his attorney prior to his interrogation.
4 Those rights have to be read or stated to the individual
5 and then the Defendant, as I say, must knowingly and
6 intelligently waive those rights.

7 And if the statement or confession was freely and
8 voluntarily given, without duress or coercion, without
9 undue influence, without promise of lenience, without
10 threat of injury, or without compulsion or inducement of
11 any kind, and that such alleged incriminating statement
12 was not the voluntary product of the free and
13 unconstrained will of the Defendant, if it was none of
14 those things, in other words, that if it was somehow not
15 the free and voluntary statement, that is for your
16 determination. If you determine it was not, those
17 rights were not given, were not waived, then and the
18 statement was not made, then you would disregard it.
19 However, your finding must be beyond a reasonable doubt,
20 not a mere preponderance of the evidence, but beyond a
21 reasonable doubt that the statement was freely,
22 voluntarily, knowingly and intelligently made.

23 But this statement will come in at this time for
24 your determination whether or not it can be used against
25 him, this alleged statement.

1 You may proceed.

2 **MS. SIMMONS:** Thank you, Your Honor.

3 By Ms. Simmons:

4 **Q.** Captain Washington, after waiving his *Miranda*
5 rights, what did the Defendant say to you?

6 **A.** He advised me that he wanted to work or cooperate
7 with me. He advised me that he could get some more
8 drugs. He also stated that he had purchased some drugs
9 in Pendleton the night before, and that he could
10 actually purchase some more while cooperating with me.

11 He also stated that he could go to Georgia and get
12 some drugs from an individual, he never did say the
13 name, either from Pendleton or Georgia. He stated that
14 he could go to Georgia and actually get some drugs from
15 an individual in Georgia while cooperating with me.

16 At that time I advised him that I was there for
17 support for Agent Hunnicutt; that I would relay that
18 information to Mr. Hunnicutt and advise Mr. Hunnicutt of
19 him wanting to cooperate. And that's when I got, went
20 and told Mr. Hunnicutt that Mr. Temple wanted to
21 actually cooperate and talk with him.

22 **Q.** And he said he had picked up an ounce the day
23 before; is that --

24 **A.** Yes, that's what he told me. He told me that he
25 went to Pendleton and had purchased an ounce.

1 Q. And did he say anything about the drugs that were
2 in the room?

3 A. He just said that he could, that he could get some
4 more and what he had left from the drugs that he had
5 picked up in Pendleton is what was left in the room.

6 Q. And at that point in time did you refer him to
7 Agent Hunnicutt?

8 A. That's correct.

9 MS. SIMMONS: Please answer any questions
10 Mr. Rosemond might have for you.

11 Cross-Examination by Mr. Rosemond:

12 Q. Captain Washington, Mr. Temple was in the back of
13 the patrol car, correct?

14 A. Yes, sir.

15 Q. He was handcuffed?

16 A. I can't remember if he was handcuffed or not. I
17 know that he was in the back of the patrol vehicle.

18 Q. Was he free to leave at that particular time?

19 A. No.

20 Q. He was technically under arrest, though; is that
21 right?

22 A. Yes, he was detained at that time.

23 Q. Now, Mr. Temple presumably heard you read him the
24 *Miranda* warnings; is that right?

25 A. That's correct.

1 Q. And did he give you any indication that he
2 understood what you were asking him?

3 A. Yes. He shook his head and said he understood.

4 Q. Okay. Was anybody else present for this
5 conversation?

6 A. I think it was just myself and Mr. Temple that was
7 actually at the rear of the patrol vehicle.

8 Q. You were standing outside of the window and he was
9 inside; is that right?

10 A. Yes. I actually, if I can remember, I think I
11 actually had the door open and was talking to him, I
12 opened the door of the vehicle.

13 Q. And Mr. Temple allegedly gave a statement that said
14 that the drugs in the room were his?

15 A. Yes. He told me that what was in the room is what
16 was left from what he picked up in Pendleton the day
17 before.

18 Q. Now, did he give you this statement in writing?

19 A. No, sir.

20 Q. Did you have access to a voluntary statement form
21 that someone could use to write a statement on at that
22 time?

23 A. I didn't ask for one. I don't know if someone, if
24 maybe an officer maybe had one in the vehicle, but no, I
25 didn't have one at the time.

1 Q. But normally if you want someone to give a
2 statement sometimes, you have them write it out and have
3 them sign it; is that right?

4 A. That is a good practice.

5 Q. And even in your case, you filled out a voluntary
6 statement of your activity on that date; is that right?

7 A. That is correct.

8 Q. And essentially is this your voluntary statement of
9 what you did on that day; is that right?

10 A. Yes, sir, that is correct.

11 Q. And you signed yours?

12 A. Uh-huh. Yes, sir.

13 Q. And the reason why you do that is to make sure a
14 year from now you can remember about what occurred?

15 A. That's correct.

16 Q. Now, did anybody witness your statement?

17 A. No. It was just myself and Mr. Temple at the rear
18 of the vehicle.

19 Q. Is there any corroboration of what Mr. Temple said
20 to you at the back of the car, independent
21 corroboration?

22 A. Just, just like I say, it was just myself and
23 Mr. Temple that were back there. We were the only
24 witnesses that were there.

25 Q. Did you have a tape recorder on you that day?

- 1 A. I didn't have a tape recorder. I did have a -- of
2 course, cell phones now have recorders.
- 3 Q. An i-phone, a cell phone?
- 4 A. An i-phone, yes.
- 5 Q. And really on an i-phone you can record a
6 conversation between you and somebody; is that right?
- 7 A. That's correct.
- 8 Q. And at least so that we would know that the
9 conversation took place, you could have recorded the
10 conversation between you and Mr. Temple; is that right?
- 11 A. Yes, sir, I could have.
- 12 Q. But we don't have -- but you didn't do that at that
13 date; is that correct?
- 14 A. Yes, sir.
- 15 Q. And the only role you played in this particular
16 case is coming in at the end, keeping eyes on things and
17 talking to Mr. Temple; is that right?
- 18 A. Yes, sir.
- 19 MR. ROSEMOND: No further questions.
- 20 THE COURT: Re-exam?
- 21 Redirect Examination by Ms. Simmons:
- 22 Q. Captain Washington, you were approached by
23 Mr. Temple; is that correct?
- 24 A. Yes. I was told by an Officer that he wanted to
25 talk to me.

1 Q. So it would stand to follow that you didn't
2 necessarily have a lot of time to grab a statement form
3 or get a recording device if contact was initiated by
4 him?

5 A. Exactly. My intent was not to speak with
6 Mr. Temple that day as I was not the primary
7 investigator.

8 MS. SIMMONS: Thank you very much.

9 Recross-Examination by Mr. Rosemond:

10 Q. It doesn't take much to reach in your pocket and
11 pull out a phone, does it?

12 A. No, sir.

13 Q. And ultimately Mr. Temple was confined in a patrol
14 car and he wasn't going anywhere; isn't that right?

15 A. That's correct.

16 Q. And you could have certainly walked to a Patrol
17 Officer and said, could I get a form from you if you
18 have one, and codify or put in writing what he said to
19 you; is that right?

20 A. Yes, sir.

21 Q. And at the Academy, one thing that we learn at the
22 Academy is write down people's confessions; is that
23 right?

24 A. Yes. Take very good notes.

25 Q. Take very good notes. And if they give you a

1 statement as to their complicity in a crime, that you
2 have them write it out; is that right?

3 A. That is a tactic, yes.

4 MR. ROSEMOND: No further questions, Your Honor.

5 THE COURT: Re, re-exam?

6 MS. SIMMONS: No, Your Honor.

7 THE COURT: Very good. You may step down. Thank
8 you, sir.

9 THE WITNESS: Thank you, Judge.

10 (The Witness was excused.)

11 THE COURT: You may call your next witness.

12 MS. SIMMONS: I call Investigator Tim Hunnicutt.

13 Whereupon,

14 Tim Hunnicutt

15 Having first been duly sworn, was examined and testified
16 as follows:

17 Direct Examination by Ms. Simmons:

18 THE COURT: If you would please, sir, state your
19 full name for the record, spelling your last name.

20 THE WITNESS: Investigator Tim Hunnicutt,
21 H-u-n-n-i-c-u-t-t.

22 THE COURT: Thank you, sir.

23 You may proceed.

24 MS. SIMMONS: Thank you, Your Honor.

25

1 By Ms. Simmons:

2 Q. Investigator Hunnicutt, where are you employed?

3 A. Seneca Police Department.

4 Q. And how long have you been in law enforcement?

5 A. For approximately 12 years.

6 Q. What unit are you currently assigned to?

7 A. Narcotics Division.

8 Q. And were you working on July 25th, 2012?

9 A. I was.

10 Q. And did you have occasion to obtain a Search

11 Warrant for Room 103 of the Town & Country Motel?

12 A. Yes.

13 Q. And who did you obtain that Search Warrant from?

14 A. Judge Derrick.

15 Q. Located in the City of Seneca and County of Oconee?

16 A. The incident location?

17 Q. Yes.

18 A. Yes, in Seneca.

19 Q. When did you obtain that Search Warrant?

20 A. On the 24th, the day before.

21 Q. And you executed it on the 25th?

22 A. Correct.

23 Q. Based on the information you had from your course
24 of the investigation, who did you expect to be present
25 in the hotel room?

1 A. Dan Temple.

2 Q. Were you able to confirm the identity of Dan Temple
3 once you arrived?

4 A. Yes.

5 Q. How?

6 A. Just recognized him from past dealings, and IDs,
7 his photo ID, his Social Security card that was there in
8 the room.

9 Q. Who was usually with him?

10 A. Crystal Henry.

11 Q. And what's his relation to James Willie Walker,
12 relation or affiliation?

13 A. James Willie Walker is kind of his runner.

14 Q. Who was the target of your investigation and
15 execution of your Search Warrant?

16 A. Dan Temple.

17 Q. And how did the execution of the Search Warrant
18 progress?

19 A. The Tactical Response Team made entry into the
20 location. After they secured the area to make sure both
21 subjects were detained, that's when myself and other
22 Narcotics Investigators searched the room.

23 Q. And before the Tactical Response Team team made
24 entry, did they knock and announce?

25 A. Yes.

1 Q. Once you went inside the room, what did you find?

2 A. In the room was, on the dresser closest to the
3 bathroom, as you are looking at the bed it would be to
4 the right side of the bed, there was a small crack rock
5 sitting on the dresser or on the nightstand. I found
6 two different crack pipes, glass crack pipes.

7 On the floor, if you are looking at the bedroom
8 coming from the entryway to the motel room, on the floor
9 next to the bed was a little pill bottle, purplish-blue
10 looking in color.

11 Q. I'm gonna show you what's been premarked as State's
12 Exhibit 23. Is this where the crack rock was found?

13 A. Yes.

14 Q. And you said there were personal items in the room?

15 A. Yes.

16 Q. Is that what you recall seeing?

17 A. Yes.

18 Q. And that is State's 21.

19 And also State's 20, do you recognize that?

20 A. Yes.

21 Q. And State's 16?

22 A. Yes.

23 Q. What is that?

24 A. That is the pill bottle containing the crack
25 cocaine.

1 Q. And where was that located?

2 A. On the right, if you are facing the bed, on the
3 right side of the bed, the same side where he was laying
4 on, it was right below the bed and on the floor.

5 Q. Okay. I'm gonna show you what has been premarked
6 as State's 32.

7 MS. SIMMONS: May I approach the Witness, Your
8 Honor?

9 THE COURT: Certainly.

10 By Ms. Simmons:

11 Q. Do you recognize State's 32 as the pill bottle that
12 you picked up that day in the hotel room?

13 A. Yes.

14 Q. Okay. And did you package it in any way or seal it
15 to maintain its evidentiary integrity?

16 A. I did.

17 Q. When did you do that?

18 A. The same day.

19 Q. Once you packaged the -- did you also do the same
20 with the Xanax that was found?

21 A. Correct.

22 Q. And the crack rock?

23 A. Correct.

24 Q. And when you packaged those items, what did you do
25 with them?

1 A. Placed it in a BEST pack, the BEST kit that was
2 sealed, we turned it in to the evidence locker where it
3 would go to Melinda Nicholson, who is our Evidence
4 Technician.

5 Q. You did all that the same day?

6 A. Yes.

7 Q. Did you later that day have occasion to interview
8 the Defendant about what had gone on?

9 A. Yes. Right after the Search Warrant, yes, we did.

10 Q. Okay. And did you -- where did you interview him?

11 A. At the Police Department. Captain Ken Washington,
12 Lieutenant Washington then, he advised me that Mr.
13 Temple wanted to speak with me about the case.

14 Q. I show you what's been premarked as State's Exhibit
15 31. Did you advise the Defendant of his rights prior to
16 speaking with him?

17 A. Yes, I did.

18 Q. What did you say when you went over his rights?
19 Can you do it exactly as you did it that day?

20 A. Do it word for word?

21 Q. Yes.

22 A. This is the statement of *Miranda* rights form at the
23 time and location where it took place, level of
24 education on there. And each line read (reading):

25 You have the right to remain silent; that the

1 suspect understands the right or the, what you are
2 telling him, he initials by each one.

3 You have the right to remain silent. He initialed.

4 Anything you say can and will be used against you
5 in a court of law. He initialed beside that.

6 You have the right to talk to a lawyer and have him
7 present to assist you while being questioned. He
8 initialed beside that.

9 If you cannot afford a lawyer, one will be
10 appointed to represent you before any questions if you
11 wish. He initialed beside that.

12 If you decide at any time to exercise these rights,
13 you do not have to answer any questions or make any
14 statements. He initialed there.

15 And; Do you understand these rights that I've
16 explained to you?

17 And he checked "yes" and initialed beside it.

18 Q. And did he subsequently sign the form?

19 A. Yes.

20 Q. And who was the form witnessed by?

21 A. Myself and Tyrel Woodring.

22 Q. Did he sign the form in your presence?

23 A. Yes, right in front of me.

24 Q. Okay. You said you went over the form and you made
25 sure the Defendant understood his rights?

1 A. Correct.

2 Q. In your opinion did he seem to understand his
3 rights?

4 A. Yes.

5 Q. Was he intoxicated or under the influence of drugs
6 as best you could tell?

7 A. No, he was not.

8 Q. And he understood -- he indicated he understood his
9 rights by signing the form?

10 A. Correct.

11 Q. And did he subsequently waive Miranda and speak to
12 you?

13 A. Yes.

14 Q. Tell me what he said.

15 MR. ROSEMOND: The same objection, Your Honor, as
16 earlier.

17 THE COURT: Again, it will be for the Jury to
18 determine whether or not the statement was freely,
19 voluntarily, knowingly and intelligently made.
20 Overruled. But again, that determination must be beyond
21 a reasonable doubt.

22 You may proceed.

23 A. He advised me that he, the drugs that were found in
24 the hotel room, the crack cocaine was his. He went to
25 Pendleton the night before and purchased them for \$300.

1 By Ms. Simmons:

2 Q. Based on your training and experience, is \$300'
3 worth of quantity consistent with personal use or
4 possession with intent to distribute?

5 A. With intent to distribute. Because most users will
6 spend twenty or forty dollars and get a crack rock or
7 two.

8 Q. And how many times did he claim the drugs during
9 the course of your conversation?

10 A. He claimed it after we done it probably just one
11 time.

12 Q. Did he say anything about Crystal Henry's
13 involvement at that point in time?

14 A. He just said that they were all his.

15 Q. And you have seen the photographs that were
16 taken --

17 MS. SIMMONS: I'm sorry. Judge, we would move to
18 admit the Rights Waiver which has been premarked as
19 State's Exhibit 31.

20 MR. ROSEMOND: Subject to the objection of the
21 Defendant.

22 THE COURT: Subject to the objection of the
23 Defendant. And that's 31?

24 MS. SIMMONS: Yes, Your Honor.

25 THE COURT: It will be admitted.

1 (State's Ex. # 31 was received in evidence.)

2 MS. SIMMONS: Thank you, Judge.

3 By Ms. Simmons:

4 Q. Investigator Hunnicutt, have you had occasion to
5 review State's Exhibits 16 through 30, the photographs
6 that were taken at the scene?

7 A. Yes.

8 Q. And are those a fair and accurate representation of
9 what you saw that day?

10 A. Yes.

11 Q. And the drugs were found at two separate -- at
12 three separate locations in the room?

13 A. That's correct.

14 Q. And which one was Mr. Temple closest in proximity
15 to?

16 A. To the crack cocaine that was in the pill bottle.

17 Q. And you turned in all the drugs to Sergeant
18 Nicholson?

19 A. Correct.

20 Q. And did you tamper or alter the drugs in any way
21 before you turned them in?

22 A. No, ma'am.

23 Q. Based on Mr. Temple's admissions and the drugs that
24 you found in the room, what did you charge him with?

25 A. Possession with intent to distribute crack cocaine.

1 Q. And what is the basis of the with intent to
2 distribute charge?

3 A. The weight. Also the money he spent the night
4 before was not a normal user amount you would spend on
5 buying drugs.

6 Q. And was cash also found at the scene?

7 A. Yes. \$622.

8 Q. And did all events relating to this case occur
9 within the City Limits of Seneca?

10 A. They did.

11 MS. SIMMONS: Please answer any questions

12 Mr. Rosemond may have.

13 Cross-Examination by Mr. Rosemond:

14 Q. Mister -- Investigator Hunnicutt, I'm sorry, you
15 obtained that Search Warrant from Judge Derrick; is that
16 correct?

17 A. That's correct.

18 Q. Judge Derrick is a County Magistrate and located in
19 Westminster; is that right?

20 A. That's correct.

21 Q. And you are a City Police Officer; is that right?

22 A. Yes.

23 Q. The City of Seneca?

24 A. Yes.

25 Q. And the City of Seneca has a City Judge that issues

1 Search Warrants and Arrest Warrants; right?

2 A. Yes.

3 Q. This occurred on a Wednesday; is that right?

4 A. Yes.

5 Q. And that Tuesday you obtained a Search Warrant; is
6 that right?

7 A. Yes.

8 Q. But you obtained it from Judge Derrick who is the
9 County Judge and not Judge Singleton who is the City
10 Judge; is that right?

11 A. That's correct.

12 Q. Now, you had been doing surveillance on the
13 location on July 24th; is that right?

14 A. Correct.

15 Q. And you knew you were going to get a Search Warrant
16 on July 24th; is that correct?

17 A. Not until that afternoon we didn't know.

18 Q. You didn't know until that afternoon you were gonna
19 get a Search Warrant. About what time that afternoon?

20 A. I'm not sure exactly. Probably it would be between
21 two to four. I'm not sure.

22 Q. And you knew you were going to get a Search Warrant
23 between two and four, but you didn't call your City
24 Judge to get a Search Warrant; is that right?

25 A. For some reason. I'm not sure he was out of town

1 or what it was. But when we got done, it was after
2 hours and we called Judge Derrick.

3 Q. Was it your testimony he was out of town or do you
4 not --

5 A. I can't remember. There was some reason why.

6 Q. Ordinarily you would go to a City Judge to get a
7 Search Warrant; is that right?

8 A. I would go to County Judges and City Judges. It's
9 our choice who we want to go to.

10 Q. The City Judge chastised you one day for going to a
11 County Judge when he was working and you didn't go to
12 him; isn't that correct?

13 MS. SIMMONS: Objection, Your Honor.

14 THE COURT: What's the objection?

15 MS. SIMMONS: Relevance. We're discussing a case
16 that is not at issue.

17 THE COURT: Well, they have been discussing going
18 to either a Magistrate -- I mean to either a City Judge
19 or a County Magistrate. I'm going permit the question.

20 Answer the question if you can.

21 A. That's incorrect.

22 By Mr. Rosemond:

23 Q. Judge Singleton never chastised you from going
24 outside of the City of Seneca to get a Search Warrant?

25 A. He's never chastised me for anything.

1 Q. You got the Search Warrant from Judge Derrick; is
2 that right?

3 A. That's correct.

4 Q. Has Judge Singleton ever turned you down for a
5 Search Warrant?

6 A. He has not.

7 Q. How long have you been doing this work,
8 Investigator Hunnicutt?

9 A. Four years.

10 Q. You have been in Narcotics for four years?

11 A. Correct.

12 Q. You got the Search Warrant from Judge Derrick. Did
13 Judge Derrick give you an Arrest Warrant for Mr. Temple
14 as well?

15 A. I already had the Arrest Warrant.

16 Q. You already had the Arrest Warrant for what?

17 A. For the charge we picked him up on that day.

18 Q. For possession with intent to distribute?

19 A. No. What led to that.

20 Q. The arrest -- what was he arrested for on July
21 25th, the day of the Search Warrant?

22 A. The day of the Search Warrant we actually charged
23 him with possession with intent to distribute crack
24 cocaine --

25 Q. Okay.

1 A. -- and possession of the Xanax.

2 Q. Exactly. And those Arrest Warrants were issued by
3 Judge Derrick?

4 A. The Arrest Warrants on that were issued by Judge
5 Singleton.

6 Q. On what day? July 25th?

7 A. I believe so.

8 Q. So you went to Judge Derrick to get the Search
9 Warrant, but then you went to Judge Singleton to have
10 the Arrest Warrant issued?

11 A. Right. He was right upstairs and it wasn't after
12 hours, so I went to...

13 Q. Isn't it true, Investigator Hunnicutt, you went to
14 Judge Derrick because he's not as stringent on Search
15 Warrants as Judge Singleton?

16 A. No, that's not true.

17 Q. That's not true?

18 A. No.

19 Q. Did you talk to Judge Singleton that day about the
20 Search Warrant?

21 A. No.

22 Q. In the City of Seneca they have two judges, don't
23 they?

24 A. There's an assistant Judge. The Clerk, she does,
25 like a part-time judge if he's gone.

1 Q. She's an Associate Judge; is that right?

2 A. Right.

3 Q. She issues Arrest Warrants; isn't that correct?

4 A. Correct.

5 Q. She issues search warrants; is that correct?

6 A. That's correct.

7 Q. And you could have -- if Judge Singleton was not
8 available, you could have went to Judge Lawing; isn't
9 that correct?

10 A. That's correct.

11 Q. But you chose not to go to either one of them; is
12 that right?

13 A. Right. I have a choice to go to which judge I want
14 to.

15 Q. They call that judge shopping; isn't that right?

16 A. No. We can go to any judge, any judge we want to
17 in the County. It can be from Magistrates; any court to
18 a Circuit Court Judge.

19 Q. In the City of Seneca, Judge Singleton and Judge
20 Lawing are up above the Police Station right behind --
21 right beside City Hall; isn't it that correct?

22 A. That's correct.

23 Q. And on the same block there's a Magistrate Judge in
24 Ocone County; isn't that correct?

25 A. That's correct.

1 Q. Did you talk to him about issuing a Search Warrant?

2 A. It was after hours and they were all closed.

3 Q. Did you try and talk to him and call him and say
4 you had a Search Warrant?

5 A. No.

6 Q. So you didn't call Judge Singleton, you didn't call
7 Judge Lawing, you didn't call the Judge that's in the
8 same block like 400 yards from City Hall in Seneca; is
9 that right?

10 A. That's correct.

11 Q. You called the judge all the way in Westminster to
12 give you a Search Warrant; isn't that right?

13 A. That's correct.

14 Q. So you bypassed three judges to get to Judge
15 Derrick to give you a Search Warrant?

16 A. I didn't bypass anybody.

17 Q. You bypassed Judge Singleton. He's your judge; is
18 that right?

19 A. There was some reason why, but I'm not sure. There
20 was some reason he wasn't there or something and for
21 some reason I went to Judge Derrick.

22 Q. But did you even call him and say, Judge Singleton,
23 I am working on a Search Warrant, are you gonna be there
24 to execute or sign it?

25 A. I don't remember that part.

1 Q. And the incident location is in the City of Seneca;
2 is that right?

3 A. That's correct.

4 Q. You didn't go to Judge Singleton, you didn't go to
5 Judge Lawing, you didn't go to the other judge in Seneca
6 or the County Magistrate, but you went ten miles out of
7 your way to get to Judge Derrick?

8 A. I actually met him at his house in Seneca.

9 Q. You went to his home?

10 A. Correct.

11 Q. How did you get in touch with Judge Derrick that
12 day?

13 A. I had him paged.

14 Q. Did you try to page Judge Singleton?

15 A. I don't remember.

16 Q. Did you try to page Judge Lawing?

17 A. No. A lot of times when we have a joint case with
18 the Sheriff's Office working with us, we'll go ahead and
19 use a Magistrate.

20 Q. So you took the Magistrate [sic] to Judge Derrick's
21 home; is that right?

22 A. Took the what?

23 Q. I said, did you take it to his home?

24 A. Correct.

25 Q. Okay. And he lived down past The Palms down off

1 of --

2 A.

3 Q. ; is that right?

4 A. Right.

5 Q. Do you know where Judge Singleton lived?

6 A. Somewhat further than that, yes, out towards Fair
7 Play.

8 Q. Have you ever been to his house? I mean, if you
9 don't know --

10 A. I've never been to his house. I just know it's
11 down that way.

12 Q. When you got to the incident location, were you the
13 first one in?

14 A. No.

15 Q. You said that you all had not been announced; is
16 that correct?

17 A. That's what the Tactical Response Team did.

18 Q. Okay. And where were you at when they did this?

19 A. I was just a little ways behind them.

20 Q. And when you knock and announce, how does that
21 occur?

22 A. You knock and tell them, Police Department, Search
23 Warrant. And if they don't answer the door, then you'll
24 find your way in there.

25 Q. Find your way in like a battering ram; is that

1 right?

2 A. That or a key.

3 Q. That or a key. Y'all had both?

4 A. Correct.

5 Q. And a young lady was trying to get to the door to
6 open it when y'all came in; is that right?

7 A. I don't know if she was trying to let us in, but...

8 Q. She was behind the door and she got hit in the lip
9 with the door?

10 A. Looking out the peephole sitting on a suitcase and
11 chair that was propped up against the door so we
12 couldn't get in.

13 Q. Did you see her sitting on the suitcase?

14 A. She was behind the door --

15 Q. No, I didn't ask you that. Did you see her sitting
16 on the suitcase?

17 A. No.

18 Q. Did you see her sitting in a chair?

19 A. No, I didn't see her sitting there.

20 Q. Did you see her look out of the peephole?

21 A. That wasn't her testimony.

22 Q. Did you see her look out of the peephole?

23 A. No.

24 Q. So when the door came open, she's behind the door
25 and she gets hit in the face with the door; is that

1 right?

2 A. That's correct.

3 Q. So then you go inside; is that right?

4 A. Yes.

5 Q. And you survey the scene?

6 A. Yes.

7 Q. You found a piece of crack or a piece of rock-like
8 substance on a nightstand and looking at the bed on the
9 right-hand side of the bed; is that right?

10 A. Yes, if you are facing the bed looking at it --

11 Q. I'm facing the bed, I'm looking at it.

12 A. The side closest to the bathroom.

13 Q. Okay. And you found a piece of crack over there;
14 is that right?

15 A. That's correct.

16 Q. And then you said you found a purple pill bottle on
17 the left side of the bed on the floor; is that right?

18 A. Correct.

19 Q. Tell me about that pill bottle. Was it a medicine
20 bottle?

21 A. Yes.

22 Q. Did it have any tape on it?

23 A. Like where the stuff had been ripped off --

24 Q. Okay.

25 A. -- or the label would have been ripped off.

1 Q. So there was no label on the pill bottle?

2 A. Part of a label. It's not, it's not like, you
3 can't read nothing.

4 Q. Did you have it tested for fingerprints?

5 A. I really don't remember if I did or -- I don't
6 think so.

7 Q. The yellow Xanaxes, you found them where?

8 A. The top drawer of the nightstand closest to the
9 bathroom.

10 Q. You found the Xanax on the nightstand in the same
11 place you found the rock-like substance on the other
12 side of the bed from Mr. Temple; is that right?

13 A. Correct.

14 Q. You've indicated that the reason why you charged
15 him with PWID, it's possession with intent to
16 distribute, but what we would normally call PWID was the
17 weight amount, right?

18 A. Correct.

19 Q. And the weight amount was 1.22 grams; is that
20 right?

21 A. Yes.

22 Q. Give or take a couple of -- okay.

23 And the presumption is if you have anything over a
24 gram, it's with intent to distribute; is that right?

25 A. Correct.

1 Q. So he had point 22 over the limit where you can
2 presume somebody of having the intent to distribute?

3 A. Correct.

4 Q. But that's just a presumption, isn't that correct,
5 something that you can presume?

6 A. I mean, that's the, in the law there.

7 Q. That's a presumption in the law that if you have
8 over a gram, you are presumed to have the intent to
9 distribute; isn't that correct?

10 A. Okay.

11 Q. And just because you have over that gram amount
12 doesn't mean that you have the intent to distribute; is
13 that right?

14 A. (No response.)

15 Q. That's a yes or no.

16 A. I mean, not everybody -- I guess not everybody that
17 had that amount would be distributing.

18 Q. And not everybody that buys \$300 worth of crack has
19 the intent to distribute, either. Some of that could be
20 for their own personal use; isn't that correct?

21 A. I don't believe that.

22 Q. Why don't you believe that? You believe that
23 everybody who buys drugs that spends \$300 is going to
24 give it to somebody else?

25 A. I've never known a crack head to spend \$300 on

1 crack. They can barely find money because they, they're
2 out of work, they don't have a job, they have to steal
3 the money and buy a twenty-or-forty-dollar crack rock.

4 Q. Are you telling me that only people that are crack
5 heads are poor people that don't have a job and don't
6 work?

7 A. No, that's not what ---

8 Q. You're not telling me that there's not rich people
9 in this world that does crack; is that right?

10 A. I'm sure there are plenty.

11 Q. And those rich people who can afford \$300, they
12 could purchase it for themselves, they could use it for
13 themselves; isn't that correct?

14 A. I don't see that happening.

15 Q. You don't see that happening. But isn't that a
16 possibility?

17 A. I guess anything is possible.

18 Q. A rich person who is employed goes and buys more
19 than a gram or \$300' worth of crack, you don't think
20 they could use all that for themselves?

21 A. They could over a period of time, yes.

22 Q. Now, Mr. Temple was working during that time; isn't
23 that correct?

24 A. That's correct. That's what I hear.

25 Q. He had a job at the Tiki Hut at Seneca Marina;

1 isn't that right?

2 A. Yes.

3 Q. So, because he had a job, he also had the ability
4 to make money, earn money, and to have money in his
5 pocket; is that right?

6 A. Right.

7 Q. And you located \$600 in Mr. Temple's possession;
8 isn't that right?

9 A. That's correct.

10 Q. Did you ever ask him was that money from work?

11 A. We spoke about the money, yes.

12 Q. Okay. Did you ask him did the money come from
13 work?

14 A. He said he was working.

15 Q. Okay. You had spoke with Mr. Temple at the Police
16 Station; is that right?

17 A. Yes.

18 Q. You had him transported from Town & Country over to
19 the Police Station and you put him in a room and
20 interrogated him?

21 A. I never interrogated him. I never questioned him
22 about anything. He told me what he wanted to tell.

23 Q. You never interrogated him?

24 A. No.

25 Q. You call it interviewing him?

1 A. Well, he wanted to speak with us and we went in the
2 room, filled out his form, and he told us what he had to
3 say and that was it.

4 Q. So you didn't ask him any questions?

5 A. No. We didn't talk about the -- he told us what
6 had happened.

7 Q. Right. But you didn't ask him any questions while
8 you were in this interview room?

9 A. I asked about the money and that was it.

10 Q. Okay. It seems odd to have someone in a room --

11 A. He's the one who asked to talk to us. We didn't
12 ---

13 Q. Yeah. I'm gonna ask questions back. I'm gonna ask
14 who, what, when, where, and how. Isn't that basic
15 police procedure?

16 A. He told me what he wanted to say.

17 Q. You didn't ask really any other questions?

18 A. No. Because I had enough ---

19 Q. So he told you what he wanted to say, he gave you
20 what, an oral confession?

21 A. Correct.

22 Q. You were in a Police Station, weren't you?

23 A. That's right.

24 Q. Did you go get a Voluntary Statement form and have
25 him write it out?

- 1 A. No.
- 2 Q. You went to the Academy; isn't that correct?
- 3 A. I did.
- 4 Q. And at the Academy they taught you to take good
5 notes, and when someone confessed, have them give you a
6 written statement; isn't that correct?
- 7 A. It's a good thing to do, right.
- 8 Q. But you didn't do it in this case?
- 9 A. No, I didn't.
- 10 Q. So how can this Jury believe that what you told us
11 is what Mr. Temple said? Did you record it on an audio?
- 12 A. No.
- 13 Q. You didn't record it on the audio, you don't have a
14 written confession?
- 15 A. Right.
- 16 Q. But you got a written confession from Ms. Henry;
17 isn't that correct?
- 18 A. Right.
- 19 Q. You had her do a written confession here; isn't
20 that right?
- 21 A. Yeah, later, yes.
- 22 Q. You had her sign it; is that right?
- 23 A. Correct.
- 24 Q. You had a witness to it?
- 25 A. Yes, sir.

1 Q. But you couldn't give Mr. Temple a chance to write
2 his own confession because he didn't confess to you; is
3 that right?

4 A. That's incorrect.

5 Q. Did she confess to you in this statement?

6 A. No.

7 Q. So the statement that you took that a person who
8 was charged with a crime, the same crime as Mr. Temple,
9 you took a statement from her, but she didn't confess,
10 she just said it was all his. But with the person that
11 you are trying to pin it on that you say confessed to
12 you, you didn't get a statement from him; is that right?

13 A. That's right.

14 Q. When you took that statement from Mr. Temple, he
15 was in handcuffs?

16 A. Yes, in the front, yes, sir.

17 Q. He was in a room. How long was he in that room?

18 A. A very short amount of time. Probably 20 minutes,
19 maybe.

20 Q. All right. Were you in that room by yourself?

21 A. No.

22 Q. Did you have a recorder available to you?

23 A. I didn't at the moment, no.

24 Q. You could have gotten one; isn't that correct?

25 A. I probably could have found one.

1 Q. You, a few minutes ago you made an interesting
2 comment that you said James Walker was a runner for my
3 client?

4 A. Right.

5 Q. Did my client tell you that?

6 A. No.

7 Q. Did you know James Walker drove my client and
8 Mrs. Henry to Pendleton?

9 A. No, I didn't know that.

10 Q. Have you ever met James Walker?

11 A. Yes.

12 Q. Have you ever talked with James Walker?

13 A. Yes.

14 Q. Did James Walker ever help you out before?

15 A. Yes.

16 Q. But on this case you didn't know James Walker drove
17 them to Pendleton; is that right?

18 A. Correct.

19 Q. And that was on July 24th; isn't that correct?

20 A. That or the early morning on the 25th.

21 Q. Y'all had surveillance going on at that time; isn't
22 that right?

23 A. Not that night, no. It was earlier in the day.

24 Q. So what time do you think they -- well, it was
25 earlier in the day y'all were doing surveillance on

1 Mr. Temple; is that right?

2 A. Right.

3 Q. Sitting very close to my law office in the parking
4 lot watching the hotel?

5 A. Correct.

6 Q. And that surveillance didn't capture -- or did it
7 capture the, Mr. Temple leaving with anybody?

8 A. No.

9 Q. It didn't?

10 A. No. We got out of there earlier, it was before I
11 went and got the Search Warrant, around six, and it was
12 around six when I met the judge.

13 Q. When you get a Search Warrant, what are you
14 supposed to do with the Search Warrant? I mean, how do
15 you do the search? You get a Search Warrant, what do
16 you do with it?

17 A. Are you talking about executing it?

18 Q. Yes.

19 A. We go over the Search Warrant with the suspect,
20 give a copy to him, give a copy back to the judge with
21 the Return of all the information that was taken from
22 the residence or this motel room.

23 Q. So you gave him a Search Warrant, you gave
24 Mr. Temple a copy of a Search Warrant?

25 A. I didn't. Mr. Wright did, Courtney Wright.

1 Q. I'm looking at the return on the Search Warrant,
2 and it says one crack rock on end table, 822 in cash,
3 maybe 622 in cash; 13 orange capsules, purple pill
4 bottle containing crack, ten yellow tablets, Xanax; two
5 crack pipes, two pink tablets, beige-brown bag, a
6 Gateway laptop, an Acer Aspire laptop, Samsung cell
7 phone.

8 How come you didn't charge anybody for the 13
9 orange tablets?

10 A. The orange tablets ended up being something else,
11 it wasn't a controlled substance.

12 Q. Do you remember what it was?

13 A. I don't remember right off, but it wasn't
14 controlled. The two pills ended up being like a
15 heartburn medicine or something.

16 Q. Those two pink tablets that I referred to?

17 A. Some of it was heartburn medicine and one was
18 something else. I'm not sure. That's the reason they
19 weren't charged with that.

20 Q. The Gateway laptop, the Acer Aspire notebook. Why
21 did you take those?

22 A. I didn't. Investigator Wright took those.

23 Q. Okay. Well, but you were in charge of this
24 investigation. Why did, why did you take those?

25 A. To see if there was any -- actually, he pulled a

1 Search Warrant on those for any incriminating evidence,
2 anything to do with selling drugs or anything, like a
3 cell phone would have photos, it would have text
4 messages, anything like that.

5 Q. Would you repeat to me what you just said?

6 A. Which part?

7 Q. What he did with the cell phone and the Search
8 Warrant. The cell phones and the computer.

9 A. He got a Search Warrant on those.

10 Q. Okay. He got it from whom?

11 A. The judge. I don't know -- I'm not sure which
12 judge.

13 Q. Whose name was on the Search Warrant?

14 A. Courtney Wright.

15 Q. That's the person obtaining the Search Warrant?

16 Whose name ---

17 A. That's the one that --

18 Q. Whose name was on the Search Warrant?

19 A. Which judge?

20 Q. No. What did you get a Search Warrant for?

21 A. Did I or he?

22 Q. What did Mr. Wright get a Search Warrant for?

23 A. For the property, the electronics property.

24 Q. Who did you send the Search Warrant to?

25 A. Who did I send it to?

1 Q. Yes, sir.

2 A. The stuff was analyzed, it was taken to Anderson.

3 Jim Bolt of Anderson City --

4 Q. Okay.

5 A. -- he tries to check that stuff to see if they can
6 get anything off of it.

7 Q. Let me understand something. You get a Search
8 Warrant for a computer that's owned by somebody; is that
9 right?

10 A. Right.

11 Q. It's owned by Mr. Temple?

12 A. I didn't have nothing to do with that part of it.
13 That was Cortney's part of the case.

14 Q. You were in charge of this investigation; is that
15 right?

16 A. It was a joint between us both. But I made the
17 charges, so I guess he was more in charge of it.

18 Q. You and Cortney are the same rank?

19 A. Right.

20 Q. So you get a Search Warrant from a judge, and it
21 says go search this piece of property; is that right?

22 A. That should be what it said, yes.

23 Q. And then you make a Return on the Search Warrant;
24 is that right?

25 A. That will be the next thing to do, yes.

1 Q. And you return it to the owner, isn't that right?

2 A. The property?

3 Q. Yes, sir.

4 A. Return it to the owner, yes. It's probably still
5 in evidence.

6 Q. What's in evidence?

7 A. The property.

8 Q. What else did you search? The phone?

9 A. The phone, and I believe he said two computers.

10 Q. Okay. So you all picked up the phone and looked at
11 it; is that right?

12 A. No. We don't do that.

13 Q. You go and get a search warrant?

14 A. Correct.

15 Q. From Judge Derrick or Judge Singleton?

16 A. Like I said, Investigator Wright handled that and
17 I'm not sure which judge he went to.

18 Q. There was a Return made?

19 A. Yes.

20 Q. Mr. Bolt said he found something on the Search
21 Warrant; is that right?

22 A. I don't know. I really don't know. I can't
23 testify to any of that. That's not my thing.

24 Q. Not your thing. The problem with that is I don't
25 have a copy of that Search Warrant. Mr. Temple doesn't

1 have a copy of any Return. And if you are telling me
2 that you searched a phone and two Gateway computers that
3 may contain some inculpatory or exculpatory information,
4 don't I deserve to have it?

5 A. I haven't given you any information from those
6 phones, right?

7 Q. But you got the Search Warrant; is that right?

8 A. I didn't, no. There was a Search Warrant got,
9 though, obtained..

10 MR. ROSEMOND: Judge, we don't have a Search
11 Warrant then. We don't have a Search Warrant that they
12 obtained for some property in this case.

13 THE COURT: Is he charged with the property, having
14 the property?

15 MS. SIMMONS: Judge, there's no charges that came
16 from that.

17 THE COURT: Mr. Rosemond?

18 MR. ROSEMOND: We don't know ***

19 THE COURT: Mr. Foreman, ladies and gentlemen of
20 the Jury, I'm gonna ask you to retire to the Jury room
21 for a moment so I can take up a matter of law with the
22 attorneys.

23 Again, do not undertake discussion of the case
24 among yourselves or with anyone else.

25 (Whereupon, the Jury left the courtroom at

1 approximately 2:55 p.m.)

2 THE COURT: Mr. Rosemond?

3 MR. ROSEMOND: Judge, certainly they execute a
4 Search Warrant in a motel, they take out a Samsung phone
5 and two computers. They go and get a Search Warrant for
6 the Samsung phone and the two computers.

7 THE COURT: That was after the Search Warrant for
8 the room?

9 MR. ROSEMOND: Yes.

10 THE COURT: I've seen a Return and a Search Warrant
11 somewhere.

12 MR. ROSEMOND: But that's for the room.

13 THE COURT: That's what I'm saying.

14 MR. ROSEMOND: But certainly we don't have any idea
15 of what they found on the computer or the Samsung phone.

16 THE COURT: So, in other words, you are saying that
17 is Rule 5, failure to provide?

18 MR. ROSEMOND: I don't think Ms. Simmons has it.

19 THE COURT: Well, I mean, the State is the one
20 that's supposed to provide all discovery material.

21 MR. ROSEMOND: Well, I mean, I would agree with
22 that, Your Honor. But certainly it would seem to me
23 that he keeps pointing at Officer Wright and that he did
24 all this and --

25 THE COURT: Well, actually, I was listening to the

1 testimony. It seems that Officer Wright was the one
2 that got the Search Warrant.

3 MR. ROSEMOND: Well, he's got ---

4 THE COURT: I mean, I don't know. The thing is
5 that this, anything that he would testify to would not
6 be of his own knowledge. It would be what Officer
7 Wright did.

8 MR. ROSEMOND: Being the lead investigator on the
9 case, and there is a Search Warrant that was executed on
10 a piece of property that was taken, owned by my client,
11 my client deserves to have the Search Warrant.

12 THE COURT: Well, I'm not sure about that. I don't
13 know what happened to the Search Warrant. I haven't
14 seen the Search Warrant. The only time it came up is in
15 your examination.

16 What about a Search Warrant, Madam Solicitor?

17 MS. SIMMONS: Judge, I have the Search Warrant
18 that's a Court's Exhibit in my file.

19 THE COURT: That's on the room, that was all the
20 things that was in that Return. But he's suggesting
21 there's another Search Warrant for the laptop and the
22 cell phone.

23 MS. SIMMONS: I do not have a copy of that Search
24 Warrant.

25 THE COURT: Well, is there a copy of that Search

1 Warrant?

2 MS. SIMMONS: It would seem to indicate yes. I
3 mean, I did know there were phones and things of the
4 like in evidence, and Investigator Wright told me that
5 that was on the Return that Mr. --

6 THE COURT: But, no. He's saying there's a
7 separate Search Warrant for the content --

8 I think is what you are saying. Is that it,
9 Mr. Rosemond?

10 MR. ROSEMOND: That would be true, Your Honor.

11 THE COURT: Well, I don't know about it being true.
12 I'm just saying, is that what you are seeking?

13 And is there a Search Warrant for the content of
14 the laptop and the cell phone?

15 MS. SIMMONS: Not within my possession, but
16 according to this Officer's testimony, yes.

17 THE COURT: Then why wasn't that made available to
18 the Defendant?

19 MS. SIMMONS: Judge, I gave him everything I had.
20 I knew the cell phones were in evidence. And when I met
21 with Officer Wright, I said, Is there anything
22 evidentiary that I need to know about?

23 And he said that there's nothing inculpatory or
24 exculpatory. I did not have discussion of the Search
25 Warrant with him. I should have confirmed that

1 apparently.

2 **MR. ROSEMOND:** And Ms. Simmons, I mean, she opened
3 her files to me. I mean, but now we do know there is a
4 second Search Warrant out there in this case and the
5 Seneca Police Department has it and they didn't furnish
6 it.

7 **THE COURT:** What do you say, Madam Solicitor?

8 **MS. SIMMONS:** Judge, I certainly would be happy --
9 the evidence custodian, Ms. Nicholson, is here. I'll be
10 happy to make arrangements for Mr. Rosemond to review
11 what is in evidence.

12 **THE COURT:** No. I'm talking about if there was a
13 Search Warrant issued in connection with this arrest,
14 and it was, involved things seized in this arrest, and
15 there has been no -- was it not revealed to the
16 Defendant?

17 **MS. SIMMONS:** Judge, our discovery request tells
18 the Defense Attorney that all tangible items are in
19 Evidence with Sergeant Nicholson, and Mr. Rosemond had
20 the opportunity to look at anything that was available
21 to me. I didn't deliberately deceive him.

22 **THE COURT:** Admittedly, I am not the most
23 technically literate person in the world. However, I
24 see those little machines on your desk and your desk and
25 here, and I know that they have hard drives that

1 sometimes are searched for information.

2 Is that what you are talking about, Mr. Rosemond?

3 MR. ROSEMOND: Yes, sir.

4 THE COURT: I don't know what is out there or what
5 has been sought, but I certainly would like to know, to
6 find out how we should proceed.

7 MR. ROSEMOND: The answer to your question would be
8 yes, Your Honor. They evidently searched the hard drive
9 on two computers and the telephone that was either owned
10 by my client --

11 (Discussion off the record.)

12 THE COURT: All right. Let's take a short break
13 and I want you to --

14 Ms. Simmons, I want you to find out if there has
15 been a search of the instruments, not the fact that they
16 were acquired, but once they were acquired, did
17 something take place with regard to those.

18 All right. We'll take about 15 minutes.

19 MS. SIMMONS: Thank you, Judge.

20 THE COURT: See if the Jury needs anything in the
21 way of refreshments, please.

22 (A recess was taken.)

23 THE COURT: Is the State ready to proceed?

24 MS. SIMMONS: Yes, Your Honor.

25 THE COURT: Is the Defense ready?

1 MR. ROSEMOND: Yes, Your Honor.

2 THE COURT: All right. Yes, ma'am.

3 MS. SIMMONS: Mr. Rosemond and I have met during
4 the break and we are going to meet after court today to
5 review the items that are in question and we will make
6 them Court's Exhibits and Officer Wright has been
7 noticed to be here.

8 THE COURT: All right. This line of questioning
9 about the Search Warrant and any Return from that Search
10 Warrant is going to be discontinued at this time without
11 prejudice to the Defendant so that after you have had
12 time to look at whatever is available, then he can pick
13 up the line of questioning as the State's witness, not
14 as his called witness, and after, as you say, the time
15 you both have had an opportunity to consider the
16 material.

17 MS. SIMMONS: Thank you.

18 THE COURT: But we will move on this afternoon. So
19 when the Jury comes back, I will pick up not where we
20 left off, but after where we left off.

21 If that's all right with you, Mr. Rosemond.

22 MR. ROSEMOND: Yes, sir.

23 THE COURT: All right. Very good.

24 Ask the Jury to join us, please.

25 (The Jury entered the courtroom at approximately

1 3:22 p.m.)

2 THE COURT: Let the record reflect the Jury is in
3 the Jury box.

4 Madam Forelady, we will now continue with the
5 examination.

6 By Mr. Rosemond:

7 Q. Let me show you State's Exhibit Number 16. Can you
8 identify that object right there?

9 A. Yes.

10 Q. What is that?

11 A. That's the pill bottle that contained the crack
12 cocaine.

13 Q. But you -- that pill bottle was already there when
14 you walked into the room; is that right?

15 A. Correct.

16 Q. It was already on the floor?

17 A. Right.

18 Q. You didn't see where it came from, did you?

19 A. No.

20 THE COURT: What number was that, Mr. Rosemond?

21 MR. ROSEMOND: 16, Your Honor.

22 THE COURT: Thank you.

23 By Mr. Rosemond:

24 Q. Investigator Hunnicutt, that item right there
25 appears to be a rock-like substance right there?

1 A. Yes.

2 Q. And that was on the opposite side of the bed that
3 Mister -- that the pill bottle was found on; is that
4 right?

5 A. Yes.

6 THE COURT: That was which one?

7 MR. ROSEMOND: That was State's Exhibit Number 29.

8 THE COURT: Thank you.

9 By Mr. Rosemond:

10 Q. I don't remember if I asked you this question or
11 not, and if I have, I'll move on.

12 You have on gloves -- on State's Exhibit Number 28
13 you have on gloves here?

14 A. Correct.

15 Q. And that is the bottle that you say was laying on
16 the side of the bed; is that right?

17 A. That's right.

18 Q. And did you or did you not fingerprint this
19 particular bottle for latents?

20 A. I didn't, no.

21 Q. But did you ask for it to be done?

22 A. I don't think so. I don't remember asking to have
23 it done.

24 Q. Why would you not ask for a piece of evidence that
25 could conclusively prove who touched it and who didn't

1 to be done?

2 A. Most of it's kind of sticky, where the wrapper was
3 taken off, and you wouldn't be able to get any
4 fingerprints off that.

5 Q. You been to a school to teach about fingerprints?

6 A. I have.

7 Q. And have you ever taken fingerprints before?

8 A. Yes.

9 Q. And you have taken fingerprints from people or from
10 objects?

11 A. Different objects.

12 Q. Okay. And this has been while you were with the
13 City of Seneca?

14 A. No. It was while I was at the Sheriff's Office.

15 Q. Okay. You were a forensic person at the Sheriff's
16 Office?

17 A. No, I was not. But they had classes on
18 fingerprinting.

19 Q. And you took those classes?

20 A. Yes.

21 Q. And you don't think you would be able to get
22 fingerprints off of that?

23 A. There might be some parts that you could, but most
24 of it, no.

25 Q. But you didn't check?

1 A. No.

2 MR. ROSEMOND: No further questions for this
3 Witness Your Honor.

4 THE COURT: Re-exam?

5 MS. SIMMONS: Nothing further, Your Honor.

6 THE COURT: All right. You may step down.

7 (Witness leaves stand.)

8 THE COURT: All right. You may call your next
9 witness.

10 MS. SIMMONS: Your Honor, the State calls Special
11 Agent Tyrel Woodring.

12 Whereupon,

13 Tyrel Woodring

14 Having first been duly sworn, was examined and testified
15 as follows:

16 Direct Examination by Ms. Simmons:

17 THE COURT: If you would, please, give us your full
18 name for the record, spelling your last name.

19 THE WITNESS: Tyrel Allen Woodring,
20 W-o-o-d-r-i-n-g.

21 THE COURT: Thank you, sir.

22 You may proceed.

23 MS. SIMMONS: Thank you, Judge.

24 By Ms. Simmons:

25 Q. Agent Woodring, where are you employed?

1 A. I'm employed by the South Carolina State Law
2 Enforcement Division.

3 Q. How long have you been at SLED?

4 A. Since November of last year.

5 Q. And were you at the Oconee County Sheriff's Office
6 before that promotion?

7 A. Yes, ma'am.

8 Q. And how long were you at the Sheriff's Office?

9 A. Approximately 12 years.

10 Q. And what is your specialized training and education
11 and special -- area of law enforcement specialty?

12 A. I have an Associate's Degree in criminal justice.
13 I graduated from South Carolina Criminal Justice
14 Academy. I have advanced training in narcotics from the
15 Department of Justice, U.S. Department of Homeland; the
16 Department -- Division of Drug Enforcement
17 Administration and the Federal Law Enforcement Training
18 Center.

19 Q. Were you working for the Oconee County Sheriff's
20 Office on July 25th of 2012?

21 A. Yes.

22 Q. And did you have occasion to assist in the
23 execution of a Search Warrant at the Town & Country
24 Motel in Seneca?

25 A. Yes.

1 Q. How did the execution of the Search Warrant
2 progress from your participation?

3 A. I was contacted by Investigator Hunnicutt the night
4 before. He advised that he had a Search Warrant for the
5 location. I then contacted Captain Ken Washington and
6 advised him of the situation also. He requested
7 assistance the following day.

8 The following day on the 25th I, along with Captain
9 Washington, met with Investigator Hunnicutt and other
10 officers at the Seneca Police Department at a briefing
11 location. We were briefed that he had a Search Warrant
12 for the room at the Town & Country Motel in Seneca which
13 is in Oconee County.

14 Q. And what was your role in the execution of the
15 Search Warrant?

16 A. My role, I was driven to the location by
17 Investigator Hunnicutt. My role was to obtain a key
18 from the clerk, the receptionist at the Town & Country
19 Motel, which I obtained after presenting him to let him
20 know that I had a Search Warrant for the room.

21 At that time after I obtained the key, I gave the
22 key to the Tactical Response Team at the Seneca Police
23 Department and they executed the Search Warrant at Room
24 103.

25 Q. Did you assist Agent Hunnicutt in searching the

1 room?

2 A. I did.

3 Q. Did he actually take all the items into evidence?

4 A. He did.

5 Q. I'm gonna show you what have been premarked as
6 State's Exhibits 16 through 30, and just let me know if
7 these are a fair and accurate representation of the
8 scene that day (handing).

9 A. They are fair and accurate.

10 Q. Thank you. Were you also present later when the
11 Defendant was interviewed by Tim Hunnicutt?

12 A. Yes, sir.

13 Q. Where did that take place?

14 A. That happened at the patrol room at the Seneca
15 Police Department.

16 Q. I'm gonna show you -- you have it -- what has been
17 premarked as State's Exhibit 31. Do you recognize this
18 document?

19 A. I do.

20 Q. Tell me what it is.

21 A. This is a written statement of *Miranda* rights or
22 warnings.

23 Q. Do you recognize your signature on that?

24 A. I do.

25 Q. Were you there when the Defendant was advised of

1 his rights?

2 A. Yes, ma'am.

3 Q. Do you remember Agent Hunnicutt going line by line
4 with him?

5 A. Yes, ma'am.

6 Q. What time did this take place?

7 A. 9:05.

8 Q. And where were you?

9 A. I was present in the patrol room at the Seneca
10 Police Department.

11 Q. At any point was Mr. Temple threatened,
12 intimidated, or coerced into speaking with you?

13 A. No, ma'am.

14 Q. Before he was read the rights that the Defendant
15 was apprised of?

16 A. Yes, ma'am.

17 Q. And based on your experience, did the Defendant
18 understand his rights?

19 A. Yes.

20 Q. Were there any markings on the form to indicate
21 that in your presence?

22 A. Yes, ma'am.

23 Q. Tell me about those.

24 A. These are his initials by each line item of each
25 *Miranda* warning and his signature.

1 Q. Did he appear to be intoxicated or under the
2 influence of illegal drugs?

3 A. No, ma'am.

4 Q. Were you present when the Defendant signed the
5 form?

6 A. Yes, ma'am.

7 Q. Do you believe that this waiver of rights was
8 voluntary?

9 A. Yes, ma'am.

10 Q. And did the Defendant subsequently agree to speak
11 with you and Agent Hunnicutt?

12 A. Yes, ma'am.

13 Q. And tell me what he said.

14 A. He advised that he wished to cooperate with law
15 enforcement; that the drugs found in the room when he
16 was arrested were his; that he had previously purchased
17 them the night before in Anderson for \$300. He could
18 also purchase more drugs in Anderson and in Georgia.

19 Q. And, based on your training and experience in the
20 City of Seneca, what is \$300' worth of drugs consistent
21 with? Intent to distribute or possession?

22 A. Intent to distribute.

23 MS. SIMMONS: Thank you very much. Please answer
24 any questions that Mr. Rosemond might have.

25

1 Cross-Examination by Mr. Rosemond:

2 Q. Agent Woodring, why is it consistent with intent to
3 distribute if you buy \$300' worth of drugs?

4 A. Typically a crack rock would sell for \$20.

5 Q. Correct.

6 A. So, if you had five \$20 crack rocks, that would be
7 one gram or more.

8 Q. Okay. So, if I'm going to see my supplier on
9 Monday, and I got to work Tuesday through Sunday and I'm
10 not going back, and I want to buy \$300' worth of drugs
11 and they're all for me, that would be the same thing as
12 just me buying for my personal use; isn't that correct?

13 A. That could be, yes, sir.

14 Q. So, just because you spend \$300 on drugs doesn't
15 mean you are going to sell it to anybody; is that right?

16 A. Right.

17 Q. We all make mistakes, don't we, Agent Woodring?

18 A. Absolutely.

19 Q. And I assume when you say that he told you he went
20 to Anderson, you really meant Pendleton; isn't that
21 correct?

22 A. Anderson County is what I presume, yes, sir.

23 Q. Okay. Just a slip of the tongue, all right.

24 A. Yes, sir.

25 Q. Now --

1 A. Pendleton is in Anderson County.

2 Q. Okay. Investigator Hunnicutt contacted you?

3 A. Yes, sir.

4 Q. Were you in charge of the Narcotics Office of the
5 Sheriff's Office at that time?

6 A. No, sir.

7 Q. Who was your boss?

8 A. Captain Kenny Washington.

9 Q. Wouldn't it seem like if I wanted to use some
10 officers, I'm going to ask the Captain in charge of the
11 officers to let me use those guys that day?

12 A. It's just common practice for an agent to call
13 another agent. Then it's that agent's responsibility to
14 contact his supervisor --

15 Q. Okay.

16 A. -- to obtain permission for assistance from the
17 agency.

18 Q. So you and Hunnicutt are friends?

19 A. Absolutely.

20 Q. And he's the one that asked you to come do the
21 execution of the Search Warrant; is that right?

22 A. Correct. He was asking the Sheriff's Office for
23 assistance.

24 Q. And the assistance from the Sheriff's Office was
25 you and Captain Washington?

1 A. Yes.

2 Q. Anybody else?

3 A. No, sir.

4 Q. You all were in a room at the Seneca Police
5 Department and that is where Mr. Temple allegedly made
6 those statements to you; is that right?

7 A. Right.

8 Q. You were taught to get statements like that in
9 writing; isn't that right?

10 A. It is good practice to do that. We are not
11 required to get them in writing.

12 Q. Well, that is the only way that you know that
13 someone signed a written statement that they said it;
14 isn't that right?

15 A. I believe testimony can also attribute to that.

16 Q. Your testimony?

17 A. Correct.

18 Q. But officers sometimes or anybody can sometimes not
19 tell the truth; isn't that right?

20 A. Correct.

21 Q. So the better practice is to have a written
22 statement signed by the person who is allegedly
23 confessing to a crime?

24 A. That is good practice.

25 Q. And you have been an officer how long now?

1 A. Approximately 13 years.

2 Q. And you had the good fortune of getting a
3 promotion, and by that promotion you took a step up and
4 now you work for the State, for SLED?

5 A. I do.

6 Q. And certainly did you not ask him to give you a
7 written confession?

8 A. Mr. Temple?

9 Q. Yes.

10 A. No, sir, I did not.

11 Q. Who was in charge of that interview that morning,
12 that afternoon or so?

13 A. I was an assisting agent. Investigator Hunnicutt
14 was in charge of that interview.

15 Q. The policy at the Sheriff's Office says you should
16 get a written statement from a person; isn't that
17 correct?

18 A. No, sir.

19 Q. It doesn't say that?

20 A. Our policy is to give, in law to give *Miranda*
21 warning.

22 Q. Right.

23 A. It is the officer's discretion to obtain a verbal
24 statement or a written statement.

25 Q. Okay. You didn't obtain a written statement, but

1 you didn't obtain an audio statement, either, did you?

2 A. No, sir.

3 MR. ROSEMOND: No further questions.

4 THE COURT: Re-exam?

5 MS. SIMMONS: Nothing further from this Witness,
6 Your Honor.

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

8 (Witness leaves stand.)

9 MS. SIMMONS: Judge, may we mark an exhibit?

10 THE COURT: Certainly.

11 (The Drug Analysis Report was attached to State's
12 Ex. # 32, the BEST Pack, at this time.)

13 MS. SIMMONS: The State calls Sergeant Melinda
14 Nicholson.

15 Whereupon,

16 Melinda Nicholson

17 Having first been duly sworn, was examined and testified
18 as follows:

19 Direct Examination by Ms. Simmons:

20 THE COURT: Give us your full name for the record
21 spelling your last.

22 THE WITNESS: My name is Melinda Fay Nicholson,
23 N-i-c-h-o-l-s-o-n.

24 THE COURT: Thank you.

25

1 By Ms. Simmons:

2 Q. Sergeant Nicholson, where are you employed?

3 A. I'm employed with the Seneca Police Department.

4 Q. And how long have you been employed in law
5 enforcement?

6 A. Approximately 16 years.

7 Q. And what training and education is necessary for
8 your position?

9 A. I graduated from the South Carolina Criminal
10 Justice Academy. I have had specialized training in the
11 management and control of property and evidence as well
12 as crime scene.

13 Q. And what's your current job title?

14 A. I am the Evidence Custodian and the Crime Scene
15 Investigator for the Seneca Police Department.

16 Q. Before you you have what has been premarked as
17 State's Exhibit 32. Do you recognize this item?

18 A. Yes, I do.

19 Q. And does that, State's Exhibit 32, contain three
20 items that were turned into Evidence by Sergeant
21 Hunnicutt?

22 A. Yes, it does.

23 Q. When did you receive these items?

24 A. I received them from the secured evidence holding
25 locker on July the 26th, 2012.

1 Q. And when did you transport -- were these items
2 subsequently put into Evidence?

3 A. Yes. I checked them, I took them out of the
4 evidence holding locker, signed them in, entered them in
5 the computer, and placed them in Evidence Storage.

6 Q. Is evidence storage in a secure facility at the
7 Seneca Police Department?

8 A. Yes, it is.

9 Q. Did this item remain in your care, custody, and
10 control up until the time of analysis?

11 A. Yes, it did.

12 Q. And were there any individualized markings you put
13 on the package at the time to indicate you received this
14 item?

15 A. Yes. When I received, when I received this item, I
16 checked it into the computer and it issued this item an
17 individual tag number; and I noted, I marked the
18 individual tag number on this particular item.

19 Q. And this item contains three items?

20 A. Yes, it does.

21 Q. And it was turned in in that form?

22 A. Yes.

23 Q. When was it retrieved from Evidence Storage to take
24 it to the forensic lab?

25 A. On August the 3rd, 2012.

1 Q. And was that evidence returned to you after
2 analysis?

3 A. Yes, it was.

4 Q. And when was it returned to you?

5 A. It was returned to me on December the 13th, 2012.

6 Q. Has it been in your care, custody, and control
7 since that time?

8 A. Yes, it has.

9 Q. Have you tampered, altered, or changed the evidence
10 in any way while it was in your custody and control?

11 A. No, I have not.

12 Q. And what was the purpose of delivering it to
13 Anderson?

14 A. The purpose of delivering this item of evidence,
15 which actually contains three items, was for drug
16 analysis.

17 Q. And, since returning from the lab, have you altered
18 or tampered with this in any way?

19 A. No, I have not.

20 Q. And do you maintain complete control of the storage
21 facility at the Seneca Police Department?

22 A. Yes, I do.

23 MS. SIMMONS: Please answer any questions

24 Mr. Rosemond may have.

25 THE COURT: Cross-Examination.

1 Cross-Examination by Mr. Rosemond:

2 Q. Ms. Nicholson, I don't think I have many questions.

3 Just let me look at that document.

4 A. (Handing.)

5 Q. Did you make any markings on this document at all
6 on the plastic bag?

7 A. On the sealed plastic bag?

8 Q. Yes.

9 A. No, I did not.

10 Q. Did you make any markings on any bags in here at
11 all?

12 A. No, sir, not inside the sealed package, no.

13 Q. And ultimately have you opened that particular bag?

14 A. Um, not the sealed bag.

15 Q. Okay. That was already sealed when you got it?

16 A. Yes, sir.

17 Q. And the only thing you did was to transport it to
18 Anderson?

19 A. Yes, sir.

20 Q. And you got it back from Anderson; is that right?

21 A. That's correct.

22 Q. And you brought it up here this morning?

23 A. Yes, sir.

24 MR. ROSEMOND: No further questions.

25 THE COURT: Re-exam.

1 MS. SIMMONS: Judge, just one follow up.

2 Redirect Examination by Ms. Simmons:

3 Q. Agent Nicholson -- or Officer Nicholson, do you put
4 the sealed package in the manila envelope that it's
5 attached to?

6 A. Yes.

7 Q. And do you make personal markings on that?

8 A. I make personal markings on the manila envelope.

9 Q. And the item is sealed and attached in the manila
10 envelope?

11 A. Yes.

12 Q. And is that for the purpose of maintaining that you
13 were the person that took this from Evidence from
14 Officer Hunnicutt?

15 A. Yes, that is the purpose of maintaining the
16 integrity of the evidence, yes.

17 Q. And is the evidence in your chain referenced on the
18 attached manila envelope?

19 A. Yes, it is.

20 MS. SIMMONS: Okay. Thank you.

21 THE COURT: All right. You may step down.

22 (Witness leaves stand.)

23 MS. SIMMONS: Judge, we'd call Agent Lanford.

24

25

1 Whereupon,

2 Meredith Lanford

3 Having first been duly sworn, was examined and testified
4 as follows:

5 Direct Examination by Ms. Simmons:

6 THE COURT: If you would please, ma'am, give us
7 your full name, spelling your last name for the record.

8 THE WITNESS: Meredith Lee Lanford, L-a-n-f-o-r-d.

9 THE COURT: Thank you, ma'am.

10 You may proceed.

11 MS. SIMMONS: Thank you, Your Honor.

12 By Ms. Simmons:

13 Q. Agent Lanford, where are you employed?

14 A. I am employed with the Anderson/Oconee Regional
15 Forensics Laboratory.

16 Q. How long have you been employed there?

17 A. About seven years.

18 Q. What do you do at the Forensics Laboratory?

19 A. My primary job function is to test evidence that's
20 brought to our lab for controlled substances.

21 Q. What educational background do you have?

22 A. I have a Bachelor of Science degree from Clemson
23 University in chemistry. I then went on to complete the
24 Forensic Science Certificate Program at Greenville
25 Technical College. I was trained and certified as

1 forensic chemist with my previous employer, the
2 Charleston Police Laboratory, as well as my current
3 employer. I was trained in the area of forensic drug
4 chemistry at the Drug Enforcement Administration. I'm a
5 member of the American Chemical Society as well as the
6 Clandestine Laboratory of Investigating Chemists, and
7 each year I attend some kind of training and I complete
8 proficiency tests.

9 Q. All those things you just discussed, do they
10 involve training regarding prescription pills and crack
11 cocaine?

12 A. Yes.

13 Q. How often do you analyze controlled substances for
14 the presence -- analyze evidence for the presence of
15 controlled substances?

16 A. Every day.

17 Q. How many times do you estimate you have done this
18 over the course of your career?

19 A. Probably over five thousand times.

20 Q. And how many times have you testified in court as
21 an expert witness in this area?

22 A. 14.

23 MS. SIMMONS: Judge, at this time we move to
24 declare Agent Lanford as an expert in forensic drug
25 chemistry.

1 THE COURT: Voir Dire?

2 MR. ROSEMOND: No objection, Your Honor.

3 THE COURT: At this time she will be qualified as a
4 forensics drug investigating chemist?

5 MS. SIMMONS: Forensic drug chemist, Your Honor.

6 THE COURT: All right. Forensic drug chemist.

7 Mr. Foreman, ladies and gentlemen of the Jury, as
8 you have heard, normally witnesses are limited to
9 testimony that they acquire the information through the
10 exercise of their own senses; in other words, what they
11 hear, see, touch, or feel. However, if a witness by
12 reason of background, training, or experience have
13 acquired an expertise in a particular area, then that
14 witness can be qualified as an expert in that area and
15 can give their opinion rather than have firsthand
16 knowledge but based on information that they acquired
17 during their -- in preparation for their testimony.

18 However, all witnesses' testimony, be they fact
19 witnesses or expert witnesses, is for your evaluation.

20 All right. You may proceed.

21 By Ms. Simmons:

22 Q. Agent Lanford, tell me about the composition of
23 alprazolam.

24 A. Alprazolam usually, it comes in several different
25 forms, and this is the brand name, Xanax. That's

1 usually a tablet.

2 Q. And the composition of crack cocaine?

3 A. Most of the time crack cocaine comes as a rock
4 substance, but I have seen it in powder form as well.

5 Q. Agent, State's Exhibit 32 is before you. Can you
6 identify this item?

7 A. Yes, I can.

8 Q. And do you have any personal markings that you have
9 made on this item?

10 A. Yes. I have signed several of the baggies inside
11 and on the outside.

12 Q. Who did you receive this item from?

13 A. I received it from Melinda Nicholson from the
14 Seneca Police Department.

15 Q. On what date?

16 A. On August 3rd, 2012.

17 Q. Did you mark them when you received them?

18 A. Yes, I did.

19 Q. Where did you receive them?

20 A. I received them in the laboratory.

21 Q. And did these items remain in your care, custody,
22 and control during the time they were at the laboratory?

23 A. Yes, they were.

24 Q. The items today, are they in substantially the same
25 condition as they were when you received them?

1 A. Yes, they are.

2 Q. All right. During the analysis process is some of
3 the item consumed?

4 A. Yes, it is.

5 Q. For what purpose did you -- do these exhibits come
6 into your possession?

7 A. In order to test if any controlled substances are
8 present.

9 Q. Are three separate bags inside this one larger bag?

10 A. Yes, there is.

11 Q. Can you tell me about the smallest, what's commonly
12 known as a rock, in the bag?

13 A. Yes. It was found to have, cocaine base was found,
14 0.12 grams.

15 Q. Cocaine base is what is commonly called crack
16 cocaine?

17 A. Yes, it is.

18 Q. And was a blue pill bottle received by you?

19 A. Yes, it was.

20 Q. And what was the substance and total weight in the
21 blue pill bottle?

22 A. It was -- contained cocaine base 1.10 grams.

23 Q. And was there also some pills in this baggie you
24 received?

25 A. Yes.

1 Q. Did you conduct an analysis on the pills?

2 A. I conducted just drug lookup of the tablets, and it
3 indicated that it was alprazolam based on the markings
4 on the tablets.

5 Q. And is that standard practice?

6 A. Yes.

7 Q. And is alprazolam the proper name for Xanax?

8 A. It is.

9 Q. And was your forensic testing on each item
10 conducted separately?

11 A. Yes, it was.

12 Q. And what is your expert opinion on each item that
13 was analyzed?

14 A. The first item contained cocaine base at 0.12
15 grams. The second item was ten yellow oval tablets, and
16 that was alprazolam indicated. And the third item
17 contained cocaine base at 1.10 grams, so the total of
18 cocaine base of 1.22 grams.

19 Q. And when were these -- and after the analysis, did
20 you store these items at the lab?

21 A. Yes, I did.

22 Q. Did they stay in your care, custody, and control?

23 A. Yes, they did.

24 Q. And did you alter or tamper with them in any way
25 after analysis?

1 A. No, I did not.

2 Q. And when were they returned to Agent Nicholson?

3 A. They were returned on December 13th, 2012.

4 MS. SIMMONS: Judge, at this time the State would
5 move into evidence State's Exhibit 32 and its
6 accompanying attachments.

7 THE COURT: All right. Any objection?

8 MR. ROSEMOND: No objection, Your Honor.

9 THE COURT: All right. Without objection, State's
10 Exhibit Number 32 with attachments is admitted into
11 evidence.

12 (State's Ex. # 32 was received in evidence.)

13 MS. SIMMONS: Thank you, Ms. Lanford. Please
14 answer any questions that Mr. Rosemond may have for you.

15 Cross-Examination by Mr. Rosemond:

16 Q. Agent Lanford, you analyzed one plastic rock
17 substance and then one rock substance that was contained
18 in a blue plastic pill bottle; is that right?

19 A. That is correct.

20 Q. And the amount of crack that was found in the
21 singular form was how much?

22 A. 0.12 grams.

23 Q. And then the amount that was found in that blue
24 plastic pill bottle was how much?

25 A. 1.10 grams.

1 Q. And, for my edification, how much is that blue pill
2 bottle over 1 gram?

3 A. Point 10 grams.

4 Q. Okay. A tenth of a percent?

5 A. Yes.

6 Q. And that's not counting the other piece of crack
7 that was found; is that right?

8 A. That's correct.

9 MR. ROSEMOND: No further questions.

10 THE COURT: Re-exam?

11 MS. SIMMONS: Nothing further from this Witness.

12 THE COURT: You may step down.

13 (Witness leaves stand.)

14 MS. SIMMONS: May we excuse this witness?

15 THE COURT: Any objection?

16 MR. ROSEMOND: No objection, Your Honor.

17 THE COURT: Without objection, you may be excused.

18 Thank you, ma'am.

19 (Whereupon, the Witness was excused.)

20 MS. SIMMONS: Judge, we have reached a good
21 stopping point because we have some matters that need to
22 be taken up outside the presence of the Jury.

23 THE COURT: I understand.

24 MS. SIMMONS: Thank you, Judge.

25 THE COURT: All right. Ladies and gentlemen of the

1 Jury, there are some things I need to take up with the
2 attorneys before we can continue with the trial of the
3 case, so I'm going to excuse you for the balance of the
4 day, and I'm going to have to ask you to be here at
5 10:00 in the morning. There are some things I need to
6 take up before we begin the trial. So let's see if we
7 can be here a little bit -- we'll be here before that
8 because we will have to have it resolved at that time.
9 But we will try to convene at 10:00.

10 This morning, unfortunately, there were some
11 technical difficulties. And my mother always said that
12 things come in three, and I can assure you, I have had
13 at least three things already taken care of, so I can
14 assure you we'll have clear sailing tomorrow.

15 All right. I did not have anybody asking about my
16 instructions about not discussing the case, but I hope
17 everything went well with you when you went home. But I
18 will be here about 8:30, so if you do have some
19 problems, I'll be glad to explain it to them.

20 And with that I will excuse you until 10:00 in the
21 morning.

22 Everyone else remain seated while the Jury retires
23 from the courtroom.

24 (Whereupon, the Jury left the courtroom at
25 approximately 4:00 p.m.)

1 THE COURT: All right. Anything from the State?

2 MS. SIMMONS: Judge, the evidence that's in
3 question Mr. Rosemond and I plan on reviewing it this
4 afternoon, so there's nothing further from the State.

5 THE COURT: Well, I'm going to be here, so if
6 something comes up, you let me know.

7 MS. SIMMONS: Absolutely.

8 THE COURT: All right.

9 MR. ROSEMOND: Judge, certainly we can cross this
10 bridge right this minute.

11 Earlier in the day Mrs. Henry testified as to what
12 she did and she kept mentioning the name, someone by the
13 name of James Walker.

14 THE COURT: James William Walker.

15 MR. ROSEMOND: James William Walker.

16 It was a surprise to us that she mentioned that
17 name, so at lunch we went to find James William Walker,
18 and I found Mr. Walker. And he's not on our witness
19 list, but we want to call him as a witness.

20 THE COURT: Certainly. By the way, now, the same
21 requirement is not made of the Defendant as is of the
22 State about not notifying of potential witnesses because
23 obviously the Defendant does not have any duty to
24 present any sort of case at all. And unless there could
25 be some prejudice shown, of course, the Defendant has a

1 greater leeway in presenting witnesses.

2 And in this case obviously the witnesses, or this
3 potential witness now, Mr. Walker, was known to at least
4 the State's witness, she did disclose that, so I find
5 that would be appropriate. If you decide to do that,
6 you may.

7 All right. Anything else?

8 MS. SIMMONS: And, Judge, I'll be happy to get a
9 criminal history on Mr. Walker and provide it to
10 Mr. Rosemond prior to tomorrow.

11 THE COURT: That would be very good. Thank you.
12 Anything else?

13 MR. ROSEMOND: Nothing for the Defense, Your Honor.

14 THE COURT: All right. I will be here this
15 afternoon if you need to take up any matters.

16 All right. We'll stand in recess. I would like to
17 be here at 9:30 in the morning.

18 Any problem, Mr. Rosemond?

19 MR. ROSEMOND: No problem, Your Honor.

20 THE COURT: With Officer Wright and the, whatever
21 he has in the way of Search Warrants or attachments.

22 MS. SIMMONS: Yes, thank you, Judge.

23 (Court adjourned for the day at 4:15 p.m.)

24

25

1 March 20, 2013

2 10:01 a.m.

3

4 (Court's Ex. # 2, Search Warrant dated 7/24/12 with
5 Return, certified copy, was marked for
6 identification.)

7 (Court's Ex. # 3, Copy of Court's Exhibit # 2 with
8 DVD of computer, was marked for identification.)

9 THE COURT: All right. We're back on the record in
10 State v. Temple. Is the State ready to proceed?

11 MS. SIMMONS: Yes, Your Honor.

12 THE COURT: Defense ready to proceed?

13 MR. ROSEMOND: Yes, Your Honor.

14 THE COURT: All right. At the close of the case
15 yesterday a question came up about a second Search
16 Warrant. I understand that the State was able to get a
17 copy of it, is that correct, and the Return?

18 MS. SIMMONS: Yes, Your Honor, we have gotten a
19 copy of the analysis of the phones in question and the
20 Return. They have been premarked for the Court as
21 Court's Exhibits 2 and 3. Mr. Rosemond and I examined
22 the forensic analysis after court yesterday, and the
23 Return on the Search Warrant also indicates that no
24 useful information was found.

25 THE COURT: All right. Mr. Rosemond, that's what

1 your discussion revealed?

2 MR. ROSEMOND: That is correct, Your Honor.

3 THE COURT: Now, is Officer Wright here?

4 MS. SIMMONS: Yes, Your Honor.

5 THE COURT: I would suggest -- now, exculpatory
6 sometimes means excludes the use of it being involved in
7 any sort of activity. Would the Defense want to put up,
8 either go back to Mr. Hunnicutt, who is the chief
9 investigating officer who knew about the Warrant, Search
10 Warrant; or since Mr. Wright is here, put him up and
11 just -- if you want to, I'm not saying you have to.

12 MR. ROSEMOND: I would like to start with
13 Mr. Wright, Your Honor.

14 THE COURT: All right, then, we'll do that.

15 Any objection from the State?

16 MS. SIMMONS: Judge, is this proffered testimony at
17 this point?

18 THE COURT: No. I would think -- unless you want
19 to proffer, I would think it would just be
20 straightforward that, yes, a Search Warrant was made.

21 Mr. Rosemond?

22 MR. ROSEMOND: I have not made a Motion yet on them
23 not disclosing it to me, so I guess it should not be a
24 proffer right this minute.

25 THE COURT: Well, very good. I didn't mean to get

1 in the way. I was just trying to expedite things. I'll
2 just let you make your Motion and we'll decide how we
3 want to work that.

4 MR. ROSEMOND: Your Honor, yesterday we found out
5 that there was a Search Warrant in this particular case.
6 There was a second Search Warrant that was issued on
7 July 25th, 2012, and the Search Warrant was obtained for
8 items that were seized at the Town & Country Motel. It
9 was a Samsung phone and two computers.

10 And, after the seizure of those items, the Seneca
11 Police Department went and obtained a Search Warrant for
12 those particular items. They obtained the Search
13 Warrant and they sent it down for a forensic analysis.

14 Yesterday Officer -- or Investigator Hunnicutt
15 testified as such, and I indicated to the Court that the
16 Defense did not have, number one, a copy of that Search
17 Warrant; number two, a copy of the analysis. So, Your
18 Honor, as you know under *Brady*, *Kyles*, and those line of
19 cases, that they have to turn over any inculpatory or
20 exculpatory information to the Defense.

21 It's not the fact that there was nothing found on
22 the tapes on the computer or the phone. The problem is
23 they didn't turn it over to Defense and let them have a
24 copy of it, which is a *Brady* violation. And certainly,
25 Your Honor, we believe -- the Search Warrant had to be

1 returned to somebody. And if Dan Temple owned the phone
2 and the computer, they have to at least serve that
3 Search Warrant on him, give him a copy of the Return to
4 let him know that they searched his property. They
5 didn't do that, Your Honor. The first time Mr. Temple
6 knew about it was yesterday.

7 I would ask that the Court dismiss this case
8 because that is the only remedy for it. We can't ask
9 you to keep out the evidence from it because there is no
10 evidence derived from the search.

11 THE COURT: Aren't there exculpatory findings in
12 that evidence?

13 MR. ROSEMOND: I mean, there was only -- and, if
14 you look at what they found, Your Honor, it was a bunch
15 of computer jibber-jabberish.

16 THE COURT: Well, that's why I'm saying. That's
17 why, first of all, I think in such a Motion as failure
18 to provide the information required by *Brady* and Rule 5
19 is that you have to show some prejudice, and the mere
20 fact that something was not supplied and now it is being
21 supplied I would think is more important than not having
22 it.

23 Again, it's just sort of an interesting thing.
24 Search and seizures applies to property in the
25 possession of somebody. In other words, it might be

1 owned by an individual but it's in somebody else's
2 house, and you get a Search Warrant for that house, you
3 don't have to get a Return to the owner, you get a
4 Return to the person who has it. I'm not talking about
5 a technicality. What I'm talking about is trying to put
6 this case in a proper perspective, that the Defendant is
7 entitled not to just arbitrary disclosures of everything
8 as much as, but something that would be of meaning to
9 his case. And in this I think it's much like -- we
10 won't go through that. Let's just say at best that it's
11 exculpatory rather than inculpatory. I think he's
12 entitled to have that presented to the Jury and that's
13 the only thing in my mind.

14 As far as your Motion, unless you show some
15 prejudice to his case, would it have changed his case if
16 he had gotten it? And if so, how?

17 **MR. ROSEMOND:** No, it would not have changed it.

18 **THE COURT:** That's the thing. In other words, if
19 it had been something found on it that would have been
20 exculpatory in the sense that, or had been inculpatory
21 and then had come in during the State's case, and they
22 hadn't disclosed it, now that might be a surprise. But
23 here the only thing of surprise is nothing happened.

24 All right. Your Motion is noted. You are moving
25 for a directed verdict or a dismissal of the action or a

1 mistrial?

2 MR. ROSEMOND: I would move for a dismissal of the
3 action.

4 THE COURT: All right. Well, I'm going to deny
5 that. All right. But I'll note it for the record.
6 Your record is protected.

7 Now, how do you want to proceed? If you've got
8 Officer Wright here, I think he would be the one that
9 you would want to examine if you want to examine him at
10 all.

11 MR. ROSEMOND: I want to proffer the testimony of
12 Officer Wright, sir.

13 THE COURT: All right. Very good.

14 Whereupon,

15 Cortney Wright

16 Having been previously duly sworn, was examined and
17 testified as follows:

18 Direct Examination by Mr. Rosemond:

19 THE COURT: All right. If you would please give us
20 your name for the record again.

21 THE WITNESS: Yes, sir. It's John Cortney Wright.

22 THE COURT: Very good. You may proceed.

23 MS. SIMMONS: Thank you, Your Honor.

24 By Ms. Simmons:

25 Q. Officer Wright, did you obtain a Search Warrant for

1 phones that were recovered as a result of the search of
2 the Town & Country Motel on July 25th, 2012?

3 A. Yes, ma'am. I recovered a Samsung cell phone and
4 an Aspire notebook and a Gateway laptop.

5 Q. I'm gonna show you what's been premarked as Court's
6 Exhibit 2. Do you recognize this Search Warrant?

7 A. Yes, ma'am. That's a copy of the one I received.

8 MS. SIMMONS: Judge, let the record reflect this is
9 a certified copy obtained from the Seneca City Judge
10 yesterday.

11 THE COURT: Very good.

12 By Ms. Simmons:

13 Q. And when did you obtain that Search Warrant?

14 A. It would have been the same day that we executed
15 the Search Warrant on the motel on the 25th of July.

16 Q. Were you able to conduct the Return in a timely
17 fashion?

18 A. As I recall --

19 THE COURT: Excuse me. What was the date on the
20 Warrant?

21 THE WITNESS: The Search Warrant was issued
22 7-25-2012. Actually, our, Sergeant Tim Bolt, who was
23 our Forensic Lab Evidence Tech, I'm recalling from
24 memory he was either out sick for several weeks and on
25 vacation for one week, so it wasn't returned in the

1 typical ten days. It was returned back to the Judge
2 pending the inventory of the phone. I believe actually
3 the true Return was actually August the 24th before
4 Sergeant Bolt was able to return the phone to us.

5 Q. So, within that statutory ten-day period, you did
6 file a Return, but it was a pending Return?

7 A. Yes, ma'am.

8 Q. And at the time you received the analysis you
9 executed another Return?

10 A. Yes, ma'am, that's correct.

11 Q. When you obtained this Search Warrant, did you give
12 a copy to the Defendant?

13 A. The Search Warrant itself?

14 Q. Yes.

15 A. It's, typically we leave it with the phone placed
16 in evidence.

17 Q. So the Search Warrant is left at the owner's
18 property where the item is presently located?

19 A. Yes, ma'am.

20 Q. And the Return, do you serve that on the Defendant
21 himself, or what do you do with that?

22 A. The same with the Return.

23 Q. And the assumption would be that?

24 A. They can pick the property up.

25 Q. And both those items would be there?

1 A. Correct. And we were unable to contact him because
2 we had the phones.

3 Q. And at the time the phone was in the care, custody,
4 and control of the evidence custodian where it was left,
5 where both items were left?

6 A. That is correct.

7 Q. Okay. Did you also receive a forensics analysis
8 DVD from Mr. Bolt?

9 A. Yes, ma'am.

10 Q. And, based upon your review of the DVD as well as
11 your Return, was anything of evidentiary value found on
12 the phone or the laptops?

13 A. No, ma'am, there was not.

14 Q. Can you explain why there was no information found
15 from the phone?

16 A. There are certain companies that make their profits
17 I guess from dealing in pay-to-go phones, and it makes
18 them more difficult for forensics to obtain information
19 from them. That was one particular phone, that
20 particular item that he could not access. Software was
21 limited to the particular brands and particular models
22 and that would be the case with his.

23 Q. It's not that nothing was on the phone; just it
24 could not be accessed, correct?

25 A. Correct.

1 Q. And were any items of evidentiary value relating to
2 this Defendant that were exculpatory or inculpatory
3 found on the laptops?

4 A. No, ma'am.

5 Q. What kind of information was found on the laptop?

6 A. Typical internet search, the kind of thing that's
7 basically what you would find on anybody's home
8 computer.

9 Q. But there were no photographs or anything of the
10 Defendant?

11 A. Not of him, no, not of the Defendant.

12 MS. SIMMONS: Please answer any questions

13 Mr. Rosemond may have.

14 Cross-Examination by Mr. Rosemond:

15 Q. Officer Wright, you obtained a Search Warrant for
16 the phones on July 25th, 2012; is that right?

17 A. Yes, sir, it is.

18 Q. And that's the same day Mr. Temple was arrested for
19 the PWID crack and the possession of Xanax; is that
20 right?

21 A. Yes, sir.

22 Q. And certainly you knew where Mr. Temple was, he was
23 in the Oconee County Detention Center; is that right?

24 A. That is correct.

25 Q. So, when you obtained the Search Warrant, you could

1 have given it to him to show him that you were going to
2 search his property; is that right?

3 A. That's not our procedure, but yes.

4 Q. Your policy says you are not to give a copy of the
5 Search Warrant to the person who owns the property?

6 A. I didn't say policy, I said procedure. Typically
7 we leave it with the evidence itself.

8 Q. Okay. When you say procedure, this is your
9 procedure or just the Seneca Police Department's
10 procedure?

11 A. I can't speak for -- it's the way it was done in
12 Narcotics.

13 Q. Okay. So in the Narcotics Office you give a copy
14 of a Search Warrant to the person who you want to search
15 the phones; is that right?

16 A. You are referring to the lab tech or the evidence
17 tech?

18 Q. The lab tech.

19 A. That is correct.

20 Q. But you don't give it to the Defendant; is that
21 right?

22 A. We leave it with the evidence, correct.

23 Q. You leave it with the evidence. And the Defendant
24 would never know that you searched his property because
25 you never served a Return of the Search Warrant on the

- 1 Defendant; is that correct?
- 2 A. If he had picked up his property, he could, yes.
- 3 Q. If he goes and picks up his property?
- 4 A. Correct.
- 5 Q. From the jail?
- 6 A. No. The property would have been listed with the
- 7 Seneca Police Department.
- 8 Q. I mean not the jail but at the Seneca Police
- 9 Department.
- 10 A. Yes, sir.
- 11 Q. Now, Mr. Temple has been incarcerated since July
- 12 25th, 2012, so he's not had an opportunity to go pick up
- 13 his, go look at that property; is that right?
- 14 A. I'm unaware. I didn't know how long he had been
- 15 incarcerated.
- 16 Q. So, when you get a Search Warrant, you get the
- 17 Search Warrant and then you send it to a technician?
- 18 A. Correct.
- 19 Q. And he searches the phone?
- 20 A. Yes, sir.
- 21 Q. And he's looking for any incriminating information
- 22 on the phone; is that right?
- 23 A. He's just looking for evidence period.
- 24 Incriminating or disincriminating.
- 25 Q. Okay. You indicated that you filed a Return on

1 8-24-2012; is that right?

2 A. The second, or updated or second Return, yes, sir.

3 Q. Now, but you are required to file a Return within
4 ten days of execution of the Search Warrant; is that
5 right?

6 A. Which I did, yes, sir.

7 Q. That was a pending Return?

8 A. Correct.

9 Q. You indicated that he, that the technician was
10 unable to obtain any information off the phone because
11 of the software; is that right?

12 A. Once he was, once he was actually into the lab --

13 Q. Okay.

14 A. -- yes, sir. That's my understanding based on what
15 he told me.

16 Q. So the software of the phone evidently was the
17 problem?

18 A. I would assume that it's somewhere -- like I said,
19 I'm not a professional, I can't say one way or the
20 other, but he was unable to access the phone.

21 Q. So why not serve a Search Warrant on the actual
22 manufacturer or vendor of the phone itself to get inside
23 the phone to see whether or not there is any inculpatory
24 or exculpatory information in there?

25 A. We didn't have a Warrant for that.

1 Q. But you said there were certain companies that make
2 it more difficult to access their phones, is that right,
3 from your understanding?

4 A. Yes, sir.

5 Q. Then wouldn't it make sense to go to those
6 companies and say, Hey, listen, I have a Search Warrant
7 and I want to get inside this phone and I want you to
8 tell me what's inside of it?

9 A. Based on my knowledge, I've found that it's usually
10 not done in a timely manner.

11 Q. Mr. Temple is still in jail on August 24th, or even
12 within ten days of you returning the Return back to the
13 issuing Judge, but you didn't give a copy to Mr. Temple;
14 is that right?

15 A. Correct.

16 Q. And that's based on your procedure?

17 A. Correct.

18 Q. Now, you said you put the return with the phone in
19 evidence; is that right?

20 A. That's correct.

21 Q. But the phone in evidence doesn't own the phone. I
22 mean, Mr. Temple owned the phones. And doesn't he have
23 a right to know that you searched his phone?

24 A. He could have collected it, yes, sir.

25 Q. Not only did Mr. Temple not know that you searched

1 his phone, you didn't turn over that information to the
2 Solicitor's Office; is that right?

3 A. Um, it was completed in the case file is my
4 understanding. It was just a miscommunication there. I
5 turned it over to the case investigator, so I can't say
6 after that.

7 Q. Certainly the Solicitor's Office has always given
8 me all the information they have. As a matter of fact,
9 they say, Delane, come look in my file, and it wasn't in
10 there.

11 A. Okay.

12 Q. So the miscommunication is the police failed to
13 give it to the Solicitor's Office; is that right?

14 A. I'm unaware. I don't know.

15 Q. Who did you give the Return to, or who did you give
16 a Search Warrant to?

17 A. A copy of the Search Warrant?

18 Q. Yes.

19 A. It was turned over to Investigator Hunnicutt.

20 Q. Okay. So Investigator Hunnicutt knew that there
21 was a Search Warrant in this case in regards to the
22 phone; is that right?

23 A. That is correct.

24 MR. ROSEMOND: No further questions, Your Honor.

25 THE COURT: Re-exam?

1 MS. SIMMONS: Nothing, Your Honor.

2 THE COURT: All right. You may step down.

3 Anything from the Plaintiff State? Excuse me.

4 MS. SIMMONS: No, Your Honor.

5 THE COURT: Anything from the Defendant?

6 MR. ROSEMOND: I'd like to call Investigator

7 Hunnicutt, Your Honor.

8 THE COURT: All right. I'll tell you what -- Oh,
9 Mr. Hunnicutt, you want to proffer him, too?

10 MR. ROSEMOND: Yes, Your Honor.

11 THE COURT: All right. Very good. You may step
12 down.

13 (To Investigator Wright) Don't take it with you.
14 All exhibits stay with the Court Reporter.

15 (Witness leaves stand.)

16 Whereupon,

17 Tim Hunnicutt

18 Having been previously duly sworn, was examined and
19 testified as follows:

20 Direct Examination by Mr. Rosemond:

21 Q. Investigator Hunnicutt, yet you seemed surprised
22 that we did not have a copy of the Search Warrant for
23 the phones because you hadn't seen that Search Warrant;
24 is that right?

25 A. It's not that I hadn't seen it. I'm not the one

1 that actually obtained the Search Warrant.

2 Q. So you are not the one that obtained the Search
3 Warrant, but you knew it existed; is that right?

4 A. Correct.

5 Q. And did you forward that Search Warrant to the
6 Solicitor's Office?

7 A. I had it in my case file, but somehow it didn't get
8 to Lindsey.

9 Q. Had that Search Warrant contained some information
10 that would have helped the Defendant, then we would not
11 have had that information; isn't that correct?

12 A. True. But it didn't.

13 Q. Well, that's true, but it didn't. So it's like no
14 harm, no foul; isn't that correct?

15 A. (No response.)

16 Q. You know, one of the reasons why we put these rules
17 in place is to deter unlawful police conduct by not
18 sharing information that they should share; is that
19 right?

20 A. Right. It was nothing intentional. Just somehow
21 it didn't make it to her.

22 Q. Just a simple mistake; is that right?

23 A. I'm human.

24 Q. Your procedure is not to give a copy of the Return
25 to the owner of the phone; is that right?

1 A. We always put it with the evidence, and they obtain
2 a copy when they pick up their evidence. So we return
3 the phone and computers back to them.

4 Q. Do you still have a copy of the phone? I mean, do
5 you still have a copy of the phone and the computers?

6 A. Yes.

7 Q. You are the case agent on this case; isn't that
8 right?

9 A. That's correct.

10 MR. ROSEMOND: No further questions, Your Honor.

11 THE COURT: All right. Cross-exam?

12 MS. SIMMONS: Briefly, Your Honor.

13 Cross-Examination by Ms. Simmons:

14 Q. Agent Hunnicutt, any failure to disclose this item,
15 was there any intentional or malicious conduct on your
16 behalf, on your part?

17 A. No, ma'am.

18 Q. And is it your practice to forward your entire case
19 file to the Solicitor's Office?

20 A. Yes.

21 Q. And is there a voluminous amount of information in
22 this case and other cases that Mr. Temple has pending?

23 A. Excuse me?

24 Q. Has there been a tremendous volume of information
25 forwarded to my office on Mr. Temple's current pending

1 cases as well as all of his others?

2 A. Yes. A lot.

3 MS. SIMMONS: Thank you.

4 THE COURT: All right. Re-exam?

5 MR. ROSEMOND: No reexamination.

6 THE COURT: You may step down.

7 (Witness leaves stand.)

8 THE COURT: Anything from the State?

9 MS. SIMMONS: No, Your Honor.

10 THE COURT: Mr. Rosemond?

11 MR. ROSEMOND: Based upon the proffered testimony

12 that you heard, Your Honor, I would renew our Motion.

13 THE COURT: What's the prejudice?

14 MR. ROSEMOND: The prejudice in this particular

15 case is, Your Honor, Mr. Temple did not have the

16 opportunity to take that particular phone and take it to

17 anybody else to have them search the phone on his

18 behalf. Perhaps there was inculpatory information on

19 that phone, perhaps there was some exculpatory

20 information on that phone, but their technician was not

21 able to discern it. If you take it to the vendor or the

22 owner of the phone, then the manufacturer would have

23 some software to get in the phone to find out whether or

24 not there is any information in there. There could have

25 been information in there from Ms. Crystal Henry or

1 anybody, and yet he didn't have that opportunity to take
2 that phone and say, Mr. Rosemond, there is some
3 information in that phone and --

4 THE COURT: Has he been incarcerated since his
5 arrest?

6 MS. SIMMONS: Judge, he was released on bond on
7 these charges and then subsequently rearrested on a
8 County charge.

9 THE COURT: When was he released?

10 MS. SIMMONS: I think he was released and like
11 within a day or two afterwards he was rearrested on a
12 County charge. He was out, Judge, I would say a maximum
13 of 48 hours.

14 THE COURT: Before rearrest, and he's been in since
15 that time?

16 MR. ROSEMOND: For warrants they already had on
17 him, Your Honor. He went to the Police Department a day
18 after he got out of jail or two days after he got out of
19 jail to talk to Hunnicutt about his property. When he
20 gets there, Oh, they got a couple other warrants for him
21 they're going to arrest him on now. So then they arrest
22 him and put him back in jail.

23 THE COURT: At that time the Search Warrant on the
24 property had been forwarded to the person who did the
25 exam?

1 MR. ROSEMOND: Yes, sir. That would have been on
2 July 27th.

3 THE COURT: Was he out on July the 27th?
4 (Whereupon, the Defendant conferred with Counsel
5 off the record.)

6 MR. ROSEMOND: That was the 27th, Your Honor.

7 THE COURT: So he was out and the property was
8 still at the Police Department?

9 MR. ROSEMOND: He would have got out on July the
10 26th, and then the 27th he went to the Police Department
11 to --

12 THE COURT: And the property was still there?

13 MR. ROSEMOND: The property was still there.

14 THE COURT: And he didn't ask for it?

15 MR. ROSEMOND: He got arrested when he got there,
16 Your Honor.

17 THE COURT: I mean, he didn't ask for it.

18 MR. ROSEMOND: Well, you know, we don't know
19 whether he asked for it, Your Honor.

20 THE COURT: I'm just curious. I'm trying to find
21 out if he -- all right.

22 But so you are saying that if he had had a chance
23 to search it, he would find out something exculpatory;
24 is that right?

25 MR. ROSEMOND: Yes, Your Honor. He would have had

1 an opportunity to find out if there was anything
2 exculpatory on there.

3 THE COURT: Well, wouldn't he be the one who put
4 anything on the laptop or phone?

5 MR. ROSEMOND: Not if you had another Codefendant
6 in the motel, that's Ms. Henry.

7 THE COURT: But the phone has been available to the
8 Defendant or his agents since, I think it was August the
9 24th?

10 MR. ROSEMOND: That's correct, Your Honor.

11 MS. SIMMONS: Yes, Your Honor. And our discovery
12 response did indicate the phone was in evidence.

13 THE COURT: What?

14 MS. SIMMONS: Our discovery response to Mr.
15 Rosemond did indicate the phone was in evidence, he was
16 aware it was there.

17 THE COURT: But he just wasn't aware that it had
18 been searched?

19 MS. SIMMONS: Yes, Your Honor.

20 THE COURT: All right. Certain things come to
21 mind. Admittedly, if the State had attempted to
22 suppress the evidence and any results of the evidence, I
23 would find that would be prejudicial to the Defendant.
24 As far as what the significance of it would be is
25 something else, but it would be prejudicial.

1 Under the circumstances here, and I'm not exactly
2 sure how it works, but to use the analogy earlier, if a
3 person has property in somebody else's possession, and
4 even the law provides for that in forfeiture cases, in
5 other words, if a vehicle is seized and somebody else
6 has a claim to it that is not involved in that
7 particular event, then, of course, they are entitled to
8 have it returned to them. But the fact is, property
9 does stay in possession of the authorities until it's
10 released to the individuals.

11 Now, in this particular case the property in
12 question, the phone and the laptop, were in the
13 possession of really the police because they had seized
14 it under a proper Search Warrant. And so I think that,
15 I can't say that it was a perfect system, but at least
16 the officers when they wanted to get a search of
17 whatever the contents of the phone and the laptop were,
18 they served the person who was in possession, the
19 Evidence Custodian apparently, of the property. And
20 then they made the Return to the Evidence Custodian of
21 the property. And all the testimony has been that once
22 there was nothing found on it, which would be
23 exculpatory, the property would have been returned to
24 the Defendant if he had had either himself when he was
25 there or he had requested it through an agent or someone

1 else to pick up the property, at which time he would
2 have gotten a copy of the Search Warrant and Return.

3 I just find that, if anything, this is not the type
4 of police misconduct or prosecutorial misconduct at all.
5 I think it's more inadvertence. And there was nothing
6 done to suppress the evidence or to exclude the evidence
7 from the discovery by the Defendant if he had pursued
8 it.

9 The Court's Ruling on Defense Motion to Dismiss:

10 THE COURT: So, therefore, I'm going to deny your
11 Motion, Mr. Rosemond, but it's noted for the record.
12 And that is the Motion to dismiss all charges with
13 prejudice.

14 MR. ROSEMOND: Yes, Your Honor.

15 THE COURT: It's denied.

16 All right. Anything else -- now we're getting back
17 to where we were a few minutes ago or a half an hour
18 ago.

19 Do you want to pursue this line through the State's
20 case? Because I could, inasmuch as the matter was
21 broached in the presence of the Jury, I could and I
22 would permit you to have the State put Investigator
23 Hunnicutt back on the stand so you could have a chance
24 then, and, of course, the State would have the Direct
25 and then you would have the opportunity to Cross-Examine

1 without having to put him up as your witness.

2 MR. ROSEMOND: Just to close out that line of
3 questioning for the Jury, Your Honor, I think they were
4 left cut off yesterday, just so we can finish with
5 Investigator Hunnicutt in front of the Jury.

6 THE COURT: Very good. All right. So does that
7 suit you?

8 MR. ROSEMOND: That's fine.

9 THE COURT: Yes, ma'am.

10 MS. SIMMONS: I'm sorry, Your Honor. I think the
11 Jury will have lingering questions if we don't also put
12 up Officer Wright as well.

13 THE COURT: Well, you can do that. I'm gonna let
14 you re-call him for that --

15 MS. SIMMONS: Thank you.

16 THE COURT: -- because that's obviously something.

17 What I'm doing is I'm not requiring the Defendant
18 to put up anything, but I do feel that inasmuch as the
19 State has, or evidence has been or testimony has been
20 elicited by this during the State's case, that the State
21 has the responsibility of clarifying.

22 MS. SIMMONS: Yes, Your Honor, thank you.

23 THE COURT: All right. Very good. Are you ready
24 to proceed now from the State?

25 MS. SIMMONS: Yes, Your Honor.

1 THE COURT: From the Defense?

2 MR. ROSEMOND: Yes, Your Honor.

3 THE COURT: All right. Very good. Ask the Jury to
4 join us, please.

5 (The Jury entered the courtroom at approximately
6 10:39 a.m.)

7 THE COURT: Mr. Foreman, ladies and gentlemen of
8 the Jury, at the close of the case yesterday
9 Investigator Hunnicutt was on the stand and was being, I
10 think we've done some Cross-Examination. But I'm going
11 to at this time ask the State to continue their Direct
12 Examination.

13 MS. SIMMONS: Thank you, Judge.

14 Direct Examination by Ms. Simmons (continued):

15 Q. Investigator Hunnicutt, for purposes of today, all
16 we're going to be doing is discuss the phones and
17 computers that were seized as a result of the Search
18 Warrant that was executed in this case.

19 A. Okay.

20 Q. How many phones and computers were seized in this
21 matter?

22 A. It was one phone and there were two computers.

23 Q. And is that one phone and two computers placed into
24 evidence at the Seneca Police Department?

25 A. Yes.

1 Q. And who did that?

2 A. It was turned in by Investigator Courtney Wright.

3 Q. And what happened with those items subsequent to
4 that?

5 A. They were -- he obtained a Search Warrant and they
6 were taken to a Forensics Laboratory in Anderson to be
7 analyzed.

8 Q. And you have seen Court's Exhibit 1 and Court's
9 Exhibits 2 and 3. Were any items of evidentiary value
10 recovered as a result of that search of those phones and
11 the laptops?

1 A. No. One of the phones was a special phone, it was
13 the type of phone that is hard to, the forensic officer
14 to get any kind of information off of, there are certain
15 kinds of phones that's harder than others; and the
16 computers just have other regular information from
17 searching the internet, stuff like that.

18 Q. And was the phone that you seized in question what
19 is typically known as a throw-away phone or a track
20 phone?

2 A. Yes, it was a prepaid track phone.

22 Q. So, based on your investigation, there is no
23 evidence of the Defendant's guilt or innocence as a
24 result of the search of those items that were seized?

25 A. No.

1 MS. SIMMONS: Thank you.

2 THE COURT: All right. Cross-Examination.

3 Cross-Examination by Mr. Rosemond:

4 Q. Investigator Hunnicutt, you said because of --

5 let's start here. You obtained a Search Warrant for the
6 cell phone and the two computers that you took out of
7 the hotel room; is that right?

8 A. Investigator Wright did.

9 Q. Okay. And on that particular cell phone you said
10 there was no helpful evidence or hurtful evidence on
11 there regarding Mr. Temple; is that right?

12 A. Nothing could be pulled from the phone.

13 Q. Nothing could be pulled from the phones because of
14 what?

15 A. He was unable to get any information from it.

16 Q. And who was the person that was searching the
17 phones?

18 A. Jim Bolt.

19 Q. And who does Jim Bolt work for?

20 A. Anderson Police Department.

21 Q. Someone manufactured that phone, is that correct,
22 the Samsung phone?

23 A. Correct.

24 Q. Did you send a Search Warrant to Samsung to say,
25 Listen, we want you to search this phone for any

1 evidence that's helpful or hurtful to the Defendant?

2 A. No.

3 Q. Did you know whether or not Mr. Bolt did a complete
4 examination of the telephone?

5 A. I'm not aware. I'm not sure.

6 Q. So you don't know whether or not he was able to
7 examine the phone 100 percent to determine whether or
8 not there was any helpful or hurtful things on that
9 phone; is that right?

10 A. I know he couldn't get any kind of information from
11 the phone.

12 Q. But that does not necessarily mean that the company
13 can't get any information from that phone; is that
14 right?

15 A. Right, the company that makes it.

16 Q. But you didn't do that.

17 A. Right. I'm not the one who took care of the Search
18 Warrant.

19 Q. Ms. Crystal Henry had access to that telephone;
20 isn't that correct?

21 A. I don't know.

22 Q. She was in the room with him. Is that right?

23 A. True.

24 Q. And so she had access to it; is that right?

25 A. If he let her use it.

1 Q. Did you find her phone in the room?

2 A. No. There was only one phone found.

3 Q. Everybody has a cell phone in America, Investigator
4 Hunnicutt. You are telling me that there was only one
5 cell phone found in that particular room?

6 A. Right. We would have, we would have checked that
7 out, also.

8 Q. Investigator Wright was the only person that dealt
9 with the phones; is that correct?

10 A. Correct.

11 Q. You didn't have anything to do with that. You were
12 just the lead agent; is that right?

13 A. Correct, he handled that part.

14 Q. The Return from the Search Warrant is a document
15 that you write down everything that was found on the
16 Search Warrant; is that right?

17 A. Correct.

18 Q. And on that Return -- did you have a copy of that
19 Return?

20 A. Do I have a copy?

21 Q. Did you have a copy of it?

22 A. There was a copy in the file, yes.

23 Q. There was a copy in your case file; is that right?

24 A. Correct.

25 Q. Because yesterday I indicated I didn't have a copy

1 because the Solicitor's Office didn't have a copy. Did
2 you not turn it over to the Solicitor's Office?

3 A. Correct. Somehow I didn't -- with all the
4 paperwork I send to them, somehow it didn't get put in
5 there.

6 Q. So they didn't know about the Search Warrant or the
7 Return until yesterday; is that right?

8 A. Correct.

9 Q. And that was just because of the amount of
10 paperwork in this case; is that right?

11 A. Correct. Nothing intentional. It was just a
12 mistake.

13 Q. Just a simple mistake?

14 A. Correct.

15 MR. ROSEMOND: No further questions, Your Honor.

16 THE COURT: Redirect?

17 Redirect Examination by Ms. Simmons:

18 Q. Just to be clear, Investigator Hunnicutt, there was
19 no intentional conduct by you or Officer Wright to hide
20 this information or -- and, in fact, there was no
21 helpful or hurtful information found as a result of your
22 investigation?

23 A. Right.

24 MS. SIMMONS: Thank you.

25 THE COURT: All right, you may step down.

1 No. Is there any further testimony from this
2 Witness?

3 MS. SIMMONS: No, Your Honor.

4 MR. ROSEMOND: No, Your Honor.

5 THE COURT: Very good. You may step down.

6 (Witness leaves stand.)

7 THE COURT: Call your next witness.

8 MS. SIMMONS: Judge, I beg the Court's indulgence
9 for one moment.

10 (Discussion off the record.)

11 MS. SIMMONS: Judge, at this time the State would
12 rest.

13 THE COURT: I think that you were going to call
14 Officer Wright, though, on this issue.

15 MS. SIMMONS: Judge, I will if the Court deems it
16 necessary.

17 THE COURT: Well, I'm going to suggest that you do.

18 MS. SIMMONS: Officer Wright?

19 Whereupon,

20 Cortney Wright

21 Having been first duly sworn, was examined and testified
22 further as follows:

23 Direct Examination by Ms. Simmons:

24 THE COURT: Your name for the record again, please.

25 THE WITNESS: John Cortney Wright.

1 THE COURT: Thank you. You may proceed.

2 MS. SIMMONS: Thank you, Judge.

3 THE COURT: Now, it's limited to just the testimony
4 that was brought out at the close of the testimony
5 yesterday.

6 MS. SIMMONS: Absolutely, Your Honor.

7 THE COURT: Very good.

8 By Ms. Simmons:

9 Q. Officer Wright, we're only going to discuss your
10 involvement in this case as to the Search Warrant for
11 the phones and computers that was obtained by you.

12 A. Okay.

13 Q. Did you obtain a Search Warrant for the phones and
14 computers that were seized at the Town & Country Motel
15 in Seneca?

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

17 Q. And did you execute that Search Warrant?

18 A. Yes, ma'am.

19 Q. Where were those phones located upon execution of
20 that Search Warrant?

21 A. Inside the room or -- they're in our possession
22 after seizing it from the Search Warrant at the hotel.

23 Q. When you obtained that Search Warrant, did you
24 leave a copy of the Search Warrant in Evidence?

25 A. Yes, ma'am.

1 Q. When you have phones and laptops searched, where do
2 you take them?

3 A. To the Crime Lab at the Anderson City Police
4 Department.

5 Q. And were you able to get that analysis done within
6 the ten-day Statutory time frame for a Return on a
7 Search Warrant?

8 A. In this particular case Sergeant Jim Bolt with the
9 Anderson Police Department was their forensics computer
10 technician. If I am not mistaken, he had been out
11 several weeks due to illness and a vacation, and so
12 within ten days, the Return was completed within ten
13 days pending inventory and then returned back to the
14 Judge. An additional Return was given once we actually
15 received the information from Sergeant Bolt at the
16 Anderson Police Department.

17 Q. So you executed two Returns?

18 A. That is correct.

19 Q. When did you receive the results on your Search
20 Warrant?

21 A. August the 24th, 2012.

22 Q. And did those phones get returned to Evidence at
23 that time?

24 A. Yes, ma'am.

25 Q. And would they have been available for return at

1 that time?

2 A. Yes, ma'am.

3 Q. Was there any helpful or hurtful information
4 regarding this Defendant from the analysis of the phones
5 as a result of your Search Warrant?

6 A. No, ma'am, there was not.

7 Q. Can you explain what information you were able to
8 garner from this or what you were not able to?

9 A. The laptops and the net book, that was actually one
10 laptop and a net book, that had typical information you
11 would find on anyone's computer, internet searches,
12 contact list, that kind of thing, but nothing of
13 evidentiary value.

14 The cell phone itself was inaccessible by Sergeant
15 Bolt. It's been my experience he has the best software
16 in the State, including ICE and SLED, as far as
17 accessing phones and computers, and this particular
18 model was one that he was unable to get into.

19 Q. And Sergeant Bolt has high-tech equipment?

20 A. Yes, ma'am. He's spent a lot of money on several
21 grants to maintain that software.

22 Q. And he was able to obtain that?

23 A. Correct.

24 Q. And at any point in time did you deliberately hide
25 the existence of this Search Warrant or the Return?

1 A. No, ma'am.

2 Q. And essentially was it a communication paperwork
3 error?

4 A. Yes, ma'am.

5 MS. SIMMONS: Thank you. Please answer any
6 questions that Mr. Rosemond may have for you.

7 Cross-Examination by Mr. Rosemond:

8 Q. What type of high-tech equipment does Sergeant Bolt
9 have?

10 A. It's not the equipment so much as the software.

11 Q. What type of software does he have?

12 A. You would have to ask him the specific names of it.

13 Q. Well, you just said that he has the best software
14 in the State, even better than SLED.

15 A. I said in my experience.

16 Q. Tell me about your experience, then. What
17 experience did you have with SLED with obtaining
18 forensic information from a phone or a computer?

19 A. There again, you would have to get him to testify.
20 I'm not a professional on that part.

21 Q. You just said in your experience that he has the
22 best software in the State, even better than SLED. I
23 just want to know, do you have any experience with SLED
24 obtaining forensic analysis of a phone or a computer in
25 your dealings in law enforcement?

1 A. Not from search warrants of mine, but I've been
2 witness to, yes. .

3 Q. You have been witness to SLED obtaining phone
4 records and computer records?

5 A. I guess I should say that I have knowledge of cases
6 that they were able to obtain information on.

7 Q. But you don't know what type of software they have,
8 do you?

9 A. Not specifically.

10 Q. And you really don't know what type of software Jim
11 Bolt has, do you?

12 A. The only thing I can tell you is -- I mean, I'm
13 pretty much a computer nerd, so I don't try to keep up
14 with stuff like that.

15 Q. Okay. But certainly to say that he's the best in
16 the State or he's better than SLED, you don't have any
17 evidence to support that, do you?

18 A. No, it's not a professional thing, no, sir.

19 Q. Okay. On July 25th you obtained a Search Warrant
20 for the phones and the computer?

21 A. Correct.

22 Q. And on July 25th you arrested Mr. Temple for the
23 drug charges?

24 A. Correct.

25 Q. And the Search Warrant, you have to make a Return

1 within ten days of executing that Search Warrant; is
2 that right?

3 A. Yes, sir.

4 Q. You didn't do that in this case, did you?

5 A. I didn't. A pending inventory of the Return.

6 Q. You made a pending Return.

7 A. Correct.

8 Q. And that pending Return was filed on what?

9 A. The 2nd of August.

10 Q. Okay. And a Search Warrant Return is designed to
11 tell the Judge what you found?

12 A. Correct.

13 Q. In your pending Return what did you tell the Judge
14 that you found?

15 A. I told him that at the time we had not found
16 anything because the evidence technician wasn't even, he
17 wasn't even in his office to answer the phone.

18 Q. Okay. So at that point that Search Warrant
19 becomes -- if he had not looked at the Search Warrant or
20 the phones and the computer within that ten days, that
21 Search Warrant should no longer be valid; is that right?

22 A. I guess technically you could say no. Or I'm not
23 really sure, to be honest with you.

24 Q. Did you ever serve the Search Warrant at the hotel
25 room at Town & Country, did you serve that on the

- 1 Defendant, Mr. Temple?
- 2 A. The Search Warrant over to the hotel room?
- 3 Q. Yes, sir.
- 4 A. I'm assuming it was, yes.
- 5 Q. Okay. The Search Warrant for his phone and the
6 computer, did you ever serve that on the Defendant?
- 7 A. No, sir. We left it with his property.
- 8 Q. You left it with his property. The property was in
9 the Police Department, the evidence locker room, right?
- 10 A. Correct.
- 11 Q. But Mr. Temple was in jail; is that right?
- 12 A. On the 25th?
- 13 Q. On the 25th.
- 14 A. Correct.
- 15 Q. And that's the same day you got the Warrant?
- 16 A. Correct.
- 17 Q. On July 25th he was put in under a temporary
18 commitment order, is that right, TCO?
- 19 A. I don't know.
- 20 Q. You normally do that if you don't have arrest
21 warrants available for somebody; is that right?
- 22 A. Yes.
- 23 Q. So later on that day he got served with those
24 Arrest Warrants for the hotel drugs?
- 25 A. Okay.

1 Q. But he didn't get served with the Search Warrant on
2 the same day that he got arrested?

3 A. Correct.

4 Q. Why is that?

5 A. The Search Warrant cell phone wasn't delivered
6 until the 26th.

7 Q. Did you give it to him on the 26th?

8 A. No. It was left with Evidence.

9 Q. Did you give it to him on August 24th, 2012?

10 A. It was available for him, yeah.

11 Q. He was in jail, wasn't he?

12 A. I'm not aware.

13 Q. Did you look to see if he was in jail?

14 A. I did not, no.

15 Q. You search his property but you don't make a Return
16 to him to tell him that you searched his property and
17 what you found; is that right?

18 A. Right. We leave it with their property so that he
19 or one of his designated friends or family members can
20 come pick it up.

21 Q. And you leave it with their property because of
22 that's your policy or procedure or that's your
23 procedure?

24 A. That is correct.

25 Q. When you say procedure, is that something that the

1 Seneca Police Department has in its general orders?

2 A. Not to my knowledge, no.

3 Q. When you say procedure, what procedure are you
4 speaking of?

5 A. Standard practice.

6 Q. Standard practice of whom?

7 A. The Narcotics Department.

8 Q. At the Seneca Police Department?

9 A. Yes, sir.

10 Q. But that's not a part of your policies that are
11 written out in your Policies and Procedures Manual?

12 A. I'm really not sure how it pertains to the
13 Narcotics Division aspect.

14 Q. You indicated that there was no attempt to conceal
15 that information. You never told the Solicitor's
16 Office, did you?

17 A. I did.

18 Q. You did?

19 A. Uh-huh.

20 Q. Okay. When did you tell them?

21 A. I don't remember the date. I just vaguely
22 discussed there was no evidence on there.

23 Q. Did you turn the Search Warrant over to them?

24 A. I'm sorry?

25 Q. Did you turn the Search Warrant over to them?

1 A. To the Solicitor?

2 Q. Yes.

3 A. No. I left it with the case officer.

4 MR. ROSEMOND: No further restioYousu, Honor.

5 THE COURT: Re-exam?

6 MS. SIMMONS: You Honor, I'm going to ask the witness

7 to be excused.

8 THE COURT: Any objection?

9 MR. ROSEMOND: No objection, Your Honor.

10 THE COURT: All right. You may be excused.

11 THE WITNESS: Thank you, Your Honor.

12 (Whereupon, the witness was excused.)

13 THE COURT: Madam Solicitor?

14 MS. SIMMONS: Judge, at this time, the State would
15 rest.

16 THE COURT: Mr. Foreman, I am discharging
17 the jury. I now need to take some matters away with
18 the attorneys. I'm going to ask you to retire to the
19 jury room while I do this. It should take a few minutes,
20 I don't know. It's 10:00 now. It could take some time.
21 So, if you want to use the restroom or get a drink, you
22 may do so. I'll be back in a moment.
23 With that, I'll see you later.

24 THE BAILIFF: How long, sir?

25 THE COURT: When I finish (the daughter).

1 As you can see, sometimes I'm not a very good
2 predictor of time and all.

3 (Whereupon, the Jury left the courtroom at
4 approximately 10:58 a.m.)

5 THE COURT: All right. With regard to the last bit
6 of testimony and the issue of failure to disclose. In
7 *State v. Gathers*, 295 S.C. 476, 369 S.E.2d 140, 1988,
8 our Supreme Court held (reading):

9 In determining the materiality of non-disclosed
10 evidence, the Court will consider it in the context of
11 the entire record. The State's failure to disclose
12 information warrants a reversal as a *Brady* violation
13 only if the omission deprived the Defendant of a fair
14 trial.

15 Because Appellant has failed to show any prejudice
16 from any alleged non-disclosure, after having the
17 opportunity to effectively cross-examine the witness in
18 regard to the testimony, we hold that there was no
19 error.

20 So that would be, as I said earlier, the basis of
21 the Court's ruling on the Motion.

22 Now, is there anything else from the State?

23 MS. SIMMONS: No, Your Honor.

24 THE COURT: Anything from the Defendant?

25

1 Defendant's Motion for Directed Verdict:

2 MR. ROSEMOND: Your Honor, at this time we would
3 ask the Court to consider a Motion for a Directed
4 Verdict. You have heard the evidence in this particular
5 case. Certainly the evidence as proffered by the State
6 of South Carolina has that Mr. Temple was laying in the
7 bed when they barged into the hotel room.

8 They didn't find any evidence directly on
9 Mr. Temple. There was a pill bottle in the room that
10 was on the floor. Mrs. Henry admitted that she is a
11 crack user and she was high on crack all the particular
12 time, and certainly there is no evidence to connect
13 Mr. Temple to those drugs.

14 And at this particular time, Your Honor, we would
15 ask the Court to grant Mr. Temple a directed verdict in
16 this matter.

17 THE COURT: Madam Solicitor?

18 MS. SIMMONS: Judge, in accordance with the South
19 Carolina Rules of Criminal Procedure 19, I believe that
20 we have to have presented enough evidence for this
21 matter to be considered by the Jury. As you know, the
22 Trial Court is concerned with the existence or the
23 non-existence of the evidence, not its weight at this
24 particular point in time.

25 In addition to Ms. Henry saying that the drugs in

1 the room on Mr. Temple's side belonged to him. Also we
2 have Officer McClure's testimony the drugs rolled out of
3 bed with the Defendant at the scene. And in fact it
4 would have been very difficult for the Defendant to have
5 concealed those drugs on his person because he was not
6 wearing any clothes under the covers.

7 In addition, we have three sworn law enforcement
8 officers who spoke with the Defendant, who made an
9 incriminating statement of his ownership of the
10 contraband found in the hotel room.

11 THE COURT: All right. Mr. Rosemond, anything?

12 MR. ROSEMOND: No, Your Honor.

13 The Court's Ruling on Motion for Directed Verdict:

14 THE COURT: Of course, a Motion for Directed
15 Verdict is appropriate if there is a failure of
16 competent evidence tending to prove the charge in the
17 Indictments. However, in ruling on this Motion pursuant
18 to Rule 19, the Trial Judge should consider only the
19 existence or non-existence of evidence, not its weight.
20 And in this case the Court does find that there is
21 sufficient evidence to go forward to the Jury. However,
22 as in all cases, it comes for the attorneys to persuade
23 the Jury as to whether the evidence is credible and
24 should be believed to support such a conviction. The
25 Motion is denied under Rule 19 of the Rules of Criminal

1 Procedure.

2 Does the Defendant intend to testify?

3 (The Defendant conferred with Counsel off the
4 record.)

5 MR. ROSEMOND: No, sir, Your Honor.

6 THE COURT: Mr. Temple, if you would please stand.
7 Please stand --

8 THE DEFENDANT: Yes, sir.

9 THE COURT: -- and raise your right hand.

10 (Whereupon, the Defendant was sworn by the Court.)

11 THE DEFENDANT: I'm not gonna testify. Yes, sir.
12 I'm sorry.

13 THE COURT: Thank you, sir.

14 Mr. Temple, at this time I am going to explain to
15 you certain of your rights. If you do not understand
16 anything I say, please let me know, and if you want me
17 to explain anything in more detail, please let me know.
18 Do you understand this?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: We have now reached the stage of trial
21 where you may present your defense. You have the right
22 to claim the protections given to you by the Fifth
23 Amendment of the Constitution of the United States.
24 This Amendment in part states (reading):

25 No person shall be compelled in any criminal case

1 to be a witness against himself. This means that you
2 cannot be required to testify in this case.. You have
3 the right to testify on your own behalf; however, no one
4 can make you testify. This is a personal right, and no
5 one can waive this right except you.

6 If you decide to testify, you will be subject to
7 the same rules that govern other witnesses, and you may
8 be examined or cross-examined on any relevant issue in
9 this case.

10 In addition, if you have any convictions involving
11 dishonesty or false statement or for crimes punishable
12 by imprisonment for more than one year, and this Court
13 determines that the probative value of admitting this
14 evidence outweighs its prejudicial effect to you, the
15 Solicitor will be able to introduce your record to
16 attack your credibility.

17 If you decide to testify, decision on your part
18 must be freely, voluntarily and intelligently made, with
19 the knowledge of the protections given to you by the
20 Fifth Amendment and the consequences of your decision to
21 testify.

22 If you decide not to testify, I will instruct the
23 Jury that they cannot give the fact that you did not
24 testify any consideration whatsoever and there is to be
25 absolutely no prejudice to you because you did not

1 testify.

2 You may talk with your attorney, your family and
3 friends or anyone else, but the final decision will be
4 left entirely up to you.

5 Do you understand what I've explained to you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have any questions about what
8 I've explained to you?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you discussed with your lawyer
11 whether you should testify or not testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you wish to talk to your lawyer any
14 more at this time?

15 THE DEFENDANT: No.

16 THE COURT: Do you wish to testify in this case?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. Very good. I do find that
19 the decision of the Defendant not to take the stand and
20 testify is freely, voluntarily, knowingly and
21 intelligently made.

22 All right. Mr. Rosemond, does the Defense wish to
23 present a case?

24 MR. ROSEMOND: I have one Witness, Your Honor.

25 THE COURT: You do understand that that will

1 foreclose the final argument?

2 MR. ROSEMOND: I do.

3 THE COURT: All right. Very good.

4 Let's do take a short break, let's say 11:15,
5 that's about ten minutes, and then we'll come back and
6 complete the evidence.

7 (A recess was taken.)

8 THE COURT: All right. Anything from the State
9 before we proceed?

10 MS. SIMMONS: No, Your Honor.

11 THE COURT: From the Defense?

12 MR. ROSEMOND: No, Your Honor.

13 THE COURT: Very good. All right. Ask the Jury to
14 join us, please.

15 (The Jury entered the courtroom at approximately
16 11:18 a.m.)

17 THE COURT: All right. Let the record reflect the
18 Jury is in the Jury box.

19 Mr. Foreman, ladies and gentlemen of the Jury, we
20 will now proceed with the Defense.

21 Mr. Rosemond?

22 MR. ROSEMOND: Yes, Your Honor. I would like to
23 call James Willie Walker.

24

25

1 Whereupon,

2 James Willie Walker

3 Having first been duly sworn, was examined and testified
4 as follows:

5 Direct Examination by Mr. Rosemond:

6 THE COURT: Please give us your full name for the
7 record, spelling your last name.

8 THE WITNESS: James Willie Walker, W-a-l-k-e-r.

9 THE COURT: Very good. Thank you, sir.

10 You may proceed.

11 By Mr. Rosemond:

12 Q. Mr. Walker, you have to slide up to that microphone
13 so we can hear you.

14 A. (Complies.)

15 Q. How old are you?

16 A. 40.

17 Q. And do you know Dan Temple in this case?

18 A. Yes, sir.

19 Q. What's your relationship to Mr. Temple?

20 A. He's a classmate. I've been knowing him for a long
21 time.

22 Q. And when was the last time you saw Mr. Temple?

23 A. July 24th at the Town & Country Motel.

24 Q. What month was that?

25 A. July.

1 Q. Tell me what, if any, conversation did you have
2 with Mr. Temple that night?

3 A. We were just talking, and then he was in the room
4 with Crystal. And she was asking me --

5 MS. SIMMONS: Objection, Your Honor, hearsay.

6 MR. ROSEMOND: It's not hearsay, Your Honor.

7 803(b)(2). It's a statement made by a Codefendant.

8 THE COURT: I overrule the objection.

9 Very well. You may proceed.

10 Go ahead. I've overruled the objection. Go ahead.

11 THE WITNESS: Go ahead?

12 A. She was telling me to take her somewhere to get
13 some drugs, take her to Pendleton to get some drugs.
14 She had like, she had \$80 she said. She asked me would
15 I take her to Pendleton to get some drugs.

16 Q. Now, how did you remember this particular night?

17 A. Because that was the last night I talked with Danny
18 and Crystal.

19 Q. Okay. Did you know what, if anything, happened the
20 next day?

21 A. The next day, I mean, I got a phone call from Danny
22 saying he was in jail, that they kicked the motel room
23 door open. And, you know, that's all he said, he was in
24 jail.

25 Q. So what did Ms. Henry exactly tell you or ask you

1 to do?

2 A. Take her to Pendleton to get crack.

3 Q. And what, if anything, did you do?

4 A. I did it, because I smoked myself so I took her so
5 I could have some.

6 Q. How did you get there?

7 A. I drove her in my friend lady's car.

8 Q. Now, who all rode in the car to Pendleton?

9 A. It was me and her at first, and Danny called back
10 and said come back and get him, and he just rode. But
11 at the time she was the only one who purchased. She
12 brought \$80 and got two grams.

13 Q. Okay. And after she obtained those drugs on the
14 24th, what did you do?

15 A. When we got back, she started arguing, trying to
16 get the door open, and started hollering stuff, and so I
17 said, I'm gone, and I left. And Dan called me the next
18 day and told me where he was.

19 Q. And did anyone else purchase any drugs when you
20 went to Pendleton that evening?

21 A. No. No, sir. Nobody had no money. Danny had to
22 go to work the next day, so didn't really want to ride,
23 but he wanted to ride because he didn't want to stay by
24 himself.

25 Q. About what time did you go to Pendleton?

- 1 A. Right around about 8:30, 9:00, somewhere in that
2 area.
- 3 Q. Now, have you ever testified before?
- 4 A. Yes, sir.
- 5 Q. Have you ever sat in that particular chair before?
- 6 A. I don't know if it was this one, but it was one of
7 them.
- 8 Q. You testified in what case?
- 9 A. Tim Blassingame.
- 10 Q. And who did you testify for in that case?
- 11 A. The County.
- 12 Q. When you say County, what County?
- 13 A. Oconee.
- 14 Q. Who called you to testify in their case?
- 15 A. The Seneca Police Department and Ms. Simmons.
- 16 Q. Did you testify for them or against them?
- 17 A. For them.
- 18 Q. Now, about when did that occur?
- 19 A. I forgot what year. I know it was October
20 sometime, but I forgot what year it was.
- 21 Q. Okay. But you testified on their behalf?
- 22 A. Yes, sir.
- 23 Q. Now, do you know Mr. Hunnicutt?
- 24 A. Yes, sir.
- 25 Q. How do you know Investigator Hunnicutt?

1 A. I did some work for Hunnicutt.

2 Q. When you say you did some work for him, explain
3 that for me a little bit.

4 A. I'd get wired up to go buy, purchase drugs.

5 Q. And how long did you do that for Investigator
6 Hunnicutt?

7 A. Well, I'd say about two or three years, somewhere
8 in there.

9 Q. Now, so you had a two-or-three-year relationship
10 with Investigator Hunnicutt. Now, how long ago was
11 that?

12 A. Um, well, it was like something about last year.
13 Recently. It ain't been that long ago. It's, you know,
14 it's been like one, two, three -- probably year before
15 last year, some last year and some before that.

16 MR. ROSEMOND: No further questions, Your Honor.

17 THE COURT: Cross-examine.

18 Cross-Examination by Ms. Simmons:

19 Q. Mr. Walker, did you have a driver's license the
20 night you drove Ms. Henry to Pendleton?

21 A. No, ma'am.

22 Q. And do you recall giving Mr. Rosemond a statement
23 in this case on March the 19th of 2013?

24 A. Yes, ma'am.

25 Q. And in that statement did you ever mention that Dan

1 Temple went with you guys to Pendleton that night?

2 A. No. I said, back when I was telling the statement,
3 I told him that at first Dan didn't go, but Dan called
4 back and said, Come get me, I want to ride.

5 (Counsel confer.)

6 MS. SIMMONS: Beg the Court's indulgence for one
7 moment.

8 By Ms. Simmons:

9 Q. So you are saying today that Dan was with you.

10 A. At first he didn't want to ride, but then when we
11 got right there at Ingles, he called and said he wanted
12 to ride.

13 Q. But on the 19th you said, I took Crystal to
14 Pendleton to buy \$80 of crack cocaine on the night
15 before they were arrested.

16 A. Yeah.

17 Q. But you didn't include Dan.

18 A. Crystal asked me to take her.

19 Q. But today you say Dan was with ---

20 A. Crystal was asking me to take her, so I went to
21 Pendleton with her.

22 Q. But you said she had the money. I was taking her
23 to buy drugs, and she got the drugs from Duke Ramsey.

24 And Dan started working and didn't have any drugs?

25 A. Yeah.

1 Q. But now you are saying Dan was with you?

2 A. Yeah. At first he wasn't with us, but he called
3 and I turned around and got him to ride with us. I
4 mean, he didn't purchase anything.

5 Q. But on March the 19th, 2013, is the first time you
6 gave a statement regarding this case at all?

7 A. Yes, ma'am.

8 Q. And Mr. Temple is your running buddy, right?

9 A. Yes, ma'am.

10 Q. And you drive him around when he does stuff?

11 A. Sometimes.

12 Q. Okay. But you had all this time to tell law
13 enforcement, Hey, you know, those are Crystal's drugs.
14 And you didn't do it?

15 A. I didn't know, I really didn't know until they
16 asked me. Nobody asked me until yesterday.

17 Q. But you talked to Officer Hunnicutt at least two
18 dozen times since July of 2012.

19 A. I have. Well, see, I mean, at the time that night
20 right there I remember Dan had just got off work, Dan
21 was tired, Dan was ready to go to bed. They was
22 arguing. And she had the money. She had some money and
23 said, Do you know of something, man? I said yeah, I
24 know of something. And then we got in the car and rode
25 to Pendleton.

1 Q. But you never told anybody this until Wednesday.

2 In the middle of your buddy's trial, his back is against
3 the wall, and you go, Oh, hey, let me tell you, I got
4 something to say?

5 A. I wasn't the one that came and got me. I remember
6 that night -- I remember that day. I was over there
7 that day. They came and talked to me. Delane came and
8 got me.

9 Q. On Wednesday, though?

10 A. I didn't mention nothing to anybody about the case.
11 I didn't talk to anybody about the case.

12 Q. You hadn't talked to anybody. But you even told
13 Officer Hunnicutt in the last couple weeks that you were
14 gonna come watch this trial.

15 A. Yeah. He's my friend. I would have been up here,
16 too.

17 Q. Yeah. You were gonna come up and watch this trial
18 for your friend, and you don't bother to tell him, Oh,
19 I've got the evidence that can save his soul.

20 A. I didn't know at the time. I knew at the time but
21 I wasn't thinking.

22 Q. But you weren't thinking?

23 A. No, ma'am, I wasn't.

24 Q. So since July you weren't thinking. But this week,
25 in the middle of your friend's trial, yes, you remember?

1 A. I really ain't seen Dan since then, since that day.

2 Q. Aren't you all living in the same place now?

3 A. Yeah, you can say that. We're sitting in the same
4 jail, but different sides.

5 THE COURT: Let's move on.

6 By Ms. Simmons:

7 Q. And you are saying you have not talked to him since
8 July?

9 A. I went and seen him a couple times --

10 MR. ROSEMOND: Objection, Your Honor.

11 THE COURT: All right. Let's move on to something
12 else.

13 MS. SIMMONS: Thank you, Your Honor.

14 By Ms. Simmons:

15 Q. And, Mr. Walker --

16 A. Yes, ma'am.

17 Q. -- you have a prior criminal history, correct?

18 A. Yes, ma'am.

19 Q. Were you convicted of distribution of crack cocaine
20 in 1998?

21 A. Yes, ma'am.

22 Q. And conspiracy in 1998?

23 A. Yes, ma'am.

24 Q. Fraudulent check in 2005?

25 A. Yes, ma'am.

- 1 Q. Forgery in 2005?
- 2 A. Yes, ma'am.
- 3 Q. Another forgery?
- 4 A. Yes, ma'am.
- 5 Q. Shoplifting in 2005?
- 6 A. Yes, ma'am.
- 7 Q. Another shoplifting in 2005?
- 8 A. Yes, ma'am.
- 9 Q. False information to the police in 2005?
- 10 A. Yes.
- 11 Q. Shoplifting in 2007?
- 12 A. Yes, ma'am.
- 13 Q. Shoplifting in 2008?
- 14 A. Yes, ma'am.
- 15 Q. Shoplifting in 2008?
- 16 A. Yes, ma'am.
- 17 Q. Another petit larceny in 2008?
- 18 A. Yes, ma'am.
- 19 Q. Shoplifting in 2009?
- 20 A. Yes, ma'am.
- 21 Q. Shoplifting in 2010?
- 22 A. Yes, ma'am.
- 23 Q. And another shoplifting in 2012?
- 24 A. Yes, ma'am.
- 25 MS. SIMMONS: Thank you.

1 THE COURT: Redirect.

2 Redirect Examination by Mr. Rosemond:

3 Q. Did Ms. Simmons have any problem with all of those
4 shopliftings and whatever whenever she asked you to
5 testify for her?

6 A. No, ma'am -- no, sir, I don't think so.

7 Q. Did Mr. Hunnicutt have any problem with all those
8 shopliftings when he asked you to work for him?

9 A. No, sir.

10 Q. Has that ever been a problem in the past?

11 A. No, sir.

12 Q. When was the last time you saw me?

13 A. Yesterday.

14 Q. Before yesterday when was the last time you saw me?

15 A. It had been a long time, man.

16 Q. A long time?

17 A. Yes, sir.

18 Q. And you saw Investigator Hunnicutt sometime in the
19 last month, I take it; is that right?

20 A. Maybe about two months.

21 Q. Did he ever ask you about this case?

22 A. No, sir.

23 Q. Did he ever ask you do you have any knowledge of
24 this case?

25 A. No, sir.

1 Q. Did he ever ask you to do some work for him at that
2 time?

3 A. Not at the time. I'll probably do some for him on
4 down the line.

5 Q. So he was more concerned about you doing work for
6 him as opposed to what knowledge you had in this case?

7 A. Yes, sir. Yes, sir.

8 Q. The reason why no one knew of your involvement
9 until yesterday was simply because your name hadn't come
10 up; is that right?

11 A. Yes, sir.

12 Q. What, if any, promises has anyone made to you about
13 your testimony today?

14 A. None.

15 MR. ROSEMOND: No further questions, Your Honor.

16 THE COURT: Yes, ma'am.

17 MS. SIMMONS: Briefly, Judge?

18 THE COURT: Very well.

19 Recross-Examination by Ms. Simmons:

20 Q. Mr. Walker, you have not testified for the State
21 since the Tim Blassingame trial, correct?

22 A. Yes, ma'am.

23 Q. And, in fact, I've never asked you to testify since
24 then.

25 A. No, ma'am.

1 Q. And, when you testify in cases as a confidential
2 informant, is it based solely upon your word?

3 A. Yeah.

4 Q. Isn't there audio and videotape evidence in a
5 confidential informant case?

6 A. Yes, ma'am.

7 Q. And when you testify as a confidential informant,
8 it's not just your word that something happened?

9 A. Yes, ma'am.

10 MS. SIMMONS: Okay. Thank you.

11 THE COURT: Re, Redirect?

12 MR. ROSEMOND: No, Your Honor.

13 THE COURT: Very well.

14 All right. You may step down. Thank you, sir.

15 (Whereupon, the Witness was excused.)

16 THE COURT: All right. You may call your next
17 witness.

18 MR. ROSEMOND: The Defense rests, Your Honor.

19 THE COURT: Any Reply?

20 MS. SIMMONS: No, Your Honor.

21 THE COURT: Very well.

22 Mr. Foreman, ladies and gentlemen of the Jury, a
23 Defendant has a Constitutional right to remain silent
24 and require the State to meet its burden of proof beyond
25 a reasonable doubt. The assertion of the Constitutional

1 right not to testify or present evidence must not be
2 considered by you in your deliberations. Under the oath
3 you took you are to draw no conclusion whatsoever from
4 the fact that the Defendant in this case did not testify
5 or put up any evidence on his own behalf. As I stated,
6 the Defendant is not required to prove his innocence,
7 and the burden of proof remains upon the State to prove
8 guilt beyond a reasonable doubt.

9 Now, that concludes the testimony and other
10 evidence in this case, and we still have the final
11 argument by Counsel and then the charge on the law, and
12 then the case will be given to you for your
13 deliberations.

14 It's 12:35. That process will take some time. I'm
15 going to suggest that we go to lunch at this time and
16 come back --

17 (Discussion off the record.)

18 **THE COURT:** Excuse me. I'm sorry. I read the
19 clock on the wall. It's 11:35. Because I'm gonna ask
20 you to take a rather long lunch. But be back at 1:00
21 and then we'll go to the Jury, and at that time the case
22 will be concluded.

23 All right. But again, do not do not undertake
24 discussion among yourselves in any way. Thank you very
25 much.

1 Everyone else remain seated while the Jury retires
2 from the courtroom.

3 But again, be back in the Jury room at 1:00.

4 (Whereupon, the Jury left the courtroom at
5 approximately 11:36 a.m.)

6 THE COURT: Anything from the State?

7 MS. SIMMONS: No, Judge.

8 THE COURT: The Defendant?

9 Renewal of Defense Motion for Directed Verdict:

10 MR. ROSEMOND: Just renew our Motion for Directed
11 Verdict, Your Honor.

12 The Court's Ruling on Motion for Directed Verdict:

13 THE COURT: All right. Based on the same finding,
14 that there is sufficient evidence to go forward and that
15 the Court is not to weigh the testimony but only to
16 determine whether there is such testimony, the Motion is
17 denied.

18 Charge Conference:

19 THE COURT: Now, are there any requests for charges
20 from the State?

21 MS. SIMMONS: Judge, if we might just review your
22 standard charge? I don't believe I have any special
23 requests, though.

24 THE COURT: Of course I'll charge presumption of
25 innocence, reasonable doubt, direct and circumstantial

1 evidence, intent.

2 Indictments are not evidence.

3 The possession with intent to distribute crack
4 cocaine. The State must prove beyond a reasonable doubt
5 the Defendant had both the power and the intent to
6 control the disposition of the crack cocaine. That
7 possession may be either actual or constructive.
8 Constructive possession means the Defendant had dominion
9 and control or the right to exercise dominion and
10 control over either the crack cocaine itself or the
11 property on which the crack cocaine was found.

12 Mere presence at the scene where the drugs were
13 found is not enough to prove possession.

14 Two or more persons may have joint possession of a
15 drug.

16 By the way, does the Defendant have any particular
17 requests?

18 MR. ROSEMOND: Only the mere presence charge, Your
19 Honor.

20 THE COURT: All right. That will be there.

21 MS. SIMMONS: And, Judge, as to the possession,
22 will you also state the possession of the Xanax as well
23 as separate charges?

24 THE COURT: Yes, ma'am. They are two separate
25 Indictments.

1 MS. SIMMONS: Thank you.

2 THE COURT: The State also must prove beyond a
3 reasonable doubt that the Defendant intended to
4 distribute crack cocaine. Distribute means, and the
5 definition of distribute.

6 The Defendant's -- in determining whether the
7 Defendant had the intent to distribute, you may consider
8 the circumstances, to include the amount of the
9 substance alleged to have been possessed, the manner in
10 which it was allegedly possessed, the place where it was
11 allegedly possessed, and other factors.

12 Possession of more than one or more grams of crack
13 cocaine creates an inference that the Defendant
14 possessed that crack cocaine with the intent to
15 distribute. This inference does not relieve the State
16 from proving beyond a reasonable doubt that the
17 Defendant had the intent to distribute. It is simply an
18 evidentiary fact to be taken into consideration by you
19 along with other evidence in the case and be given the
20 weight you decide it should have.

21 MS. SIMMONS: Thank you, Judge.

22 THE COURT: Also, there's a lesser-included offense
23 of possession. Simple possession does not require the
24 intent to distribute. The State must prove beyond a
25 reasonable doubt the Defendant knowingly and

1 intentionally possessed crack cocaine, and with the
2 knowledge consciously and not accidentally. And to
3 prove possession the State must prove beyond a
4 reasonable doubt both the power and intent to control
5 the disposition of crack cocaine.

6 Actual possession means that the crack cocaine was
7 in the actual physical custody of the Defendant.
8 Constructive possession means that the Defendant had
9 dominion and control. And again, mere presence at the
10 scene where the drugs were found is not enough to prove
11 possession.

12 And then on the possession of Xanax. Again, to
13 prove possession the State must prove beyond a
14 reasonable doubt that the Defendant had both the power
15 and the intent to control the disposition and the use of
16 Xanax. And again constructive possession and actual
17 possession.

18 And then if you have a reasonable doubt of the
19 Defendant's guilt after considering all the evidence of
20 either Indictment, then you must find the Defendant not
21 guilty on that Indictment. On the other hand, if you
22 find no reasonable doubt of the Defendant's guilt after
23 considering all the evidence on either or both
24 Indictments, then you must find the Defendant guilty on
25 that or those Indictments.

1 Also, I will have a charge about the
2 lesser-included as to, that under our law we do have
3 lesser-included offenses.

4 All right. Anything further from the State?

5 MS. SIMMONS: No, Your Honor, thank you.

6 THE COURT: From the Defendant?

7 MR. ROSEMOND: No, Your Honor.

8 THE COURT: Let's try to be back at about quarter
9 till one in the event that you have anything you need to
10 bring to the Court's attention, to include requests for
11 charges.

12 All right. Oh. Also, I will reiterate the fact
13 that the Defendant does not have to testify.

14 (Whereupon, a luncheon recess occurred.)

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1 ** FROM HERE TO END NEEDS PROOFING **

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Afternoon Proceedings

4

1:10 p.m.

5

6 THE COURT: All right. It's my understanding that
7 you have seen the verdict forms?

8 MS. SIMMONS: Yes, Your Honor.

9 THE COURT: Any objection from the State?

10 MS. SIMMONS: No.

11 THE COURT: Wait a minute. We need the Defendant.
12 I guess.

13 MS. SIMMONS: Judge, it's my understanding that I
14 will open on the law and Mr. Rosemond will close and
15 then I will finish up?

16 THE COURT: You will do what now?

17 MS. SIMMONS: I will open on the law and
18 Mr. Rosemond will close and then I will --

19 THE COURT: What do you say about that,
20 Mr. Rosemond?

21 MR. ROSEMOND: I don't have any problem waiving her
22 opening on the law and just letting her close.

23 (Defendant enters courtroom.)

24 THE COURT: Do you want to?

25 MS. SIMMONS: I'm at the Court's pleasure. I'll do

1 whatever you think is judicially efficient.

2 THE COURT: All right. That's the -- pardon?

3 MS. SIMMONS: I'll do whatever you think is
4 judicially efficient.

5 THE COURT: All right. It's not so much judicially
6 efficient. That's one thing, the law is not efficient,
7 it's supposed to be effective.

8 Okay. Now, as I understand it, the Defendant
9 waives the State opening, so there will be two
10 arguments.

11 (The Defendant conferred with Counsel off the
12 record.)

13 MR. ROSEMOND: We'll waive that, Judge.

14 THE COURT: All right. So you'll waive the State
15 having to open at all, the Defense will argue, and the
16 State would close.

17 MR. ROSEMOND: Yes, Your Honor.

18 MS. SIMMONS: Yes.

19 THE COURT: All right. Anything else from the
20 State?

21 MS. SIMMONS: No, Your Honor.

22 THE COURT: Anything from the Defendant?

23 MR. ROSEMOND: No, sir.

24 MS. SIMMONS: No, sir, Your Honor.

25 THE COURT: Anything from the State?

1 MS. SIMMONS: No, Your Honor.

2 THE COURT: Anything from the Defense before we
3 bring the Jury out?

4 MR. ROSEMOND: No, sir, Your Honor.

5 THE COURT: All right. Ask the Jury to join us,
6 please.

7 (The Jury entered the courtroom at approximately
8 1:12 p.m.)

9 THE COURT: All right. Let the record reflect the
10 Jury is in the Jury box.

11 Mr. Foreman, ladies and gentlemen of the Jury, as
12 I've said earlier, this will be the final stage of the
13 trial of the case, the argument by Counsel, and then the
14 charge on the law by the Court. The parties have agreed
15 that the Defendant will open and the State will close.

16 All right. I recognize Mr. Rosemond for his
17 closing argument.

18 Closing Argument on behalf of the Defendant:

19 MR. ROSEMOND: Dan Temple is not guilty. Mr. Dan
20 Temple is not guilty. And that's what I indicated to
21 you in our Opening Statement, that there would be
22 evidence presented that would show that he was not
23 guilty.

24 And I told you, this trial is much like a TV show,
25 a sitcom, a soap opera, where you have the opening

1 credits, and then you have the meat of the show, and at
2 then the end you have the closing credits. And that's
3 where we're at now. We are almost at the end of this
4 particular trial. But before we get there, we need to
5 talk about the evidence that you have heard over the
6 last two days and how that evidence applies to
7 Mr. Temple.

8 We talked about earlier the foundations of our
9 legal system. We talked about the presumptions of
10 innocence and what that means, and when you open the
11 paper and you see people charged with a crime, you don't
12 automatically assume that they are guilty of that crime.

13 Sometimes we are all guilty of it when we see
14 somebody walking down the street and we make assumptions
15 about people. We see people in the paper and we assume
16 that the police are right in what they said and what
17 they charge them with, but that's not necessarily the
18 case.

19 We talked about the burden of proof. Who has to
20 give you the evidence? Where does that evidence have to
21 come from to say that Mr. Temple beyond a reasonable
22 doubt possessed with the intent to distribute crack
23 cocaine or Xanax on July 25th, 2012? And I told you
24 earlier that that evidence comes from that Witness
25 chair, that Mr. Temple doesn't have to prove anything to

1 anybody. All the evidence must be proven by the State
2 of South Carolina. It must come from this table and
3 that chair; not only does it come from that table, all
4 the evidence must be proven beyond a reasonable doubt.

5 And what is a reasonable doubt? If, at the end of
6 this trial, if you have a reasonable doubt in your mind
7 that Mr. Temple is guilty of possession with intent to
8 distribute crack cocaine or possession of Xanax, it is
9 your obligation and your duty as a Juror to say he's not
10 guilty. They didn't present enough evidence to convince
11 you, they didn't present enough evidence to convince me
12 that he was guilty of what the police said he did. And
13 I submit to you, ladies and gentlemen, that they did not
14 do that.

15 We talked about reasonable doubt. And what was
16 that? And I believe that this case is ridden with
17 reasonable doubt. James Willie Walker came into this
18 courtroom an hour or so ago and sat up there on that
19 Witness stand and told you that on July the 24th he was
20 hanging out with Dan and he was hanging out with
21 Crystal, and Crystal kept screaming, "I want some
22 crack." She's already told you she's a crack addict.
23 She says, "I get high all the time." "I want some
24 crack."

25 And what does she ask James to do? She asks James

1 to take her to Pendleton to get some crack. She had the
2 money, she had the \$80. And he took her to Pendleton
3 and she purchased that crack and she brought it back to
4 the motel room. He said Dan had to work the next day.
5 Dan said he had a job, or Dan has a job.

6 And then, when he was on Cross-Examination, what
7 did Mrs. Simmons ask him? "You were driving without a
8 license to ride around and do work for Mr. Hunnicutt?"
9 Did that matter when he was working for Mr. Hunnicutt?
10 Did it matter when he was working for the Seneca Police
11 Department whether or not he had a driver's license?
12 No, it didn't matter.

13 Did it matter to Ms. Simmons about his criminal
14 record when she put him on the stand in the *State v. Tim*
15 *Blassengame*? And he testified for her, for the State of
16 South Carolina, for the Solicitor's Office.

17 Did she care about his shoplifting then? No, she
18 didn't. Did she care about any other thefts on his
19 record? No, she didn't. Did she care about the drug
20 charges? No, she didn't. But conveniently today she
21 cares about it.

22 Did Mr. Hunnicutt care about it when he was asking
23 Mr. Walker to help him out on some cases, to give him
24 some information, to go buy drugs for him? Did he care
25 whether or not he had any shoplifting? No, he didn't,

1 either. Did he care about what was on his record? He
2 didn't care. He used him as an informant. He counted
3 on his information. And then they want to stand up here
4 today and want to discredit him, the same person that
5 they used day in and day out to make cases.

6 And it's wrong. If you're gonna put somebody up
7 there on the Witness stand, if you're gonna work with
8 somebody, and then you're gonna say, Don't believe him,
9 Jury, he's not telling the truth.

10 James Walker was not known in this courtroom until
11 Crystal Henry only yesterday in her statement. And in
12 her statement she said, Dan went to Pendleton. Dan
13 bought the drugs. She didn't mention she went there.

14 And then I said, Well, how did you get there?

15 She says, James Willie Walker drove us.

16 So what did I do yesterday? Any good lawyer would
17 go find James Willie Walker and ask him, "Tell me about
18 that day. Do you remember it?"

19 "Yes, I do. That was the last time I saw Dan or
20 saw Crystal. We was at the hotel together."

21 "Well, tell me what happened."

22 "Well, Crystal wanted some drugs. I took her to
23 Pendleton. She had the money, she bought the drugs.
24 She brought the drugs back."

25 But then we move to, if that doesn't give you the

1 reasonable doubt, let's move to B.J. McClure. He was
2 the first Witness that you heard on that particular day.
3 And what did B.J. say?

4 B.J. said, well, he was trying to tell Mr. Temple
5 to get his hands out from under the covers.

6 And then, when Mr. Teramano, a police officer,
7 jumped up on the bed and his weight hit the bed, a
8 purple pill bottle fell out. He didn't say it came from
9 Mr. Temple. He just said it came out when Mike Teramano
10 jumped up on the bed. And that's that same purple pill
11 bottle in this case. But that's all B.J. McClure said.

12 But then, if you look at Lindsey Simmons' Opening
13 Statement, what does she say? In her Opening she said
14 the following. She said Crystal Henry only had the
15 crack pipes, that the crack belonged to Dan Temple. It
16 wasn't true. That wasn't true. 'Cause Crystal Henry
17 got up on that Witness stand and said, That's my crack,
18 at least that one piece of crack is my crack. And if
19 you think a crack addict who gets high on crack all the
20 time only had one piece of crack, that's not even
21 believable. She's not believable.

22 But let's talk about what else is unbelievable.
23 The City of Seneca has a police force. The City of
24 Seneca has a Municipal Judge. The City of Seneca has an
25 Associate Judge. And they went and got a Search Warrant

1 in this case for the Town & Country Motel room in the
2 City of Seneca right below the bowling alley. And they
3 got it on July the 24th sometime between two and four.
4 At least they were working on it between that time.
5 They knew they were gonna get the Search Warrant.

6 But did they go to the Judge in Seneca? No, they
7 didn't. Did they go to the Associate Judge in Seneca?
8 No, they didn't. They bypassed their own Judge who sits
9 on the second floor of the Police Department.

10 Not only that, there's a Magistrate in the same
11 block of Seneca City Hall who works for the County,
12 who's a County Magistrate. They bypassed him. They
13 don't want to go to their Judge, Judge Singleton; they
14 don't want to go to their City of Seneca Associate
15 Judge, Tammy Lawing, Judge Tammy Lawing; they don't want
16 to go to the Magistrate on that same block. They want
17 to go to Judge Derrick who's based in Westminster.

18 But they say, oh, by the way, we found him at home
19 at 6:40. But they knew early on that they needed that
20 Judge to sign that Search Warrant. Call your own Judge
21 and say, Judge, we're gonna need your signature. It
22 makes you suspicious of what they are trying to pull.

23 You couple that with the other Search Warrant that
24 we found out about yesterday, that they didn't disclose,
25 they didn't give to Mr. Temple. He got the first Search

1 Warrant, he didn't get the second Search Warrant. You
2 have to watch the police.

3 And then Mr. Hunnicutt gets up on the stand and he
4 testifies as to what he did. He testified as to him
5 getting the Search Warrant, he testified as to what he
6 went to do when he got to the scene.

7 That piece of crack right there, we talked about
8 who's on what side of the bed. We said Dan Temple was
9 on the left side of the bed. The right side was empty.
10 And right beside the right side of the bed is a
11 nightstand where that piece of crack is sitting right
12 there.

13 We talked about it. We talked about the purple
14 pill bottle. And I asked him, "Did you check the pill
15 bottle for fingerprints?"

16 He said, "No, I didn't." He said, "Based upon my
17 experience we could not have gotten anything off of it."

18 But did they at least try? Then you start trying
19 to count how many rocks are in there.

20 And then they bring in and they introduce evidence
21 of a bank card by a working individual, his Social
22 Security card. But interestingly, they don't introduce
23 anything from Crystal Henry. Nothing. No driver's
24 license.

25 And, ladies and gentlemen, they want you to believe

1 that Mr. Temple confessed to having the crack. They
2 want you to believe that while he was in the back of a
3 patrol car he told Mr. Washington, Captain Washington,
4 "Come here for a second. I want to talk to you. I want
5 to help myself."

6 And they want you to believe that he says that the
7 balance of the drugs are his, that he had went to
8 Pendleton the night before and spent \$300.

9 And what did I ask him to do? I said, "Captain
10 Washington, did you go and get a voluntary statement
11 form? Did you ask another officer to give you a
12 statement form so Mr. Temple can write out his
13 statement?"

14 They want you to believe that he wrote his name on
15 this one.

16 He said, "I didn't do that."

17 Then I said, "Captain Washington did you have an
18 iPhone, did you have an Android, did you have some
19 recording device with you?"

20 He said, "Yes, I had a phone with me."

21 I said, "Well, why didn't you pull your phone out
22 and record the conversation so this Jury could know
23 exactly what Dan Temple said?"

24 "I didn't do that."

25 But then they take him to the station and put him

1 in a room. And I said, Investigator Hunnicutt, did you
2 interrogate him?

3 I didn't interrogate him. I just listened to him.

4 Do you believe that he's gonna sit in the room and
5 they're not gonna ask him any questions? Hey, they got
6 him to sign a *Miranda* waiver. They got him to sign
7 this.

8 So then he says, "Dan Temple told me that the
9 balance of the drugs in the room was his; that he went
10 to Pendleton, that he spent \$300 the night before."

11 And I asked him, "You were in the police station.
12 Did you not have a voluntary statement form just like
13 the one Captain Washington signed when he did his
14 statement?"

15 They went to the Academy. They were trained how to
16 be police officers. They were trained how to take
17 notes. They were trained how to get written confessions
18 from people and have them sign it. And they want you to
19 believe that Dan Temple confessed to them in a police
20 station when no voluntary statement was ever given to
21 them.

22 I said, "Did you have a tape recorder in there?"

23 "I probably had one somewhere in there."

24 "Did you have a phone somewhere?"

25 "I think I had a phone."

1 The day that we live in, the technology-based
2 society we are in, you can record anybody at any time
3 for any reason. We all have that capability if you have
4 a phone on you. And, if you're interviewing someone,
5 that's what you want to do. But they didn't do that to
6 Dan Temple.

7 And now they want you to believe that he confessed
8 to that crime. But what you have to decide is whether
9 or not he voluntarily did that beyond a reasonable
10 doubt. You have to decide whether or not he was coerced
11 or whether or not he was promised anything to do that.
12 And I'm telling you, ladies and gentlemen, that on this
13 day, that Dan Temple didn't confess to those police
14 officers.

15 But what they want you to believe is that just
16 because they wear a badge, just because they wear a
17 uniform, just because they have been cloaked in the
18 clothes of a police officer, that they always tell the
19 truth. And just because you hear it from a police
20 officer, it has to be the Gospel.

21 But we just, we know that they're just like anybody
22 else. That just because you are a police officer, you
23 don't always tell the truth. Just because you are a
24 teacher, you don't always tell the truth. Just because
25 you are a priest, you don't always tell the truth. So

1 you just can't believe them just because they have a
2 badge. You have to think about the evidence and how it
3 relates to Dan Temple.

4 Possession with intent to distribute. The law says
5 that anything over one gram, you can infer that the
6 person had the intent to distribute the drugs if you
7 have more than a gram. The chemist came in here
8 yesterday and told you that there was 1.22 grams of
9 crack found in that room. Certainly Ms. Henry claimed
10 one piece of rock that weighed point 12, and that left
11 1.10 worth of crack in that pill bottle. And that means
12 that it was only a tenth more than a gram of crack
13 cocaine left.

14 And although the law says that you can infer based
15 upon the amount of evidence or the weight of the drug
16 that someone intends to distribute it, that's not the
17 case in this case. The better choice, the better bet is
18 to say it wasn't a possession with intent to distribute,
19 it was a possession.

20 Just like the possession of Xanax. You can have
21 ten of those capsules. But the better choice is the
22 possession.

23 Ladies and gentlemen, one of the most important
24 things that we did this week was to find 12 Jurors who
25 we believe that can listen to this particular evidence,

1 who can listen to the witnesses, who can analyze the
2 testimony and come away with what we thought was a very
3 fair verdict in this case.

4 You know, not only is this day important to Dan
5 Temple. This day is important to Crystal Henry as well.
6 She's charged with the same crime. She's charged with
7 the possession with intent to distribute crack cocaine.
8 She's charged with the possession. But that's not how
9 we do things. We don't make them any promises. We tell
10 them, you go testify and we'll see what happens.

11 If you don't believe that in the background there
12 is something that's going to either benefit Ms. Crystal
13 Henry for testifying that all of those drugs in there
14 was Dan Temple's, you are absolutely wrong about that.
15 That's the reason why she hasn't pled guilty yet because
16 she's already pled guilty. She's already said "I'm
17 guilty." So then come up here and plead guilty. Go
18 ahead and get your sentence.

19 But, no, they want her to testify first to see
20 exactly what she testifies to. Who has the incentive to
21 lie in this case? She blamed everything on Mr. Temple,
22 but yet she's in the same boat paddling upstream. But
23 she knows how to help herself out. You can tell by that
24 statement that she wrote. She certainly helped herself
25 out with that statement.

1 But I promise you that when she was on that Witness
2 stand, she was looking out for her benefit and not his.
3 She was making sure that she protected herself so that
4 when it was her time to stand in this courtroom and say
5 "I am guilty," that she would get the benefit of
6 testifying for the State for helping them out.

7 At the end of the day we all have a job to do. The
8 State's job is to prosecute people for alleged crimes.
9 Our job as defense lawyers is to make sure they operate
10 under the confines of the Constitution. The Judge's job
11 is to be the overseer. But it's your job that is most
12 important. It is your job that you have to make sure
13 that they convince you beyond a reasonable doubt that
14 young man right there is guilty.

15 If you have any doubts in your mind, if you have a
16 reasonable doubt in your mind, as hard as it may be, as
17 hard as it may be, if you have a reasonable doubt in
18 your mind that he didn't do what they accused him of
19 doing, just say "not guilty." Sometimes you have to do
20 that. Sometimes you have to say, you didn't give me
21 enough evidence to convince me beyond a reasonable doubt
22 that he's guilty. There's no harm in that. No harm in
23 that if they don't give you the evidence to put on
24 Mr. Temple, not the circumstantial evidence.

25 And the Judge will talk to you about what

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1 circumstantial evidence is and what actual evidence is.
2 He will talk to you about mere presence. And what he
3 will tell you is just your mere presence around drugs
4 doesn't mean you possessed those drugs. Just your mere
5 presence in the room doesn't mean that you possessed
6 those drugs.

7 And, as I told you when we were beginning, and as I
8 told you when I stood up a few minutes ago, that Dan
9 Temple was not guilty, that he didn't have the intent
10 that is required to distribute those drugs.

11 What do they have to prove to you? They have to
12 prove every element of the crime: that Dan Temple
13 illegally possessed the crack cocaine or the Xanax and
14 the Xanax with the intent to distribute it to another
15 party.

16 And, ladies and gentlemen of the Jury, I submit to
17 you that from the evidence that you heard over the last
18 two or three days, Dan Temple is not guilty. Dan Temple
19 is not guilty. Dan Temple is not guilty. They did not
20 give you enough evidence beyond a reasonable doubt. If
21 you have a doubt, a reasonable doubt in your mind, I'm
22 asking you to hold them accountable and tell them, I am
23 sorry, but Mr. Temple, on this charge, on this day, is
24 not guilty.

25 Your reasonable doubt in this case is Crystal

1 Henry, a web of lies. James Walker, he told the truth
2 after he was asked by the State of South Carolina to
3 testify against him and after he worked with Hunnicutt
4 as an informant, you can't say I believed him on one day
5 but I don't believe him on the next.

6 Dan Temple is not guilty. Thank you.

7 THE COURT: Madam Solicitor.

8 MS. SIMMONS: Thank you, Your Honor, may it please
9 the Court; Mr. Rosemond.

10 Closing Statement on behalf of the State:

11 MS. SIMMONS: Ladies and gentlemen, the time has
12 now come for me to have my final opportunity to speak
13 with all of you. Before we talk about the facts of this
14 case and I get into arguing about what you heard over
15 the last couple days, I want to inform you a little bit
16 more about the law as it applies to this case.

17 The Defendant is charged with PWID crack cocaine,
18 possession with intent to distribute. The Judge will
19 then charge you with that information as well. He's
20 gonna tell you that in South Carolina the statutory
21 inference for possession with intent to distribute is a
22 gram; that there is an inference you intended to
23 distribute if you possess more than one gram of crack
24 cocaine.

25 He's also gonna tell you another way to prove that

1 is through circumstantial evidence. And an example of
2 circumstantial evidence in cases is a large amount of
3 cash present at the scene, other people testifying you
4 have prior drug-related activity and prior evidence of
5 drug distribution.

6 On the possession of Xanax charge, it's just a
7 strict possession charge. You can possess 30 and it's
8 still possession of Xanax.

9 Possession can be proved two ways: actual
10 possession and constructive possession. Actual
11 possession is if I had crack in my pocket, it's on my
12 person. Actual possession. Constructive possession is
13 I had dominion and control over the premises where the
14 crack was located, an example being if the police came
15 in and the crack rolled off the table that I was sitting
16 at, it was construction possession that it was in my
17 dominion and control in my area.

18 The Judge is also gonna tell you that two people
19 can have joint possession of something, and ownership is
20 not a sole thing. You can even determine that two
21 people possessed a drug.

22 And reasonable doubt is a big standard we've heard
23 a lot about over the last couple days. It's not beyond
24 all doubt, it's not a hundred percent. The standard is
25 if it would cause a reasonable person hesitate to act.

1 We told you your common sense is the most important
2 thing you brought with you to jury duty. It's not an
3 absolute certain requirement, it's a reasonable person
4 standard. When you go into the Jury room to deliberate,
5 please keep that in mind.

6 Also, the Judge is gonna tell you that Openings and
7 Closings are not evidence. Openings are our opportunity
8 to tell you what we expect the evidence will present in
9 a case. That's not always how it comes out. Closings
10 are your argument on the law. The Judge will tell you
11 what I told you just now is not evidence. The only
12 thing that you are to consider in the course of your
13 deliberations is what you heard from that Witness stand
14 and the evidence that has been admitted for you to
15 consider.

16 Before I talk to you about our case, I wanted to
17 spend a little time talking about the Defense case.

18 At the beginning of the Defense case they told you
19 that this trial would play out kind of like a show.
20 Well, on their side it was a show. A show and an entire
21 case built around the facts that they want to get your
22 attention away from Dan Temple and on everybody else
23 that has something to do with this case. That is their
24 show. They think if they throw up enough stop signs,
25 enough roadblocks, and they throw a bunch of bright,

1 shiny objects in front of you, you will lose track of
2 the fact that Dan Temple is a guilty man. A lot of
3 noise and a whole lot of distractions designed to get
4 you off track and make you forget why you are here.
5 They want you to think that all these drugs belonged to
6 Crystal Henry and poor Dan Temple is the victim of
7 circumstance. People like this flock together, folks,
8 it's just a fact of life. There's a lot of people with
9 culpability in this, the most important being Dan
10 Temple.

11 The Defense is also asking you to convict him
12 merely upon possession. You've heard from Witnesses
13 multiple times that the quantities referenced by the
14 Defendant are not consistent with personal use. And
15 you've heard all about this drug-related behavior and
16 he's traveling around all over creation to engage in
17 these illegal activities.

18 And an attack on law enforcement credibility. They
19 want you to believe be that not one, not two, but three
20 sworn law enforcement officers, two of which had just
21 received promotions, concocted a story to frame Dan
22 Temple and put him away. They want you to believe that
23 they, all three of them -- not one, not two, but
24 three -- framed Dan Temple. That's not reasonable, and
25 it's not true.

1 There's also been a big argument about obtaining a
2 Search Warrant from a County Judge. Officer Hunnicutt
3 told you it is common practice if you're working in a
4 County of the State that you might get your Search
5 Warrant from a County Judge. Magistrates have
6 County-wide jurisdiction in South Carolina.

7 In fact, at 6:42 p.m. when the Search Warrant was
8 signed, Judge Derrick was the closest Judge in proximity
9 to the Seneca Police Department because they testified
10 he lives behind the woods. This was not a conspiracy to
11 Judge shop. There was a lot of brouhaha over the
12 signing of the Search Warrant. There was nothing there,
13 nothing was hidden by law enforcement. The inadvertence
14 was non-disclosure, but there was nothing to disclose.
15 No useful information regarding this case was found on
16 those phones or on those computers.

17 Let's talk about James Willie Walker. His record
18 is atrocious, I'm not gonna lie to you. He works as a
19 CI, he did do Confidential Informant buys for the Seneca
20 Police Department. I did put him on the stand to
21 testify. But I will tell you, and he agreed with me,
22 that confidential informant buys are never solely based
23 on the word of just a confidential informant. Those
24 buys have audio and video evidence to back them up. You
25 don't put a confidential informant on the stand without

1 some proof other than their word, especially with a
2 record like James Willie Walker's.

3 And he testified to you he has not testified since
4 he testified in the Blassengame trial a few years ago.

5 Today the Defense wants you to believe a wholly
6 uncorroborated statement by Mr. Walker. There is no
7 video, there's no audio, there's no Witnesses. Nothing.
8 They want you to put all your faith in James Willie
9 Walker, the words of a convicted felon, and a man who
10 has two dozen crimes of moral turpitude that involve
11 giving false information to law enforcement, and they
12 want you to rest solely on his word. It's not
13 reasonable, ladies and gentlemen, it not reasonable at
14 all.

15 James Willie Walker had at least two dozen
16 opportunities to tell Tim Hunnicutt what he told you
17 today. He said, Yes, I talked to him probably a dozen
18 times, I talked to him on a regular basis. He had all
19 these opportunities to say, "Hey, my friend, Dan Temple,
20 is not guilty. Those were her drugs, not his."

21 He never said it, not -- he even discussed with
22 Officer Hunnicutt, "I'm gonna come to this trial and
23 watch."

24 Wouldn't you give the information that you think
25 your friend is innocent? But after Crystal Henry

1 testifies, his good buddy, back is against the wall, he
2 gives a statement to save his friend just like that. He
3 admits he's Dan Temple's friend and he admits he's his
4 classmate and he admits he's his running buddy and he
5 drives him around. Even today he didn't give you
6 consistent testimony.

7 Yesterday he gave a statement to Mr. Rosemond that,
8 "Oh, I drove Crystal Henry to buy drugs in Pendleton."
9 And then today: "Oh, yeah, I drove Crystal Henry and
10 Dan Temple to buy drugs in Pendleton, but only she
11 bought drugs."

12 Then he also said, "I haven't talked with Dan since
13 his July arrest." Then in his next breath he said, "He
14 called me the day after he was arrested and told me he
15 got arrested." And then he admitted on Cross that they
16 had talked since. They're in the same place.

17 He said he dropped Crystal and Dan off about 8:30
18 that night, the night of the 24th. I submit to you he
19 would have no idea what happened the rest of that night.
20 He wouldn't know if they went to Georgia to get more
21 crack. He has no idea.

22 Remember, Crystal Henry said there was a second
23 trip that night in the early morning hours out of state.

24 The only part of James Willie Walker's testimony
25 that's credible is that he's Dan Temple's buddy and his

1 criminal record is horrible.

2 The Defense case is a bunch of puffing designed
3 to get you guys lost and make you lose track of the
4 guilty man that sits at that table, Dan Temple.

5 Now I want to briefly talk to you about the case we
6 presented to you. Unlike what the Defense said, and
7 they said it in their Opening and their Closing, this is
8 not a show. I disagree wholly. This case is nothing
9 like *CSI*, *Law & Order*, *NCIS*, or *Forensic Files*. I'm not
10 gonna wrap this case up in a pretty little bow and put
11 it in for your consideration in 60 minutes or less.
12 Real life doesn't permit that. In real life, mistakes
13 are real, and people are real human beings, and they
14 make mistakes.

15 Tim Hunnicutt testified how the service of a Search
16 Warrant works, how the Search Warrant was executed in
17 this case, that the bottle in the Search Warrant that he
18 took into his custody was found on Dan Temple's side of
19 the bed where his things were on the side closest to the
20 door.

21 He talked to you about who was present. The chain
22 of custody on the drugs is solid. He was somewhat
23 nervous, but you heard his training, education and his
24 experience. You as the Jurors are the judges of his
25 credibility.

1 Now let's talk about Crystal Henry. Again,
2 credibility. You had the opportunity to observe her
3 credibility and believability on the stand. And her
4 overall consistency. No promises have been made to her.
5 She held her own on Cross-Examination and admitted what
6 she knew and what she didn't know. Her sole prior
7 record is a petit larceny conviction. Her criminal
8 history is not riddled with crimes of dishonesty.

9 The confession the Defendant later made to law
10 enforcement actually corroborates what she told you.
11 It's consistent. What he said to law enforcement is
12 consistent with what she told you.

13 I want to look at a few things she said yesterday
14 that stuck out in my mind. The Defendant sold drugs, he
15 didn't use them. That's how she met him, selling drugs.
16 She recounted driving all over creation to engage in
17 illegal drug activity at all hours of the night.

18 She said, "I had to buy my own drugs, I would not
19 touch his stuff." And she said there was a lot of
20 fighting going on in their relationship.

21 She said she tried one of the Xanax, but that she
22 didn't like it, and Dan had gotten them trading them for
23 crack. And look at what she admitted. She admitted the
24 crack pipes were hers and the crack rock on her
25 nightstand was hers. Even if you believe she bought

1 \$80' worth of crack in Pendleton the night before,
2 that's nothing compared to the over one gram that was
3 found on the Defendant's side of the bed. If you think
4 she bought the crack the night before, she probably
5 smoked it. That was the one crack rock she had left.
6 She told you, one crack rock on my nightstand and the
7 pipes were mine, they were mine.

8 She admitted to crimes under oath that can send her
9 to jail. If she was really out to get Dan Temple, don't
10 you think she would have got up there and said it was
11 all his, absolutely none of it was mine, if she was
12 really trying to save her own hide? She would say, None
13 of it belonged to him -- I mean none of it belonged to
14 me, all of it belonged to him, both sides of the bed.
15 But, no, she admitted what part of this was hers.

16 And the two most compelling things she said, "The
17 times I've been with him, I could write a book. And if
18 all that other crack belonged to me, yeah, I would have
19 smoked it."

20 Crystal Henry is not a liar. Let's just call
21 Crystal Henry what she is. She's a crack head. She
22 told you she was high most of the time back in 2012 and
23 she lived at low-end motels with the Defendant. Crystal
24 was just a pawn for Dan Temple. He used her, she used
25 him. That simple. But the big fish in that

1 relationship was not Crystal Henry, she was a crack head
2 in tow. Crystal Henry was just a pawn.

3 You also heard from Meredith Lanford and Melinda
4 Nicholson, probably not the most exciting testimony
5 you've heard over the past couple days, but we have to
6 present to you the chain of custody in this case and
7 that the evidence was maintained in a secure manner and
8 that it was not tampered with in any way.

9 Agent Lanford told you that she tested the Xanax
10 and it was Xanax, or Alprazolam -- it's a little hard to
11 say. And then the crack cocaine was actually crack, it
12 was 1.10 grams in the blue bottle and point 12 in the
13 rock on Ms. Henry's side of the bed. PWID can be
14 anything over a gram. Keep that in mind during the
15 course of your deliberations. It can be weight, the
16 1.12 grams, just the blue bottle that rolled out of bed
17 with Mr. Temple, or circumstantial evidence, the prior
18 drug activity that you heard about, the \$622 in cash
19 that he had, and a low-rent motel.

20 Most dish washers don't have \$622 in cash in their
21 pocket when they also have a debit card. Most of us
22 don't have \$622 cash period. He's got a large amount of
23 money, drug activity the night before, as recently as
24 the night before by his own admission, and statements
25 made to law enforcement about the \$300 purchase, and "I

1 could get more in Pendleton and Georgia; if you allow me
2 to do so, I can get as much as an ounce."

3 That's not the behavior of somebody who uses drugs,
4 that's the behavior of someone who sells them.

5 You also heard from B.J. McClure who was part of
6 the entry team. He told you that Mr. Temple was naked
7 in the bed. Crystal already told you he was naked, and
8 Mr. McClure told you that when he was in the bed, he was
9 in the bed under the covers. He wouldn't show his
10 hands, he was not cooperative. They had to tackle him
11 in the bed to get him out of the bed. That's when the
12 blue bottle of crack rolled out of the bed on his side
13 where his stuff was, on his nightstand the blue bottle
14 rolled out. You will have the pictures in the Jury
15 room. It's only logical and reasonable to believe that
16 the drugs that rolled out of the bed of Dan Temple's
17 were his.

18 I want to take a look at the confessions you heard.
19 There's three of them -- well, two of them to three
20 people. Captain Kenny Washington told you he's been in
21 law enforcement for 20 years, he's recently been
22 promoted to Captain at the Sheriff's Office.

23 He says Temple approached him in the parking lot
24 and said, "I want to cooperate; I can get more drugs in
25 Pendleton and Georgia." He Mirandized him prior to

1 those statements. Sometimes things in law enforcement
2 are a little bit on the fly. I don't think Captain
3 Washington was probably anticipating interviewing
4 anybody in the parking lot. But when he was called over
5 to Mr. Temple, he listened to what he had to say, he
6 Mirandized him, and then subsequently he took a detailed
7 statement of what was told to him and he reported it in
8 writing on that same day. You observed Lieutenant [sic]
9 Washington's testimony and you are the sole judge of his
10 credibility.

11 We then have Officers Hunnicutt and Woodring.
12 Hunnicutt interviewed the Defendant after he was told by
13 Captain Washington that he thought that he had some
14 information for him. There was a thorough *Miranda*
15 warning line by line, initialed line by line, signed on
16 the bottom with not one, but two witnesses.

17 The Defendant said, "All the drugs in the room
18 belonged to me; I bought them the night before for
19 \$300." Which is consistent with the number of rocks
20 that were found in the blue bottle.

21 "I can get more from Georgia and Pendleton. I can
22 get you an ounce delivered."

23 All of these are promises of cooperation and are
24 the words of a guilty man who got caught and is trying
25 to find a way to mitigate his own guilt.

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1 It is true the confession is not in writing. You
2 have heard some confessions are written and some of them
3 are oral. This confession, while not written, does have
4 a substantial benefit of being witnessed by another
5 officer. We're not coming in here asking you to just
6 believe Tim Hunnicutt that he confessed to him. Tyrel
7 Woodring, who is now a SLED Agent, was in the room and
8 heard the words and heard exactly the same thing Officer
9 Hunnicutt told you, two officers that are totally
10 consistent with each other.

11 So all in all we have two confessions to three
12 separate law enforcement officers with a combined
13 experience of over 40 years.

14 The Defense would like you to believe that they all
15 conspired together to make up lies about Dan Temple.
16 It's just not reasonable and, quite frankly, it's an
17 insult to your intelligence as Jurors.

18 This is not about conspiracy against Dan Temple.
19 The Defense wants you to believe that from top to bottom
20 this is a persecution, from the Magistrate issuing the
21 Warrant to B.J. McClure to Crystal Henry to Tim
22 Hunnicutt to Ken Washington and Tyrel Woodring. Is it
23 reasonable to believe that all these people concocted
24 this grand scheme to get Dan Temple? It's wholly
25 unreasonable and wholly unrealistic.

1 The bottom line is that on July 25th, 2012, Dan
2 Temple was found in bed at the Town & Country Motel with
3 a blue bottle of crack rock in his constructive
4 possession. It rolled out of bed with him on the entry
5 of the team, of the search team. PWID of crack cocaine
6 has been proved by words, deed, and weight. The Xanax
7 that was in the room was his because he traded crack for
8 it.

9 Ladies and gentlemen, use your common sense. Dan
10 Temple is not an innocent man. Dan Temple is a guilty
11 man, a guilty man whose time for accountability is here.
12 Thank you.

13 The Court's Charge to the Jury:

14

15 Mr. Foreman, ladies and gentlemen of the Jury, as
16 Jurors in this case you have certain functions and
17 responsibilities to perform which are entirely separate
18 and distinct from those of mine as the Trial Judge. I
19 am prohibited by the Constitution of our State from
20 charging you on the facts of this case. I am also
21 prohibited from discussing the facts of the case with
22 you or in any way intimating what my feelings, if any,
23 are about the facts in this case.

24 It is your responsibilities and yours alone to pass
25 upon all the issues and the facts presented in this

1 case. I would, therefore, charge you that if, during
2 the course of the trial or my charge, you have been
3 given or left with the impression or feeling that I do
4 have a personal feeling about the facts of this case, I
5 would specifically instruct you to disregard that
6 feeling or impression.

7 Moreover, you are the sole judges of what the
8 testimony was and not the argument of Counsel. It is
9 also your duty and yours alone to weigh the testimony
10 and evidence in this case and pass upon the credibility
11 or believability of the Witnesses.

12 In this connection you have the right to believe
13 all that a Witness tells you or disbelieve all of what a
14 Witness tells you. You have the right to believe a part
15 of what a Witness tells you and to disbelieve a part of
16 what a Witness tells you. You have the right to take
17 into consideration any bias, prejudice or interest you
18 feel a Witness might have in the case.

19 I say this merely to emphasize that the weight you
20 see fit to give the testimony and the credibility of the
21 Witnesses as well as all issues of fact are for your
22 sole determination. As judges of the facts you are the
23 sole judges of the credibility and that is the
24 believability of the witnesses who have testified in
25 this case.

1 In passing upon their credibility you may take into
2 consideration many things, such as the appearance and
3 manner of the witness on the stand, sometimes referred
4 to as the demeanor of the Witness. Was the Witness
5 forthright or hesitant? Was the Witness's testimony
6 consistent or did it contain discrepancies? What was
7 the ability of the Witness to know the facts about which
8 he or she testified? Did the Witness have a cause or a
9 reason to be biased or prejudiced in favor of the
10 testimony he or she gave? Was the testimony of the
11 Witness corroborated or made stronger by other testimony
12 and evidence or was it made weaker or impeached by such
13 other testimony and evidence?

14 As Jurors you have the right to believe a small
15 portion of a Witness's testimony and discard the larger
16 or vice versa. You may believe all of a Witness's
17 testimony or none. You may believe a single Witness
18 against that of many Witnesses or the other way around.
19 Most certainly you do not determine the matter of
20 credibility or believability by counting up the number
21 of Witnesses who may have testified on behalf of the
22 parties.

23 Now, the Rules of Evidence ordinarily do not permit
24 Witnesses to testify to opinions or conclusions. An
25 exception is a group of Witnesses we call Expert

1 Witnesses. A Witness who, by education and experience,
2 has become an expert in some art, science, profession or
3 calling may state an opinion as to a relevant and
4 material matter in which a Witness claims to be an
5 expert and may also state the reasons for the opinion.

6 You should consider any expert opinion received in
7 evidence in this case and, like any other evidence, give
8 it the weight you think it deserves. If you decide the
9 opinion of an Expert Witness is not based on sufficient
10 education or experience, or if you conclude that the
11 reasons given in support of the opinion are not sound,
12 or that the opinion is outweighed by other evidence, you
13 may disregard the opinion entirely.

14 An Expert Witness's testimony is to be given no
15 greater weight than any other Witness's simply because
16 the Witness is an expert. Further, you are not required
17 to accept an expert's opinion even though it is not
18 contradicted. Throughout this entire process you have
19 but one single objective, and that is to seek the truth
20 regardless of what Witness that testimony may have come.

21 Now, I instruct you and emphasize the fact that the
22 Defendant did not testify is not a factor to be
23 considered by you in any way in your deliberations or
24 your consideration of whether the State has proven the
25 Defendant guilty or not guilty of the charges in the

1 Indictment. It must not be considered by you in any
2 manner whatsoever. The Defendant has the Constitutional
3 right to remain silent, and this exercise must not be
4 considered by you in any way during your deliberations.
5 You must not consider the fact the Defendant did not
6 testify. The fact should not even be discussed in the
7 Jury room. The burden of proof, as I have stated to
8 you, is on the State. The Defendant is not required to
9 prove his innocence. The burden of proof remains on the
10 State to prove guilt beyond a reasonable doubt.

11 Now, by the same Constitution and law which makes
12 you the finders of the facts and evidence, as I have
13 discussed with you, I am as the Judge made the only
14 instructor of the law. You must accept as correct the
15 law I charge and apply it to the evidence as you find it
16 and reach a verdict. If I should make an error in
17 stating the law to you, there is another time and place
18 that error can be considered and, if necessary,
19 corrected. But for the purposes of this case today you
20 must accept the law as I charge it to be the correct
21 law.

22 Finally, I charge you in this regard. You, nor for
23 that matter I, should not be concerned with what the law
24 ought to be but rather what I charge you the law to be.

25 Now, the Defendant has pled not guilty to these

1 Indictments and that plea puts the burden on the State
2 to prove the Defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is never
4 required to prove himself innocent. I charge you that
5 it is an important rule of law that a Defendant in a
6 criminal trial, no matter what the seriousness of the
7 charge may be, will always be presumed innocent of the
8 crime for which the Indictment was issued unless guilt
9 has been proven by evidence satisfying you of that guilt
10 beyond a reasonable doubt.

11 The presumption of innocence does not end when you
12 begin your deliberations, but it accompanies the
13 Defendant throughout the trial until you reach a verdict
14 of guilt based upon evidence satisfying you of that
15 guilt beyond a reasonable doubt. The presumption of
16 innocence is like a robe of righteousness placed about
17 the shoulders of the Defendant. It remains with the
18 Defendant until it has been stripped from the Defendant
19 by evidence satisfying you of the Defendant's guilt
20 beyond a reasonable doubt.

21 The presumption of innocence is not a mere legal
22 theory and it is not just a legal phrase. It is a
23 substantial right to which every Defendant is entitled
24 unless you, the Jury, are satisfied from the evidence of
25 the Defendant's guilt beyond a reasonable doubt. As

1 I've said, reasonable doubt is that kind of doubt that
2 would cause a reasonable person to hesitate to act.

3 Now, a statement alleged to have been made by the
4 Defendant has been admitted into evidence in this case.
5 While the Court has determined that the statement is
6 admissible, I instruct you that you make the ultimate
7 decision of whether or not the Defendant made this
8 statement.

9 If you determine that the Defendant did make the
10 statement, you must determine whether the Defendant made
11 the statement voluntarily and of his own free will.
12 This means that the statement was not caused by
13 pressure, force, fear, threats, coercion or
14 intimidation, or by hope or promise of leniency or of a
15 reward of any kind.

16 In determining whether the statement was voluntary,
17 you can consider both of characteristics of the
18 Defendant and the details of the questions. Some of the
19 factors that you must consider are the age of the
20 Defendant, the Defendant's education or lack of
21 education, the Defendant's mental ability or capacity,
22 the Defendant's I.Q. or intelligence, the Defendant's
23 background, and the environment, the place and length of
24 detention; the nature of the questioning and the advice
25 of lack thereof to the Defendant of his Constitutional

1 rights, but not limited to the right to remain silent,
2 that anything he stated could be used against him in a
3 court of law, the right to have a lawyer present, that
4 if he could not afford a lawyer, a lawyer would be
5 appointed to represent him without any cost; and that he
6 could stop making the statement at any time.

7 You must carefully consider all of the surrounding
8 circumstances before you give any weight to an alleged
9 statement. The State has the burden of proving beyond a
10 reasonable doubt that the alleged statement was
11 voluntary. If you determine it was, you may give that
12 statement any further consideration that you deem
13 proper. You must decide the weight, if any, that should
14 be given to the alleged statement. If you determine the
15 alleged statement was not the free and voluntary
16 statement of the Defendant, you should not consider the
17 statement at all.

18 Now, there are two types of evidence which are
19 generally presented during a trial: direct evidence and
20 circumstantial evidence. Direct evidence is the
21 testimony of a person who claims to have actual
22 knowledge of facts, such as an eyewitness. It is
23 evidence which immediately establishes the main fact to
24 be proved.

25 Circumstantial evidence is proof of a chain of

1 facts and circumstances indicating the existence of a
2 fact. It is evidence which immediately establishes
3 collateral facts from which the main fact may be
4 inferred. Circumstantial evidence is based on inference
5 and not of personal knowledge and observation. It is
6 proof which does not actually establish the fact in
7 question, but that asserts or describes something else
8 from which you may reasonably infer the truth of the
9 fact or at least reasonably infer the probability that
10 the fact is true.

11 For circumstantial evidence to be sufficient to
12 warrant the finding of a fact, the circumstances must
13 lead to the fact with reasonable certainty. The facts
14 and circumstances should be considered in light of
15 ordinary experience and common sense.

16 The existence of a fact cannot be based upon
17 speculation, surmise or conjecture. The law makes
18 absolutely no distinction between the weight or value to
19 be given to either direct or circumstantial evidence,
20 nor is a greater degree of certainty required of
21 circumstantial evidence than of direct evidence.

22 You should weigh all of the evidence in the case.
23 If, after weighing all of the evidence, you are not
24 convinced of the guilt of the Defendant beyond a
25 reasonable doubt, you must find the Defendant not

1 guilty.

2 In order to establish criminal liability, criminal
3 intent is required. For example, the mental state
4 required to be proven by the State for a particular
5 crime might be purpose, intent or knowledge. Criminal
6 intent must be proven by the State beyond a reasonable
7 doubt. Criminal intent is always a matter that must be
8 determined by the Jury from the circumstances
9 surrounding the situation.

10 There is no way to prove intent to a mathematical
11 certainty. There is no way that medical science can
12 dissect a person's brain and determine what the person
13 had in mind. So the law says that criminal intent may
14 be inferred from the circumstances shown to have
15 existed. This is how a determination of whether or not
16 the element requiring intent was present. It is not
17 necessary to establish intent by direct or positive
18 evidence, but intent may be established by inference in
19 the same manner and way as other facts by taking into
20 consideration the acts of the parties and all the facts
21 and circumstances of the case. Criminal intent is a
22 mental state, a conscious wrongdoing. It is up to you
23 to determine what the Defendant intended to do based on
24 the circumstances that are shown to have existed.

25 Criminal intent is a state of mind that operates

1 jointly with act or omission or commission of a crime.
2 Criminal intent is a mental state. Criminal liability
3 is normally based upon the concurrence of two factors:
4 An evil meaning mind and an evil doing hand. A person
5 who causes a particular result is said to act
6 purposefully if he consciously desires that result,
7 whatever the likelihood of that result happened from his
8 conduct.

9 A person is said to act knowingly if he is aware
10 that result is particularly certain to follow from his
11 conduct, whatever his desire may be as to that result.

12 Suspicion, however strong, is not enough to sustain
13 a conviction. The evidence presented by the State must
14 be substantial evidence that tends to prove the guilt of
15 the Defendant beyond a reasonable doubt.

16 Now, there are two Indictments in this case.
17 Indictment Number 2013-GS-37-00184 charges the
18 Defendant, Dan Lavert Temple, with the possession with
19 the intent to distribute crack cocaine, and Indictment
20 Number 2013-GS-37-185 charges the Defendant with
21 possession of Xanax, both pursuant to the law of South
22 Carolina.

23 I charge you that the fact that the Defendant was
24 arrested, charged, and indicted in this case is not
25 evidence in this case and cannot be considered by you as

1 evidence of guilt in this case, nor does it create any
2 presumption or inference of guilt. An Indictment is
3 simply a formal and written instrument which contains
4 the charges made against the Defendant. It is the
5 formal document by which a case is brought into court.

6 Now, mere presence at the scene is not sufficient
7 to prove someone guilty of a crime. A Defendant's
8 presence where a crime is being committed or mere
9 association with a person who commits a crime does not
10 make a Defendant an accomplice or an aider and abettor
11 to a person committing a crime.

12 The burden is upon the State to prove every element
13 of the crime charged. If you find, after reviewing all
14 the evidence, that the State has proved that the
15 Defendant was only present at the scene of the crime,
16 and they have not proved beyond a reasonable doubt any
17 other participation in the crime, then you must find the
18 Defendant not guilty. The law is that proof of being at
19 the scene of the crime is not sufficient to find someone
20 guilty.

21 Now, the Defendant is charged with possession with
22 intent to distribute crack cocaine. The State must
23 prove beyond a reasonable doubt that the Defendant
24 possessed crack cocaine with the intent to distribute
25 it.

1 To prove possession the State must prove beyond a
2 reasonable doubt that the Defendant had both the power
3 and the intent to control the disposition or use of the
4 crack cocaine. Possession may be either actual or
5 constructive. Actual possession means that the crack
6 cocaine was in the actual physical custody of the
7 Defendant. Constructive possession means that the
8 Defendant had dominion and control or the right to
9 exercise dominion and control over either the crack
10 cocaine itself or the property on which the crack
11 cocaine was found.

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

24 The State must also prove beyond a reasonable doubt
25 that the Defendant intended to distribute the crack

1 cocaine. Distribute means to deliver, other than by
2 administering or dispensing, a drug. It may be shown by
3 acts and conduct of the Defendant in other circumstances
4 which may naturally and reasonably be inferred -- well,
5 which may naturally and reasonably infer intent.

6 In determining whether the Defendant had the intent
7 to distribute crack cocaine, you may consider the
8 circumstances surrounding the Defendant's alleged
9 possession. You may consider the amount of the
10 substance alleged to have been possessed, the manner in
11 which it was allegedly possessed, the place where it was
12 allegedly possessed, and all other factors which you
13 consider to be important.

14 You must find that the Defendant did not intend to
15 have the crack cocaine solely for his own use.
16 Possession of more than one or more grams of crack
17 cocaine creates an inference that the Defendant
18 possessed the crack cocaine with the intent to
19 distribute it. This inference does not relieve the
20 State from proving beyond a reasonable doubt that the
21 Defendant intended to distribute it. It is simply an
22 evidentiary fact to be taken into consideration by you
23 along with all the other evidence in the case and to be
24 given the weight you decide it should have.

25 Under South Carolina we have a principle known as

1 the lesser-included offenses. Some crimes that are of a
2 lesser degree are included in crimes which are of a
3 greater degree. In this particular case there is one
4 lesser-included offense that you are to consider on
5 Indictment Number 2013-GS-37-184, which charges the
6 Defendant, Dan Lavert Temple, with possession with
7 intent to distribute crack cocaine.

8 The offense of possession with intent to distribute
9 includes the lesser-included offense of simple
10 possession of crack cocaine. Therefore, you may
11 consider the lesser-included offense of simple
12 possession of crack cocaine on Indictment Number
13 2013-GS-37-184.

14 If you find that the State has failed to prove
15 beyond a reasonable doubt that the Defendant is guilty
16 of possession with intent to distribute crack cocaine,
17 you may consider whether the State has proved beyond a
18 reasonable doubt the Defendant is guilty of simple
19 possession of crack cocaine.

20 Simple possession does not require an intent to
21 distribute the crack cocaine. If you find that the
22 Defendant is charged with possession of crack cocaine,
23 the State must prove beyond a reasonable doubt that the
24 Defendant knowingly or intelligently possessed the crack
25 cocaine.

1 Knowingly means with knowledge, consciously, and
2 not accidentally. Intentionally means willfully
3 intending the result which actually occurs, not
4 accidentally or involuntarily. Intent may be shown by
5 acts and conduct of the Defendant in other circumstances
6 by which you may naturally and reasonably infer intent.

7 To prove that possession, the State must prove
8 beyond a reasonable doubt that the Defendant had both
9 the power and the intent to control the disposition and
10 the use of the crack cocaine. Possession may be either
11 actual or constructive.

12 Actual possession means that the crack cocaine was
13 in the actual physical possession of the Defendant.
14 Constructive possession means the Defendant had dominion
15 and control over the right to exercise -- or the right
16 to exercise dominion and control over either the crack
17 cocaine itself or the property on which the crack
18 cocaine was found. Two or more persons may have joint
19 possession of a drug.

20 Indictment Number 2013-GS-37-185 charges the
21 Defendant, Dan Lavert Temple, with possession of Xanax.
22 To prove possession the State must prove beyond a
23 reasonable doubt that the Defendant had both the power
24 and intent to control the disposition or use of the
25 Xanax. Possession may be actual or constructive.

1 Actual possession, as I've said, means that the Xanax
2 was in the actual physical custody of the Defendant, or
3 constructive possession means that the Defendant had
4 dominion and control or the right to exercise dominion
5 and control over either the Xanax itself or the property
6 on which the Xanax was found.

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

19 Now, Mr. Foreman, ladies and gentlemen of the Jury,
20 if you have a reasonable doubt of the Defendant's guilt
21 after considering all of the evidence on either
22 Indictment, then you must find the Defendant not guilty
23 on that Indictment. On the other hand, if you have no
24 reasonable doubt of the Defendant's guilt after
25 considering all of the evidence on either or both of the

1 Indictments, then you must -- excuse me -- if you have a
2 reasonable doubt as to the Defendant's guilt after
3 considering all of the evidence on either Indictment,
4 then you must find the Defendant not guilty on that
5 Indictment.

6 On the other hand, if you have no reasonable doubt
7 of the Defendant's guilt after considering all of the
8 evidence on either or both of the Indictments, then you
9 must find the Defendant guilty on that or both
10 Indictments.

11 Now, Mr. Foreman, ladies and gentlemen of the Jury,
12 you have been selected as fair and impartial Jurors
13 sworn to impartially try and determine the facts of this
14 case, and when you comply with your oath to do so, then
15 no one will have the right to criticize your verdict and
16 you will have fully discharged your duties as Jurors.

17 You should not be influenced by opinions or
18 expressions of opinions you may have heard on the
19 outside, but you are to decide this case according to
20 the testimony that you have heard from the lips of the
21 sworn Witnesses along with evidence which may have been
22 introduced.

23 As I said earlier, you are the judges of the facts
24 in this case and you are to determine only if the
25 Defendant is guilty or not guilty of the Indictments

1 based on the testimony and evidence presented at the
2 trial, after applying the law as I give it to you.

3 If from the evidence you have a reasonable doubt as
4 to whether or not the Defendant is guilty, it is your
5 duty to acquit him and write the words "not guilty" as
6 to that charge. On the other hand, you took an oath,
7 and you swore to try this case based only and solely on
8 the testimony and evidence and the law presented to you
9 in the case.

10 It is your duty to lay aside all bias, prejudice,
11 or sympathy you may have in reaching your verdict. You
12 have no friends to reward or enemies to punish in this
13 case. I might note that the word "verdict" is taken
14 from the Latin term "*veredicto*," which means to speak
15 the truth. Abide by your oath and return a verdict
16 which speaks the truth.

17 Mr. Foreman, I have prepared a verdict form for you
18 to use in your deliberations. Now, again, whatever
19 verdict you reach as to each of these charges must be
20 unanimous. That means, of course, all 12 members of the
21 Jury must agree to it. And the verdict form provides
22 first with Indictment number 2013-GS-37-184, possession
23 with intent to distribute crack cocaine, and it provides
24 on that Indictment: We, the Jury, unanimously find on
25 Indictment Number 2013-GS-37-184 that the Defendant, Dan

1 Lavert Temple, is guilty of possession with intent to
2 distribute crack cocaine or guilty of the
3 lesser-included offense of possession of crack cocaine
4 or not guilty. One of those verdicts, you must have one
5 of those verdicts, but it must be a unanimous verdict as
6 to all 12 members of the Jury.

7 And on the second page, Indictment Number
8 2013-GS-37-184, possession of Xanax. Again: We, the
9 Jury, unanimously find on Indictment Number
10 2013-GS-37-185 that the Defendant, Dan Lavert Temple, is
11 guilty of possession of Xanax, or not guilty. Whichever
12 verdict you have on that Indictment would have to be
13 unanimous.

14 Once the verdict form is complete, you would then
15 sign on the line above your name, knock on the door, and
16 we will then receive your verdict at that time. I'm
17 gonna ask you to give the verdict form back to the
18 Bailiff and also to retire to the Jury room, but do not
19 begin your deliberations until I send the verdict form
20 and all of the exhibits that have been introduced in
21 this case in to you. The Bailiff will deliver them to
22 you. Once you receive the verdict form and the
23 exhibits, then begin your deliberations, and once you
24 reach your verdict as to both Indictments, knock on the
25 door and we will receive it.

1 With that I'll ask you to retire to the Jury room.

2 (Whereupon, the Jury left the courtroom at
3 approximately 2:25 p.m.)

4 THE COURT: All right. Any exceptions to any
5 charge or additional requests to charge from the State?

6 MS. SIMMONS: No, Your Honor.

7 THE COURT: From the Defendant?

8 MR. ROSEMOND: Nothing from the Defendant, Your
9 Honor.

10 THE COURT: All right. Very good. Do look at the
11 exhibits and be sure that everything that goes back does
12 and none of the exhibits that are marked Court's
13 Exhibits or not anything that doesn't go back does.

14 (Discussion off the record.)

15 (The Jury started deliberations at approximately
16 2:27 p.m.)

17 THE COURT: All right. It's now in the Jury's
18 hands. But I do want to say thank you for the way you
19 have tried this case. Obviously, it was a very
20 challenging case for both parties, and you represented
21 not only your clients but your positions very well and
22 aggressively, which is the way that attorneys should,
23 but you also did it in a very professional manner and I
24 thank you for that.

25 MS. SIMMONS: Thank you, Judge.

1 **THE COURT:** So we will stand at ease awaiting the
2 Jury's verdict.

3 (A recess was taken from 2:28 p.m. until 4:15 p.m.,
4 at which time there was a question from the Jury.)
5 (Court's Exhibit # 4, note from jury, was marked
6 for identification.)

7 **THE COURT:** I've been provided several questions
8 from the Jury: Where exactly were the Xanax?

9 And there are three more: The letter of the law on
10 PWID.

11 And, number two, the second series of questions:
12 Were they divided between two people if two were charged
13 for the total amount? Example, 1.22 divided by 2 equals
14 .55111. Charge for each?

15 Three: Is Crystal Henry also being charged with
16 PWID?

17 Madam Solicitor? Did you get all that?

18 The letter on the law on PWID, I would just read
19 what the possession with intent to distribute is.

20 Would they divide between two people if two were
21 charged for a total amount? Example 1.22 divided by 2?

22 What does the State say?

23 **MS. SIMMONS:** My position would be if you could
24 re-read the portion of your charge about two people
25 could conjointly own something. I'm paraphrasing.

1 but...

2 THE COURT: That's what your charge would be?

3 MS. SIMMONS: Yes, Your Honor.

4 THE COURT: All right. Now, Mr. Rosemond, what do
5 you say? First about reading of the charge of PWID
6 again.

7 MR. ROSEMOND: Also that you have to read the
8 charge of possession, Your Honor, along with that.

9 THE COURT: I mean, that's a part of it.

10 MR. ROSEMOND: And that hopefully answers their
11 question.

12 THE COURT: All right.

13 MS. SIMMONS: Judge, as to questions I think one
14 and four, we would just have to tell them that all the
15 evidence is already in for their consideration.

16 THE COURT: All right. Now, what did you say?

17 MS. SIMMONS: And I may have written them wrong.

18 But I thought question one was where were the Xanax --

19 THE COURT: Right.

20 MS. SIMMONS: -- and question four was: Is Crystal
21 Henry being charged with PWID?

22 THE COURT: Well, there are four questions and one
23 is unnumbered. What did you say about question three?
24 Or are you using four as: Is Crystal Henry also being
25 charged with PWID?

1 MS. SIMMONS: I think it would be the State's
2 position as to where were the Xanax and is Crystal Henry
3 also being charged with PWID, that you have heard all
4 the evidence in this case and those are questions you
5 cannot answer.

6 MR. ROSEMOND: I think the Jury is entitled to know
7 whether or not she has been charged with PWID and
8 possession of the meth.

9 THE COURT: The Xanax?

10 MR. ROSEMOND: The Xanax, I'm sorry.

11 MS. SIMMONS: And, Judge, she was charged with
12 both.

13 THE COURT: It was a part of the -- I think you
14 argued it as well -- it was part of the testimony.

15 MS. SIMMONS: On that I think you could answer the
16 question because I do believe she testified to that.

17 THE COURT: When you say I could answer the
18 question, what do you mean by that?

19 MS. SIMMONS: I believe Mr. Rosemond is saying the
20 Jury is entitled to know what she's been charged with,
21 and since it's in the Court's record, I think we
22 probably could answer it.

23 THE COURT: Would it be fair to do it as a
24 stipulation by the parties if she has been charged with
25 PWID and possession of Xanax? I mean, has she? That's

1 what I understood from the testimony.

2 MS. SIMMONS: Yes. Can we confirm that from the
3 Clerk's file, Judge? I have her file here.

4 THE COURT: Let's do it by stipulation rather than
5 going back through the record if there's not going to be
6 any controversy about it.

7 MR. ROSEMOND: I think that certainly, Your Honor,
8 if we could agree upon that, I would have no problem by
9 doing it by stipulation rather than going back through
10 the record.

11 THE COURT: Good. Actually, they only asked about
12 PWID.

13 THE CLERK: Yes. She does have, she has been
14 charged with possession with intent to distribute crack
15 cocaine.

16 THE COURT: That's the only thing they asked about,
17 so I would say that by stipulation that Crystal Henry is
18 also being charged with PWID.

19 MS. SIMMONS: Thank you, Judge.

20 THE COURT: All right. What's the other one that
21 you say is the letter of the law? I'll do possession,
22 PWID or possession, which includes the possession
23 charge.

24 Now, and then exactly where the Xanax was, doesn't
25 it show in the photographs?

1 MS. SIMMONS: They would need to refer to the
2 photographs.

3 THE COURT: How about that just for purposes of the
4 testimony to include, and other exhibits or other
5 evidence?

6 MS. SIMMONS: And, Judge, when you recharge the law
7 on PWID, would you include the joint ownership?

8 THE COURT: Certainly. That's part of the charge.

9 MS. SIMMONS: Thank you.

10 THE COURT: All right. Now, what do I do with
11 would they divide between two people if two were charged
12 with the total amount, an example 1.22 divided by 2 is
13 1.5511.

14 MS. SIMMONS: I think the answer to that is the
15 joint ownership charge.

16 THE COURT: Let me see what we have. I do have as
17 part of the PWID charge. Let me just limit it to that.
18 I charged the complete PWID charge as I did the first
19 time and not get into the division. Because actually,
20 if I remember the testimony, the testimony was a total
21 of 1.22. But, as Mr. Rosemond pointed out, the crack
22 rock on the bedside table was point 02 -- or point 1,
23 point 12, which left point 12, and then which left then
24 from 1.22, it left 1.10.

25 MS. SIMMONS: Yes.

1 THE COURT: So really, I think, that -- again, I
2 think that would be covered by the charge when you've
3 got the possession, it can be joint possession.

4 MS. SIMMONS: Thank you, Judge.

5 THE COURT: Anything else?

6 MR. ROSEMOND: Nothing from the Defense.

7 THE COURT: All right. Ask the Jury to join us,
8 please.

9 (The Jury entered the courtroom at 4:35 p.m.)

10 THE COURT: All right. Mr. Foreman, ladies and
11 gentlemen of the Jury, I've been requested to, or been
12 provided with four questions.

13 One is unnumbered: Where exactly were the Xanax?

14 And then three numbered. Letter of the law on
15 PWID, one; two, would they divide it between two people
16 if two were charged with total amount; for example, 1.22
17 divided by 2 equals 1.5111. Charge for each?

18 And, three, is Crystal Henry also being charged
19 with PWID?

20 Let me take them in reverse order or at least
21 starting at the last question.

22 Is Crystal Henry also being charged with PWID?

23 It's been stipulated by the parties because the record
24 would so reflect that the individual, Crystal Henry, is
25 also being charged in an Indictment with PWID.

1 Now, as far as the question about where exactly
2 were the Xanax, all of that was addressed in the
3 testimony, but I think you will also find them in the
4 exhibits or photographs. So we can't reopen the case
5 for further testimony or evidence, but you can rely on
6 what your recollection of the testimony was as well as
7 the exhibits, so you need to look at your exhibits on
8 that.

9 And, finally, as far as the charge on the law, PWID
10 I think will answer both your questions about one and
11 two, meaning the letter of the law on PWID, as well as
12 would they divide it between two people if two were
13 charged with the total amount, example, 1.22 divided by
14 2 equals 1.5111 charged to each.

15 So I'm gonna read you now the charge on the law as
16 it relates to possession with intent to distribute,
17 which is the Indictment Number 2013-GS-37-184 (reading):

18 The Defendant is charged with possession with
19 intent to distribute crack cocaine. The State must
20 prove beyond a reasonable doubt that the Defendant
21 possessed crack cocaine with the intent to distribute
22 it.

23 To prove possession the State must prove beyond a
24 reasonable doubt that the Defendant had both the power
25 and the intent to control the disposition or use of the

1 crack cocaine. Possession may be either actual or
2 constructive.

3 Actual possession means that the crack cocaine was
4 in the actual physical custody of the Defendant.

5 Constructive possession means that the Defendant had
6 dominion and control or the right to exercise dominion
7 or control over either the crack cocaine itself or the
8 property on which the crack cocaine was found.

9 Mere presence at the scene where the drugs were
10 found is not enough to prove possession.

11 Actual knowledge of the presence of the crack
12 cocaine is strong evidence of the Defendant's intent to
13 control its disposition and use. The Defendant's
14 knowledge in possession may be inferred when a substance
15 is found on a property under the Defendant's control;
16 however, this inference is simply an evidentiary fact to
17 be taken into consideration by you along with the other
18 evidence in the case and to be given the weight you
19 decide to give it. Two or more persons may have joint
20 possession of a drug.

21 The State must also prove beyond a reasonable doubt
22 the Defendant intended to distribute the crack cocaine.
23 Distribute means to deliver, other than by administering
24 or dispensing, a drug.

25 Intent may be shown by acts and conduct of the

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1 Defendant in other circumstances which you may naturally
2 and reasonably infer -- from which you may naturally and
3 reasonably infer intent.

4 In determining whether Defendant had the intent to
5 distribute the crack cocaine, you may consider the
6 circumstances surrounding Defendant's alleged
7 possession. You may consider the amount of the
8 substance alleged to have been possessed, the manner in
9 which it was allegedly possessed, the place where it was
10 allegedly possessed, and other factors which you
11 consider to be important.

12 You must find the Defendant did not intend to have
13 the crack cocaine solely for his own use. Possession of
14 more than one or more grams of crack cocaine creates an
15 inference that the Defendant possessed the crack cocaine
16 with the intent to distribute it. This inference does
17 not relieve the State from proving beyond a reasonable
18 doubt that the Defendant had the intent to distribute
19 it. It is simply an evidentiary fact to be taken into
20 consideration by you along with the other evidence in
21 the case and to be given the weight you decide it should
22 have. (End of reading.)

23 Now, do you need any further instructions as to
24 your questions, Mr. Foreman?

25 THE FOREMAN: No, sir. Other than is it possible

1 to have that in writing to be able to go over it?

2 THE COURT: No, sir. Because the reason I don't
3 give you a printed copy, I want to know what your
4 questions are. Because I can assure you that writings
5 can sometimes be interpreted in more than one way, and
6 unless we have it on the record as to what your question
7 really was and what the answer was given, it could be
8 that we might not get exactly the right answer. Or, at
9 least, and if it's ever subject to review, the reviewing
10 Court wouldn't know what was discussed or at least what
11 the question was. So that would be the only thing, the
12 reason I do not give you the printed copy.

13 Now, I would be glad to read it over and try to be
14 a little more clear about that.

15 THE FOREMAN: Could we hear it again? Because
16 that's a subject of debate.

17 THE COURT: All right. Very well.

18 (The Court and Law Clerk conferred off the record.)

19 THE COURT: He asked for the lesser-included?

20 MR. ROSEMOND: I asked for that earlier, Your
21 Honor.

22 THE COURT: Oh, very good. We'll do that, yes,
23 sir.

24 All right. So I will be giving you not only the
25 PWID but also the lesser-included offenses. I'm sorry.

1 I didn't realize that was part of the question.

2 (Reading):

3 The Defendant is charged with possession with
4 intent to distribute crack cocaine. The State must
5 prove beyond a reasonable doubt that the Defendant
6 possessed crack cocaine with the intent to distribute
7 it. To prove possession the State must prove beyond a
8 reasonable doubt that the Defendant had both the power
9 and the intent to control the disposition or use of the
10 crack cocaine.

11 Possession may be either actual or constructive.
12 Actual possession means that the crack cocaine was in
13 the actual physical custody of the Defendant.
14 Constructive possession means that the Defendant had
15 dominion and control or the right to exercise dominion
16 or control over either the crack cocaine itself or the
17 property on which the crack cocaine was found. Mere
18 presence at the scene where the drugs were found is not
19 enough to prove possession.

20 Actual knowledge of the presence of the crack
21 cocaine is strong evidence of the Defendant's intent to
22 control its disposition and use. The Defendant's
23 knowledge and possession may be inferred when a
24 substance is found on the property under the Defendant's
25 control; however, this inference is simply an

1 evidentiary fact to be taken into consideration by you,
2 along with the other evidence in the case, and to be
3 given the weight you decide it should have.

4 Two or more persons may have joint possession of a
5 drug.

6 The State must also prove beyond a reasonable doubt
7 that the Defendant intended to distribute the crack
8 cocaine. Distribute means to deliver other than by
9 administering or dispensing a drug. Intent may be shown
10 by acts and conduct of the Defendant and other
11 circumstances from which you may naturally and
12 reasonably infer intent.

13 In determining whether the Defendant had the intent
14 to distribute the crack cocaine you may consider the
15 circumstances surrounding the Defendant's alleged
16 possession. You may consider the amount of the
17 substance alleged to have been possessed, the manner in
18 which it was allegedly possessed, the place where it was
19 allegedly possessed, and other factors which you
20 consider to be important. You must find that the
21 Defendant did not intend to have the crack cocaine
22 solely for his own use.

23 Possession of more than one or more grams of crack
24 cocaine creates an inference that the Defendant
25 possessed the crack cocaine with the intent to

1 distribute it. This inference does not relieve the
2 State from proving beyond a reasonable doubt that the
3 Defendant had the intent to distribute it. It is simply
4 an evidentiary fact to be taken into consideration by
5 you along with the other evidence in the case and to be
6 given the weight you decide it should have.

7 Now, under South Carolina law we have a principle
8 known as lesser-included offenses. Some crimes that are
9 of a lesser degree are included in crimes which are of a
10 greater degree. In this particular case there is one
11 lesser-included offense for you to consider on
12 Indictment Number 2013-GS-37-184, which charges Dan
13 Lavert Temple with possession with intent to distribute
14 crack cocaine.

15 The offense of possession with intent to distribute
16 crack cocaine includes the lesser-included offense of
17 simple possession of crack cocaine. Therefore, you may
18 consider the lesser-included offense of simple
19 possession of crack cocaine on Indictment Number
20 2013-GS-37-184.

21 If you find that the State has failed to prove
22 beyond a reasonable doubt that the Defendant is guilty
23 of possession with intent to distribute crack cocaine,
24 you may consider whether the State has proved beyond a
25 reasonable doubt that the Defendant is guilty of simple

1 possession of crack cocaine. Simple possession does not
2 require intent to distribute the crack cocaine. With a
3 charge of possession of crack cocaine, the State must
4 prove beyond a reasonable doubt that the Defendant
5 knowingly or intentionally possessed crack cocaine.
6 Knowingly means with knowledge, consciously, not
7 accidentally. Intentionally means willfully intending
8 the result of which the act occurs, not accidentally or
9 involuntarily. The intent may be shown by acts and
10 conducts of the Defendant and other circumstances from
11 which you may naturally and reasonably infer intent.

12 To prove possession the State must prove beyond a
13 reasonable doubt that the Defendant had both the power
14 and the intent to control the disposition or use of the
15 crack cocaine. Possession may be either actual or
16 constructive.

17 Actual possession means that the crack cocaine was
18 in the actual physical custody of the Defendant.

19 Constructive possession means that the Defendant had
20 dominion and control or the right to exercise dominion
21 and control over either the crack cocaine itself or the
22 property on which the crack cocaine was found.

23 Two or more persons may have joint possession of a
24 drug. (End of Reading.)

25 Is there anything further?

1 THE FOREMAN: No, sir.

2 THE COURT: Very good. If you would please retire
3 to the Jury room and continue your deliberations.

4 I might note the hour is getting close to five. If
5 you should decide that you want to, you can go home
6 tonight and come back in the morning and reconvene.

7 THE FOREMAN: I do believe that's gonna be
8 necessary, yes.

9 THE COURT: All right. I'll tell you what,
10 Mr. Foreman. I'm gonna just ask you to retire to the
11 Jury room and be sure that that is what the Jury would
12 like to do.

13 All right. But again, do not otherwise discuss the
14 case until you come back with your answer. Thank you.

15 (Whereupon, the Jury left the courtroom at
16 approximately 4:50 p.m.)

17 THE COURT: All right. Anything from the
18 Solicitor?

19 MS. SIMMONS: No, Your Honor.

20 THE COURT: I think they're gonna come back and ask
21 to come back in the morning and continue deliberations
22 at that time.

23 Anything from the Defendant?

24 MR. ROSEMOND: No, Your Honor.

25 THE COURT: By the way, let me ask, any exceptions

1 or requests for additional charges from those I gave in
2 response to their questions from the State?

3 MS. SIMMONS: No, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. ROSEMOND: No exceptions, Your Honor.

6 THE COURT: Very good. But I think that's part of,
7 from what his comment was, that's probably what he's
8 gonna want to do.

9 MR. ROSEMOND: I do have an emergency hearing in
10 the morning.

11 THE COURT: Where is it?

12 MR. ROSEMOND: In Pickens at 9:15. It will take 15
13 minutes.

14 THE COURT: Yeah, but you've got to get over there
15 and back.

16 MR. ROSEMOND: If I drive back here from 9:30...

17 THE COURT: You cannot get back here by 9:30.

18 MR. ROSEMOND: No, I can't.

19 THE COURT: Do you want to say 10:30?

20 MR. ROSEMOND: That's fine.

21 THE COURT: And, of course, if you are not back, we
22 won't -- we'll just ask them not to begin their
23 deliberations. We can just gather in the morning like
24 we do until everybody does get together.

25 I'll just ask them to come back at 10:30. I'll

1 tell them I have some other things I need to take up
2 before we start.

3 MS. SIMMONS: Judge, in the event that this becomes
4 lengthy tomorrow, I am scheduled to be with Judge Maddox
5 for a double murder hearing at 1:30. Would you object
6 to Mr. Wagner sitting in my place if things go that
7 long?

8 THE COURT: Does he know about it? I don't have
9 any objection, Mr. Rosemond. Would you?

10 MR. ROSEMOND: No, Your Honor. Although
11 Ms. Simmons is very nice to work with and I would much
12 rather have her here.

13 THE COURT: I'm sure Judge Maddox feels the same
14 way.

15 MS. SIMMONS: I spoke with Mr. Wagner and he said
16 he'll be glad to.

17 THE COURT: Very well.

18 MS. SIMMONS: I apologize, Judge.

19 THE COURT: So what I do when I get the answer,
20 I'll tell them to come back at 10:30 in the morning.

21 And, as I say, Mr. Rosemond, don't worry about,
22 especially -- if you would kind of give us a head's up
23 when you do leave, when you anticipate getting back.

24 MR. ROSEMOND: Certainly, Your Honor.

25 THE COURT: Thank you, sir.

1 All right. See if the Jury is ready to come back.

2 Is the Jury ready?

3 THE BAILIFF: They said they would like to go home
4 and come back.

5 THE COURT: All right. Ask them to come in and
6 I'll give them some instructions and send them home.

7 (The Jury entered the courtroom at approximately
8 4:53 p.m.)

9 THE COURT: All right. Mr. Foreman, ladies and
10 gentlemen of the Jury, I understand you have reached a
11 decision as to what you would like to do. Is it still
12 that you would like to come back in the morning?

13 THE FOREMAN: Yes, sir.

14 THE COURT: Unfortunately, I have some things I
15 have to do, and it'll probably take me till 10:30. So
16 rather than you waiting back there, I'm gonna ask you to
17 come in at 10:30 and we'll start at that time.

18 But again, please do not undertake discussion of
19 the case or permit anybody to discuss the case with you.
20 As you can see, this case is not only important, but it
21 has to be resolved in a proper fashion, but that can
22 only be by those who have heard the testimony and
23 evidence and have had the opportunity to view the
24 exhibits and also listen to the law. Someone who has
25 not been where you are or have been, those who have not

1 had the opportunity to have heard the law and been in
2 that Jury room with you cannot help you, they can only
3 hurt you.

4 So, with that I'll excuse you till 10:30 tomorrow
5 morning.

6 Everyone else remain seated while the Jury retires
7 from the courtroom.

8 (Whereupon, the Jury left the courtroom at
9 approximately 4:55 p.m.)

10 THE COURT: All right. Anything from the State
11 before we recede for the evening?

12 MS. SIMMONS: No, Your Honor.

13 THE COURT: Defense?

14 MR. ROSEMOND: No, Your Honor.

15 THE COURT: We'll reconvene on this case at 10:30,
16 but if you've got some pleas or something, I'll be glad
17 to take those up earlier.

18 MS. SIMMONS: Might I approach on scheduling
19 matters, Your Honor?

20 THE COURT: Certainly.

21 (Discussion off the record.)

22 THE COURT: All right. We'll stand in recess
23 until -- well, when do you want me to be here in the
24 morning?

25 MS. SIMMONS: Would 10:00 suit you?

1 THE COURT: That's fine.

2 (Court adjourned at 5:00 p.m., to resume in this
3 trial at 10:30 a.m. on Thursday, March 21, 2013.)

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2 10:39 a.m.

4 **THE COURT:** All right. Good. Well, let's see if
5 we can't get the Jury started. Let's have some room
6 here at the table.

8 MR. ROSEMOND: We're just going to bring the Jury
9 out and tell them to start deliberating?

11 (Whereupon, the Defendant, Dan Lavert Temple,
12 entered the courtroom at approximately 10:41 a.m.) *

16 Is there anything else before we bring the Jury out
17 and ask them to begin their deliberations?

20 THE COURT: Anything from the Defense?

22 THE COURT: All right, very good.

24 (The Jury entered the courtroom at approximately
25 10:42 a.m.)

1 **THE COURT:** All right. Let the record reflect the
2 Jury is in the Jury box now.

3 Mr. Foreman, ladies and gentlemen of the Jury, we
4 needed to do some other things this morning before we
5 began asking you to continue your deliberations, but now
6 those things have been accomplished, the parties are
7 here, and so I'm going to ask you to retire to the Jury
8 room and continue your deliberations.

9 Is there anything the Court can do for you before
10 you do retire?

11 **THE FOREMAN:** Yes, sir. Could we hear the letter
12 of the law read again?

13 **THE COURT:** Yes, sir, I'd be more than happy to.

14 Now, that's on possession with intent to distribute
15 and the lesser-included offense?

16 **THE FOREMAN:** Yes, sir.

17 **THE COURT:** (Reading): The Defendant is charged
18 with possession with intent to distribute crack cocaine.
19 The State must prove beyond a reasonable doubt that the
20 Defendant possessed crack cocaine with the intent to
21 distribute it.

22 To prove possession the State must prove beyond a
23 reasonable doubt that the Defendant had both the power
24 and the intent to control the disposition or use of the
25 crack cocaine. Possession may be either actual or

1 constructive. Actual possession means that the crack
2 cocaine was in the actual physical custody of the
3 Defendant. Constructive possession means that the
4 Defendant had dominion and control or the right to
5 exercise dominion or control over either the crack
6 cocaine itself or the property on which the crack
7 cocaine was found.

8 Mere presence at the scene where the drugs were
9 found is not enough to prove possession.

10 Actual knowledge of the presence of the crack
11 cocaine is strong evidence of the Defendant's intent to
12 control its disposition or use. The Defendant's
13 knowledge and possession may be inferred when the
14 substance is found on the property under the Defendant's
15 control. However, this inference is simply an
16 evidentiary fact to be taken into consideration by you
17 along with the other evidence in the case, and to be
18 given the weight that you feel it should have.

19 Two or more persons may have joint possession of a
20 drug.

21 The State may also prove beyond a reasonable doubt
22 that the Defendant intended to distribute crack cocaine.
23 Distribute means to deliver, other than by administering
24 or dispensing, a drug.

25 Intent may be shown by the acts and conduct by the

1 Defendant and other circumstances by which you may
2 naturally and reasonably infer intent. In determining
3 whether the Defendant had the intent to distribute crack
4 cocaine, you may consider the circumstances surrounding
5 the Defendant's alleged possession. You may consider
6 the amount of the substance alleged to have been
7 possessed, the manner in which it was allegedly
8 possessed, the place where it was allegedly possessed,
9 and other factors you consider to be important.

10 You must find that the Defendant did not intend to
11 have the crack cocaine solely for his own purpose or
12 use.

13 Possession of more than one or more grams of crack
14 cocaine creates an inference that the Defendant
15 possessed the crack cocaine with the intent to
16 distribute it. This inference does not relieve the
17 State from proving beyond a reasonable doubt that the
18 Defendant had the intent to distribute it. It is simply
19 an evidentiary fact to be taken into consideration by
20 you along with the other evidence in the case and to be
21 given the weight you decide it should have.

22 Now, under South Carolina law we have a principle
23 known as lesser-included offenses. Some crimes that are
24 of a lesser degree are included in crimes which are of a
25 greater degree. In this particular case there is one

1 lesser-included offense for you to consider on
2 Indictment Number 2013-GS-37-184, which charges the
3 Defendant with possession with intent to distribute
4 crack cocaine. The offense of possession with intent to
5 distribute crack cocaine includes the lesser-included
6 offense of simple possession of crack cocaine.
7 Therefore, you may consider the lesser-included offense
8 of simple possession of crack cocaine on Indictment
9 Number 2013-GS-37-184.

10 Now, if you find that the State has failed to prove
11 beyond a reasonable doubt that the Defendant is guilty
12 of possession with intent to distribute crack cocaine,
13 you may consider whether the State has proved beyond a
14 reasonable doubt the Defendant is guilty of simple
15 possession of crack cocaine. Simple possession does not
16 require an intent to distribute the crack cocaine.

17 One charged with possession of crack cocaine -- for
18 one to be charged with the simple possession of crack
19 cocaine, the State must prove beyond a reasonable doubt
20 that the Defendant knowingly or intentionally possessed
21 crack cocaine. Knowingly means with knowledge,
22 consciously, not accidentally. Intentionally means
23 willfully, intending the result which actually occurred,
24 not accidentally or involuntarily. Intent may be shown
25 by acts and conduct of the Defendant in other

1 circumstances from which you may naturally and
2 reasonably infer intent.

3 To prove possession the State must prove beyond a
4 reasonable doubt the Defendant had both the power and
5 the intent to control the disposition or use of the
6 crack cocaine. Possession may be actual or
7 constructive. Actual possession means that the crack
8 cocaine was in the actual physical custody of the
9 Defendant. Constructive possession means that the
10 Defendant had dominion or control or the right to
11 exercise dominion and control over either the crack
12 cocaine itself or the property on which the crack
13 cocaine was found.

14 Two or more persons may have joint possession of a
15 drug. (End of reading.)

16 Is there anything else that the Court may do?

17 **THE FOREMAN:** No, thank you.

18 **THE COURT:** All right. Very good. Please retire,
19 and once you reach a verdict, knock on the door and
20 we'll receive it.

21 Everyone else remain seated while the Jury retires
22 from the courtroom.

23 (Whereupon, the Jury left the courtroom at
24 approximately 10:50 a.m.),

25 **THE COURT:** All right. Any exceptions or requests

1 from the State?

2 MS. SIMMONS: No, Your Honor.

3 THE COURT: From the Defendant?

4 MR. ROSEMOND: None from the Defense, Your Honor.

5 THE COURT: All right. We'll stand at ease
6 awaiting a verdict in this case.

7 (Whereupon, the parties recessed in the trial of
8 this case and considered other matters until
9 approximately 12:15 p.m. when a verdict was reached
10 by the Jury, after which the following occurred.)

11 Verdict of the Jury:

12 THE COURT: We have a verdict. All right. It's my
13 understanding that the Jury in the case of the State v.
14 Dan Lavert Temple has reached a verdict.

15 Is there anything from the State before we bring
16 the Jury back?

17 MS. SIMMONS: No, Your Honor.

18 THE COURT: From the Defense?

19 MR. ROSEMOND: No, Your Honor.

20 THE COURT: All right. Very good. Ask the Jury to
21 join us, please.

22 (The Jury entered the courtroom at approximately
23 12:20 p.m.)

24 THE COURT: All right, Mr. Foreman, ladies and
25 gentlemen of the Jury, I understand the Jury has reached

1 a verdict?

2 THE FOREMAN: Yes.

3 THE COURT: If you would please hand it up to the
4 Bailiff.

5 THE FOREMAN: (Complies.)

6 THE COURT: Madam Clerk, would you publish the
7 verdict.

8 THE CLERK: In the matter of the State of South
9 Carolina versus Dan Lavert Temple on Indictment Number
10 2013-GS-37-184, possession with intent to distribute
11 crack cocaine, we, the Jury, unanimously find on
12 Indictment Number 2013-GS-37-184 that the Defendant, Dan
13 Lavert Temple, is guilty of the lesser-included offense
14 of possession of crack cocaine.

15 On Indictment Number 2013-GS-37-185, possession of
16 Xanax, we, the Jury, unanimously find on Indictment
17 Number 2013-GS-37-185 that the Defendant, Dan Lavert
18 Temple, is guilty of possession of Xanax.

19 Ladies and gentlemen of the Jury, if this was your
20 verdict and remains your verdict, please indicate so by
21 raising your right hand.

22 (All members of the Jury raised their right hands.)

23 THE CLERK: Let the record reflect that all members
24 of the Jury have raised their right hands.

25 THE COURT: Very good. Mr. Foreman, ladies and

1 gentlemen of the Jury --

2 Oh, excuse me. Is there anything from the State
3 before we dismiss the Jury?

4 M S .S I M M O N S: So; Your Honor.

5 T H E C O U R T: From the Defense?

6 M R .R O S E M O N N D,: Your Honor.

7 T H E C O U R T: All right. As I was gonna say, I am
8 never interested, or the Court is never interested in a
9 verdict, but only how that verdict is reached; and in
10 this case I am satisfied that each of you gave -- well,
11 I noticed, even though it looks like I'm doing
12 everything else up here except paying attention, I
13 noticed that all of you paid very careful and close
14 attention to not only the testimony but the evidence and
15 the exhibits that were introduced as well as the
16 arguments by Counsel and particularly on the charge on
17 the law you were very careful and you wanted to be sure
18 that you had that law, and I think you were read it
19 three times. So you took a very conscientious approach
20 to your duties here, and having done so and reached a
21 verdict that was in accordance with your conscience and
22 your finding of the facts, I am satisfied that the both
23 the State and the Defendant got a fair and impartial
24 trial, and I thank you for your service.

25 Now, this will conclude your service. I'm sure you

1 had some other places you would rather be this week.
2 This is, what, the fourth day I think you have been in
3 court. So the fact is that without citizen
4 participation, we would not have the system of justice
that we have, and thank you for it.

6 And not to put too much of an emphasis on it, but
7 it is that important, that, for example, the Prime
8 Minister of Great Britain during the Second World War,
9 Winston Churchill, once said no greater service can a
10 citizen perform in peacetime than that as a Juror,
11 because without citizens, as I say, participating as
12 Jurors our system would not function and be what it is
13 today, and I thank you for it.

14 I wish there was something more I could tell you or
15 provide for you; but if you remember when I qualified
the Jury Panel on Monday said that -- asked if any
17 had served on the Jury in the last three years. At
18 least you won't have to be called for another three
19 years. (Laughter.)

20 But I do hope your service has not been without
21 some benefit because the County of Oconee and the State
22 of South Carolina Judicial System is in your debt and I
23 thank you.

24 Madam Clerk, do you have anything for the Jury
25 before we dismiss them?

1 **THE CLERK:** Yes, sir. I will be submitting your
2 pay statements to our Finance Department and a statement
3 of your service will be coming with your checks. If
4 your employer needs something before you receive your
5 check, if you will just have them call the Clerk's
6 Office and ask for me, my name is Lisa Burton, and I
7 would be more than happy to provide them anything they
8 may need.

9 **THE COURT:** All right. With that you will be
10 excused. And again, I do thank you very much. And I
11 hope -- this is the first day of spring, but you
12 wouldn't know it, but I do hope you have a wonderful
13 weekend.

14 Everyone else remain seated while the Jury retires
15 from the courtroom.

16 (Whereupon, the Jury left the courtroom at
17 approximately 12:25 p.m.)

18 **THE COURT:** All right. Is the State ready?

19 **MS. SIMMONS:** Yes, Your Honor.

20 **THE COURT:** Wait a minute. Get the Foreman,
21 please.

22 (The Foreman returned to the courtroom).

23 **THE COURT:** Mr. Miller, I've just got one more
24 thing. I need to conform the Verdict and the
25 Indictment.

1 (Off-the-record discussion between the Court and
2 the Foreman of the Jury, after which the Foreman
3 was excused.)

4 (Whereupon, several Jurors entered the courtroom to
5 observe the sentencing of the Defendant at
6 approximately 12:27 p.m.)

7 THE COURT: Yes, ma'am. The State is ready to
8 proceed?

9 MS. SIMMONS: Yes, Your Honor.

10 THE COURT: Defense?

11 MR. ROSEMOND: Yes, Your Honor.

12 THE COURT: All right. Have the Defendant come
13 around.

14 Yes, ma'am.

15 Sentencing of the Defendant:

16 MS. SIMMONS: Judge, for the record, and I do have
17 true copies for the Court as far as for sentencing
18 purposes, the Defendant does have prior convictions for
19 distribution of crack cocaine, second offense;
20 distribution in proximity of a school, distribution in
21 proximity of a school, distribution of crack cocaine,
22 distribution, conspiracy to distribute crack cocaine,
23 conspiracy to distribute crack cocaine, and a Georgia
24 conviction for conspiracy to violate the Controlled
25 Substances Act. These have been provided in discovery,

1 Your Honor.

2 And I bring the Court's attention to *Robinson v.*
3 *State*, which is 387 S.C. 568, which noted that signing a
4 plea sheet as second offense puts you on notice for a
5 third offense, and the sentencing sheets from Ocone he
6 signed as second offenses.

7 THE COURT: Which puts you on notice for a third?

8 MS. SIMMONS: Yes, Your Honor. And I'd be happy to
9 give you his entire prior record at the appropriate
10 time.

11 Ms. Newton asked me to let you know that he is on
12 probation.

13 Judge, in 1989 he was convicted in Georgia of theft
14 and conspiracy to violate the Controlled Substance Act;
15 in 1991, criminal conspiracy; in 1991, petit larceny and
16 a probation violation; 1992, burglary third and petit
17 larceny; 1992, petit larceny and criminal conspiracy;
18 1996, five counts of distribution of crack or crack in
19 proximity of a school. He received a seven-year
20 sentence.

21 In 1997 he received a seven-year sentence for
22 conspiracy. In 2004 he went to the Department of
23 Corrections for 11 years for voluntary manslaughter.
24 And in 2011, driving under suspension.

25 Judge, based upon his extensive prior history, he

1 has been in the Department of Corrections most of his
2 adult life, I would ask that you impose the maximum
3 sentence on both counts and run it consecutive. He has
4 been a constant problem in our community.

5 THE COURT: All right. As I understand it, he's on
6 probation as well?

7 PROBATION OFFICER GINGER NEWTON: Yes, sir.

8 THE COURT: What's the probationary sentence?

9 PROBATION OFFICER GINGER NEWTON: He was -- this
10 was a case from back in 1997. It was distribution of
11 crack cocaine within proximity of a school. He was
12 sentenced by Judge Harwell on March 20, 1997. He got 12
13 years on the service of seven years with five years'
14 probation.

15 THE COURT: Do that one again for me.

16 PROBATION OFFICER GINGER NEWTON: He got 12 years
17 on the service of seven years with five years'
18 probation. And I think this case somehow got wrapped up
19 in when he went in for that manslaughter charge, so this
20 case didn't start until he got out on community
21 supervision.

22 THE COURT: In other words, it was tolled. So
23 again, I'm sorry, I guess I don't have the sheet before
24 me.

25 PROBATION OFFICER GINGER NEWTON: (Hanging.)

1 THE COURT: Thank you. All right. So it was 12
2 years, service of seven years, and five years'
3 probation?

4 PROBATION OFFICER GINGER NEWTON: Yes, sir.

5 THE COURT: Now, did he serve his seven years?

6 PROBATION OFFICER GINGER NEWTON: Yes, sir. I
7 believe it was included in --

8 THE COURT: So he has five years left on this
9 sentence?

10 PROBATION OFFICER GINGER NEWTON: Yes, sir.

11 (The Defendant conferred with Counsel off the
12 record.)

13 THE COURT: All right. As I understand it,
14 possession of -- excuse me -- possession of crack, third
15 offense, would be what?

16 MS. SIMMONS: Up to ten years, Your Honor, and
17 \$12,500.

18 THE COURT: And how about possession of Xanax?

19 MS. SIMMONS: Second offense, one year and \$2,000.

20 THE COURT: That would be a second offense?

21 MS. SIMMONS: On Xanax it tops out as a second
22 offense.

23 THE COURT: Oh, it tops out, okay.

24 PROBATION OFFICER GINGER NEWTON: Yes, sir.

25 THE COURT: One and two?

1 MS. SIMMONS: Pardon?

2 THE COURT: I said one year and \$2,000?

3 MS. SIMMONS: Yes, Judge.

4 THE COURT: So, if he should be sentenced
5 consecutively, he could be sentenced to ten years on the
6 possession of crack, one year on the possession of
7 Xanax, and the remaining five years on the probation
8 violation, and fines of \$14,500?

9 MS. SIMMONS: Yes, Your Honor. And we would
10 respectfully request that you consider a consecutive
11 sentence.

12 THE COURT: All right. Anything else from the
13 State?

14 MS. SIMMONS: No, Your Honor.

15 THE COURT: All right. Mr. Rosemond, what do you
16 have to say on behalf of Mr. Temple?

17 MR. ROSEMOND: Your Honor, certainly in
18 representing Mr. Temple, I would ask that you not give
19 him the maximum sentence in this particular case.
20 Certainly, Your Honor, I would ask that you deviate
21 downward from the max that you can give him. Certainly,
22 I think for a possession charge of this magnitude, that
23 a sentence of five years would be certainly appropriate
24 for Mr. Temple.

25 He's 42 years of age. He has a son who's 15. As

1 you see throughout this court trial today, his family
2 has been with him all four days. Certainly, giving him
3 an opportunity to come back to society and certainly be
4 a good product in society, I think that's a quality that
5 we should shoot for in every case.

6 Ultimately I would -- I know Mr. Temple wants to
7 speak to you, and certainly I'm gonna give him that
8 opportunity in a second. But certainly I would ask that
9 you not give him the max on this particular case. He
10 served seven years out of that 12, and he does have five
11 years left on probation. And I would ask that you
12 certainly --

13 **THE COURT:** The 12 that he got was for what,
14 distribution of crack cocaine within proximity of a
15 school?

16 **MS. SIMMONS:** Distribution of crack cocaine,
17 second, and distribution of crack cocaine proximity.

18 **MR. ROSEMOND:** He did seven years on that. And
19 certainly I ask you not to run that consecutively and
20 certainly run all those sentences concurrently and allow
21 Mr. Temple to serve his time that way.

22 **THE COURT:** All right. Does anybody else want to
23 speak on behalf of Mr. Temple?

24 I do want to hear you, Mr. Temple, no question
25 about that.

1 But does anybody else want to speak on behalf of
2 Mr. Temple?

3 (A woman stands.)

4 THE COURT: If you would come forward, please,
5 ma'am.

6 MS. ANDREANNA TEMPLE: I'm Andreanna Temple, and I
7 know if you just give him five years, he will do better.
8 He's not a bad person.

9 THE COURT: I understand. Thank you, ma'am.

10 MR. ROSEMOND: Your Honor, certainly Mr. Temple was
11 facing a sentence of 30 years.

12 THE COURT: That's what I was curious about. The
13 Jury obviously gave him the benefit of the doubt and
14 they found him guilty of possession of the crack but
15 gave him the benefit that rather than what would have
16 been a 30-year sentence down to a ten-year. All right.

17 MR. ROSEMOND: That concludes any comments that I
18 have, Your Honor.

19 THE COURT: All right.

20 THE DEFENDANT: Your Honor, I just want to say that
21 the State indicted me for a second offense of possession
22 of a controlled substance. I never had no pill charge,
23 so she indicted me for something, a charge I never had
24 before. As a second time offender, I pled guilty in
25 1997 to a second offense from Georgia but Georgia was

1 for another non-controlled substance, not a scheduled
2 controlled substance. So, therefore, she misapplied
3 that Statute to my case here.

4 But I went before you in I think it was 2001 on a
5 PCR about this same matter, and I still have the
6 transcript based on this. They keep sentencing me for
7 an out-of-state conviction. South Carolina is supposed
8 to be my second offense, but they're misapplying it.
9 They're misapplying it, Your Honor. And they have it as
10 a third-time offense, which I ain't never had but a
11 first-time offense.

12 But if you look at my rap sheet, if you look at the
13 Georgia record, and you tell the Solicitor, they'll tell
14 you it was a non-controlled substance. If you look at
15 3-33-375 (phonetic), the Statute of South Carolina law
16 says that a non-controlled substance is not a scheduled
17 controlled substance. So, therefore, they used that
18 Statute, they applied it wrong in my case.

19 So what the State is doing, Your Honor, she's being
20 vindictive in trying to sentence me like this. See,
21 that I never had a possession of a controlled substance
22 charge, period, on my record. So that's what I was
23 telling Mr. Delane when he gave me these Indictments, I
24 told him that I have never been convicted of no pill
25 charge. So how could the Grand Jury indict me for

1 possession of a controlled substance and I never had
2 this charge? And one more thing.

3 THE COURT: Certainly.

4 THE DEFENDANT: Okay. Now, the Jury found me
5 guilty under Section A, 375. Now, 375 A says, that
6 Section says first offense of three years; second
7 offense, five; third, ten. But in my case they
8 convicted me for possession. I never had a possession
9 charge. So how can she take the possession charge and
10 enhance that and make it greater when it falls under
11 Section A and not under B? That's my problem I have
12 with this, Your Honor.

13 Do you understand what I'm saying?

14 THE COURT: I understand perfectly what you are
15 saying.

16 Now, if you would, what was his record? And again,
17 the South Carolina record.

18 MS. SIMMONS: The South Carolina record? Judge,
19 1991, criminal conspiracy --

20 THE COURT: I'm talking about drug offenses.

21 MS. SIMMONS: Drugs. In 1996 he pled guilty on
22 five drug convictions that were either distribution of
23 crack or distribution in proximity and a conspiracy
24 charge in 1997.

25 THE COURT: Five drug offenses involving crack as

1 far as the possession being the charge?

2 MS. SIMMONS: Five charges involving distribution
3 or in proximity and a conspiracy to distribute.

4 THE COURT: And any other?

5 MS. SIMMONS: I'm sorry, Judge?

6 THE COURT: Any other drug offenses?

7 MS. SIMMONS: Not in South Carolina. There is the
8 Georgia offense that has been passed up to the Court.

9 THE COURT: And anything else?

10 MR. ROSEMOND: Nothing from the Defense, Your
11 Honor.

12 (Whereupon, the Defendant conferred with Counsel
13 off the record.)

14 Sentence of the Court/Indictments and Probation
15 Violation:

16 THE COURT: What was the Indictment on the
17 probation?

18 PROBATION OFFICER GINGER NEWTON: 1997-GS-37-00089.

19 (Whereupon, the Defendant conferred with Counsel
20 off the record.)

21 THE COURT: All right. Anything else from the
22 State?

23 MS. SIMMONS: No, Your Honor.

24 THE COURT: From the Defense?

25 MR. ROSEMOND: I just want to ask for that credit

1 for 236 days. He's been in jail since July 27th of
2 2012, Your Honor.

3 THE COURT: Very good.

4 All right. I do find that there has been
5 substantial willful violations of the probationary
6 sentence by reason of the sentence or the verdicts in
7 this case as to two criminal convictions subject to the
8 probation.

9 All right. On Indictment Number -- so, therefore,
10 I do revoke the balance of the five-year sentence, or
11 the 12-year sentence, the balance being five years.

12 On Indictment Number 2013-GS-37-184, it's the
13 sentence of the Court that the Defendant, Dan Lavert
14 Temple, be committed to the State Department of
15 Corrections for a term of ten years, plus pay the costs
16 and assessments as applicable.

17 Indictment Number 2013-GS-37-185, it's the sentence
18 of the Court that the Defendant, Dan Lavert Temple, be
19 committed to the State Department of Corrections for one
20 year, plus pay the costs and assessments as applicable.

21 The Defendant to undergo drug and alcohol testing
22 and treatment and substance abuse counseling as directed
23 while incarcerated.

24 All sentences to run consecutive to each other and
25 the Defendant be given credit for time served.

1 **PROBATION OFFICER GINGER NEWTON:** Does that mean,
2 Your Honor, that you want the probation to run
3 consecutive also?

4 **THE COURT:** As I said, the sentences to run
5 consecutive on 2013-GS-37-184, consecutive to sentences
6 on 2013-GS-37-185 and 1997-GS-37-89.

7 **PROBATION OFFICER GINGER NEWTON:** Yes, sir.

8 **THE COURT:** On Indictment Number 2013-GS-37-185, it
9 is the sentence of the Court the sentence run
10 consecutive on 2013-GS-37-184 and 1997-GS-37-89.

11 **PROBATION OFFICER GINGER NEWTON:** Thank you.

12 **MS. SIMMONS:** Thank you, Your Honor.

13 (Whereupon, the trial in the case of the State of
14 South Carolina v. Dan Lavert Temple was adjourned
15 at approximately 12:50 p.m., after which a luncheon
16 recess was taken and the Court considered other
17 matters, after which the following occurred at
18 approximately 4:35 p.m.)

19 (Whereupon, the Defendant conferred with Counsel
20 off the record.)

21 **THE COURT:** All right. We're back on the case of
22 the State v. Dan Temple, 2013-GS-37-184, on which
23 Indictment he was found guilty by the jury for
24 possession of crack cocaine and sentenced by this Court
25 to ten years, and on Indictment Number 2013-GS-37-185

1 where he was found guilty of possession of Xanax and
2 sentenced to one year, and then violation of a
3 probationary sentence on Indictment Number 1997-GS-37-39
4 where he was sentenced to 12 years suspended upon
5 service of seven years with five years' probation, and
6 on that he was sentenced to five years, the balance of
7 the sentence, the balance of the 12-year sentence after
8 the service of five years.

9 Now, Mr. Temple, you did raise some issues about
10 whether or not these were enhanced offenses?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Let me see if I can go through these
13 just to be sure.

14 All right. The Court has reviewed your prior
15 convictions and I find that here in South Carolina you
16 have indictments from '97, 1997-GS-37-165, and
17 Indictments Number 1997-GS-37-85 and 1997-GS-37-86,
18 1997-GS-37-87, 1997-GS-37-88, and 1997-GS-37-89. You
19 signed sentencing sheets on each of those Indictments on
20 March the 20th, 1997, when you were sentenced by Judge
21 Dix Harwell, the 1997-GS-37-165 being for conspiracy to
22 distribute crack cocaine, you were sentenced to seven
23 years and \$25,000.

24 On 1997-GS-37-85 you were sentenced on that date by
25 Judge Harwell to seven years and \$50,000. And that was

1 to a distribution of crack cocaine, second offense. And
2 you signed the sentencing sheet as such.

3 (Whereupon, the Defendant conferred with Counsel
4 off the record.)

5 THE COURT: And then you signed on Indictment
6 Number 1997-GS-37-86, you were sentenced to distribution
7 of crack cocaine and received a sentence of seven years
8 and \$25,000.

9 And then on 1997-GS-37-87 you were sentenced on
10 distribution of crack cocaine within proximity of a
11 school and received a sentence of 12 years and \$10,000
12 reduced to seven years' active sentence.

13 And then on Indictment Number 1997-GS-37-88 you
14 were sentenced on that date by Justice Harwell to seven
15 years and \$50,000, to receive ATU and to complete your
16 high school education on the Indictment charging
17 distribution of crack, second offense; and you signed
18 the sentence sheet.

19 And then you were sentenced on Indictment Number
20 1997-GS-37-89 on that date to distribution of crack
21 cocaine within proximity of a school, receiving a
22 sentence of 12 years and \$10,000, suspended upon seven
23 years' active sentence and five years' probation, and I
24 think it was that seven years that was the probationary
25 sentence that he also sentenced you to under the

1 sentence in this court today.

2 Without considering the Georgia convictions where
3 you were charged and sentenced under conspiracy to
4 violate the Georgia Controlled Substances Act, I find
5 that that would also be applicable, but it's obvious
6 that this was a third offense. It deals with
7 distribution of crack cocaine, and not only distribution
8 of crack cocaine but distribution of crack cocaine
9 within proximity of a school, which requires a
10 possession of crack cocaine in order to distribute it,
11 so I find that the sentences were appropriate.

12 Anything?

13 MR. ROSEMOND: Judge, for the record, we would just
14 object to the underlying convictions being sufficient to
15 enhance him up to that third offense for the possession
16 with intent to distribute crack and the possession of
17 Xanax.

18 THE COURT: Well, does Mr. Temple challenge whether
19 or not the certified true copy of his signing the
20 sentence sheets on Indictments Number 1997-GS-37-85 were
21 to distribution of crack cocaine, second offense?

22 THE DEFENDANT: Yes. But that was based on, they
23 said the Georgia conviction was the first offense, and
24 the one you refer to is the second offense.

25 THE COURT: It sounds like you had four other South

1 Carolina offenses of the same -- well, do whatever you
2 want to, sir. But I'm just asking. The record reflects
3 that it was a second offense, that you acknowledged the
4 sentence and accepted the sentence on 1997-GS-37-85.
5 You were sentenced by Judge Harwell on March the 20th,
6 1997?

7 THE DEFENDANT: Yes, sir, and I still have the
8 transcript.

9 THE COURT: To one, two, three, four, five, six
10 offenses.

11 THE DEFENDANT: Including the Georgia conviction?

12 THE COURT: No, I'm not asking about the Georgia
13 conviction. I'm asking if you were sentenced by Judge
14 Harwell to seven in South Carolina Indictments. I'll
15 read them out to you again: 97-GS-85, 97-GS-86,
16 97-GS-87 -- and by the way, 37 I should say for the
17 record -- 97-GS-37-85, 97-GS-37-87, 97-GS-37-88,
18 97-GS-37-89 and 97-GS-37-165, and those were all South
19 Carolina Indictments, and that you were sentenced by
20 Judge Harwell on March the 20th, 1997.

21 THE DEFENDANT: Not knowingly and intelligently,
22 though.

23 THE COURT: I didn't ask you about how knowingly
24 and intelligent you were, but I'm just asking: Did you
25 sign the sentencing sheet on those? (No response.)

1 Did you sign the sentencing sheets?

2 THE DEFENDANT: Not knowingly and intelligently I
3 didn't.

4 THE COURT: Well, then you did sign it, though, so
5 you are admitting that you did sign, or the Court finds
6 that you did and it's a certified true copy.

7 Now, on those Indictments, 1997-GS-37-85 was
8 distribution of crack cocaine, second offense; and
9 1997-GS-37-88 was distribution of crack cocaine, second
10 offense. The others did not indicate any prior
11 convictions. And that's the record. None of them
12 referred to the Georgia offense.

13 Motion to be Relieved as Counsel by Mr. Rosemond:

14 THE COURT: Very good. All right. Now, it's my
15 understanding that you have made a complaint about your
16 attorney; is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. And I think, Mr. Rosemond,
19 I understand that this was received after you completed
20 the trial this morning?

21 MR. ROSEMOND: Yes, sir, Your Honor. As soon as I
22 left here this afternoon, I went by my Post Office Box,
23 and in it I found one of those white envelopes from the
24 Office of Disciplinary Counsel dated March 19th
25 containing a handwritten letter by Mr. Temple that was

1 dated 2-14 -- well, February the 4th, 2013, and the
2 Commission on Lawyer Conduct received it on February the
3 8th, 2013, well before we started this particular trial,
4 and certainly my interest becomes adverse at this point.

5 I am appointed to represent Mr. Temple on a litany
6 of other charges that he still has pending in this
7 court. And certainly Dan Temple filed a grievance, and
8 thus I think it would be very difficult to go forward
9 with any representation with this investigation hanging
10 over my head.

11 THE COURT: Well, Mr. Temple, obviously I'm not
12 going to put you in a situation where you might be
13 tempted to say something that would not be in your own
14 interests or could be held against you in a different
15 circumstance or anything of that nature.

16 However, I do note and the record would so reflect
17 that you were indicted for a distribution or rather
18 possession of crack cocaine with intent to distribute as
19 well as possession of Xanax under the two Indictments
20 that you just received your sentence on; that is
21 Indictments Numbers 2013-GS-37-184 and 2013-GS-37-185,
22 respectively; and after really two days of deliberation
23 and two days of trial, the jury acquitted you in essence
24 of the distribution -- rather, the possession of crack
25 with intent to distribute where the maximum sentence

1 would have been -- or the sentence would have been 10 to
2 30 years and a \$50,000 fine, and found you guilty of the
3 lesser-included offense of possession of crack cocaine,
4 and you were found guilty of possession of the Xanax.

5 Without unduly exercising any sort of evaluation of
6 attorneys and trials, I would suggest that you may have
7 been premature in your complaint about your attorney
8 because he gave you an excellent representation. I say
9 that without reservation.

10 All right. Unless there's something else from the
11 State?

12 MR. BLAIR STOUDEMIRE: (Standing in for Ms.
13 Simmons.) Nothing, Your Honor. If Mister, Delane is
14 moving to be relieved, we would have no objection.

15 THE COURT: All right. Without objection from the
16 State, and I trust, Mr. Temple, that would be your
17 request as well, I'm gonna relieve Mr. Rosemond from his
18 responsibility for your representation

19 And request that our Clerk of Court appoint the
20 next appropriate counsel for you. Good luck to you,
21 sir.

22 MR. BLAIR STOUDEMIRE: Thank you, Your Honor.

23 THE DEFENDANT: I appreciate it.

24 MR. ROSEMOND: All right.

25 (Whereupon, the trial in the matter of the State of

1 South Carolina v. Dan Lavert Temple was concluded
2 on Thursday, March 21, 2013, at 5:06 p.m.)

3 ** End of Requested Certified Transcript of Record **
4
5

Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR,
Official Court Reporter for the Tenth Judicial Circuit
of the State of South Carolina, do hereby certify that
the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and the
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Oconee County, South Carolina, on the 18th day, 19th
day, 20th day, and 21st day of March, 2013.

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

September 28, 2013



Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

SEP 29 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAN TEMPLE,

APPELLANT.

APPELLATE CASE NO. 2013-000663

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The Trial Court erred in denying Appellant's motion to suppress the drug evidence seized during the execution of the search warrant where the affidavit for the search warrant was based on information from a confidential informant that he had received drugs from Appellant and where such affidavit contained no information about the reliability of this informant.

STATEMENT OF THE CASE

On January 23, 2013, Appellant Dan Lavert Temple was indicted by the Oconee County Grand Jury for (1) possession of intent to distribute crack cocaine, third offense in violation of S.C. CODE ANN. § 44-53-375; and (2) possession of a controlled substance, second offense, in violation of S.C. CODE ANN. § 44-53-370. R.269.

Appellant was tried before the Honorable Alexander S. Macaulay and a jury on March 18-21, 2013. R. 1. Appellant was represented by R. Delane Rosemond, and the State was represented by Assistant Solicitors Lindsey S. Simmons and Blair S. Stoudemire. Tr. 1.

On March 21, 2013, the jury found Appellant guilty of (1) the lesser included offense of possession of crack cocaine; and (2) possession of a controlled substance. R. 244, ll. 8-18. Judge Macaulay sentenced Appellant to ten years for possession of crack cocaine, third offense and one year for possession of a controlled substance, second offense. Judge Macaulay also sentenced Appellant to five years for a probation violation. The sentences are to run consecutive to each other for a total of sixteen years. R. 255, ll. 4-25.

Appellant timely filed and served a Notice of Appeal on March 23, 2013.

STATEMENT OF FACTS

On July 24, 2012, Officer Tim Hunnicutt of the Seneca Police Department obtained a search warrant to search Room 103 of the Town and Country Motel located at 320 Bypass 123, Seneca, South Carolina. R. 107, l. 14 – 108, l. 20. Officer Hunnicutt testified that he expected to find Appellant at this location. R. 108, l. 24 – 109, l. 1. In his affidavit supporting the search warrant, Officer Hunnicutt averred:

3. That on July 17, 2012 an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of crack cocaine from [Appellant] in the area of the 100 block of Bypass 123 Seneca, SC.
4. That on July 17, 2012 an undercover operative working under the direction of the Seneca Police Department/Oconee Sheriff's Office was distributed a quantity of crack cocaine from [Appellant] in the area of the 100 block of Bypass 123 Seneca, SC.
5. That on July 23, 2012 an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of crack cocaine from [Appellant] in the area of the 1000 block of Bypass 123 Seneca, SC.
6. Within the last 72 hours an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of lortabs from [Appellant] at 318 Bypass 123 in Seneca, SC. [Appellant] was seen walking to and from the Town & County Motel.
7. Within the last 72 hours an undercover operative working under the direction of the Seneca Police Department was given a counterfeit 100 dollar bill by [Appellant] at 318 Bypass 123. He asked the undercover operative to take it to a store and exchange it for real US currency. The undercover operative turned the counterfeit money over to agents. Agents gave the undercover operative 100 dollars in documented funds. The undercover operative met with [Appellant] at the Town & Country Motel and gave [Appellant] the documented funds. [Appellant] was observed by agents exiting and re-entering room 103 at Town & County Motel.

8. Based upon the Undercover Operation on the above listed dates, establishing a continuing criminal enterprise, the affiant believes illegal drugs, proceeds from illegal drug transactions, and drug paraphernalia and counterfeit money will be present at this residence.

R.264 (Court's Ex. 1).

The next day, on July 25, 2012 at approximately eight in the morning, officers executed the search warrant at Room 103 of the Town and Country Motel. R. 35, l. 22 – 111, l. 19; 108, ll. 21-22; 264 [Return to Search Warrant (Court's Ex. 1)]. The officers rammed their way into the motel room and found Appellant lying in bed on the side closest to the door. R. 37, ll. 12-24. The officers yelled at Appellant to put his hands up. R. 38, ll. 106. Officer Mike Teramano then jumped on the bed to secure Appellant. R. 41, ll. 2-25. At that point, Investigator B.J. McClure observed either a purplish or bluish-color prescription bottle fall out of the bed onto the floor closest to the door. R. 38, ll. 5 – 10. Investigator McClure did not see exactly where this pill bottle came from and only remembered that this pill bottle fell from the bed. R. 40, l. 23 – 41, l. 1; 42, ll. 3-7. Officer Hunnicutt also observed this pill bottle on the floor but he too did not see from what direction the bottle came. R. 142, ll. 7-19. It was later determined that this pill bottle contained 1.10 grams of crack cocaine. R. 52, ll. 24-25; 85, ll. 18-22. Officers did not have this bottle examined for fingerprints. R. 68, ll. 18-23.

Officers found a single rock-like substance on the nightstand on the opposite side of the bed where officers saw Appellant. R. 52, ll. 14-21; 55, l. 25 – 131, l. 4; R. 110, ll. 2 -5; 127, ll. 7-10. Officer Hunnicutt also observed two crack pipes on this nightstand, along with ten yellow pills of alprazolam, also known as Xanax. R. 110, ll. 5-6; 128, ll. 7-13; 161, ll. 1 – 18. None of Appellant's personal items were found on the nightstand with the rock-like

substance, crack pipes, and Xanax pills. R. 56, ll. 8-24. The rock-like substance found was determined to be 0.12 grams of crack cocaine. R. 160, ll. 11-16.

Officers found Appellant's girlfriend, Crystal Henry, behind the door to the motel room. R. 42, ll. 18-25. Crystal Henry testified that she had been in a relationship with Appellant and had been with him for a little over a year and a half at the time officers executed the search warrant. R. 60, ll. 7-13. She and Appellant lived together in Room 103 of the Town & Country Motel. R. 60, ll. 14-15. Following the execution of the search warrant, Crystal Henry was also charged with possession with intent to distribute crack cocaine and possession of Xanax. R. 64, l. 25 – 65, l. 3.

On the day officers executed the search warrant, Crystal Henry had been getting high. She testified that a crack pipe found in the room by officers did belong to her. R. 61, ll. 10-18. She further testified that the piece of crack found on the nightstand beside the bed also belonged to her. R. 61, ll. 19-21; 63, ll. 16-19; 67, ll. 2-4; 72, ll. 4-5. She denied that any other drugs found in the room, including the other crack cocaine and Xanax, belonged to her. R. 61, l. 19 – 62, l. 12.

James Willie Walker also testified at trial. He had been a classmate of Appellant and had known him for a long time. R. 181, ll. 8-21. He testified that on July 24, 2012, the night before officers executed the search warrant at Appellant's motel room, Crystal Henry asked him to take her to Pendleton, South Carolina to buy some crack. R. 181, l. 22 – 183, l. 2. Walker drove Crystal Henry and Appellant to Pendleton where Crystal Henry purchased two grams of crack. R. 183, ll. 3-12.

Appellant and Crystal Henry were both charged with possession with intent to distribute crack cocaine and possession of a controlled substance. R. 64, l. 25 – 65, l. 3.

Appellant was convicted by the jury on the lesser included offense of possession of crack cocaine and possession of a controlled substance. Crystal Henry's charges were still pending at the time of Appellant's trial. R. 65, ll. 13 - 18.

ARGUMENT

The Trial Court erred in denying Appellant's motion to suppress the drug evidence seized during the execution of the search warrant where the affidavit for the search warrant was based on information from a confidential informant that he had received drugs from Appellant and where such affidavit contained no information about the reliability of this informant.

During pre-trial motions, defense counsel for Appellant moved to suppress the drugs found in Appellant's motel room where the affidavit in support of the search warrant was not supported by probable cause and lacked any information as to the informant's reliability. R. 10, ll. 7-16; 14, l. 7 - 15, l. 2. The search warrant was based solely upon the alleged receipt of drugs from Appellant to a confidential informant:

3. That on July 17, 2012 an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of crack cocaine from [Appellant] in the area of the 100 block of Bypass 123 Seneca, SC.
4. That on July 17, 2012 an undercover operative working under the direction of the Seneca Police Department/Oconee Sheriff's Office was distributed a quantity of crack cocaine from [Appellant] in the area of the 100 block of Bypass 123 Seneca, SC.
5. That on July 23, 2012 an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of crack cocaine from [Appellant] in the area of the 1000 block of Bypass 123 Seneca, SC.
6. Within the last 72 hours an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of lortabs from [Appellant] at 318 Bypass 123 in Seneca, SC. [Appellant] was seen walking to and from the Town & County Motel.
7. Within the last 72 hours an undercover operative working under the direction of the Seneca Police Department was given a counterfeit 100 dollar bill by [Appellant] at 318 Bypass 123. He asked the undercover operative to take it to a store and exchange it for real US currency. The undercover operative turned the counterfeit money over to agents. Agents gave the undercover operative 100 dollars in documented funds. The undercover operative met with [Appellant]

at the Town & Country Motel and gave [Appellant] the documented funds. [Appellant] was observed by agents exiting and re-entering room 103 at Town & County Motel.

8. Based upon the Undercover Operation on the above listed dates, establishing a continuing criminal enterprise, the affiant believes illegal drugs, proceeds from illegal drug transactions, and drug paraphernalia and counterfeit money will be present at this residence.

R.264 (Court's Ex. 1).

Defense counsel further argued that there was no indication in the search warrant that the informant received drugs from Appellant in a properly conducted controlled buy. R. 16, l. 13 - 17, l. 10. The Trial Court disagreed and denied Appellant's motion to suppress the drug evidence. R. 25, ll. 2-3.

In a case with comparable facts, State v. Philpot, 317 S.C. 458, 454 S.E.2d 905 (Ct. App. 1995) this Court held that a search warrant affidavit was insufficient to establish probable cause for a search of the defendant's residence. In Philpot, an officer of the Pickens County Sheriff's Department signed an affidavit to obtain a search warrant for marijuana and marijuana paraphernalia at the residence of the defendant. The affidavit contained the following statement:

Within the past 72 hours, a confidential informant has seen a quantity of marijuana in the residence to be searched. Also in the past, agents with the Special Operations Div. of the Pickens County Sheriff's Office have received information the [sic] one of the persons who lives at the residence, Jim Philpot, is involved in illicit activity.

317 S.C. at 460, 454 S.E.2d at 906.

Based upon this affidavit, the magistrate issued the search warrant. Officers of the sheriff's department executed the search warrant and seized evidence of marijuana manufacturing and possession. Id.

The defendant moved to suppress the evidence seized during the search because the name of the confidential informant had not been disclosed and the affidavit for the search warrant was

devoid of information as to the informant's reliability. The trial court denied the motion. During cross-examination, the defense counsel asked the officer presenting the affidavit whether he told the magistrate why this informant was dependable and reliable. The officer replied that he had presented the magistrate with a statement from the informant. Defense counsel moved for a production of the statement, and the trial court reviewed the statement and ruled there was nothing in it which would assist the defense and denied the motion to produce. Id. at 460, 454 S.E.2d at 906-07.

On appeal, the defendant asserted that the evidence seized during the execution of the search warrant should have been suppressed because the warrant was not supported by probable cause. More specially, the defendant attacked the failure of the affidavit to address the veracity of the confidential informant. This Court agreed with the defendant's position. Id. at 460, 454 S.E.2d at 907.

This Court first set forth the law regarding the issuance of search warrants by magistrates. "The task of a magistrate when determining whether to issue a warrant is to make a practical, common sense decision as to whether, under the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place. State v. Adolphe, 314 S.C. 89, 441 S.E.2d 832 (Ct. App. 1994). This decision includes consideration of the veracity of the person supplying the information and the basis of his or her knowledge. Id. The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause. Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient. State v. Smith, 301 S.C. 371, 392 S.E.2d 182 (1990). If the affidavit alone is insufficient to establish probable cause, it may be supplemented by sworn oral testimony before the magistrate. State v. Johnson, 302 S.C. 243, 395

S.E.2d 167 (1990) An appellate court reviewing the decision to issue the warrant should decide whether the magistrate had a substantial basis for concluding probable cause existed. Adolphe, 314 S.C. 89, 441 S.E.2d 832." Philpot, 317 S.C. at 461, 454 S.E.2d at 907.

This Court then concluded that the search warrant should not have been issued. The record indicated that the magistrate only had the officer's affidavit and the written statement of the confidential informant before him. This Court found that the affidavit and written statement contained absolutely no showing of the confidential informant's reliability. Furthermore, the officer testified at the pre-trial suppression hearing that the magistrate had no information regarding the reliability of the informant making a remand unnecessary under State v. Johnson. This Court held there was no substantial basis for the magistrate to conclude that probable cause for the search existed. Therefore, the evidence obtained as a result of the search warrant was inadmissible. Philpot, 317 S.C at 461, 454 S.E.2d at 907.

The facts of this case are akin to the facts in the Philpot case. Here, the officer's affidavit was based solely upon information received from an undisclosed confidential informant. The affidavit contained absolutely no information about the reliability of this informant. R.264 (Court's Ex. 1). In addition, Officer Hunnicutt testified that he took the search warrant to Judge Derrick's home in Seneca to have the warrant signed. Officer Hunnicutt did not testify that he provided Judge Derrick with any additional information about the informant other than what was in the affidavit. R. 124, ll. 4-24.

The entire investigation of Appellant and the search warrant ultimately issued stemmed from this unreliable informant. There was no substantial basis for the magistrate in this case to have concluded that probable cause existed. Accordingly, the evidence obtained from Appellant's

motel room during the execution of the search warrant should be suppressed and Appellant's convictions for possession of crack cocaine and a controlled substance reversed.

During the pre-trial hearing, the State relied upon State v. Dupree, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003) in support of its argument that the magistrate had a substantial basis for concluding probable cause existed to issue the search warrant. R. 15, ll 4-17.

In Dupree, the affidavit supporting the search warranted provided: "Within the past (72) hours, a confidential and first time informant of the Richland County Sheriff's Department has purchased crack cocaine from the described location. The informant was searched before and after the purchase and was observed by narcotics agents while making the purchase entering and exiting the location." 354 S.C. at 681, 583 S.E.2d at 439-40. The magistrate issued the search warrant and during the execution of the warrant the officers found crack cocaine. Id. at 681, 583 S.E.2d at 440. Defense counsel moved the trial court to suppress the crack cocaine seized pursuant to the search warrant arguing that the warrant was not supported by probable cause and lacked any indicia of reliability as to the informant's veracity or reliability. The trial court denied the defendant's motion to suppress. Id. at 681-82, 583 S.E.2d at 440.

In affirming the trial court's denial of the motion to suppress, this Court observed that "[a]n informant's controlled buy of drugs can constitute probable cause sufficient for a magistrate to issue a warrant." Id. at 687, 583 S.E.2d at 443. This Court further went on to state: "If the controlled buy was properly conducted, it alone can provide facts sufficient to establish probable cause for a search warrant." Id. at 689, 583 S.E.2d at 444. Based upon the totality of the circumstances, this Court held the affidavit in Dupree provided the magistrate with a substantial basis for finding probable cause to search the mobile home. This Court found that information provided by the confidential informant was corroborated by an independent police investigation where officers had set up a

controlled buy. The affidavit indicated that an officer searched the informant prior to the controlled buy. The officer observed the informant enter and exit the mobile home. The informant was searched again after the buy. These facts constituted sufficient police corroboration of the informant's information based upon the controlled buy, and the controlled buy was evidence of the credibility and trustworthiness of the informant. *Id.* at 690-91, 583 S.E.2d at 444-45. This Court therefore upheld the trial court's denial of the defendant's motion to suppress the crack cocaine and reiterated that "if a controlled buy is properly conducted, the *controlled buy alone* can provide facts sufficient to establish probable cause for a search warrant." *Id.* at 691, 583 S.E.2d at 445 (emphasis in original).

Unlike Dupree, there was no controlled buy in Appellant's case establishing probable cause for the search warrant. There was no indication in the affidavit that the confidential informant was searched prior to and after meeting Appellant. There was no indication in the affidavit that law enforcement observed the informant meeting with Appellant or even observed the informant leaving to meet with Appellant. From the limited information provided in this affidavit, there is no way of knowing whether the confidential informant in fact obtained any drugs from Appellant. The informant could have already been in possession of the drugs when he claimed to law enforcement that he received drugs from Appellant. The affidavit Officer Hunnicutt used to seek the search warrant of Appellant's motel room therefore lacks any indication of the confidential informant's reliability and did not provide the magistrate with a substantial basis for issuing the search warrant of Appellant's motel room.

The State also relied upon State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999) in its argument to the Trial Court during the pre-trial hearing on the motion to suppress. R. 15, ll. 4-17. This case, like Dupree, is also distinguishable from the facts in Appellant's case.

In Bellamy, the police chief of Atlantic Beach requested the assistance of the State Law Enforcement Division ("S.L.E.D.") concerning a break-in at the Atlantic Beach Police Department in which weapons were stolen from the department. The police chief informed S.L.E.D. that an individual named Luther Stanley, who was already in jail on unrelated charges, had information about the missing weapons. 336 S.C. at 141, 519 S.E.2d at 347. A field officer with S.L.E.D. interviewed Stanley, and Stanley stated he had seen the weapons in a particular apartment in Atlantic Beach. Stanley, who had lived at the apartment for days at a time, gave the officer the names of the people who would normally be in the apartment, including the defendant's name. Id.

The officer submitted the following affidavit in support of the search warrant:

At 1420 hours, July 08, 1993, Luthor Spencer Stanley, after being advised of his rights, stated that [during] the early morning hours of July 08, 1993, Stanley observed Lamont Gause fire two shots from a 25 mm pistol, while standing outside of the above described premises. [A]ccording to Stanley, he then observed Gause immediately take the 25 mm pistol inside the premises and left it. Stanley further stated that on July 06, 1993, he observed Lamont Gause take a 38 cal pistol and a 22 cal Derringer into the above described premises. These three weapons are the same [description] as weapons stolen from the Atlantic Beach Police department located in Atlantic Beach, S.C. on or about June 23, 1993. [Stanley] further stated that cocaine is usually kept in above residence, inside the refrigerator or the microwave oven.

Id. at 142, 519 S.E.2d at 348.

The magistrate issued the search warrant and when officers executed the warrant, they found drugs in the apartment and arrested the defendant. The defendant argued the officer's affidavit lacked sufficient probable cause for issuance of the search warrant. The South Carolina Supreme Court disagreed. Id. The Court found that (1) the informant, whose identity was disclosed, was a witness to the events described in the affidavit; (2) the informant described the events with great specificity; and (3) the affidavit was confirmed to the extent the weapons described by the informant matched those weapons stolen from the police department days earlier. Id. at 144-45, 519 S.E.2d at

349. Accordingly, in upholding the sufficiency of the affidavit, the Supreme Court noted: "Although the affidavit is weak on the element of the reliability of the informant, this deficiency is compensated for by the strong showing of specificity, first-hand observation, and partial corroboration." Id. at 145, 519 S.E.2d at 349.

Unlike the affidavit presented in Bellamy, the affidavit in Appellant's case contains no specificity of the confidential informant's encounters with Appellant and is not corroborated in the very least by law enforcement. The affidavit used in Appellant's case is insufficient and fails to establish probable cause because there is no information supporting the confidential informant's reliability. The drug evidence obtained pursuant to the search warrant should be suppressed and Appellant's convictions reversed.

CONCLUSION

For the reasons set forth herein, Appellant Dan Lavert Temple requests this Court to reverse his convictions.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

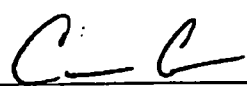
ATTORNEY FOR APPELLANT

This 29th day of September, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 29, 2014



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Alexander S. Macaulay, Circuit Court Judge

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SEP 29 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAN TEMPLE,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of September, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of September, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021.

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Honorable Alexander S. Macaulay, Circuit Court Judge
Appellate Case No. 2013-000663

THE STATE,

Respondent,

vs.

DAN LAVERT TEMPLE,

Appellant.

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Any issue regarding the trial judge's denial of Appellant's pre-trial motion to suppress the evidence discovered during a search of his motel room was not preserved for appellate review because defense counsel waived any objection to the admission of that evidence by affirmatively indicating to the trial judge there were no objections to the admission of the evidence at the time it was introduced during trial. However, regardless of any issue preservation concerns, the trial judge properly declined to suppress the evidence discovered during the search of Appellant's motel room because the search warrant affidavit contained sufficient information to establish a reliable probable cause basis to believe crack cocaine and other incriminating evidence would be discovered in the motel room at the time of the search. Furthermore, even if the trial judge erred in finding the search warrant affidavit sufficiently established a probable cause basis for the search, the trial judge properly declined to suppress the evidence discovered in the search because the search warrant was obtained in good faith and was not so lacking in indicia of probable cause that belief in and reliance on its validity was unreasonable.

STATEMENT OF THE CASE

On July 25, 2012, Appellant Dan Lavert Temple was arrested after law enforcement officers conducted a search of his motel room and discovered evidence of illegal activity, including crack cocaine. In January of 2013, the Oconee County grand jury indicted Appellant for one count of third-offense possession of crack cocaine with intent to distribute and one count of second-offense possession of a controlled substance. On March 18, 2013, a jury trial was commenced in the Oconee County court of general sessions with the Honorable Alexander S. Macaulay, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant of the lesser-included offense of possession of crack cocaine and the indicted offense of possession of a controlled substance. Following the verdict, the trial judge sentenced Appellant to consecutive terms of imprisonment of ten years for possession of crack cocaine and one year for possession of a controlled substance. Furthermore, the trial judge ruled Appellant willfully violated a previously-imposed probationary sentence as a result of his convictions and imposed a consecutive five-year term of imprisonment for that violation. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

In July of 2012, law enforcement officers from both the Seneca Police Department and Oconee County Sheriff's Office conducted a narcotics investigation into the activities of Appellant Dan Lavert Temple. (R. pp. 35-36; pp. 45-46; pp. 94-95; p. 108; p. 146; pp. 264-268). As part of the investigation, the officers worked with a confidential informant to purchase drugs from Appellant and conducted surveillance of Room 103 of the Town & Country Motel in Seneca, South Carolina. (R. pp. 46-47; pp. 264-268). During the surveillance, the officers observed and photographed Appellant returning to and entering the motel room along with Appellant approaching the vehicle driven by the confidential informant. (R. pp. 47-49).

Based on the information obtained during the investigation, Investigator Tim Hunnicutt of the Seneca Police Department sought a search warrant on July 24, 2012, seeking authorization to search Appellant's motel room for controlled substances, counterfeit money, and other associated items. (R. p. 108; pp. 264-268). In the affidavit attached to the search warrant, Investigator Hunnicutt included the following information to establish a probable cause basis for the issuance of the warrant:

1. That the affiant, Tim Hunnicutt, is an Investigator in the Narcotics Division with the Seneca Police Dept. and has been involved in numerous narcotics investigations and has been a sworn law enforcement officer for approximately eleven (11) years.
2. That during this time, the affiant has investigated various types of narcotics cases and has participated in the investigation, apprehension and arrest of numerous narcotic violators.
3. That on July 17, 2012 an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of crack cocaine from [Appellant] in the area of the 100 block of Bypass 123 Seneca, SC.

4. That on July 17, 2012 an undercover operative working under the direction of the Seneca Police Department/Oconee Sheriff's Office was distributed a quantity of crack cocaine from [Appellant] in the area of the 100 block of Bypass 123 in Seneca, SC.

5. That on July 23, 2012 an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of crack cocaine from [Appellant] in the area of the 100 block of Bypass 123 Seneca, SC.

6. Within the last 72 hours an undercover operative working under the direction of the Seneca Police Department was distributed a quantity of lortabs from [Appellant] at 318 Bypass 123 in Seneca, SC. [Appellant] was seen walking to and from the Town & Country Motel.

7. Within the last 72 hours an undercover operative working under the direction of the Seneca Police Department was given a counterfeit 100 dollar bill by [Appellant] at 318 Bypass 123. He asked the undercover operative to take it to a store and exchange it for real US currency. The undercover operative turned the counterfeit money over to agents. Agents gave the undercover operative 100 dollars in documented funds. The undercover operative met with [Appellant] at the Town & Country Motel and gave [Appellant] the documented funds. [Appellant] was observed by agents exiting and re-entering room 103 at Town & Country Motel.

8. Based upon the Undercover Operation on the above listed dates, establishing a continuing criminal enterprise, the affiant believes illegal drugs, proceeds from illegal drug transactions, and drug paraphernalia and counterfeit money will be present at this residence.

(R. pp. 264-268). Later that day, a magistrate judge issued the search warrant. (R. p. 108; p. 117; pp. 264-268).

The next morning, officers went to the motel room to execute the search warrant, knocked on the door, and announced their presence. (R. p. 37). They then attempted to enter the room but discovered the door was barricaded shut. (R. p. 37). As a result, the officers broke through the door and located Appellant in the bed with his hands hidden underneath the covers along with Appellant's girlfriend, Crystal Henry, hiding behind the door. (R. p. 37; p. 42; p. 60; p. 109). Upon finding Appellant and Henry in the motel room, the officers ordered Appellant to reveal his hands, but he would not do so. (R. pp.

37-38). Appellant and Henry were then secured and arrested. (R. pp. 37-38; p. 109). As Appellant was secured, Investigator B.J. McClure of the Seneca Police Department observed a pill bottle fall out of Appellant's bed and onto the floor. (R. p. 38). Then, during an ensuing search of the motel room, officers discovered a rock-like substance in the pill bottle, a rock-like substance on a bedside nightstand, several pills in a nightstand drawer, \$622 in cash, a cell phone, several computers, two glass crack pipes, and other items associated with the use of crack cocaine. (R. p. 39; p. 52; p. 54; p. 75; pp. 110-111; p. 117; p. 128).

Thereafter, Appellant asked to speak with an officer, and Captain Kenneth Washington of the Oconee County Sheriff's Office met with him. (R. p. 96; p. 105). Appellant then waived his rights and advised the officer he wanted to cooperate, he had purchased an ounce of crack cocaine in Pendleton, South Carolina, on the previous night, he could buy more from that source, and he could also buy drugs from a source in Georgia. (R. p. 96; p. 98; p. 101; p. 103). Captain Washington then relayed that information to Investigator Hunnicutt, and Investigator Hunnicutt subsequently spoke with Appellant at the police department. (R. p. 101; p. 112). During their conversation, Appellant again waived his rights, claimed the crack cocaine found in the motel room belonged to him, and admitted he had bought the drugs in Pendleton on the preceding night for \$300. (R. p. 114; pp. 148-150).

Subsequently, Appellant was indicted for possession of crack cocaine with intent to distribute and possession of a controlled substance, and he proceeded to trial. (R. pp. 8-9; pp. 269-270). At the outset of trial, defense counsel moved to suppress the evidence discovered in the search of Appellant's motel room, arguing the search violated Appellant's Fourth Amendment rights. (R. p. 10). In support of that contention, defense

counsel asserted the search warrant was invalid because it did not contain any information in regard to the reliability of a confidential informant, it did not establish any controlled buys actually occurred at Appellant's motel room, and it did not contain any information establishing the controlled buys were properly conducted. (R. p. 10; p. 14; pp. 16-17). In response, the solicitor argued the search warrant was properly issued because the totality of the circumstances as presented in the search warrant affidavit established a probable cause basis for the issuance of the warrant. (R. p. 23). After considering the arguments of counsel, the trial judge determined the search warrant affidavit contained sufficient information to support the issuance of the warrant and denied defense counsel's suppression motion. (R. pp. 24-25).

Thereafter, the officers involved in the operation testified before the jury about their investigation into Appellant's illegal activities, Appellant's apprehension and arrest, and the search of Appellant's motel room that led to the discovery of crack cocaine and other incriminating evidence. (R. pp. 35-39; pp. 45-46; pp. 94-95; pp. 108-114; pp. 146-147). Additionally, Henry testified for the State, indicated Appellant was a crack cocaine dealer, claimed the crack cocaine discovered on the nightstand belonged to her, asserted the bottle of crack cocaine and Xanax belonged to Appellant, and stated Appellant purchased crack cocaine in both Pendleton and Toccoa, Georgia, on the night before the search. (R. pp. 60-63; pp. 72-73; pp. 82-83; pp. 87-88). Following the testimony of the investigating officers and Henry, Agent Meredith Lanford, an analyst with the Anderson/Oconee Regional Forensics Laboratory and an expert forensic drug chemist, testified about her analysis of the drugs discovered during the search of Appellant's motel room. (R. pp. 156-160). Specifically, Lanford confirmed one of the rock-like substances discovered during the search was 0.12 grams of crack cocaine, the substance recovered

from the pill bottle was 1.10 grams of crack cocaine, and the ten pills located during the search were alprazolam, which was also known as Xanax. (R. pp. 160-162). Thereafter, the solicitor moved to admit the drugs recovered during the search and Lanford's analysis report into evidence, and the trial judge inquired of defense counsel as to whether there were any objections to the admission of that evidence. (R. p. 162). Defense counsel responded: "No objection, Your Honor." (R. p. 162). The trial judge then admitted the drugs and the report "[w]ithout objection[.]" (R. p. 162).

Subsequently, at the conclusion of trial, the jury convicted Appellant of possession of crack cocaine and possession of Xanax. (R. p. 244). Following the verdict, the trial judge sentenced Appellant to an aggregate eleven-year sentence for those convictions along with a consecutive five-year sentence for Appellant's willful violation of a previously-imposed probationary sentence. (R. pp. 255-256).

ARGUMENT

Any issue regarding the trial judge's denial of Appellant's pre-trial motion to suppress the evidence discovered during a search of his motel room was not preserved for appellate review because defense counsel waived any objection to the admission of that evidence by affirmatively indicating to the trial judge there were no objections to the admission of the evidence at the time it was introduced during trial. However, regardless of any issue preservation concerns, the trial judge properly declined to suppress the evidence discovered during the search of Appellant's motel room because the search warrant affidavit contained sufficient information to establish a reliable probable cause basis to believe crack cocaine and other incriminating evidence would be discovered in the motel room at the time of the search. Furthermore, even if the trial judge erred in finding the search warrant affidavit sufficiently established a probable cause basis for the search, the trial judge properly declined to suppress the evidence discovered in the search because the search warrant was obtained in good faith and was not so lacking in indicia of probable cause that belief in and reliance on its validity was unreasonable.

Appellant alleges the trial judge erred in denying his motion to suppress the evidence recovered during the search of his motel room. In support of that contention, Appellant maintains the search warrant affidavit was insufficient to establish a probable cause basis for the search due to the fact it allegedly contained no information about the reliability of the confidential informant who supplied information to the law enforcement officers. Initially, any issue with Appellant's challenge to the trial judge's pre-trial ruling denying the suppression motion is not preserved for appellate review because defense counsel waived any objection regarding the admission of the crack cocaine and other incriminating evidence by indicating he had no objection to the admission of that evidence when it was introduced during trial. Accordingly, Appellant is precluded from now raising that issue on appeal. However, even if the issue had somehow been preserved for appellate review despite the lack of a contemporaneous objection to the admission of the evidence, the trial judge properly denied Appellant's suppression motion because the search warrant affidavit contained sufficient reliable information to establish a probable cause basis to believe crack cocaine and other incriminating evidence would

be found in Appellant's motel room at the time of the search. Furthermore, even if the search warrant had somehow been insufficient to establish probable cause, suppression of the evidence recovered in the search of the motel room was nonetheless not warranted because the search warrant was obtained in good faith and was not so lacking in indicia of probable cause that Investigator Hunnicutt's belief in its validity was unreasonable. Accordingly, the trial judge properly denied Appellant's suppression motion. Appellant's convictions should be affirmed.

A. Issue Preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Imposing issue preservation requirements on a party "is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000); see, e.g., State v. Pauling, 322 S.C. 95, 100, 470 S.E.2d 106, 109 (1996) ("Having denied the trial judge an opportunity to cure any alleged error by failing to contemporaneously object to the charge, Appellant is procedurally barred from raising these issues for the first time on appeal."). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not

constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be made at the time the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993). "However, where a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection." State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001); see State v. Wiles, 383 S.C. 151, 156-157, 679 S.E.2d 172, 175 (2009) ("This exception is based on the fact that when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection.").

In the case at bar, any issue with the admission of the crack cocaine and other evidence discovered during the search of Appellant's motel room was not properly preserved for appellate review. At the outset of trial, Appellant filed a motion in limine seeking the suppression of the evidence discovered during the search. Then, following a pre-trial hearing on the suppression motion, the trial judge issued a preliminary ruling denying Appellant's motion. Thereafter, when the solicitor moved to introduce the crack cocaine and other incriminating items into evidence later during trial, Appellant did not renew his pre-trial objection and, instead, affirmatively stated he had no objection to the admission of the evidence, which was then specifically admitted without objection by the trial judge. Cf. State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue

Dicapua had with the videotape.”). Accordingly, under those circumstances, Appellant’s pre-trial objection to the admission of the crack cocaine and other incriminating evidence was expressly waived, and the issue cannot properly be raised or reviewed on appeal.

See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) (“When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review.”); see also State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) (“A party cannot complain of an error which his own conduct induced.”); State v. Burton, 326 S.C. 605, 613, 486 S.E.2d 762, 766 (Ct. App. 1997) (“This testimony was admitted without objection. Because Burton failed to object, he is barred from raising this issue on appeal.”). Appellant’s convictions should be affirmed.

B. Propriety of the Search Warrant

In South Carolina, an affiant seeking to obtain a search warrant must present a sworn affidavit to a judge presenting grounds sufficient to establish probable cause in order to justify the issuance of the warrant. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348-349 (1999); see S.C. Code Ann. § 17-13-140 (“A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant.”); see also Illinois v. Gates, 462 U.S. 213, 238 (1983) (identifying probable cause as “a fair probability that contraband or evidence of a crime will be found”). In State v. Williams, 262 S.C. 186, 189, 203 S.E.2d 436, 437-438 (1974), the South Carolina Supreme Court explained probable cause as it relates to the issuance of a search warrant:

In order to justify the issuance of a search warrant, probable cause must be shown, but the term 'probable cause' does not import absolute certainty. In determining whether there is sufficient evidence to sustain a finding of probable cause, each case stands on its own facts. The evidence need not be sufficient to support a conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive, it being enough if it is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed.

(citing State v. Bennett, 256 S.C. 234, 182 S.E.2d 291 (1971)).

In deciding whether to issue a search warrant, the issuing judge must "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Gates, 462 U.S. at 238. In making the probable cause determination, "[issuing judges] are concerned with probabilities and not certainties." State v. Sullivan, 267 S.C. 610, 617, 230 S.E.2d 621, 624 (1976).

Importantly though, the issuing judge must view the warrant affidavit in a common sense and realistic fashion and give consideration to the fact that such affidavits are typically prepared by non-lawyers in the haste of criminal investigations. State v. Arnold, 319 S.C. 256, 260, 460 S.E.2d 403, 405 (Ct. App. 1995).

Furthermore, in making such a probable cause determination in a case where an affiant relied upon information supplied by a confidential informant, the informant's veracity, reliability, and basis of knowledge are highly relevant towards a determination of the value of the informant's information. Gates, 462 U.S. at 238. However, those elements related to the informant are not "entirely separate and independent requirements to be rigidly exacted in every case" and, instead, "should be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question

whether there is 'probable cause' to believe that contraband or evidence is located in a particular place." *Id.* at 230.

When reviewing a decision to issue a search warrant, the reviewing court should decide whether the issuing judge had a substantial basis for concluding probable cause existed. *State v. Dupree*, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). Applying the same standard as the issuing judge, the court should base its determination on the totality of circumstances. *State v. Keith*, 356 S.C. 219, 223, 588 S.E.2d 145, 147 (Ct. App. 2003). The issuing judge's probable cause determination should be afforded great deference on appeal. *State v. Rutledge*, 373 S.C. 312, 316, 644 S.E.2d 789, 791 (Ct. App. 2007). Significantly, "[s]earches based on warrants will be given judicial deference to the extent that an otherwise marginal search may be justified if it meets a realistic standard of probable cause." *Id.* "Suppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" *State v. Weston*, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) (quoting *United States v. Leon*, 468 U.S. 897, 923 (1984)).

In the case sub judice, the trial judge correctly found the search warrant was properly issued because the information contained in the search warrant affidavit – when viewed in a common sense fashion and in its totality – was sufficient to establish a reliable probable cause basis to believe crack cocaine and other incriminating evidence would be found in the targeted motel room at the time of the search. *See State v. Thomas*, 275 S.C. 274, 276, 269 S.E.2d 768, 769 (1980) (holding that courts should consider a "common-sense reading of the entire affidavit" in determining whether

probable cause exists). Accordingly, the trial judge properly denied the motion to suppress the evidence recovered during the search of the Appellant's motel room.

In challenging the propriety of the search warrant, Appellant contends the trial judge erred in denying his motion to suppress the incriminating evidence found pursuant to the search warrant because the search warrant affidavit allegedly failed to contain sufficient information to establish the reliability of the confidential informant. To the contrary, the search warrant affidavit contained sufficient information to establish the reliability of the confidential informant through the information regarding the informant's successful drug purchases from Appellant on multiple occasions coupled with the other information linking Appellant to the motel room and other illegal activity, including the possession of counterfeit money. See Dupree, 354 S.C. at 691, 593 S.E.2d at 445 ("The controlled buy was evidence of the credibility and trustworthiness of the informant."); see also Bellamy, 336 S.C. at 145, 519 S.E.2d at 349 (finding a search warrant sufficiently established the confidential informant's reliability where, "[a]lthough the affidavit is weak on the element of the reliability of the informant, this deficiency is compensated for by the strong showing of specificity, first-hand observation, and partial corroboration"); see generally United States v. Colkley, 899 F.2d 297, 300 (4th Cir. 1990) ("An affiant cannot be expected to include in an affidavit every piece of information gathered in the course of an investigation."); but see State v. Robinson, 408 S.C. 268, ___, 758 S.E.2d 725, 728 (Ct. App. 2014) ("We find, however, that Sergeant Donald's failure to include in his affidavit any evidence of the informant's reliability renders the warrant invalid."). Critically, the statements in the affidavit indicated the informant successfully purchased crack cocaine – along with other controlled substances – from Appellant in the vicinity of the Town & Country Motel. The statements also indicated Appellant distributed

currency verified as counterfeit and was seen entering and exiting Room 103 of the Town & Country Motel. Thus, through the successful purchases of drugs from Appellant while under the direction of the law enforcement officers and the verification of Appellant's possession of counterfeit bills, the confidential informant's reliability was established, and there was probable cause to believe more crack cocaine, controlled substances, drug paraphernalia, and counterfeit bills would be found in a search of Appellant's motel room. See Gates, 462 U.S. at 233 ("[A] deficiency in [veracity or basis of knowledge] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."); see, e.g., United States v. Anderson, 851 F.2d 727, 729 (4th Cir. 1988) ("[T]he nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence."); cf. State v. Viard, 276 S.C. 147, 150-151, 276 S.E.2d 531, 532 (1981) ("Affiant alleged his informant had been at the residence, saw drugs there within the past 72 hours, and purchased drugs during a controlled buy which field tested positive for depressants. We conclude the affidavit contained sufficient underlying facts and information upon which the magistrate made her independent determination of probable cause."). As a result, the magistrate judge committed no error in issuing the search warrant, and the trial judge properly declined to suppress the evidence discovered during the search of Appellant's motel room.

However, even if the search warrant affidavit in Appellant's case did not sufficiently establish the confidential informant's reliability, the trial judge properly declined to suppress the evidence discovered as a result of the search because Investigator Hunnicutt acted in good faith in obtaining the search warrant and acted in

objectively reasonable reliance on the issuing judge's probable cause determination in conducting the search. See Leon, 468 U.S. at 922 ("[T]he marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion."). Critically, Investigator Hunnicutt complied with the statutory warrant requirements in obtaining the search warrant and included information in the search warrant affidavit establishing a confidential informant working under the direction of law enforcement officers had purchased crack cocaine and other illegal substances from Appellant on multiple occasions both recently and continuously. See id. at 921 ("'[O]nce the warrant issues, there is literally nothing more the policeman can do in seeking to comply with the law.' Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." (citation omitted and brackets in original)). Furthermore, the information contained in the search warrant affidavit prepared in Appellant's case was not " 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable[.]' " which is what is necessary for an officer's reliance on a search warrant to be objectively unreasonable. Id. at 924. Under those circumstances, even if the issuing judge erred in determining the search warrant affidavit was sufficient to establish probable cause, the affidavit was not so lacking in indicia of probable cause that it was entirely unreasonable for Investigator Hunnicutt to rely on the warrant after it was issued.¹ See Weston, 494 S.C. at 293, 494 S.E.2d at 804 (recognizing that application of

¹ Notably, in United States v. Bynum, 293 F.3d 192, 195 (4th Cir. 2002), the Fourth Circuit Court of Appeals explained there is a difference between the "substantial basis" standard for determining the existence of probable cause and the standard required for determining if reliance on an already-issued search warrant is in good faith and objectively reasonable, instructing: " 'Substantial basis' provides the measure for determination of whether probable cause exists in the first instance. If a lack of a substantial

the good-faith exception is not prohibited simply because a search warrant was deficient in some respect); see also Leon, 468 U.S. at 918-921 ("[S]uppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule. . . . Penalizing the officer for the [issuing judge]'s error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations."); Anderson, 851 F.2d at 729-730 (finding the good-faith exception applied even though the search warrant affidavit did not contain any information regarding the date of the crime or the date that Anderson offered to sell a weapon to the informants). Accordingly, as Investigator Hunnicutt did not act unreasonably in relying on the search warrant, the trial judge properly declined to suppress the evidence discovered in the search of the Appellant's motel room. See Segura v. United States, 468 U.S. 796, 806 (1984) ("By its terms, the Fourth Amendment forbids only 'unreasonable' searches and seizures."); cf. Leon, 468 U.S. at 926 (finding that an officer's reliance on a search warrant was not objectively unreasonable despite the fact that the warrant affidavit did not contain sufficient information to establish probable cause where the warrant was supported by more than a "bare bones" affidavit).

In conclusion, the trial judge properly determined the affidavit contained sufficient information to establish a reliable probable cause basis to believe crack cocaine

basis also prevented application of the Leon objective good faith exception, the exception would be devoid of substance. In fact, Leon states that the third circumstance prevents a finding of objective good faith only when an officer's affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' This is a less demanding showing than the 'substantial basis' threshold required to prove the existence of probable cause in the first place." (citations omitted and emphasis added); see also Gates, 462 U.S. at 239 ("An affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause[.]"); Weston, 329 S.C. at 293, 494 S.E.2d at 804 ("Johnson should not be read as prohibiting the application of the good-faith exception every time an affidavit fails to satisfy the technical requirements of Gates. Suppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' " (citation omitted)).

and other incriminating evidence would be discovered in Appellant's motel room at the time of the search. See Gates, 462 U.S. at 238 ("The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."); Texas v. Brown, 460 U.S. 730, 741 (1983) (instructing probable cause is a flexible, common-sense standard); see also Dupree, 354 S.C. at 691, 593 S.E.2d at 445 ("The magistrate had ample probable cause to issue the warrant. Given all the circumstances set forth in the affidavit, there was a 'fair probability' that crack cocaine would be found in the mobile home."). However, even if the search warrant should not have been issued due to some deficiency in regard to the search warrant affidavit, the trial judge properly declined to suppress the evidence recovered during the search because the affidavit was not so lacking in indicia of probable cause as to render Investigator Hunnicutt's reliance upon the search warrant entirely unreasonable. See Leon, 468 U.S. at 926 ("We have now reexamined the purposes of the exclusionary rule and the propriety of its application in cases where officers have relied on a subsequently invalidated search warrant. Our conclusion is that the rule's purposes will **only rarely be served by applying it in such circumstances.** . . . [S]uppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause." (emphasis added)); see also Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]"). Accordingly, assuming the issue had somehow been properly preserved for appellate review despite the fact defense counsel specifically indicated he

had no objection to the admission of the evidence recovered during the search of Appellant's motel room when that evidence was introduced during trial, the trial judge properly denied Appellant's suppression motion. Appellant's convictions should be affirmed.

CONCLUSION

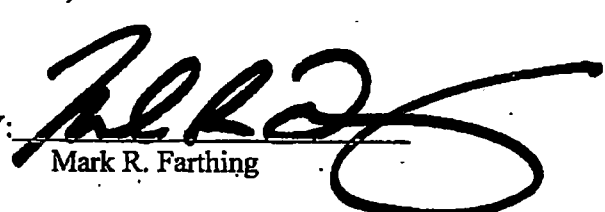
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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September 9, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Honorable Alexander S. Macaulay, Circuit Court Judge
Appellate Case No. 2013-000663

THE STATE,

Respondent,

vs.

DAN LAVERT TEMPLE,

Appellant.

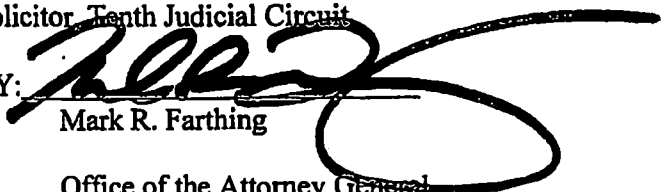
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 9th day of September, 2014.


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SC Court of Appeals

ORIGINAL

STATE OF SOUTH CAROLINA
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SEP 29 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAN TEMPLE,

APPELLANT.

APPELLATE CASE NO. 2013-000663

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ARGUMENT IN REPLY

I. Appellant's argument that the Trial Court erred in denying the motion to suppress the drug evidence is preserved for appellate review.

The State first contends that the issue on appeal – that the Trial Court erred in denying Appellant's motion to suppress the drug evidence seized during the execution of the search warrant where the affidavit for the search warrant was devoid of any information about the reliability of the confidential informant – is not preserved for this Court's review. The State argues that Appellant filed a motion *in limine* seeking the suppression of the drug evidence and that the Trial Court only issued a preliminary ruling denying Appellant's motion to suppress. The State then asserts that Appellant then did not renew his motion to suppress the drug evidence and stated that he had no objection when the drug evidence and a drug analysis report was admitted by the State through the testimony of chemist Meredith Lee Lanford who analyzed the drug evidence and determined the type and weight of the drugs. R. 6; 242, l. 2 – 163, l. 9.

The State is incorrect that the issue is not preserved for appellate review. Appellant moved to suppress the drug evidence which was the basis of the drug charges against Appellant because the drugs were seized as a result of an unlawful search warrant. R. 10, ll. 6-16. The Trial Court heard arguments on the motion to suppress from both Appellant and the State. R. 10, l. 6 – 25, l. 4. At the conclusion of both side's arguments, the Trial Court issued a final ruling that Appellant's motion to suppress the contraband found was denied and also remarked that "[t]he motion of the Defendant is duly noted." R. 25, ll. 2-4.

Where a trial judge indicates that his ruling was a final ruling, then a party need not renew his objection to the evidence during trial. State v. Wiles, 383 S.C. 151, 156-57, 679 S.E.2d 172, 175 (2009). In Wiles, the defendant made a motion *in limine* to exclude evidence of his escape. The Supreme Court held that the trial judge indicated his ruling was a final ruling rather than a preliminary one because he commented to the jury about the defendant's escape before any evidence was admitted. The Supreme Court also noted that the escape was referenced by both the State and the defendant's counsel in their opening statements. Because the trial judge's ruling on the admission of the evidence was a final ruling rather than a preliminary ruling, the defendant's argument on appeal that the evidence was improperly admitted was preserved for appellate review even though the defendant apparently did not renew his objection when the evidence was entered. Id.

In Appellant's case, the Trial Court issued a final ruling denying Appellant's motion to suppress the drug evidence. The Trial Court gave no indication that his ruling might change depending on how the evidence developed at trial. The Trial Court said that Appellant's motion was "duly noted" for the record. R. 25, ll. 2-4.

In addition, this is not a case where the parties were worried about the jury hearing about some piece of evidence. The purpose of a motion *in limine* is to prevent disclosure of potentially prejudicial matter to the jury. State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988). Here, the jury panel already knew at the very beginning of the case that the case was about drugs from Solicitor's description of the charges against Appellant: "We call 2013-GS-37-185, the State versus Daniel Lavert Temple, for possession of a controlled substance, a Schedule I through V, and 2013-GS-37-184, the State versus Daniel Lavert Temple, for possession with intent to distribute crack cocaine." R. 8, ll. 17-22. The Trial

Court also informed the jury panel of the charges pending against Appellant. R. 8, l. 23 - 9, l. 5.

During her opening statement to the jury, the Solicitor immediately informed the jury that Appellant was charged with possession with intent to distribute crack cocaine and the possession of Xanax. R. 26, ll. 17-20. She discussed the drugs found throughout her opening statement and likewise, Appellant's defense counsel also had to discuss the drug evidence during his opening statement. R. 26-34.

If the Trial Court's ruling on the motion to suppress the drug evidence had been a preliminary ruling only, as the State contends, then both the State and the defense would have been unable to say anything at all during their opening statements to the jury. They would have been prevented from discussing anything about the case. That is because the drug evidence is integral to the drug charges against Appellant. In fact, had the Trial Court granted Appellant's motion to suppress the drug evidence, as the Appellant is asking this Court to do in this appeal, then the charges against Appellant would have had to be dismissed because without evidence of the drugs, there can be no conviction against Appellant.

Appellant's issue to this Court that the Trial Court erred in denying his motion to suppress the drug evidence is preserved for this Court's review because the issue was (1) raised to and ruled upon by the Trial Court; (2) raised by Appellant; (3) raised in a timely manner; and (4) raised to the Trial Court with sufficient specificity. The Trial Court's denial of Appellant's motion to suppress the drug evidence was a final ruling. That Appellant did not object to the drug evidence and the drug analysis report during the chemist's testimony after the Trial Court had ruled with finality that the drugs were

admissible and that the case would not be dismissed and after the drug evidence had been discussed throughout the entire trial since the case involved drug charges is of no consequence. This Court should reject the State's argument that the Trial Court's error in denying the motion to suppress the drug evidence is not preserved for appellate review.

II. The good faith exception does not apply in cases where the affidavit supporting the search warrant fails to provide the magistrate with a substantial basis for probable cause and where the affidavit does not contain any information regarding the reliability of the informant.

The State also contends that the Trial Court properly declined to suppress the drug evidence because Officer Hunnicutt acted in good faith in obtaining the search warrant and acted in objectively reasonable reliance on the issuing judge's probable cause determination in conducting the search, relying upon the case of United States v. Leon, 468 U.S. 897 (1984).

In Leon, the United States Supreme Court established a good faith exception to the exclusionary rule, holding "that when an officer acting in objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope, a reviewing court should not order a suppression of the evidence based on a lack of probable cause." State v. Weston, 329 S.C. 287, 292, 494 S.E.2d 801, 803-04 (1997) (summarizing Leon). In Leon, the United State Supreme Court listed three situations in which the good faith exception cannot apply, one of which is reviewing courts will not defer to a warrant based on an affidavit "that does not provide the magistrate with a substantial basis for determining the existence of probable cause." 468 U.S. at 914-15.

In State v. Johnson, 302 S.C. 243, 248, 395 S.E.2d 167, 170 (1990), South Carolina's Supreme Court ruled "Leon specifically precludes the application of the good

faith exception" in a situation indistinguishable from Appellant's case. In Johnson, "the informant told South Carolina Law Enforcement agents that he had seen a large quantity of cocaine, cash and a gun in Johnson's home" "within the past seventy-two (72) hours." 302 S.C. at 245, 395 S.E.2d at 168. The affidavit supporting the search warrant, however, did not set forth any information as to the reliability of the informant, and the Supreme Court held that the affidavit by itself did not provide the magistrate with sufficient information concerning the informant's reliability upon which he could base a probable cause determination. Id. at 247-48, 395 S.E.2d at 169. The Supreme Court stated:

Without any information concerning the reliability of the informant, the inferences from the facts which lead to the complaint will be drawn not by a neutral and detached magistrate, as the Constitution requires, but instead, by a police officer engaged in the often competitive enterprise of ferreting out crime, or, as in this case, by an unidentified informant.

Id. at 248, 395 S.E.2d at 169 (internal quotation marks omitted).

After concluding that the affidavit did not provide the magistrate with sufficient information to make a probable cause determination, the Supreme Court considered whether the good faith exception applied and whether "sufficient information was given to the magistrate to perform his 'neutral and detached' function rather than serve as a 'rubber stamp for the police.'" Id. at 248, 395 S.E.2d at 169-70. Quoting Leon, 468 U.S. at 915, our Supreme Court found the good faith exception inapplicable:

[R]eviewing courts will not defer to a warrant based on an affidavit that does not provide the magistrate with a substantial basis for determining the existence of probable cause. Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.

Johnson, 302 S.C. at 248, 395 S.E.2d at 170 (internal quotation marks omitted).

As in Johnson, Officer Hunnicutt's affidavit gave the issuing magistrate no information to assess the reliability of the informant or information on which probable cause could exist. Without such information, the issuing magistrate was forced to guess whether the events in the affidavit actually occurred, especially where there was no indication that the confidential informant was reliable. Under these circumstances, this court should not defer to the warrant because Officer Hunnicutt's affidavit did not provide the magistrate with a substantial basis for determining the existence of probable cause. The affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. There is no good faith of Officer Hunnicutt where he in the one that prepared the affidavit to obtain the search warrant and knew that there was nothing in that affidavit to indicate that the confidential informant was reliable.

This Court should hold the good faith exception inapplicable to Appellant's case and suppress the drug evidence where the affidavit for the search warrant contained absolutely no information about the reliability of the confidential informant who claimed he received drugs from Appellant.

CONCLUSION

For the reasons set forth herein and in the Appellant's Brief, Appellant Dan Lavert Temple respectfully requests this Court to reverse his convictions.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

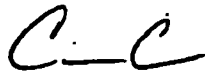
ATTORNEY FOR APPELLANT.

This 29th day of September, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Reply Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 29, 2014



Carmen V. Ganjehsani
Appellate Defender

RECEIVED

SEP 29 2014

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

SEP 29 2014

SC Court of Appeals

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAN TEMPLE,

APPELLANT.

APPELLATE CASE NO. 2013-000663

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of September, 2014.


Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 29th day of August, 2014.


Notary Public for South Carolina

(L.S.)

My Commission Expires: October 24, 2021

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Dan Lavert Temple, Appellant.

Appellate Case No. 2013-000663

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2015-UP-061
Submitted December 1, 2014 – Filed February 4, 2015

AFFIRMED

Appellate Defender Carmen Vaughn Ganjehehnsani, and
Appellate Defender Laura Ruth Baer, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia; and Solicitor Christina Theos Adams, of
Anderson, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Forrester*, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) ("In

most cases, [m]aking a motion *in limine* to exclude evidence at the beginning of trial does not preserve an issue for review because a motion *in limine* is not a final determination." (internal quotation marks omitted)); *State v. Dicapua*, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) (holding that when a party affirmatively states it has no objection to evidence being admitted at trial, it has waived any previous objections made in a pretrial motion), *aff'd*, 383 S.C. 394, 680 S.E.2d 292 (2009).

AFFIRMED.¹

WILLIAMS, GEATHERS, and McDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FILED 000115C
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF Oconee

2015 MAR 16 P 2:44

IN THE COURT OF COMMON PLEAS

Dan Lavert Temple
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2015 . CP . 37 . 225

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make chr to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay threes and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Tupleville Correctional
2. Name and location of Court which imposed sentence Oconee County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Poss. of Controlled Substance / indictment # 2013-GS-37-185 sch 1 through V
 - (b) Poss. with intent to distribute crack cocaine #2013-GS-37-184
 - (c) and probation violation
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 20 2013
 - (b) 10 years, 11 years 5) years probation violation

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓ _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeal _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 4, 2015 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Attorney fail to properly object to the admission _____
- ii. of the drug evidence, at suppression hearing _____
- iii. to preserve for appellate review. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of Counsel Trial Counsel
 (b) 1992 prior conviction for noncontrolled substance still persists 17-27-10
 (c) The denial of suppression hearing regard the veracity of informant
 Ect
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial Counsel failing to properly object to the admission of drug evidence such that
 (b) the suppression was not preserved for Appellate review
 (c) Trial judge error in denial of the suppression and deciding mix question
 OF LAW
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? ✓
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? ✓
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court?
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Court of appeals
 ii.
 iii.
 iv.
- (b) the name and location of the Court in which each was filed:
- i. The State of South Carolina Court of Appeals
 ii.
 iii.
 iv.
- (c) the disposition thereof:
- i. affirmed
 ii.
 iii.

- iv. _____
- (d) the date of each such disposition:
- i. February 4, 2015
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. affirmed
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- Yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. Prior conviction from a 1989 GA conviction for a non controlled substance
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. PCR
- ii. Appeals court
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) failure of Attorney to properly raise issues
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes _____
- (c) your sentencing? yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? PCR _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Mr Delane Rosemond Post office box 1498 100 Century Plaza
- ii. Suite 2. Senca 29679. / Appellate Defender, Laura R. Boer
- iii. 11330 lady street Suite 401 Columbia SC. Pobox 11589 Columbia SC 29221
- (b) the proceedings at which each such attorney represented you:
- i. Trial _____
- ii. Court of Appeals _____
- iii. _____
19. State clearly the relief you seek in filing this application:
New Trial/suppression of Drugs / vacate Prior Convictions
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

2015. CP. 37. 225

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Dan Lavert Temple

SWORN to and subscribed before me this 20th
day of February, 2015

Evelyn H. White (L.S.)
Notary Public

My Commission Expires: 4-27-2016

FILED O'CONNOR, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2015 MAR 16 P 2:44

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2015, CP. 37. 225

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Don Lavert Temple
Applicant

SWORN or affirmed to and subscribed before me this
20th day of February, 2015.

Eulyn H. H.
Notary Public

My Commission Expires: 4-27-2016

FILED O'CONNOR, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2015 MAR 16 P 2:44

Page 2/3 continues from PCR Application

(10) state concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(2) Ineffective assistance of Counsel

(b). 1989. Prior conviction for a non-controlled substance still persist.

(c) Counsel fail to investigate, review the record, where Applicant was indicted for a second offense for possession of a controlled substance. 2 Schedule I through V, and 2013-GS-37-84 when Applicant never had a first conviction.

State concisely and in the same order the facts which support each of the grounds set out in (10)

(11)(a) Trial Counsel failing to properly object to the admission of drug evidence such that the suppression was not preserved for Appellate review.

(b). Trial Counsel failure to investigate the 1989 prior Georgia conviction for a non controlled substance, that led to the Applicant to be sentenced to a

496
Third offense Also Counsel was ineffective for not reviewing the records. which led the Applicant to be indicted and sentence to a Second time offender for possession of a Controlled Substance Scheduled I through V. When applicant did not have a first Conviction.

Trial Counsel was ineffective for not, Motioning to the Court, to recuse Magistrate Judge William F. Derrick from Presiding over the preliminary Hearing dated.

October 29, 2012. Since He was the same Judge, Magistrate who sign off on the Search WARRANT that led to applicant Conviction date July 24, 2012. see Search warrant and preliminary Hearing schedule

Trial Counsel was ineffective because he did not interview his Twin Brother David Temple. As A defence. Applicant Alleged That His Twin Brother could have been the one in the video. that led to the Search warrant of His Motel room on July 25, 2012 which the video did not show any drug traction.

according to search warrant Affiant Tim Hunicut along with Captain⁴⁹⁷
Ken Washington. / Captain Washington states in his warrant # 2012A37
10400039 that the defendant did on 07-17-12 Distributed A Quantity
of Crack Cocaine. and on 07-17-12 Distributed A Quantity of Hydroco
Done, A ~~SCH~~ SCHEDULE III Controlled Substance warrant # 2012A37
20300038 and 07-23-12 The defendant distributed a Quantity
of Crack Cocaine warrant # 12-000396

(C) Trial judge error in denial of the Suppression hearing, failing to
decide Mix Question of law.

Trial Judge errored, by not Question the Affiant Tim Hunicut
regarding the controlled buy that was not established.

After the Affidavit fail to contain any information, about the
reliability of the Confidential informant.

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

Dan L. Temple
S.C.D.C. No. 240638)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-37-0225

**RETURN AND PARTIAL
MOTION TO DISMISS¹**

In response to the Post-Conviction Relief (PCR) application filed March 16, 2015, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted by the January 2013 term of the Oconee County Grand Jury for manufacture, distribution, etc. of cocaine base, third or subsequent offense (2013-GS-37-0184) and possession of other controlled substance in schedule I to V, second or subsequent offense (2013-GS-37-0185). Delane Rosemond, Esq. represented Applicant. On March 18-21, 2013, Applicant proceeded to a trial before the Honorable Alexander S. Macaulay and a jury. He was found guilty of the lesser included offense of possession of crack cocaine – third offense; and as indicted for possession of other controlled substance, second or subsequent. Judge Macaulay sentenced Applicant to a term of imprisonment for ten (10) years for possession of crack cocaine; and to a term of

¹ By Order dated April 2, 2015, Hugh Welborn, Esq., has been appointed as Counsel.

imprisonment for one (1) year possession of other controlled substance.² These sentences were to be served consecutively.

A timely notice of appeal was filed and perfected on Applicant's behalf. Carmen Ganjehsani, Esq., represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Temple, Op. No. 2015-UP-061 (S.C. Ct. App. filed February 5, 2015). The Remittitur was issued on February 23, 2015.

II.

In his current Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Trial counsel failing to properly object to the admission of drug evidence such that the suppression was not preserved for appellate review"
 - b. "Counsel fail[ed] to investigate, review the record, where Applicant was indicted for a second offense for possession of a controlled substance 2 schedule I through V and 2013-GS-37-84 when Applicant never had a first conviction"
 - c. "Trial counsel was ineffective for not motioning to the court to recuse Magistrate Judge William F. Derrick from presiding over the preliminary hearing dated October 29, 2012. Since he was the same judge, Magistrate, who sign[ed] off on the search warrant that led to applicant conviction date July 24, 2012. See search warrant and preliminary hearing schedule"
 - d. "Trial counsel was ineffective because he did not interview his twin brother, David Temple. As a defen[s]e, Applicant alleged that his twin brother could have been the one in the video that led to the search warrant of his motel room on July 25, 2012, which the video did not show any drug traction [stet]."
2. "1989 Prior Conviction for noncontrolled substance still persist [sic] 17-27-10"
 - a. "Trial counsel failure to investigate the 1989 prior Georgia conviction for a noncontrolled substance that led to the Applicant to be sentence to a third offense. Also counsel was ineffective for not reviewing the record which led the Applicant to be sentence[d] to a second time offender for possession of a

² Applicant's criminal history is also relevant. Although not charged in this application, Applicant pled guilty to voluntary manslaughter (2002-GS-03-0152) in Allendale County on August 23, 2004, for an incident occurring while in prison. Applicant was sentenced to eleven (11) years imprisonment and, upon his release, he began serving probation for 1997-GS-37-0089. After the jury found Applicant guilty of the charges he is challenging in this application, Judge Macaulay revoked his probation and sentenced Applicant to five (5) years in prison. This was also to be served consecutively.

controlled substance schedule I through V when Applicant did not have a first conviction"

3. "The denial of suppression hearing regard[ing] the veracity [sic] of informant, etc."
 - a. "Trial judge error in denial of the suppression and deciding my question of law"
 - b. "Trial judge erred, by not question[ing] the affiant Tim Hunnicut regarding the controlled buy that was not established. After the affidavit fail[ed] to contain any information about the reliability of the confidential informant"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Oconee County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and Applicant's trial transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits that Applicant's second allegation for Post-Conviction Relief should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or