

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

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**RECEIVED**

JAN 17 2018

S.C. SUPREME COURT

CHRISTOPHER T. WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001403

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APPENDIX

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1 State of South Carolina ) In the Court  
2 County of Lexington ) Of General Sessions  
3 ) Indictment No.:  
4 State of South Carolina, ) 2014-GS-32-00-155-161  
5 Plaintiff, )  
6 vs. ) Transcript of Record  
7 Christopher T. Wilson, )  
8 Defendant. )  
9 \_\_\_\_\_ )

10 March 16 through 19, 2015  
11 Lexington, South Carolina

12 BEFORE:  
13 The Honorable Donald B. Hocker, Judge,  
14 and Jury

15  
16 APPEARANCES:  
17 Scott Spivey, Assistant State Solicitor  
18 Micah Caskey, Assistant State Solicitor  
19 Attorneys for the State

20 Robert Theodore Williams, Sr., Esquire  
21 Attorney for the Defendant

22 ALSO PRESENT:  
23 Christopher T. Wilson  
24  
25

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1 MARCH 16, 2015

2 \* \* \* \* \*

3 THE COURT: Have a seat. Let me see the lawyers for  
4 just a minute please.

5 (Side bar off the record.)

6 THE COURT: All right. Solicitor, you want to call  
7 the first case for trial please.

8 MR. SPIVEY: Yes, sir, Your Honor. The State calls  
9 State versus Christopher Tywhun Wilson for trial this  
10 week, Your Honor.

11 THE COURT: Okay. Thank you very much. Ladies and  
12 gentlemen of the jury panel, as the Solicitor has  
13 indicated, we are starting the case of State of South  
14 Carolina versus Christopher Tywhun, that's T-y-w-h-u-n,  
15 Wilson. Mr. Wilson, would you be so kind as to stand  
16 and face the jury panel for just a brief moment  
17 please.

18 CHRISTOPHER WILSON: (Complies.)

19 THE COURT: Thank you very much. Have a seat.  
20 Ladies and gentlemen of the jury panel, I have before me  
21 four indictments charging Mr. Wilson with two charges of  
22 trafficking in cocaine between 10 and 28 grams,  
23 possession of a firearm during the commission of a  
24 violent crime, and the fourth indictment is possession  
25 with intent to distribute marijuana.

1           Now, let me explain to you, ladies and gentlemen of  
2           the jury panel, and emphasize the fact that the  
3           indictments are not evidence of guilt on the part of the  
4           defendant. The defendant has exercised his  
5           constitutional right and has pled not guilty to these  
6           four charges. Consequently that puts on the State the  
7           burden of proof to prove the allegations in these  
8           indictments beyond a reasonable doubt standard. I'll  
9           explain more about that as we get into the case. The  
10          indictments serve as the charging papers to get this  
11          case to the point where we are at today which is the  
12          trial on these charges, but the allegations that the  
13          indictments contain which I will publish in just a few  
14          moments are merely allegations and that's all that they  
15          are. And again they are not evidence of guilt on the  
16          part of the defendant.

17               Is anyone on the jury panel related by blood or by  
18               marriage to the defendant Christopher Tywhun Wilson? If  
19               so, please stand.

20               (No one standing.)

21               THE COURT: Does anyone have a close personal or  
22               social relationship with the defendant Christopher  
23               Tywhun Wilson? If so, please stand.

24               (No one standing.)

25               THE COURT: I'm going to publish a list of potential

1 witnesses in this case. That doesn't necessarily mean  
2 that all of these potential witnesses will testify in  
3 the case but they might. I'll need to know once I  
4 publish these potential witnesses if anyone on the jury  
5 panel is related by blood or marriage to these  
6 individuals or if you have or have had in the past any  
7 sort of personal or social relationship with any of  
8 these individuals. The list is as follows: Marc  
9 Miramontes, Lexington Police Department, Thomas Hodges,  
10 Lexington County Sheriff's Department, Charles Holloway,  
11 Lexington County Sheriff's Department, Sam Gunter,  
12 Lexington County Sheriff's Department, Beth Holliman,  
13 Lexington County Sheriff's Department, Candy Kyzer,  
14 Lexington County Sheriff's Department, Emily  
15 Homer-Conrad, Lexington County Sheriff's Department,  
16 Justin Flake, Brittany Jay, Kevin Wilson with the  
17 Lexington County Solicitor's Office.

18 Anyone related by blood or marriage or have or had  
19 in the past a close personal or social relationship with  
20 any of these individuals? If so, please stand.

21 (No one standing.)

22 THE COURT: Now, at this point in time I'm going to  
23 ask the attorneys on both sides to introduce themselves  
24 to you. I'm going to tell you right now that these are  
25 excellent lawyers and they will certainly do an

1       excellent job in the representation of their respective  
2       clients. So, Solicitor, I'll start with you, sir.

3               MR. SPIVEY: Thank you, Your Honor. Your Honor and  
4       jury, my name is Scott Spivey. I am the prosecutor in  
5       this case. My co-counsel is Micah Caskey.

6               THE COURT: Thank you. Mr. Williams.

7               MR. WILLIAMS: I'm Theo Williams. I practice law  
8       right here in Lexington right across the street on the  
9       corner there. The name of my firm is Williams, Hendrix,  
10      Stigner and Drier.

11              THE COURT: Ladies and gentlemen of the jury panel,  
12      any of you have in the past ever been represented by any  
13      of the lawyers in this case? If so, please stand. Or  
14      any of their, at least Mr. Williams' law firm by any of  
15      the attorneys in that law firm. Yes, ma'am. Your name  
16      and your number?

17              JENNIFER McMILLAN: 136, Jennifer McMillan.

18              THE COURT: Yes, ma'am.

19              JENNIFER McMILLAN: Jennifer Butler represented me  
20      in my divorce.

21              THE COURT: The fact that a member of Mr. Williams'  
22      law firm represented you in the past, would that prevent  
23      you from being fair and impartial to both the State and  
24      the defense in this case?

25              JENNIFER McMILLAN: No, Your Honor.



1 THE COURT: Thank you, ma'am. Any member of the  
2 jury panel have or had in the past a close personal or  
3 social relationship with any of the attorneys involved  
4 in this case or anyone in Mr. Williams' law firm? If  
5 so, please stand.

6 (No one standing.)

7 THE COURT: Now, I'm going to publish at this time  
8 the indictments. And again as I stated to you a moment  
9 ago, the allegations contained in the indictments are  
10 merely allegations and are not proof of any guilt on the  
11 part of the defendant. The indictment for trafficking  
12 cocaine alleges that Christopher Tywhun Wilson did in  
13 Lexington County, South Carolina between March 22, 2013  
14 and June 14th, 2013 did knowingly intentionally,  
15 willfully, unlawfully sell, cultivate, manufacture,  
16 deliver, purchase or bring into the State or did provide  
17 financial assistance or otherwise or aid, abet, attempt  
18 or conspire with an individual or individuals to sell,  
19 manufacture, cultivate, deliver, purchase or bring into  
20 this state or knowingly and intentionally in actual  
21 constructive possession of or did knowingly and  
22 intentionally attempt to become in actual or  
23 constructive possession of cocaine, a controlled  
24 substance under the laws of this state. The allegations  
25 are that the quantity involved was between 10 grams or

1 more but less than 28 grams and there are actually two.  
2 Well, that is for cocaine.

3 The second indictment, the trafficking indictment  
4 relates to crack cocaine.

5 The third indictment, possession with intent to  
6 distribute marijuana alleges that the defendant did in  
7 Lexington County on or about June 14th, 2013 did  
8 knowingly, intentionally, willfully and unlawfully  
9 possess with intent to distribute marijuana which is a  
10 controlled substance under the laws of this state.

11 And lastly the last indictment alleges that the  
12 defendant did in Lexington County, South Carolina on or  
13 about June 14th, 2013 knowingly, willfully,  
14 intentionally, unlawfully posses a firearm or firearms  
15 during the commission of a violent crime as defined in  
16 the laws of this state. Again, those are merely  
17 allegations.

18 Has any member of the jury panel formed or expressed  
19 any opinion about any issue or matter involved in this  
20 case? If so, please stand. What I'm going to do, and I  
21 should have mentioned this at the very beginning of this  
22 process concerning this particular case, I'm going to  
23 give you an opportunity to come down front and speak  
24 with me privately. Therefore, sir, just hold that  
25 thought and I'll talk with you in just a few moments.

1           Is there any member of the jury panel aware of any  
2           bias or prejudice towards either the State or the  
3           defendant in this case? If so, please stand.

4           (No one standing.)

5           THE COURT: Now, this next question, I don't think  
6           this applies but I have to ask it anyway. Is there any  
7           member of the jury panel that was a member of the grand  
8           jury which issued these four indictments in this case?

9           (No one standing.)

10          THE COURT: Is there any member of the jury panel  
11          who is a member of or a contributor to any group which  
12          has as its primary concern the promotion of law  
13          enforcement or victims' rights? These groups would  
14          include but certainly are not limited to, and I'll give  
15          you the acronyms for these groups, MADD, SADD or CAV?

16          (No one standing.)

17          THE COURT: Is there any member of the jury panel --  
18          This question has been asked but I'll ask it again --  
19          know the defendant or any of the defendant's relatives?  
20          If so, please stand.

21          (No one standing.)

22          THE COURT: Even though I asked you if any member of  
23          the jury panel has been represented by either Mr.  
24          Williams or any lawyers in his law firm, is there any  
25          member of the jury panel have a relative or close friend

1       who has previously been represented by Mr. Williams or  
2       anyone in his law firm? If so, please stand.

3               (No one standing.)

4       THE COURT: Is there any member of the jury panel  
5       who has previously been a witness in either a civil or  
6       criminal case? If it's a criminal case, either on  
7       behalf of the State or on behalf of the defendant in  
8       that case. If that applies to you, please stand.

9               (No one standing.)

10       THE COURT: Now this next question that I'm going to  
11       ask, if you want to respond, don't stand. You can come  
12       down front and speak with me privately in just a moment.  
13       Has any member of the jury panel ever been or any of  
14       your relatives or close friends ever been arrested for  
15       or charged with or prosecuted for any crime? And again,  
16       if that applies to you, don't stand. Just come down  
17       front and speak with me privately in a moment.

18       Has any member of the jury panel had any kind of  
19       experience with a police officer, state trooper, federal  
20       agent or state or federal law enforcement agency that  
21       might affect your ability to be fair and impartial to  
22       both the State and the defense in this case? Again, if  
23       you need to respond to that question, I'll need for you  
24       to do so privately with me in just a moment.

25       Is there any member of the jury panel have any

1 opinion about the use of marijuana, cocaine,  
2 methamphetamine, heroin, crack cocaine or other illegal  
3 drug that might affect your ability to be fair and  
4 impartial to both the State and the defense in this  
5 case? And again, if you need to respond to that  
6 question, do so privately.

7 And my last question, and if you need to respond to  
8 it, I'll ask that you do so privately, is there any  
9 member of the jury panel know of any reason whatsoever  
10 why he or she should not serve as a juror in this case  
11 with particular emphasis being placed on your ability to  
12 be fair and impartial to both the State and the  
13 defendant in this case?

14 Now, I will give you an opportunity to form a line  
15 and come down and speak with me privately if anyone  
16 needed to respond to one of those previous questions or  
17 if there is anything else that you need to discuss with  
18 me about serving on this trial jury, then form a line  
19 and speak with me privately.

20 BAILIFF: 87, Your Honor.

21 THE COURT: Yes, sir.

22 ROBERT GRUBBS: When you were talking about previous  
23 lawyers, about seven, eight years ago I did seek the  
24 attorney who is the defense lawyer in a divorce with my  
25 wife. We reconciled and just went past the initial

1 consultation but I never saw this man.

2 THE COURT: Okay. Fine. The fact that you  
3 consulted with someone in his law firm, would that  
4 prevent you from being fair and impartial to both the  
5 State and the defense in this case?

6 ROBERT GRUBBS: No, sir.

7 THE COURT: Okay. Thank you, sir.

8 BAILIFF: 119, Your Honor.

9 THE COURT: Yes, sir.

10 CHRISTOPHER LINDSEY: I'm against drug prohibition.

11 THE COURT: You're against what?

12 CHRISTOPHER LINDSEY: Drug prohibition.

13 THE COURT: You're against drug prohibition?

14 CHRISTOPHER LINDSEY: Yes.

15 THE COURT: So you want all drugs to be made legal,  
16 is that what you're telling me?

17 CHRISTOPHER LINDSEY: Decriminalized.

18 THE COURT: Decriminalized. Okay.

19 CHRISTOPHER LINDSEY: I think I would be impartial.  
20 Or partial.

21 THE COURT: Partial?

22 CHRISTOPHER LINDSEY: Yes.

23 THE COURT: Okay. All right. I will excuse you  
24 from the trial of this case but just remain with us  
25 because we will probably have more trials after this,

1           okay? So just stay with us but you will be excused from  
2           this trial, okay?

3           CHRISTOPHER LINDSEY: Go sit back there?

4           THE COURT: Yes, sir. Anyone else? Okay. Thank  
5           you very much. Does the State have any additional voir  
6           dire?

7           MR. SPIVEY: No, sir, Your Honor.

8           THE COURT: Does the State have any objections or  
9           exceptions to the Court's voir dire?

10          MR. SPIVEY: None, Your Honor.

11          THE COURT: Okay. Mr. Williams, any additional voir  
12          dire?

13          MR. WILLIAMS: No, Your Honor.

14          THE COURT: Does the defense have any objections  
15          exceptions or exceptions to the Court's voir dire?

16          MR. WILLIAMS: No, Your Honor.

17          THE COURT: Okay. Thank you very much. Ladies and  
18          gentlemen of the jury panel, we are now at the process  
19          or at the stage rather where we are going to select a  
20          trial jury in this case. When your name is called, you  
21          will come down to the front. You will stand facing both  
22          of the counsel tables and then they will make a  
23          determination whether or not you will sit on the trial  
24          jury in this particular case.

25          If you are not selected, if you hear the words

1 "excuse this juror" or words to that effect, don't take  
2 it personally, okay? Don't take offense to not being  
3 selected. Some of you may be excited about not being  
4 selected but these lawyers have their certain reasons  
5 for wanting particular people on the jury and reasons  
6 for not wanting particular people on the jury so don't  
7 take it personally.

8 I will tell you this though before we actually  
9 start. Serving on a jury is, many people consider it to  
10 be the second highest civic responsibility that we all  
11 have second only to serving in the military and serving  
12 on a jury is very educational and it can be a very  
13 rewarding experience so I hope that you want to serve  
14 and that you will be, maybe excited is not the correct  
15 word to use, but certainly if you're picked, you're  
16 going to take your job very seriously. I'm confident of  
17 that. But hopefully you will not be disappointed and we  
18 will be glad that you were accepted. So with that said  
19 we'll start with the process. Five and five. One  
20 alternate?

21 MR. WILLIAMS: Yes, sir.

22 MR. SPIVEY: Yes, sir.

23 THE COURT: When your name is called, if you will  
24 bring whatever belongings you have with you because if  
25 you're selected, then you will be immediately placed in



1 the jury box, okay? The Court is ready any time the  
2 Clerk is ready.

3 THE CLERK: Juror 41, Taylor Cook.

4 (Whereupon, Taylor Cook, a white male, was called  
5 forward.)

6 THE CLERK: What say for the State?

7 MR. SPIVEY: Please excuse this juror.

8 THE CLERK: Please return to your seat. Juror 77,  
9 David George.

10 (Whereupon, David George, a white male, was called  
11 forward).

12 THE CLERK: What say for the State?

13 MR. SPIVEY: Please present this juror.

14 THE CLERK: What say for the defense?

15 MR. WILLIAMS: Please excuse the juror from the  
16 trial of this case.

17 THE CLERK: Please return to your seat. Juror 191,  
18 Janet Stamey.

19 (Whereupon, Janet Stamey, a white female, was called  
20 forward.)

21 THE CLERK: What say for the State?

22 MR. SPIVEY: Please present this juror.

23 THE CLERK: What say for the defense?

24 MR. WILLIAMS: Please swear the juror.

25 THE CLERK: Please be seated in the jury box. Juror

1           25, Laura Bodie.

2           (Whereupon, Laura Bodie, a white female, was called  
3 forward.)

4           THE CLERK: What say for the State?

5           MR. SPIVEY: Please present this juror.

6           THE CLERK: What say for the defense?

7           MR. WILLIAMS: Please swear the juror.

8           THE CLERK: Please have a seat in the jury box.  
9 Juror 175, Sharon Scruggs.

10          (Whereupon, Sharon Scruggs, a white female, was  
11 called forward.)

12          THE CLERK: What say for the State?

13          MR. SPIVEY: Please present this juror.

14          THE CLERK: What say for the defense?

15          MR. WILLIAMS: Please excuse the juror from the  
16 trial of this case.

17          THE CLERK: Please return to your seat. Juror 177  
18 Lynn Sealey.

19          (Whereupon, Lynn Sealey, a white female, was called  
20 forward.)

21          THE CLERK: What say for the State?

22          MR. SPIVEY: Please present this juror.

23          THE CLERK: What say for the defense?

24          MR. WILLIAMS: Please swear the juror.

25          THE CLERK: Please be seated in the jury box. Juror

1 130, Rebecca Mcauley.

2 (Whereupon, Rebecca Mcauley, a white female, was  
3 called forward.)

4 THE CLERK: What say for the State?

5 MR. SPIVEY: Please present this juror.

6 THE CLERK: What say for the defense?

7 MR. WILLIAMS: Please swear the juror.

8 THE CLERK: Please have a seat in the jury box.  
9 Juror 111, Terry Lee Kennedy.

10 (Whereupon, Terry Lee Kennedy, a white male, was  
11 called forward.)

12 THE CLERK: What say for the State?

13 MR. SPIVEY: Please present this juror.

14 THE CLERK: What say for the defense?

15 MR. WILLIAMS: Please swear the juror.

16 THE CLERK: Please have a seat in the jury box.  
17 Juror 108, Donald Johnson.

18 (Whereupon, Donald Johnson, a white male, was called  
19 forward.)

20 THE CLERK: What say for the State?

21 MR. SPIVEY: Please excuse this juror.

22 THE CLERK: Please return to your seat. Juror 50,  
23 Jessica Crouch.

24 (Whereupon, Jessica Crouch, a white female, was  
25 called forward.)

1 THE CLERK: What say for the State?

2 MR. SPIVEY: Please present this juror.

3 THE CLERK: What say for the defense?

4 MR. WILLIAMS: Please swear the juror.

5 THE CLERK: Please have a seat in the jury box.

6 Juror 73, David Fulwood.

7 (Whereupon, David Fulwood, a white male, was called  
8 forward.)

9 THE CLERK: What say for the State?

10 MR. SPIVEY: Please present the juror.

11 THE CLERK: What say for the defense?

12 MR. WILLIAMS: Please swear the juror.

13 THE CLERK: Please have a seat in the jury box.

14 Juror 42, James Corbett.

15 (Whereupon, James Corbett, a white male, was called  
16 forward.)

17 THE CLERK: What say for the State?

18 MR. SPIVEY: Please excuse this juror.

19 THE CLERK: Please return to your seat. Juror 195,  
20 Wade Stowe.

21 (Whereupon, Wade Stowe, a white male, was called  
22 forward.)

23 THE CLERK: What say for the State?

24 MR. SPIVEY: Please present this juror.

25 THE CLERK: What say for the defense?

1 MR. WILLIAMS: Please swear the juror.

2 THE CLERK: Please have a seat in the jury box. 14,  
3 June Ballentine.

4 (Whereupon, June Ballentine, a white female, was  
5 called forward.)

6 THE CLERK: What say for the State?

7 MR. SPIVEY: Please present this juror.

8 THE CLERK: What say for the defense?

9 MR. WILLIAMS: Please swear the juror.

10 THE CLERK: Please have a seat in the jury box.  
11 Juror 71, Toddre Fulmer.

12 (Whereupon, Toddre Fulmer, a male, was called  
13 forward.)

14 THE CLERK: What say for the State?

15 MR. SPIVEY: Please present this juror.

16 THE CLERK: What say for the defense?

17 MR. WILLIAMS: Please swear the juror.

18 THE CLERK: Please have a seat in the jury box.  
19 Juror 157, Tamoria Praylow.

20 (Whereupon, Tamoria Praylow, a black female, was  
21 called forward.)

22 THE CLERK: What say for the State?

23 MR. SPIVEY: Please present this juror.

24 THE CLERK: What say for the defense?

25 MR. WILLIAMS: Please swear the juror.

1 THE CLERK: Please have a seat in the jury box.

2 Juror 11, Mary Anderson.

3 (Whereupon, Mary Anderson, a white female, was  
4 called forward.)

5 THE CLERK: What say for the State?

6 MR. SPIVEY: Please excuse this juror.

7 THE CLERK: Please return to your seat. Juror 127,  
8 Michael Masi.

9 (Whereupon, Michael Masi, a white male, was called  
10 forward.)

11 THE CLERK: What say for the State?

12 MR. SPIVEY: Please present this juror.

13 THE CLERK: What say for the defense?

14 MR. WILLIAMS: Please excuse the juror from the  
15 trial of this case.

16 THE CLERK: Please return to your seat. Juror 97,  
17 Jonathan Hollis.

18 (Whereupon, Jonathan Hollis, a white male, was  
19 called forward.)

20 THE CLERK: What say for the State?

21 MR. SPIVEY: Please excuse this juror.

22 THE CLERK: Please return to your seat. Juror 178,  
23 Daryll Sharp.

24 (Whereupon, Daryll Sharp, a white male, was called  
25 forward.)

1 THE CLERK: What say for the State?

2 MR. SPIVEY: Please present this juror.

3 THE CLERK: What say for the defense?

4 MR. WILLIAMS: Please swear the juror.

5 THE CLERK: Please have a seat in the jury box.

6 Juror 121, Deirdre Long.

7 (Whereupon, Dierdre Long, a white female, was called

8 forward.)

9 THE CLERK: What say for the State?

10 MR. SPIVEY: Please present this juror.

11 THE CLERK: What say for the defense?

12 MR. WILLIAMS: Please excuse the juror from the

13 trial of this case.

14 THE CLERK: Please return to your seat. Juror 129,

15 Karen Masters.

16 (Whereupon, Karen Masters, a white female, was

17 called forward.)

18 THE CLERK: What say for the State?

19 MR. SPIVEY: Please present this juror.

20 THE CLERK: What say for the defense?

21 MR. WILLIAMS: Please swear the juror.

22 THE COURT: This is the alternate.

23 THE CLERK: Please have a seat in the jury box.

24 THE COURT: Just one alternate. Thank you very

25 much. Ladies and gentlemen, what I'm going to ask that

1       you do is I'm going to ask Mr. Mills to escort you to  
2       your jury room so you can get a little acclimated of  
3       where you're gonna be spending a little time this week  
4       and also get to know each other. I need to speak with  
5       the lawyers for just a minute and then we'll get you  
6       back out and we'll kind of figure out exactly when we  
7       are going to start this trial.

8               You will hear me tell you something now and I will  
9       tell you this throughout the entire trial. Don't begin  
10      discussing this case. Now, you know very little other  
11      than just the little bit I told you from the  
12      indictments. But don't start any discussions among  
13      yourselves about anything related to this case and  
14      that's something that I will tell you throughout. When  
15      we take a break for lunch or at the end of the day, I  
16      will also instruct you not to discuss anything about  
17      this case with anybody that you may come into contact  
18      with whether it's friends, family member or whatever.

19             So anyway, if you will go back to your jury room  
20      for a few moments and we'll get you back out shortly.

21             (Whereupon, the jury entered the jury room at 11:30  
22      a.m.)

23             THE COURT: Does the State have any objections or  
24      exceptions to the jury selection?

25             MR. SPIVEY: No, sir, Your Honor.



1 THE COURT: And does the defense?

2 MR. WILLIAMS: Yes, Your Honor. May we approach?

3 THE COURT: All right.

4 (Side bar off the record.)

5 THE COURT: Mr. Williams, any exceptions or  
6 objections to the jury selection?

7 MR. WILLIAMS: None, Your Honor.

8 THE COURT: Thank you very much. Ladies and  
9 gentlemen of the jury panel, again some of you may be  
10 disappointed that you were not selected. I hope that's  
11 the case, but some of you are probably glad in some way  
12 that you are not, but we are not finished with you yet,  
13 okay? We anticipate at least having another trial later  
14 on in the week. What I'm going to need for you to do,  
15 I'm going to excuse you in just a moment, you have been  
16 provided a call in number and you will need to call that  
17 number after 6:00 this evening. It will give you  
18 instructions on what to do so don't forget to call that  
19 number because if you don't call it, then you're not  
20 going to know what to do, whether to come back tomorrow  
21 or to call again after tomorrow evening or whatever the  
22 case may be. So put that little card that you have with  
23 that number in a spot that will remind you to make that  
24 phone call. But for right now I'm going to excuse you  
25 and you can go to work or back home or whatever you

1 normally do during the day and we look forward to seeing  
2 you later on in the week so you are excused.

3 (Whereupon, the remainder of the jury venire were  
4 released for the day.)

5 THE COURT: All right. Gentlemen, I understand that  
6 we have some pretrial matters that we need to take up.  
7 Do you anticipate about how long we are going to need  
8 for that so I can kind of have an idea of when to bring  
9 the jury back?

10 MR. WILLIAMS: It depends when he gets here, Your  
11 Honor. I wouldn't think it would take more than an hour  
12 for everything.

13 THE COURT: For everything?

14 MR. WILLIAMS: Yes, sir.

15 THE COURT: Okay. And are they still needing you  
16 downstairs?

17 CHRIS SAMELLAS: I need to bring Theo downstairs. I  
18 don't think it's a plea though. I need him to come down  
19 and talk.

20 THE COURT: All right. If I bring them back, say,  
21 1:30, that will give us enough time to get some lunch  
22 and do the pretrial matter and for Mr. Williams to do  
23 whatever he has to do downstairs. 1:30 okay with  
24 everybody?

25 MR. SPIVEY: Yes, sir, Your Honor.

1 MR. WILLIAMS: Yes, sir.

2 THE COURT: All right. If we can get the jury back  
3 out.

4 (Whereupon, the jury returned to the courtroom at  
5 11:38 a.m.)

6 THE COURT: Let the record reflect the jury is back  
7 in and, ladies and gentlemen, what we're gonna go ahead  
8 and do because I have some matters that I need to  
9 discuss with the lawyers so we are going to go ahead and  
10 take an early lunch break. I normally don't give a two  
11 hour lunch break but in this particular situation I am  
12 because I do have matters that I need to talk with the  
13 lawyers about so if you would be back here promptly at  
14 1:30. Allow yourself enough time to get back.  
15 Sometimes unexpected things happen so allow yourself  
16 enough time and be promptly back in the jury room at  
17 1:30 and again I remind you don't discuss this case or  
18 anything about this case with anybody including  
19 yourselves and we'll see you back at 1:30. Have a good  
20 lunch, okay?

21 (Whereupon, the jury was released for lunch recess  
22 at 11:39 a.m.)

23 THE COURT: Okay. We need to take a break now for  
24 you to do whatever you need to do, Mr. Williams, and  
25 we'll start back, you tell me what time to start back on

1 the pretrial.

2 CHRIS SAMELLAS: What time are they coming for the  
3 pre-trial? Because they're not here yet, Judge.

4 MR. SPIVEY: They were supposed to be here in five,  
5 ten minutes, the lead investigator, and then we will be  
6 ready but whatever. Mr. Williams?

7 MR. WILLIAMS: Take to 12:00?

8 CHRIS SAMELLAS: Whatever you want, Theo. I don't  
9 know what you have down there.

10 THE COURT: Why don't we do this. Just y'all come  
11 and get me. I'll go back in chambers. When you're free  
12 up, then somebody come back and get me or let Bob know  
13 that y'all are ready for me.

14 MR. SPIVEY: Yes, Your Honor. We'll keep you  
15 informed.

16 THE COURT: Okay. Thank you.

17 (Short break.)

18 (Whereupon, State's Exhibits #1 through # 38 marked  
19 for identification.)

20 BAILIFF: All rise. Court is now back in session.

21 THE COURT: Thank you. Please be seated.

22 MR. SPIVEY: Your Honor, very briefly, I was  
23 discussing with Sergeant Brazell, we do have two  
24 weapons. They're gonna secure them and make sure  
25 they're okay. They're zip tied off right now, but

1       they're gonna put actual padlocks through them to make  
2       sure they are rendered safe, Your Honor.

3           THE COURT: I know that's what he prefers.

4           MR. SPIVEY: Yes, sir. Thank you, Your Honor.

5           THE COURT: Okay. Give me just one second please.  
6       Okay. And again we have some pretrial matters. I'll be  
7       glad to hear from you.

8           MR. WILLIAMS: You first.

9           MR. SPIVEY: Your Honor, I believe we have talked.  
10       We are going to request to sequester witnesses in this  
11       case. I'm fine with that. I think Mr. Williams is okay  
12       with that.

13          MR. WILLIAMS: Yes, sir. We would move to  
14       sequester. Your Honor, one of the co-defendants is in  
15       the courtroom right now, the wife of my client so she  
16       may or may not be testifying in this case so obviously  
17       we would tell her to wait outside as opposed to sitting  
18       in the courtroom right now.

19          THE COURT: Okay. All right. Solicitor, of course,  
20       you have got the chief investigating officer who can  
21       remain with us, but anybody else that you have just make  
22       the necessary arrangements.

23          MR. SPIVEY: Yes, sir, Your Honor.

24          THE COURT: All right. Go ahead please, sir.

25          MR. SPIVEY: Okay. There are some statements that

1       there was another co-defendant in this case. It's our  
2       understanding that he's deceased since the case  
3       occurred. He made some statements at the scene and then  
4       he may have made statements afterwards. We have not  
5       been provided any in discovery, but at the appropriate  
6       time if those are elicited by the defense attorney, I am  
7       gonna have a motion to exclude those statements, Your  
8       Honor.

9           THE COURT: Okay.

10       MR. SPIVEY: Mr. Williams and I have talked about  
11       this. Just to put on notice before he elicits that  
12       testimony that we can have that discussion beforehand if  
13       they even come out. I don't want to put the cart before  
14       the horse.

15       MR. WILLIAMS: Your Honor, he was a co-defendant in  
16       this case. He's the brother. In the case in chief by  
17       the State they have provided information that indicates  
18       that there were drug deals made directly to this brother  
19       as part of the basis for this. He's dead now. He may  
20       or may not have made alleged statements to individuals  
21       saying that the drugs in the house were his and not his  
22       brother. Before I would elicit that information, I  
23       would, obviously I would ask, we'll get the jury out of  
24       here and then put up whoever would be able to testify to  
25       that information so I understand what he's saying. I

1           won't --

2           THE COURT: Okay. And it may not be an issue.

3           MR. WILLIAMS: May not be.

4           THE COURT: Okay. But you will take care of that.  
5 I appreciate that. If we have to deal with it, then  
6 we'll deal with it at the appropriate time.

7           MR. SPIVEY: Yes, sir, Your Honor. Your Honor, I  
8 also have one more motion that may come up. One of the  
9 officers involved is Investigator Scott Morris. Your  
10 Honor, he was terminated from employment from the  
11 Sheriff's Office. It's my understanding that he arrived  
12 at the scene. He carried someone. I'm not sure which  
13 of the defendants or co-defendants. He took the  
14 defendant to jail. We don't intend to introduce any  
15 statements from him about anything that happened during  
16 that time and we would like to exclude, not that he was  
17 necessarily a part of the case, but the fact that he was  
18 terminated from employment from the Sheriff's Office as  
19 being overly prejudicial, Your Honor.

20           THE CLERK: Okay. What's the position of the  
21 defense?

22           MR. WILLIAMS: Your Honor, it's kind of like we  
23 don't have a position on that yet and the reason for  
24 that is, Your Honor, is that if it comes out in  
25 testimony that he was involved in any of the

1        investigating in this particular case, then we  
2        understand the reason why he was terminated had to do  
3        with chain of custody of other evidence. That's why he  
4        was terminated. So if indeed he's involved in the chain  
5        of custody of any of this evidence, found any of this  
6        evidence, we would proffer at least the fact that he was  
7        fired because he may have lied about certain information  
8        in the chain of custody of another case.

9                THE COURT: Okay. All right. But, Solicitor, are  
10        you planning to call -- What is his name?

11               MR. SPIVEY: Scott Morris, Your Honor. He will not  
12        be called as a witness, although I heard a different  
13        reason why he was terminated. It did involve  
14        truthfulness to a superior. I'm not sure it was about  
15        chain of custody. He may know more about it than I do.  
16        He's not gonna be called by our office pretty much ever  
17        in any case. He's not in the chain of custody of any of  
18        the evidence that we intend to introduce, Your Honor.  
19        From our understanding he's not involved in any chain of  
20        custody in any evidence at all in the case.

21               THE COURT: Okay. So if he's not going to testify,  
22        so credibility is not an issue and he's not involved in  
23        the chain of custody then I think probably that would  
24        not really be pertinent to.

25               MR. WILLIAMS: That's true.



1 THE COURT: Okay. All right.

2 MR. WILLIAMS: Your Honor, there may or may not be  
3 one additional question and that involves the, they have  
4 a confidential informant who has been arrested several  
5 times after this alleged activity with Lexington County  
6 Sheriff's Department for drugs to include being charged  
7 with lying to law enforcement and at some point in time,  
8 Your Honor, I guess when he's on the stand we would, we  
9 are going to try to get that information out that he's  
10 been charged with lying to law enforcement. Whether or  
11 not he's been convicted or not, Your Honor, may just  
12 tell me I can't do that but obviously in this particular  
13 case when he is the confidential informant and he's  
14 actually been charged with lying to law enforcement, if  
15 part of the reason why the charge is going to be taken  
16 off of him is because of his testimony in this  
17 particular case, we would think that we could get into  
18 some of that, Your Honor.

19 THE COURT: Well, the fact that he's been charged is  
20 not a conviction that would go towards impeaching his  
21 credibility. Now, are you suggesting that there may be  
22 because of his testimony there's been some sort of  
23 agreement or understanding related to the dismissal of  
24 the charges?

25 MR. WILLIAMS: That's what I'm concerned about is

1       that there are at least two police officers, one who  
2       works with Springdale who as I understand it from the  
3       Solicitor's Office was asked about what would happen if  
4       I worked as a confidential informant. What would happen  
5       if I testified as a confidential informant. And as I  
6       understand what that Springdale police officer would say  
7       is that normally if you catch a bigger fish, your  
8       charges would be dismissed. One of those wink wink type  
9       of cases. The other one is, I believe is with the main  
10      officer who simply said that I'm going to tell the  
11      Solicitor that you are cooperating. So in the middle of  
12      all this if it turns out that part of these charges are  
13      for the lying to police officer is that those charges  
14      are going to go away which means, I guess, we can ask  
15      when he's on the stand is what is the status of those  
16      charges? What do you anticipate of those charges as it  
17      relates to your testimony?

18           THE COURT: What would be the position of the State  
19      insofar as Mr. Williams being allowed to cross examine  
20      this confidential informant as far as any sort of  
21      agreements or benefits that he may receive as a result  
22      of his testimony?

23           MR. SPIVEY: Yes, sir. I think he is allowed to do  
24      it. I did not from talking with Justin Flake, the  
25      informant, I did not perceive that he was -- What he

1 told me the Springdale officer said was I cannot make  
2 you any promises but as a result of if you get me a  
3 bigger fish, usually charges are dropped or lowered. I  
4 think he may have just actually said dropped. He then  
5 was handed off to the Sheriff's office and they told him  
6 we can't make any promises at all but I'll tell the  
7 Solicitor that you worked for us.

8 THE COURT: Well, I think Mr. Williams would be --  
9 And I don't know that he would necessarily be allowed to  
10 question him about the actual charge, the nature of the  
11 charge, but something to the effect isn't it true, sir,  
12 that you have got some pending charges that are going to  
13 be dismissed as a result of your testimony and then he  
14 responds however and then certainly the State would have  
15 the right to put up a rebuttal witness to counter, hey,  
16 there's been no agreements.

17 MR. SPIVEY: Yes, sir.

18 THE COURT: Something to that effect. So I think he  
19 can get into that without naming the charge, lying to a  
20 police officer, but that there is a pending charge or  
21 charges, yes.

22 MR. SPIVEY: All right, sir.

23 THE COURT: All right. Anything else pretrial?

24 MR. SPIVEY: Your Honor, we have to do a lineup.

25 MR. WILLIAMS: We filed a motion that -- It's my

1 understanding that the identification of my client is  
2 going to be part and parcel of the trial in this case.  
3 We would contest the lineup, a Biggers argument,  
4 if you would, Your Honor, in regards to how the lineups  
5 were conducted.

6 THE COURT: Okay. We're gonna need some testimony  
7 from the officer or officers who were involved in that  
8 and I'll be glad to. Any other pretrial matters other  
9 than the Biggers ID issue?

10 MR. WILLIAMS: No, sir.

11 THE COURT: Okay. All right.

12 MR. SPIVEY: Your Honor, we call Investigator Tom  
13 Hodges to the stand.

14 THE COURT: Come around please, sir.

15 | Thereupon,

16 THOMAS HODGES

17 after having been first duly sworn, testified as follows,

18 THE CLERK: Please have a seat. After you're  
19 seated, please state your full name for the record.

20 THE WITNESS: Thomas Hodges.

21 THE COURT: Proceed.

22 MR. SPIVEY: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. SPIVEY:

25 Q. Investigator Hodges, tell us where you work.

1 A. Lexington County Narcotics team.

2 Q. Were you involved with the investigation against  
3 the defendant?

4 A. Yes, sir.

5 Q. Let's go with how you developed the defendant as a  
6 suspect in this case.

7 A. Received information from a confidential informant  
8 that somebody that goes by Ty was selling drugs from a house  
9 off of Wood Trail Drive and through further investigation we  
10 found out where the house was and then found out who the  
11 person selling drugs were from that residence.

12 Q. Okay. What was that residence?

13 A. It was [REDACTED] Road in Gaston.

14 Q. How did you look that residence up to sort of figure  
15 out who might live there?

16 A. We have a computer system that we use at the  
17 Sheriff's Department. It's called RMS, Records Management  
18 System, and we are able to search by address people who live  
19 at particular residences, if they have ever had what we call  
20 involvement with the Sheriff's Department.

21 Q. Okay. As a result of that did you develop the  
22 defendant's name as a person who had lived there?

23 A. I did.

24 Q. Okay. How do you make lineups at the Sheriff's  
25 Office? How are those put together?

1           A. We fill out what's called a intel unit request form.  
2 We send it to the intelligence unit at the Sheriff's  
3 Department, they take that information that we provide and  
4 they develop a lineup of the person that we - including the  
5 person that we have on the lineup.

6           Q. Okay. What does the lineup consist of?

7           A. It consists of six different photos.

8           Q. Okay. Those are all different people?

9           A. Yes, sir.

10          Q. Okay. Where do the photographs come from?

11          A. They can come from the Department of Motor Vehicle  
12 pictures. They can come from booking photos.

13          Q. Okay. Are those pictures, other than the one of the  
14 defendant, are the other five pictures, are those selected at  
15 random? How do they decide which other pictures to put on  
16 the sheet essentially?

17          A. There are several characteristics that they look at,  
18 race, hair color, eye color, gender, height, weight. Similar  
19 factors that they look at. They just don't pick five other  
20 random pictures. They have a process that they go through.

21          Q. And they're trying to get people who look similar?

22          A. Correct.

23          Q. Okay. You created a lineup as a result of your  
24 investigation?

25          A. I had that lineup created. Yes, sir.

1 MR. SPIVEY: May I approach the witness?

2 THE COURT: Certainly.

3 MR. SPIVEY: Your Honor, we're gonna hand some  
4 lineups that were created in this case to the witness  
5 here.

6 THE COURT: Okay.

7 MR. SPIVEY: We have had them marked as State's  
8 exhibits so we can refer to them.

9 THE COURT: Sure.

10 MR. SPIVEY: But they are not entered. Just for  
11 purposes of this motion, not for the trial.

12 THE COURT: Just for purposes of this in camera  
13 hearing.

14 MR. SPIVEY: Correct, Your Honor.

15 BY MR. SPIVEY:

16 Q. All right. Let me show you what's been marked as  
17 State's exhibit number 1. Can you identify what that is?

18 A. This is a photo lineup created by our intel unit.

19 Q. Is that one of the lineups that you created?

20 A. This is one of the lineups that I created. Yes,  
21 sir.

22 Q. Okay. Can you just describe the lineup just in  
23 general?

24 A. It's a six person photo lineup. All the pictures  
25 are in black and white and they are obviously of the one

1 person who you believe to be the suspect and five others who  
2 look similar to that suspect.

3 Q. Does this lineup include a picture of the  
4 defendant?

5 A. This one does not. No.

6 Q. Explain why that is the case.

7 A. I received information from another agent that I  
8 work with as to who Ty might have been. Based on that  
9 information I had a photo lineup created. As it turned out  
10 showed it to the confidential informant and the confidential  
11 informant did not pick anybody out of the lineup.

12 Q. Okay. Do you remember about what date you showed  
13 him this lineup?

14 A. It was -- I do not remember the exact date. No,  
15 sir.

16 Q. Okay. When you presented the lineup to the  
17 informant, what did you tell him?

18 A. I just said this is a six person photo lineup. The  
19 person that you purchased drugs from may or may not be on  
20 this paper and at that point I handed it to the confidential  
21 informant, let the confidential informant look at it, the  
22 confidential informant did not pick anybody out.

23 Q. Do you remember how long he looked at it?

24 A. I normally don't let people look at them real long.  
25 Normally like anywhere from - if they don't pick them out



1 within like five seconds, usually I'll just take it from  
2 them.

3 Q. Okay. Let me hand you what's been marked as State's  
4 exhibit 2 and 3. Take a look at that. Do you recognize  
5 that?

6 A. Yes, sir.

7 Q. What is that?

8 A. This is another photo lineup. This is consisting of  
9 six black and white pictures. They are actually jail photos  
10 from the Lexington County Sheriff's Department and again it's  
11 a different picture than the first one and I thought maybe  
12 showing a different picture but there again the confidential  
13 informant did not pick anybody out of this lineup.

14 Q. Okay. At that point did you eliminate that  
15 particular person that's in that lineup as a suspect?

16 A. I did. Yes, sir.

17 Q. Okay. Again when you handed that lineup, what did  
18 you tell him?

19 A. Again I told him this is a six person black and  
20 white photo lineup. The person that you purchased drugs from  
21 may or may not be on here. I handed the confidential  
22 informant the photo lineup, let the confidential informant  
23 look at it, didn't pick anybody, I took it from him.

24 Q. Okay. I hand you what's been marked as State's  
25 exhibit number 4.

1 THE COURT: The last one was -- Was that number 2?

2 MR. SPIVEY: That was number 2 and 3.

3 BY MR. SPIVEY:

4 Q. Explain to us what number 3 is.

5 A. Number 3, when we have - when we have photo lineups  
6 that are created from jail booking photos, we are given a  
7 second sheet of paper that have the people on the photo  
8 lineup that has their identity on it.

9 Q. Is number 3, that would be in your file, but would  
10 you hand that to the informant?

11 A. No. No. Absolutely not.

12 Q. Okay. Take a look at State's number 4. Do you  
13 recognize that?

14 A. I do.

15 Q. Okay. What is that?

16 A. This is again a six person black and white photo  
17 lineup. These are Department of Motor Vehicle pictures.

18 Q. Okay. Are all of the photos of similar size and  
19 shape men of similar characteristics to the defendant?

20 A. They appear to be. Yes, sir.

21 Q. Is the defendant on that lineup?

22 A. Yes.

23 Q. Is one of his pictures on there?

24 A. Yes, sir. He is.

25 Q. What number is that?

1 A. Number six.

2 Q. Is that person that's there, is he in the courtroom  
3 today?

4 A. Yes. He is.

5 Q. Will you point to him please.

6 A. Over there at that table in the plaid shirt.

7 Q. Seated beside Mr. Williams?

8 A. Yes, sir.

9 MR. SPIVEY: Your Honor, for the record he has  
10 pointed at the defendant sitting beside Mr. Williams.

11 THE COURT: So noted for the record.

12 BY MR. SPIVEY:

13 Q. How did you present that to the informant?

14 A. Again, this is a photo lineup that consists of six  
15 different pictures, black and white photos. The person that  
16 you bought drugs from may or may not be on here. I presented  
17 the photo lineup to the confidential informant. The  
18 confidential informant looked at it, picked him out within  
19 just a couple seconds.

20 Q. How long do you think he looked at it do you  
21 think?

22 A. No more than two or three seconds.

23 Q. Okay. Did he appear to waffle at all between the  
24 two pictures?

25 A. No, sir.

1 Q. Okay. Did he circle that person?

2 A. Yes. He did.

3 Q. Did you ask him how certain he was of his  
4 decision?

5 A. I did.

6 Q. What did he respond to you?

7 A. He said he was very confident that that was the  
8 person that he purchased from and that person was Ty.

9 Q. Okay. Did he sign that?

10 A. Yes. He did.

11 Q. Okay. What date did you give him that?

12 A. This was April 22, 2013.

13 Q. Okay. And in terms of the different distributions,  
14 how many distributions had occurred prior to you handing him  
15 this lineup?

16 A. I would have to look back at my notes, sir.

17 Q. Okay. Let me hand you this. This is your notes,  
18 your summary page. Just refresh your memory real quick.

19 A. It was two prior to this one.

20 Q. What dates were those two prior distributions?

21 A. March 22nd, 2013 and April 4th, 2013.

22 Q. You said this lineup was presented on what date?

23 A. April 22nd, 2013. If I can just clear up?

24 Q. Sure.

25 A. Well --

1 Q. Go ahead and tell us the other dates that you did  
2 make purchases from the defendant?

3 A. April 26th, 2013 and June 4th, 2013.

4 Q. Okay. All right. Let me approach and hand you  
5 what's been marked as State's exhibit 5. Do you recognize  
6 that?

7 A. I do.

8 Q. Okay. What is that?

9 A. This is, again it's another six person photo lineup  
10 black and white pictures containing the picture of the  
11 defendant.

12 Q. Is this the same lineup as State's exhibit 4?

13 A. Yes, sir. It is.

14 Q. So it's the same picture?

15 A. Correct.

16 Q. Have the pictures been moved around in any different  
17 order?

18 A. No, sir.

19 Q. So it's exactly the same substance?

20 A. Yes.

21 Q. What date did you give this to the informant?

22 A. This was April 26th.

23 Q. So the first one was - the one that you gave him  
24 with the defendant was April 22nd on State's exhibit 4. Now  
25 State's exhibit 5 is April 26th?

1 A. That's correct.

2 Q. Okay. And when you presented this lineup to him,  
3 what did you tell him?

4 A. Again, I said this is a six person black and white  
5 photo lineup. The person that you purchased drugs from may  
6 or may not be on this lineup, gave him the lineup, picked him  
7 out.

8 Q. Okay. How long did it take him to pick him out?

9 A. Again, it was just a couple seconds. Very quick.

10 Q. Did he hesitate at all?

11 A. Not at all.

12 Q. Did he waffle between people at all?

13 A. No, sir.

14 Q. Did he circle that person?

15 A. Yes. He did.

16 Q. Who is the person he circled?

17 A. Christopher Wilson.

18 Q. Is that the defendant?

19 A. Yes, sir.

20 Q. Did he sign that document?

21 A. He did.

22 Q. Okay. Let me hand you what's been marked as State's  
23 exhibit number 6. If you will take a look at that document.  
24 Do you recognize it?

25 A. I do.

1 Q. What is that?

2 A. Again it's a six person black and white photo lineup  
3 consisting of a picture of the defendant.

4 Q. Okay. Is that exactly the same as the other lineups  
5 that you had given him that contained the defendant?

6 A. Yes, sir. It is.

7 Q. So State's 4 and 5 and 6 are basically the same  
8 lineup?

9 A. That's correct.

10 Q. Okay. They were just given to the informant on  
11 three different occasions?

12 A. That's correct.

13 Q. What's the date on the last lineup that you gave  
14 him?

15 A. This is June 4th, 2013.

16 Q. Okay. What did you tell him when you handed him  
17 that?

18 A. I told him this is a six person black and white  
19 photo lineup consisting of a person that you might have  
20 purchased drugs from, handed him the photo lineup and he  
21 picked number 6 which is the defendant.

22 Q. So he did pick number 6?

23 A. Yes, sir.

24 Q. Did he pick them quickly?

25 A. Yes, sir. He did.

1 Q. Did he waffle at all?

2 A. Not at all.

3 Q. Did he sign that document?

4 A. Yes, sir. He did.

5 Q. Okay. Let me hand you what's been marked as State's  
6 exhibit 7 and 8. Do you recognize State's 7 and 8?

7 A. I do.

8 Q. What are they?

9 A. This is a six person black and white photo lineup  
10 jail photos from the Lexington County Detention Center  
11 consisting of one picture of Samuel Sims.

12 Q. Okay. Who is Samuel Sims?

13 A. He's a co-defendant in this case and from my  
14 understanding Mr. Wilson's brother.

15 Q. Okay. How was Mr. Sims involved in - what did you  
16 learn was his involvement through your investigation?

17 A. The controlled purchase of crack and cocaine was  
18 made from Mr. Sims on April 4th of 2013 at [REDACTED]  
19 Road.

20 Q. Give us a little bit of background about that  
21 particular one. Was that who the informant went to purchase  
22 drugs from?

23 A. It was originally the defendant Mr. Wilson that he  
24 went to purchase from.

25 Q. How did he end up buying from the defendant's



1 brother?

2 A. When the confidential informant arrived at [REDACTED]  
3 [REDACTED] Road, apparently Mr. Wilson was not available at  
4 that time. Contact was made with Mr. Sims at which time the  
5 purchase from Mr. Sims took place.

6 Q. Okay. Where is Mr. Sims today?

7 A. He is not in this courtroom.

8 Q. Is he alive?

9 A. From my understanding, no, he's not.

10 Q. Okay. When you handed him State's exhibit 7, what  
11 did you tell the informant?

12 A. I told him this is a six person black and white  
13 photo lineup, made a controlled purchase of crack and of  
14 cocaine on April 4th of 2013. The person that you made the  
15 purchase from may or may not be contained in this photo  
16 lineup. Handed the confidential informant the photo lineup.  
17 The confidential informant picked picture number 1 which is a  
18 picture of Mr. Sims.

19 Q. Okay. How long did he look at it before he picked  
20 that person out?

21 A. Not very long. Just a couple seconds.

22 Q. When did you show the informant this particular  
23 lineup?

24 A. I don't have the exact date on that one.

25 Q. Okay. Can you estimate for us when you would have

1     showed it to him?

2             A.   I don't want to estimate.  It was - it was after -  
3     it was after the 4th of April.

4             Q.   Okay.  Was it before you executed the search  
5     warrant?

6             A.   It was before the search warrant was executed.

7             Q.   What date was the search warrant executed?

8             A.   June 14th of 2013.

9             Q.   Okay.  So somewhere between April 4th and June 14th  
10    you showed the informant this lineup?

11            A.   That's correct.

12            Q.   Okay.  And he picked out Mr. Sims immediately?

13            A.   That's correct.

14            Q.   Or shortly within a few seconds?

15            A.   Correct.

16            Q.   Okay.  Did you ask him how confident he was?

17            A.   I did.

18            Q.   What did he tell you?

19            A.   He said he was very confident.

20            Q.   Okay.  He signed that.  Did he sign that particular  
21    one?

22            A.   Yes.  He did.

23            MR. SPIVEY:  Your Honor, for the purpose of this  
24    hearing I don't know if I moved them in evidence or not.  
25    I move State's number 1 through 8 just for the purposes

1 of this hearing.

2 THE COURT: Right. They are part of the record in  
3 this case insofar as this in camera hearing and then  
4 we'll make a determination as to the evidentiary record.  
5 Okay.

6 MR. SPIVEY: Your Honor, I don't have anymore  
7 questions for him. When Mr. Williams is done with him,  
8 then perhaps you would like to look at the lineups.

9 THE COURT: I will once Mr. Williams is finished  
10 with his cross.

11 MR. SPIVEY: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. WILLIAMS:

14 Q. Officer, as I understand it, the first two photos  
15 that you handed to your confidential informant you had  
16 already zeroed in as to the location as to where drug buys  
17 were being made; is that correct?

18 A. That is correct.

19 Q. So when you handed the first two photo lineups, you  
20 were of the opinion that Ty Pender was the person selling  
21 drugs at this location?

22 A. Let me go back and look at the name if you don't  
23 mind. That is who I believed to be who Ty was. Yes, sir.

24 Q. When you showed the first two lineups, your  
25 confidential informant did not pick out Ty Pender as being

1 the person who was selling drugs at this location; is that  
2 correct?

3 A. He didn't pick out anybody. No, sir.

4 Q. Then when you showed I want to say State's 4 and  
5 State's 5 which contain a picture of my client Chris Wilson,  
6 he picked out Chris Wilson as being the person who was  
7 involved in those sales; is that correct?

8 A. Did you say that was 4 and 5?

9 Q. 4 and 5 and 6.

10 A. That is correct, sir.

11 Q. And these were done on three separate occasions; is  
12 that right?

13 A. That is correct.

14 Q. Why is it that you did not change up the photographs  
15 on those three separate occasions? Why is it that you used  
16 the identical photo lineup on each and every one of those  
17 identifications?

18 A. Yes, sir. As I explained earlier, I hand in what's  
19 called an intel unit request form to our intelligence unit.  
20 They are the ones that make the photo lineup. I put, I  
21 request three black and white photo lineups. They are the  
22 ones that create them. That's why I wouldn't show them all  
23 on the same date.

24 Q. What information did you give your unit to create  
25 these three lineups? Meaning obviously you said it was a

1 black male I assume with some sort of height and some sort of  
2 weight. Any other identification that you gave them?

3 A. Yes, sir. Date of birth and driver's license number  
4 and Social Security number.

5 Q. You did that on three separate occasions; is that  
6 right?

7 A. No. I handed in one, one request form.

8 Q. All right. But you had three separate lineups that  
9 were produced on those three separate occasions in which the  
10 photos were identical; is that right?

11 A. As I previously stated, I handed in a intel unit  
12 request form and they made three separate photo lineups or  
13 the photo lineups that I presented to the confidential  
14 informant.

15 Q. Did they do them all at one time?

16 A. I picked them all up at one time so I'm assuming.

17 Q. They actually produced one photo lineup which you  
18 showed to your confidential informant on three different  
19 occasions; is that right? They're identical?

20 A. That is correct. They're identical.

21 Q. So your confidential informant got at least three  
22 opportunities to -- You would agree, would you not, that if  
23 you had a second and third viewing of somebody that you had  
24 already picked out before, then more than likely you should  
25 pick out the same guy or you're not going your grade very

1 well? It's pretty suggestive, isn't it?

2 A. I don't suggest anything, sir.

3 Q. The lineup is suggestive when it's the same way,  
4 isn't it?

5 A. I don't have an opinion on that, sir.

6 Q. Why didn't you mix up the lineup of the six  
7 individuals on the second and third occasions when you showed  
8 it to the confidential informant?

9 A. Sir, as I previously stated, I do not make the photo  
10 lineups.

11 Q. You made the comment when you identified my client,  
12 did you say that my client had a black shirt on?

13 A. No, sir. I said he had a plaid shirt on.

14 Q. Okay. The lineup that you showed to these  
15 individuals, they are always black and white, aren't they?  
16 They are never color?

17 A. I would never show a color photo lineup.

18 Q. And, of course, you didn't show on the third and the  
19 fourth -- I'm sorry. The third and the fourth and the fifth  
20 occasions when you showed the lineups to the confidential  
21 informant, you did not reshow the lineups for Ty Pender that  
22 you had shown to him before? You didn't incorporate Ty  
23 Pender into those lineups or you didn't ask him if it was Ty  
24 Pender there or incorporate that in any way to see whether or  
25 not there was a comparison?

1 A. No, sir. I showed one photo lineup at a time.

2 MR. WILLIAMS: That's all I have, Your Honor.

3 THE COURT: Anything on redirect?

4 MR. SPIVEY: No, sir, Your Honor.

5 EXAMINATION

6 BY THE COURT:

7 Q. Officer, there are three alleged drug sales by the  
8 defendant; is that correct?

9 A. Yes, sir.

10 Q. And after each alleged drug sale, you would show a  
11 photo lineup to the CI?

12 A. They were shown after. I can't say immediately  
13 after but they were shown after.

14 Q. Well, on 5 and 6 they were shown on the same day.  
15 Would that be true for number 4 as well?

16 A. Let me look one minute, Your Honor.

17 Q. Sure.

18 A. You said 5 and 6?

19 Q. Yes.

20 A. Your Honor, 6 was on the same day, and 5 was on the  
21 same day. Yes, sir.

22 Q. How about 4?

23 A. The fourth one was not on the same day.

24 Q. How long after the alleged sale?

25 A. Your Honor, the April 22nd which is number 4 --

1 Q. Right.

2 A. -- we had - that was actually exactly one month  
3 after the first deal. The second deal was actually done with  
4 Mr. Sims on April 4th so the one on the 22nd of April was  
5 exactly one month because the first one was on March 22nd,  
6 2013.

7 Q. All right. Would you hand me all those exhibits  
8 please?

9 A. Yes, sir.

10 THE COURT: Any additional questions as a result of  
11 the Court's questioning?

12 MR. SPIVEY: No, Your Honor.

13 THE COURT: Mr. Williams?

14 MR. WILLIAMS: No, Your Honor.

15 THE COURT: Okay. Thank you for your testimony,  
16 sir. You may step down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Okay. Anything further, Solicitor?

19 MR. SPIVEY: Your Honor, just in terms of way of  
20 argument, the way I understand Neil v. Biggers is that  
21 we are trying to decide whether or not they suggest  
22 someone particularly the defendant when it was handed to  
23 him in any way suggestive. Your Honor, the witness  
24 testified that he said he could be in the lineup or he  
25 could not be. All the photos appear to be the same



1 background color, the same skin color, similar facial  
2 hair, similar facial features, all of the same race,  
3 appear to be the same size. There is nothing to  
4 indicate just from the pictures themselves that it would  
5 stand out and indicate somebody. It doesn't indicate  
6 that they have any kind of a prior record. These aren't  
7 mug shots or anything like that. They are DMV photos.  
8 Some were mug shots. There's not numbers at the bottom  
9 to suggest they are criminal in any way. And, Your  
10 Honor, I think it's informative to the Court, the  
11 investigator actually got wrong who he thought the  
12 person was initially and if it were handed to him in  
13 some sort of suggestive way, then you would think that  
14 the informant would have picked the person he was  
15 suggesting. He did not pick anyone in the first two.  
16 It wasn't until we got the actual defendant in the  
17 lineup that he picked somebody. So I think that's  
18 informative as to whether or not it was handed to him in  
19 any sort of suggestive way, Your Honor. That's all.

20 THE COURT: Okay. Thank you. Mr. Williams.

21 MR. WILLIAMS: Your Honor, I think my main concern  
22 has to do with the fact that he had the same lineup that  
23 was presented three times and when he was first  
24 testifying, I thought perhaps they had run three  
25 separate cards, if you will, to determine the lineup and

1        then as we got further into the cross examination I  
2        learned that actually he had prepared three separate  
3        sheets of paper at one time. It's the same lineup and  
4        simply presented it to him on three different occasions.  
5        The second and third occasions obviously, Your Honor, if  
6        he's already picked the guy out of the first one, it  
7        would be suggestive, if you will, to make him do it the  
8        second and the third times. So my contention is that  
9        the method in how he did the identification as well as  
10       how the pictures were arranged is the problem.

11       THE COURT: Okay. All right. Of course, the  
12       analysis I have to go through, one, I have to determine  
13       whether or not it was unduly suggestive. If I do find  
14       that it is, I'm going to think on this a little bit and  
15       determine whether or not using the same photo lineup is  
16       suggestive or not, but if I do find that it was unduly  
17       suggestive, then I have to go to the second part of the  
18       analysis and determine the reliability. Would I not  
19       need to hear from the confidential informant even though  
20       the officer has already testified as to the time between  
21       the alleged crime and the identification and that he was  
22       certain. But the other factor is his opportunity to  
23       view the person at the time of the sale, his degree of  
24       attention. So would I not need to hear from the CI to  
25       make that ruling on reliability. If I find that it's

1 not unduly suggestive, then it stops there, but  
2 otherwise I'm gonna probably need to hear from the CI.

3 MR. SPIVEY: Yes, sir, Your Honor. Your Honor, the  
4 investigator from my office has gone to pick up the  
5 informant. He doesn't have any transportation and he  
6 has very limited mobile communications. He's going to  
7 go pick him up. We have not heard back from him.

8 THE COURT: What we can do is we'll go ahead and  
9 concluded for lunch. Let me take a look at the  
10 suggestiveness of these and then we can make a  
11 determination at whatever point to further this in  
12 camera hearing and hear from the CI or not. So that's  
13 fine.

14 MR. SPIVEY: Yes, sir, Your Honor.

15 THE COURT: All right. Anything else before we  
16 break for lunch?

17 MR. WILLIAMS: Nothing from the defendant, Your  
18 Honor. Your Honor, he has - the jury has not been sworn  
19 yet.

20 THE COURT: That's correct.

21 MR. WILLIAMS: But in anticipation I called my  
22 office and they supposedly are securing some sort of  
23 statement from the bonding company stating that they  
24 would be on his bond and I informed my client of that  
25 that we have to have that.

1 THE COURT: Sure. Okay.

2 MR. WILLIAMS: Before you would even entertain  
3 whether or not he would remain out.

4 THE COURT: Okay. And not every defense lawyer  
5 thinks as you are thinking insofar as having something  
6 from the bonding company.

7 MR. WILLIAMS: Well, I have represented a few  
8 bonding issues in my lifetime, Your Honor.

9 THE COURT: I understand. Thank you. We will be at  
10 recess until 1:30. Give you a few more minutes to grab  
11 something to eat, too. That's fine.

12 MR. SPIVEY: Thank you, Your Honor.

13 MR. WILLIAMS: Thank you, Your Honor.

14 (Lunch recess.)

15 (Whereupon, Court's Exhibit #1 marked for  
16 identification.)

17 THE COURT: Okay. We are back on the record.  
18 Concerning the identification issue, I don't really find  
19 that using the same photo lineup would be unduly  
20 suggestive, however, just to make sure we have got a  
21 good record, I would ask the Solicitor if you would  
22 elicit some testimony from the CI on this issue of  
23 identification and then I'll make, after I hear that,  
24 then I'll make a formal ruling on the admissibility of  
25 the anticipated in court identification, okay?

1 MR. SPIVEY: Yes, sir, Your Honor. Your Honor, the  
2 informant is on his way. They tell me he'll be 20  
3 minutes. He was on a job site over on Clemson Road off  
4 I-20. He's coming. Can we proffer that testimony  
5 before we put the --

6 THE COURT: Yeah. Let's go ahead and get started in  
7 the case and then we can work that in whenever we can.

8 MR. SPIVEY: Yes, sir, Your Honor. I apologize.

9 THE COURT: That's okay. That's all right. Not a  
10 problem. Anything else on the record before we bring  
11 the jury out and have them sworn in? I'll pick a  
12 foreperson. Anything else?

13 MR. WILLIAMS: Not that the defendant is aware of,  
14 Your Honor.

15 MR. SPIVEY: Nothing from the State, Your Honor.

16 THE COURT: Just one little housekeeping matter.  
17 I'm going to have some time not too long from now the  
18 foreman of the grand jury, I'm going to take his report.  
19 We may need to take a little break to do that. We'll  
20 deal with that. Bring the jury out please.

21 (Whereupon, the jury entered the courtroom at 1:40  
22 p.m.)

23 THE COURT: Let the record reflect the jury is back  
24 in. I hope you folks had a good lunch and are ready to  
25 get to work. The first thing we need to do is we need

1 to have you sworn in. Madam Clerk, would you handle  
2 that for me please.

3 (Whereupon, the jury was duly sworn by The Clerk at  
4 1:40 p.m.)

5 THE CLERK: Thank you very much. Ladies and  
6 gentlemen of the jury, one matter we need to deal with  
7 now is appointing a foreperson of the jury. A foreman  
8 if it's a male, a forelady if it's a female. Let me  
9 tell you a couple things about that. First of all, the  
10 vote of the foreperson is no greater than the vote of  
11 the other members of the jury. We just have to have  
12 someone to wear really several hats as we go through  
13 this trial. One, I need someone to serve as a  
14 spokesperson for the jury. If there needs to be some  
15 communication between the jury and the Court throughout  
16 this proceeding, then I need for someone to serve in  
17 that capacity.

18 Secondly, when you are given the case at the end of  
19 the trial to begin your deliberations, then I need  
20 someone to manage and supervise and get that started and  
21 see that the deliberations are run smoothly and in order  
22 for you to reach a verdict.

23 And thirdly, I need someone to make sure that you  
24 follow all the instructions that the court gives you.  
25 For example, don't begin any discussions about this case

1 among yourselves.

2 Now, I'm confident that all 13 of you would make an  
3 excellent foreperson of the jury but I can't have 13  
4 quarterbacks. I have got to have just one and so I'm  
5 going to pick Janet Stamey. Ms. Stamey.

6 JANET STAMEY: Yes, sir.

7 THE COURT: I'm picking you as the Forelady of the  
8 jury. You will always sit -- you don't need to move now  
9 -- but when you come back out after the break, this  
10 first seat right here where this gentleman is seated,  
11 this is where you will sit at all times, okay? Then the  
12 alternate, Ms. Long, you will always maintain --

13 KAREN MASTERS: Masters.

14 THE COURT: Okay. Masters?

15 KAREN MASTERS: Uh-huh.

16 THE COURT: I'm sorry. I had that wrong note on my  
17 list. Ms. Masters, you will always maintain that seat  
18 there. All of the rest of you can sit wherever you  
19 like. It's been my experience since I have been on the  
20 bench that jurors like sometimes to sit in the same seat  
21 throughout the trial. It's kind of like a church. You  
22 have your same pew. That's where you like to sit all  
23 the time. But that's up to you. You can sit in the  
24 same seat if you like or you don't have to. It's  
25 totally up to you. The foreperson and the alternate

1 will keep the same seat, okay?

2 Let me give you some preliminary instructions for  
3 you to consider. Certainly this is not going to be a  
4 charge on the law involved in the case. That will be  
5 done at the conclusion of it. But before we begin this  
6 trial, I want to tell you that this trial will probably  
7 will be different from what you might expect. Many  
8 people don't have the chance to attend actual court  
9 sessions as you are doing now and you may think from  
10 watching television or seeing movies, reading books,  
11 that trials are always full of high drama and intense  
12 action and riveting circumstances and while all of these  
13 things may be true at times, this trial is definitely  
14 not for entertainment. It's a fundamental part of our  
15 democracy. A search for the truth in an effort to make  
16 sure that justice is done between the parties before the  
17 Court.

18 Searching for the truth and making sure justice is  
19 done is often slow, often deliberate and often  
20 repetitive. The opposite of what you may have seen in  
21 watching television or movies or read in books. This  
22 courtroom, madam forelady and ladies and gentlemen of  
23 the jury, is a place of honor dedicated to the  
24 protection and preservation of citizens' rights through  
25 what many have called the greatest justice system ever



1 created. The attorneys appearing before you are  
2 advocates for the parties they represent. But first and  
3 foremost they are officers of the Court, sworn to uphold  
4 the integrity and fairness of our judicial system and to  
5 help you in the search for the truth. You should expect  
6 them to be professional, competent and ethical in the  
7 representation of their client's interests. And I'm  
8 sure that they will be. And you are also expected to be  
9 professional and reasonable and ethical as well.

10 Let me thank you officially for accepting this  
11 important responsibility of jury service and for your  
12 contribution today to our justice system.

13 What I'm saying to you and will continue to say for  
14 the next few moments is just an introduction to the  
15 trial of this case and again these remarks are not a  
16 charge on the law in this case. I will do that at the  
17 end of the case before you retire to consider your  
18 verdict. What I'm telling you now is just merely an  
19 explanation of the procedure that we will follow in the  
20 trial of the case so that you may better understand  
21 what's going to happen.

22 You're not allowed to take notes. Consequently it  
23 is extremely important for you to be very attentive and  
24 pay strict attention to everything that goes on because  
25 you can't take notes so you will have to rely on your

1 memory individually and collective memory when you are  
2 allowed to begin your deliberations.

3 As I told you at the outset to the entire jury panel  
4 Mr. Wilson is charged with four criminal offenses by way  
5 of four indictments and the indictments are simply the  
6 charging papers by which this case is brought into  
7 court. And again they are not in any sense evidence of  
8 any of the allegations that the indictments contain.

9 As I told you also the defendant has exercised his  
10 constitutional right and has pled not guilty to these  
11 four indictments therefore the State has the burden of  
12 proving each of the elements of these four indictments  
13 beyond a reasonable doubt. I'll explain that further to  
14 you at the end of the case. So it will be your duty,  
15 madam forelady and ladies and gentlemen of the jury, to  
16 decide whether the State has met that burden. You will  
17 make that decision at the end of the case.

18 Your purpose as jurors is to find and determine the  
19 facts. You are the sole judge of the facts. If at any  
20 time I make any comment regarding the facts, you must  
21 disregard it. You are to determine the facts from the  
22 testimony you hear and the other evidence introduced in  
23 court. It is up to you to determine the inferences  
24 which you feel may properly be drawn from the evidence  
25 presented. It's especially important that you perform

1 your duty of determining the facts diligently and  
2 conscientiously because ordinarily there is no way to  
3 correct an erroneous determination of the facts by a  
4 jury.

5 Now, on the other hand but with equal emphasis the  
6 same law that makes you the sole judge of the facts  
7 makes me the sole judge of the law. The law as given by  
8 the Court is the only law that you can consider. You  
9 must accept and follow it even though you may disagree  
10 with it. I can't tell you what the facts are and you  
11 can't tell me what the law is. Your job is to take the  
12 law as I give it to you and apply it to the facts as you  
13 find them from the testimony of the witnesses and any  
14 other evidence that is introduced. After doing that,  
15 you will be able to render a verdict, a verdict under  
16 the solemn oath that you just took as jurors a moment  
17 ago.

18 And again, as I have already explained to you, you  
19 can't discuss this case among yourselves or with anyone  
20 you may come into contact with during a break and you  
21 can't start any discussions until I tell you to. And  
22 also it is extremely important that you not conduct any  
23 independent research into this case or into the type  
24 charges or the law or do anything on your own. Now, we  
25 have easy access now to get just about any information

1 we want and so when you take a break and you go home in  
2 the evening, I don't want you getting on your computer  
3 and trying to do some research into what these charges  
4 are about or into this case in particular.

5 Also and I don't know if there is going to be any  
6 media coverage of this case, whether radio, television,  
7 newspapers, but if there is, you are not to consider  
8 that whatsoever because your decision, your verdict must  
9 be based one hundred percent on what you hear and see in  
10 this courtroom during this trial and on nothing else.

11 And one thing, too, I'll mention to you that I  
12 probably should have mentioned this before the jury was  
13 selected. Cell phones. The best practice is to just  
14 leave your cell phone in your car. You may have it.  
15 You may think you have cut off and it hasn't been cut  
16 off and it rings or even if you put it to vibrate,  
17 sometimes the vibration is louder than a ring. The  
18 better practice is to just leave the cell phone in your  
19 car when you come into the courtroom.

20 It's very important, ladies and gentlemen of this  
21 jury, to keep an open mind and not decide any issue  
22 until all of the evidence has been presented to you, the  
23 parties have made their closing arguments at the end of  
24 the trial and I have instructed you on the law in this  
25 case. It's your solemn responsibility to determine the

1       guilt or innocence of this defendant and your verdict  
2       again must be based solely on the evidence as it is  
3       presented to you in this trial.

4       Now, from time to time during this trial you may  
5       hear one of the lawyers say objection, Your Honor. Or,  
6       Judge, I have got a matter of law to take up with the  
7       Court. It may require me to excuse you to your jury  
8       room because we may need to discuss some of the facts  
9       and I don't want to influence you in any manner  
10      concerning the facts of the case so it may be necessary  
11      to send you out to the jury room so I can discuss  
12      whatever matters that the lawyers may have for me.  
13      Sometimes we can take care of some objection by having  
14      what we call a side bar conference where they will come  
15      up and we'll talk about it and I won't need to send you  
16      out. We'll try to do that the best we can but sometimes  
17      it's just better to send you out so we can discuss it on  
18      the record at that particular time.

19      In determining what the true facts are in this case  
20      as in any case you must decide whether or not the  
21      testimony of the witnesses is believable. It will be my  
22      responsibility to rule as a matter of law as to whether  
23      certain testimony is admissible or not, but once the  
24      testimony is admitted, whether or not you believe it is  
25      solely for you to determine. In deciding whether to

1 believe a witness you have the right to consider the  
2 interest of any witness, the bias of any witness, the  
3 prejudice of any witness, the opportunity for the  
4 witness to have seen the matters and things about which  
5 the witness may testify and the way the witness acts on  
6 the witness stand. You have the right to consider  
7 anything and everything that is in the record that will  
8 help you evaluate the testimony of the witnesses and the  
9 evidence in this case.

10 At this time I will ask the State, does the State  
11 have any objections or exceptions to the Court's  
12 preliminary instructions?

13 MR. SPIVEY: No, sir, Your Honor.

14 THE COURT: From the defense?

15 MR. WILLIAMS: None from the defendant, Your Honor.

16 THE COURT: Thank you very much. Madam Forelady,  
17 ladies and gentlemen of the jury, at this time the  
18 lawyers will make their opening statements to you or  
19 opening arguments to you. The State will go first and  
20 then the defense if the defends so chooses. These  
21 arguments or statements are merely a statement as to  
22 what they believe the facts are in the case. Their  
23 respective positions in this case. Not evidence but  
24 just their statements to you what they think this  
25 case is all about. As I told you, we have excellent

1       lawyers in this case so please give them your very  
2       strict attention. Solicitor, you may proceed.

3           MR. CASKEY: Thank you, Your Honor. May it please  
4       the Court.

5           THE COURT: Yes, sir.

6           MR. CASKEY: Good afternoon. This morning before I  
7       got here early to work I went through my e-mails. I  
8       usually do and one of the e-mails that popped up in my  
9       in box, really the spam folder, invited me to take part  
10      in a work from home business. And unfortunately as  
11      often the case with a job like this I was skeptical  
12      because of cases just like this. Because you see this  
13      case before you today is in essence a work from home  
14      business. It's a family business of sorts. All be it  
15      in this case it wasn't a legitimate enterprise that  
16      forms the bedrock of our community. No. This was a  
17      case, a business about trafficking crack cocaine,  
18      trafficking cocaine, possessing with intent to  
19      distribute marijuana and possessing a firearm during the  
20      commission of a violent crime. That's what this  
21      case is.

22           Over the course of this trial you will be exposed to  
23      a lot of different information. You will hear from a  
24      lot of different folks and you will hear a number of  
25      different terms that come about. You will likely hear

1 the word conspiracy which is a fancy lawyer word that  
2 means essentially a partnership. A joint venture you  
3 might call it if we were in business school.

4 This case again is about three individuals who lived  
5 at [REDACTED] Road in Gaston and what they were  
6 doing, to traffic in narcotics.

7 Now, I say that there are three residents in the  
8 house. You will come to hear it all right there on the  
9 witness stand. But this case, this case today is solely  
10 about the defendant Christopher Ty Wilson. You see, at  
11 that address, [REDACTED] Road, eventually you  
12 will hear the facts as they come out, but a search  
13 warrant is executed and during the course of that search  
14 of that house they found in total 29.74 grams of crack  
15 cocaine, 18.09 grams of cocaine, 88.92 grams of  
16 marijuana, two weapons, a pistol and an assault rifle,  
17 all of which in the State of South Carolina is illegal.

18 As I mentioned, you're going to hear witnesses  
19 under oath. They are going to take that stand right  
20 there. And you will see some photos and you will see  
21 some of the physical evidence in this case, but I want  
22 to make one thing clear at the outset, this is not an  
23 episode of CSI Lexington. This case is going to be  
24 tried like the thousands before it in American  
25 courtrooms as we have over the last 220 some odd years.



1       The witnesses are going to testify under oath and make  
2       no mistake about it, that is evidence. As the Judge  
3       said, you will give that as much credit as you see fit,  
4       but it is evidence. And I encourage you to listen very  
5       diligently because the charges against Christopher Ty  
6       Wilson are very, very serious.

7               Our system calls for you to bring your God given  
8       common sense and your experiences individually and  
9       collectively together to make a decision because as the  
10      defendant sits here today, as the Judge told you, he is  
11      cloaked in the robe of innocence which is a fancy way of  
12      saying he is as innocent as anyone else. We start  
13      effectively at zero. As the State, as the prosecutors  
14      our responsibility is to prove to you beyond a  
15      reasonable doubt the defendant is, in fact, guilty of  
16      all the crimes of which he stands accused. We will put  
17      that evidence in front of you.

18             You will hear at the end of the case us present and  
19      summarize that information to you. We don't argue. We  
20      are just here to present the evidence to you. That  
21      perhaps is one of the great misconceptions about  
22      prosecutions. We are not arguing. We are going to put  
23      the evidence in front of you. At the end of that when  
24      you weigh all the evidence you will have the opportunity  
25      to render a verdict that you believe to be true and

1 just. A verdict that the State believes will be guilty  
2 on all counts.

3 I thank you for your kind attention. I urge you  
4 please pay very close attention to all the information  
5 and evidence as presented to you.

6 THE COURT: Thank you, Solicitor. Mr. Williams,  
7 ready?

8 MR. WILLIAMS: May it please the Court.

9 THE COURT: Yes, sir.

10 MR. WILLIAMS: Ladies and gentlemen of the jury, I  
11 met you earlier. I'm Theo Williams. So I haven't  
12 changed. The case you're about to hear obviously  
13 doesn't begin with the opening arguments. That's how we  
14 typically begin the opening of a case. The case  
15 actually begins when the presentation of the evidence  
16 starts to be brought in because that's really what  
17 you're really asked to consider. That is whatever the  
18 evidence is to determine whether or not it's truthful or  
19 not. Whether or not it's reliable or not. Whether or  
20 not the evidence points to the guilt of my client or  
21 not. Whether or not you believe that there is  
22 sufficient evidence to find my client guilty. That's  
23 what it's all about.

24 You know, I heard the opening statement of the  
25 Solicitor and that is that it's a family business. I

1       took a different take on this when I took this file over  
2       and became involved in it. I thought of other things  
3       like no good deed goes unpunished which is a phrase  
4       which we use a lot in my law office. It's probably true  
5       of a lot of things in life. When you try to do a good  
6       deed for somebody, it comes back to bite you for doing  
7       the right thing and good thing.

8               My client Chris Wilson who is seated over there has  
9       the misfortune of having a brother -- I shouldn't say  
10      misfortune because that's not fair. He has or had a  
11      brother who had a drug problem. And his brother was  
12      probably selling drugs. Chris knew that he had bad  
13      friends but didn't know that he was selling drugs.  
14      Actually the reason why he was over at the location  
15      where he was at was because his mother, his own mother  
16      kicked him out of her house. Pretty bad when your mama  
17      kicks you out of the house. But that's what happened.

18             Mr. Sims was selling drugs. When he moved over to  
19      where Chris was staying, he told his brother not to  
20      bring them into the house. Not to do anything with  
21      them. Not to sell any drugs. Not do any of that  
22      because, you see, Chris has a wife and a child and from  
23      what we can determine based on the evidence that we have  
24      gone through is that obviously Chris was wrong in  
25      thinking that his brother had changed.

1           I can only tell you what my client will tell you and  
2           that is that he is not selling drugs. If there were any  
3           drugs that were found in that location at 344, they were  
4           not his drugs. That he didn't know anything about the  
5           drugs. He wasn't selling any drugs and sometimes  
6           that's all you can say. You know, you don't find  
7           everybody guilty just because one person may have drugs  
8           on them. You don't do that. What you don't know which  
9           I'm sure you will find out as this case goes on is that  
10          at some point we had anticipated maybe even calling  
11          Samuel Sims or getting Samuel Sims to testify, but  
12          Samuel Sims cannot testify because he's dead. He died  
13          July the 14th of 2014, Bastille Day. So we don't have  
14          Samuel Sims to testify. All we have is our client Chris  
15          Wilson who will testify and he will tell you that those  
16          drugs were not his drugs.

17          His wife was charged also, Brittany Jay, because she  
18          lives in that house and that's why she was charged.  
19          Whether or not she testifies or not I can't control and  
20          the reason I can't control that is because she was  
21          charged also. Sometimes when you got three different  
22          people charged, you can't always make the other side  
23          testify. But that's what we have today.

24          I would ask that you do this: We heard a litany of  
25          items that were supposedly found in the house. We have

1       heard about drugs and heard about guns and heard about  
2       cell phones and heard about any number of things. We  
3       were told that this is not a case of CSI. Well, we are  
4       not living in the eighteenth century either. We are not  
5       living in the nineteenth century and they certainly are  
6       able in this day and age to do such things as take  
7       photographs, take fingerprints, take DNA sampling and  
8       you can determine which individual has touched  
9       something, has had his hands on it. So I'm going to ask  
10      that you focus on where these items are found, what  
11      evidence there is that my client did anything with these  
12      items.

13             See, I'm old enough to remember when Oswald  
14      supposedly shot Kennedy. I want to say they took  
15      fingerprints off that gun, if I remember right. This  
16      may not be CSI but you're not supposed to forget  
17      everything that you picked up through the years. My  
18      client can only tell you that he's not guilty. You make  
19      them prove it. Before you convict my client, you make  
20      sure there is evidence that my client committed a crime.  
21      I thank you for your attention.

22             THE COURT: Thank you, Mr. Williams.

23             MR. WILLIAMS: Thank you, Your Honor.

24             THE COURT: Madam Forelady, ladies and gentlemen of  
25      the jury, I have a very brief matter that I need to take

1 up. I need to send you out. Don't get too comfortable  
2 because I'm not going to leave you back there very long,  
3 okay? We'll get you back out shortly.

4 (Whereupon, the jury entered the jury room at 2:05  
5 p.m.)

6 THE COURT: I think that's my grand jury foreman.  
7 Come up, sir, please.

8 Thereupon,

9 MITCHELL DRAPER

10 after having been first duly sworn, testified as follows,

11 THE COURT: Okay. Would you give me your name  
12 please, sir.

13 MITCHELL DRAPER: Yes, sir, Your Honor, Mitchell  
14 Draper, foreman of the County Grand Jury.

15 THE COURT: I understand the grand jury convened  
16 today and conducted some business.

17 MITCHELL DRAPER: Yes, sir, Your Honor. We had 18  
18 jurors present. We had 222 indictments presented before  
19 us. There were 222 true bills. No no bills. Zero no  
20 bills.

21 THE COURT: Thank you very much, sir. I appreciate  
22 your hard work. When the grand jury convenes again, if  
23 you would express to them my sincere appreciation for  
24 all their hard work.

25 MITCHELL DRAPER: Yes, Your Honor.

1 THE COURT: Thank you very much. Have a great day.  
 2 MITCHELL DRAPER: Thank you.  
 3 THE COURT: Is the State ready to call its first  
 4 witness?  
 5 MR. SPIVEY: Yes, sir, Your Honor.  
 6 THE COURT: All right. Bring the jury back out  
 7 please.  
 8 BAILIFF: Yes, sir.  
 9 (Whereupon, the jury returned to the courtroom at  
 10 2:10 p.m.)  
 11 THE COURT: Let the record reflect the jury is back  
 12 in. Solicitor, proceed.  
 13 MR. SPIVEY: Thank you, Your Honor. The State calls  
 14 Tom Hodges.  
 15 THE COURT: Okay.  
 16 Thereupon,  
 17 THOMAS HODGES  
 18 after having been first duly sworn, testified as follows,  
 19 THE CLERK: Please have a seat. After you're  
 20 seated, please state your full name for the record.  
 21 THE WITNESS: Thomas Hodges.  
 22 THE COURT: You may proceed.  
 23 MR. SPIVEY: Thank you, Your Honor.  
 24 DIRECT EXAMINATION  
 25 BY MR. SPIVEY:

1 Q. Investigator Hodges, please tell us where you work.

2 A. I work for the Lexington County Sheriff's Department  
3 attached to the narcotics enforcement team.

4 Q. How long have you worked there?

5 A. I have been at the Lexington County Sheriff's  
6 Department since October 2008. I have been attached to the  
7 narcotics enforcement team since August of 2012.

8 Q. What are your daily duties as an investigator?

9 A. Investigate drug complaints throughout the County of  
10 Lexington. Also meet with informants and receive information  
11 from them and talk to them, find out who may be selling drugs  
12 throughout Lexington County and do what we call controlled  
13 purchases.

14 Q. Okay. How did you meet Justin Flake?

15 A. I received information from the chief of the Spring  
16 Hill Police Department that he had some charges and was  
17 willing to work. At that time I met with Justin Flake. We  
18 did what we call a debrief which is basically listening to  
19 all the information that he had about certain drug dealers  
20 throughout the County of Lexington and go back and look at  
21 some information and then we did what we call sign them up as  
22 a confidential informant.

23 Q. Okay. How did you develop the defendant as a target  
24 of investigation?

25 A. He told us that --



1 MR. WILLIAMS: Objection to hearsay, Your Honor.

2 THE COURT: Okay.

3 BY MR. SPIVEY:

4 Q. All right. Let's just -- What are your general  
5 procedures for drug distributions?

6 A. Generally we send a confidential informant to some  
7 type of location where the confidential informant can buy  
8 drugs from whoever may be selling drugs at this location  
9 whether it's a house, a business, street side, wherever it  
10 may be.

11 Q. Do you use any kind of technology to aid or assist  
12 you in these investigations?

13 A. Yes. We record deals using audio/video equipment.

14 Q. Okay. What dates did you and Mr. Flake attempt to  
15 purchase drugs from the defendant?

16 A. That would be March 22nd, 2013, April 4th, 2013,  
17 April 26th, 2013 and June 4th, 2013.

18 Q. What type of drugs was the investigation  
19 targeting?

20 A. Targeting powder cocaine as well as crack cocaine.

21 Q. Okay. What location was the informant to go to in  
22 each of these distributions?

23 A. It was [REDACTED] Road located in Gaston,  
24 South Carolina.

25 Q. Is that in Lexington County?

1 A. Yes, sir. It is.

2 Q. Okay. Did you search Mr. Flake before you took him  
3 to this location or he went to the location?

4 A. Yes, sir.

5 Q. Okay. Did Mr. Flake drive himself to the location?  
6 How did he get there?

7 A. On the first controlled purchase we made which was  
8 on March 22nd, 2013, we actually had another agent drive him.  
9 On the subsequent controlled purchases we dropped him off and  
10 he walked in.

11 Q. Okay. And you searched him prior to. Why would you  
12 search somebody prior to doing a distribution?

13 A. It's a safeguard that we use on the narcotics  
14 enforcement team to ensure that the confidential informant  
15 does not have any money on them, that the money they have is  
16 the money that we give them and also that they do not have  
17 any drugs on them, that the drugs that we give them or the  
18 drugs that they have are the drugs that they got from the  
19 target of the investigation. Also that they do not have any  
20 weapons on them in case anything were to break bad and also  
21 that they cannot force the person to sell them drugs by the  
22 use of any weapon.

23 Q. Okay. At the end of each of these investigations  
24 did the informant bring you drugs?

25 A. Yes. He did.

1 Q. Okay. What did he bring you?

2 MR. WILLIAMS: Your Honor, I'm gonna object to that  
3 unless there is a foundation for whatever these items  
4 are that he says that he brought.

5 MR. SPIVEY: I'll rephrase the question, Your  
6 Honor.

7 THE COURT: Lay a foundation. If you still need to  
8 renew your objection, you can.

9 BY MR. SPIVEY:

10 Q. Okay. At the end of each of these distributions,  
11 would the informant -- What would the informant do after he  
12 left the residence [REDACTED] Road?

13 A. Would come straight back to us.

14 Q. Okay. Did the informant hand you anything at the  
15 end of that?

16 A. Yes. He did.

17 Q. Okay. What did it appear that he handed you?

18 A. Drugs.

19 Q. Okay. What type of drug did it appear to be?

20 A. It was powder cocaine. And on April 4th it was  
21 powder cocaine as well as crack cocaine.

22 Q. Okay. All right. How much money did each of these  
23 transactions -- How much money was used in each of the  
24 transactions?

25 A. I believe the first one was \$100.00 and each

1 subsequent I believe was \$200.00.

2 Q. Is that money the Sheriff's Office money or was that  
3 the informant's money?

4 A. It's the Sheriff's Office. We provide it.

5 Q. Okay. How did you learn -- Who did you think you  
6 were buying drugs from initially?

7 A. When I started the investigation, I spoke with a  
8 couple different agents back there that have worked the area  
9 and I was given the name Ty from the confidential informant.  
10 I ran that past a couple different agents that I worked with  
11 at the time and they gave me the name Tyrone Pender.

12 Q. Okay. I want to back up just a little bit. So  
13 initially what was - what did the informant know the  
14 defendant as?

15 MR. WILLIAMS: Objection, Your Honor. Hearsay.

16 THE COURT: Okay. You can't repeat what someone  
17 told you.

18 BY MR. SPIVEY:

19 Q. Okay. Did you believe that the informant's name  
20 through methods of investigation was Ty?

21 A. Yes. I did.

22 Q. Okay. And you stated just a second ago that you had  
23 developed someone that you thought might be Tyrone Pender?

24 A. That's correct.

25 MR. SPIVEY: Okay. If you give me just a second.

1 THE COURT: Sure.

2 MR. SPIVEY: Your Honor, do you have a copy of

3 State's exhibit 1 through 7?

4 THE COURT: I do.

5 MR. SPIVEY: May I approach and get those?

6 THE COURT: Sure.

7 MR. SPIVEY: Thank you, Your Honor..

8 MR. WILLIAMS: Your Honor, I would object to this

9 officer, I guess, testifying in regards to what the

10 confidential informant should be able to be here to

11 testify to.

12 THE COURT: Let me see the lawyers just a minute.

13 (Side bar off the record.)

14 BY MR. SPIVEY:

15 Q. All right. Let's see. Investigator Hodges, did you

16 ever conduct any surveillance as a part of this

17 investigation?

18 A. Yes, sir. I did.

19 Q. Okay. Tell us what you did and about what time you

20 did it in the time frame that we are talking about.

21 A. It was during the daytime hours and in the early

22 afternoon. I sat down the street from [REDACTED] Road

23 in my vehicle and observed traffic in and out of the

24 residence.

25 Q. Okay. When you say traffic, what do you mean by

1     that?

2             A.   People going in and out.

3             Q.   Okay.   Describe the street for us.

4             A.   It's - there are houses located on either side,  
5 mobile homes actually.  It runs off of Havenwood and there it  
6 dumps into another street at the end.  I apologize.  I don't  
7 remember the name of that street right now.

8             Q.   Is it residential?

9             A.   It is residential.  Yes.

10            Q.   Is it paved?

11            A.   Yes.  It is.

12            Q.   Mostly mobile homes?

13            A.   That's correct.

14            Q.   Okay.  How much -- Does it get a lot of traffic down  
15 the street to and from other houses?

16            A.   I wouldn't say a lot of traffic.

17            Q.   Okay.  But standard?  You would otherwise describe  
18 it as an ordinary neighborhood?

19            A.   A standard neighborhood.  Yes.

20            Q.   All right.  Describe for us again, you said you saw  
21 traffic in and out of the defendant's house?

22            A.   That's correct.  I saw people driving up, go in,  
23 leave.

24            Q.   During that time when you were doing the  
25 investigation, did you make contact with the defendant at any

1 time?

2 A. I did.

3 Q. Tell us about that.

4 A. I was sitting in my vehicle on the side of the road.  
5 The defendant Mr. Wilson, he actually came up to my vehicle  
6 and asked me if there was any problem and I told him no  
7 problem.

8 Q. Okay. Did you have any other discussions with him  
9 at that time?

10 A. He just asked if everything was okay. I just gave  
11 him a story that we were - we had a lot of burglaries in the  
12 area which was true at the time and we were just on  
13 surveillance to see if we could catch anybody trying to break  
14 into the houses. Of course, I wasn't going to tell him the  
15 real reason I was there.

16 Q. You admit that you, at least at that time were  
17 untruthful with the defendant about the reasons you were  
18 doing surveillance?

19 A. That's correct.

20 Q. That was to protect your investigation?

21 A. Correct.

22 Q. Did you see which house he came from?

23 A. He did. He came from [REDACTED].

24 Q. Did he tell you anything about where he lived or  
25 anything like that?

1 A. He did.

2 Q. What did he tell you?

3 A. He told me he lived at [REDACTED].

4 Q. Okay. At the end of your investigation after all of  
5 the distributions were concluded, tell us what you did  
6 then?

7 A. After all the distributions were concluded, I typed  
8 up a search warrant and presented it to a judge.

9 Q. Okay. Did you go to execute that search warrant?

10 A. Yes. I did.

11 Q. Okay. What date did you go execute that search  
12 warrant?

13 A. That was on June 14th of 2013.

14 Q. Okay. So the investigation began March 22, 2013.  
15 You concluded with executing the search warrant on June  
16 14th?

17 A. Yes, sir. That is correct.

18 Q. Okay. There was subsequent purchases in between?

19 A. That's correct.

20 Q. Okay. What was your role in the execution of the  
21 search warrant?

22 A. I was what's known as the agent in charge.  
23 Basically that's the lead investigator. Myself along with  
24 members of the Lexington County SWAT team went to the house.  
25 Members of the SWAT team actually entered the house along



1 with members of the narcotics enforcement team stayed on the  
2 perimeter until the house was rendered safe. Once it was  
3 rendered safe, then we began the execution of the actual  
4 search warrant.

5 Q. As the agent in charge what was your role in the  
6 actual search?

7 A. As the agent in charge it's my job to make sure that  
8 the people on scene have specific duties and execute those  
9 duties. I also took part in the search of the residence.

10 Q. Okay. Who was in the house when the search warrant  
11 was executed?

12 A. Christopher Wilson, Samuel Sims and Brittany Jay.

13 Q. What's the defendant's full name?

14 A. I believe it's -- I apologize if I mispronounce the  
15 middle name, Christopher Tywhun Wilson.

16 Q. Okay. What's the relationship of Mr. Wilson or the  
17 defendant to the other two people in the house?

18 A. My understanding is that he is the brother of Samuel  
19 Sims and at the time the boyfriend of Brittany Jay.

20 Q. Was anybody else present at the house when y'all  
21 executed the search warrant?

22 A. There were kids present at the time.

23 Q. Okay. They were minor children?

24 A. That's correct.

25 Q. Okay. Did the defendant have anything on him when

1 you executed the search warrant?

2 A. He had money on him.

3 Q. Do you remember how much money?

4 A. \$239.00.

5 Q. That was obviously cash?

6 A. That's correct.

7 Q. Okay. Talk a little bit about when you started  
8 searching the house. How do you break up the areas to be  
9 searched?

10 A. What we do is each room or area is given a number.  
11 We number it so it's easier for us down the road when we are  
12 gathering everything up we can have a room number to go on  
13 along with the room itself and once every room is numbered,  
14 then we'll take pictures.

15 Q. Okay. And take a look at your notes if you need to,  
16 but if you can tell us what room number 2 was?

17 A. Room number 2 was the kitchen.

18 Q. Okay. What was room number 4?

19 A. Room number 4 was Christopher Wilson's room.

20 Q. Is that a bedroom?

21 A. Yes. I apologize. Master bedroom. Christopher  
22 Wilson's bedroom.

23 Q. Who else shared that room with him?

24 A. Brittany Jay.

25 Q. What was room number 10?

1           A. That was the back bedroom that belonged to Samuel  
2 Sims.

3           Q. Okay. All right. Just briefly, if you could, tell  
4 us what was located in each of those rooms?

5           MR. WILLIAMS: Your Honor, I'm going to object to  
6 this unless he's the person who did the finding of those  
7 items because that person would be the one to say that  
8 they found it in such and such a location.

9           THE COURT: All right.

10          MR. SPIVEY: Your Honor, if I could perhaps lay a  
11 little more foundation about their procedure and the way  
12 things were found.

13          THE COURT: Let's do that. You can certainly renew  
14 your objection if you feel compelled to.

15 BY MR. SPIVEY:

16          Q. Investigator Hodges, when an item is found during  
17 the execution of a search warrant, is that item picked up in  
18 any way initially?

19          A. Not initially. It's photographed initially.

20          Q. Okay. And that's done before it's been touched by  
21 anybody?

22          A. That's correct.

23          Q. As a matter of practice or training y'all wear  
24 gloves during the search?

25          A. Yes.

1 Q. Okay. After, just in general, after items are found  
2 and they have been photographed, what happens just in general  
3 with those items? How are they collected?

4 A. They are put into plastic bags and written on the  
5 plastic bags where they were found and who they were found  
6 by.

7 Q. Okay. Does one person handle all of the items that  
8 were found?

9 A. What happens is we have somebody else called a  
10 scribe who basically does what's known as a search warrant  
11 return and the items are brought to that person. At the  
12 conclusion of the search warrant the agent in charge which is  
13 me collects up all of the evidence to turn into our evidence  
14 room.

15 Q. Okay. So you are the person who collected it, but  
16 after it was submitted to the scribe. Let me back up. The  
17 item is found. It's photographed in place?

18 A. Correct.

19 Q. After it's photographed in place, that item is  
20 brought to a central location?

21 A. That's correct.

22 Q. Okay. Where you write down what was found?

23 A. That's correct.

24 Q. Okay. And then what happens?

25 A. It stays in that central location until the

1 conclusion of the search warrant at which time I come and  
2 gather up everything.

3 Q. Okay. Are you familiar with what was found in each  
4 location?

5 A. Yes. I am.

6 Q. Okay. That was before it was moved to the central  
7 location?

8 A. That's correct.

9 Q. Okay. Please tell us what it was that was found in  
10 --

11 MR. WILLIAMS: Same objection, Your Honor.

12 THE COURT: Okay.

13 MR. WILLIAMS: Because I can -- We may have to argue  
14 outside the presence of the jury.

15 THE COURT: Let me see just the lawyers for just a  
16 minute.

17 (Side bar off the record.)

18 THE COURT: Madam Forelady, ladies and gentlemen of  
19 the jury, we have a matter of law that I need to discuss  
20 with the lawyers. Consequently I'm gonna ask that you  
21 go back to your jury room. It should not be too long,  
22 but a few minutes for me to deal with it. Again don't  
23 begin any discussions concerning this case.

24 (Whereupon, the jury entered the jury room at 2:30  
25 p.m.)

1           THE COURT: Okay. The defense has made an objection  
2           concerning this officer's testimony related to the items  
3           found, whatever those items are, and I don't know what  
4           they are but nonetheless what was found in the home as a  
5           result of the search warrant. I have instructed the  
6           Solicitor to have him testify as to each item and  
7           whatever involvement he had as supervising agent  
8           concerning this search. Certainly, Mr. Williams, you  
9           can renew your objection and then I'll make a ruling.  
10          Solicitor, proceed forward.

11          MR. SPIVEY: Thank you, Your Honor. Your Honor, may  
12          I approach?

13          THE COURT: Sure.

14                   PROFFERED TESTIMONY OF THOMAS HODGES

15   BY MR. SPIVEY:

16           Q. Officer, we have pre-marked these to try to make  
17           this a little easier. This is State's 11 through State's 24.  
18           They are individually numbered pictures. Take a look at  
19           those and flip through them real quickly.

20           A. (Witness complies.)

21           Q. You have had a moment to look at these?

22           A. I did.

23           Q. Do you recognize those?

24           A. I do.

25           Q. Did you take those photographs?

1 A. Agent Miramontes took the photographs.

2 Q. Were you present when those photographs were  
3 taken?

4 A. Yes. I was.

5 Q. Did you see each of the items in those photographs,  
6 without mentioning what they are, but just tell us each of  
7 the items, were those the locations in which they were  
8 found?

9 A. Yes. They are.

10 Q. Okay. And they had not been touched prior to the  
11 photographs being taken?

12 A. Correct.

13 Q. Okay. And all of those are fair and accurate  
14 representations of the items that were found on June 14th,  
15 2013?

16 A. Yes. They are.

17 MR. SPIVEY: Your Honor, for purposes of the motion  
18 I would move them into evidence as a block.

19 MR. WILLIAMS: Your Honor, his statement is almost  
20 impossibility that he said that no one had touched those  
21 items prior to the photographs being taken. There is  
22 not enough foundation for anyone to be convinced that  
23 what he is saying is actually true unless he is  
24 following each agent every time he finds an item. There  
25 is just no way that that can possibly be true as to how

1           this happened.

2           THE COURT: I'll allow you some cross examination of  
3           this officer for this limited purpose while we're  
4           outside the presence of the jury.

5           MR. WILLIAMS: Thank you, Your Honor.

6 BY MR. SPIVEY:

7           Q. Do you recall what items were found specifically by  
8           you or do you need to look at the bags?

9           A. I would have to look at the bags.

10          Q. Okay. I'll approach with each one of these things.  
11          This is State's 33. Do you recognize that?

12          A. I do.

13          Q. What is that just briefly?

14          A. A ledger.

15          Q. Who found that?

16          A. Charles Holloway.

17          Q. Did you see it when it was found?

18          A. I did.

19          Q. Where was it found?

20          A. It was in room 2 which was the kitchen.

21          Q. Okay. Just read what's written on the outside of  
22          the bag?

23          A. It says room 2, kitchen counter, found Charles.

24          Q. That's Charles Holloway?

25          A. That's correct.



1 Q. He works with the Sheriff's Office?

2 A. He is connected to the narcotics enforcement team.  
3 He actually works for the town of Batesburg/Leesville Police  
4 Department but he's attached to the task force.

5 Q. So he's following all the same procedures and  
6 protocols that you would have directed him to follow?

7 A. That's correct.

8 Q. You were the supervisor?

9 A. That is correct.

10 Q. So was that moved prior to you seeing where it was  
11 located?

12 A. Not to my knowledge. No.

13 Q. That is the item that was located in the kitchen?

14 A. That is the item that was located in the kitchen.

15 Q. I'm going to hand you what's marked as State's  
16 exhibit 31. Do you recognize that?

17 A. I do.

18 Q. Okay. What is that?

19 A. That is a High Point nine millimeter.

20 Q. Okay. Would you read the outside of the bag of that  
21 item for us?

22 A. Room number 4, High Point firearm model C9, nine  
23 millimeter Luger located by Hodges.

24 Q. Hodges is yourself?

25 A. That is correct.

1 Q. You found that item?

2 A. That's correct.

3 Q. Where did you find that item?

4 A. I found it in room number 4 which was the master  
5 bedroom or the bedroom of Mr. Wilson and Ms. Jay.

6 Q. Do you remember where explicitly in that bedroom it  
7 was found?

8 A. It was on the dresser.

9 Q. Okay. All right. Let me approach with State's  
10 exhibit 28.

11 A. This says camera lens outside over front door by  
12 Hodges model number 95914, serial number -- I don't believe  
13 the serial number stood the test of time. Looks like  
14 104-36484- -- I can't read that bottom one.

15 Q. Okay. But you found that?

16 A. Yes. I did.

17 Q. Where was that located?

18 A. That was outside over the front door.

19 Q. Okay. Let me approach with State's 26. Can you  
20 identify that for us?

21 A. It is two digital scales.

22 Q. Okay. Where was that located?

23 A. That was located in room 4 which is a master bedroom  
24 on the dresser. It was found by Charles Holloway.

25 Q. Okay. And did you see that item prior to it being

1 touched?

2 A. I don't recall if I saw it prior to it being  
3 touched, but I saw it after he found it.

4 Q. Okay. All right. Let me pull that one aside so we  
5 are clear on what you know you saw prior to it being touched  
6 and what you aren't. Number 27, tell us what that is.

7 A. This is another digital scale found in room 2 which  
8 is the kitchen on the kitchen counter and it was found by  
9 Charles Holloway.

10 Q. Okay. Did you see that item before it was moved?

11 A. I don't recall if I saw this one prior to it being  
12 moved.

13 Q. Okay. Let's pull 27 and 26 have been pulled aside  
14 as you're not being sure if you saw them before they were  
15 moved. Okay. Approach with State's exhibit 29. What is  
16 that item?

17 A. That is two razor blades found in room 2 which is  
18 the kitchen cabinet.

19 Q. Okay. Who found that item?

20 A. Charles Holloway.

21 Q. Okay. Do you remember where in the kitchen cabinet  
22 it was found?

23 A. I don't remember exactly where in the kitchen  
24 cabinet it was found.

25 Q. Do you remember seeing that before it was moved?

1           A. I don't remember seeing this before it was -- I  
2 remember it was photographed and told me where it was but  
3 whether he moved it or not I don't know.

4           Q. Okay. Let me pull that one aside you not being  
5 sure. But you are sure that this is the item -- On each of  
6 these items, number 29, 26 and 27, you are sure those are the  
7 items found and you are sure of the location in which they  
8 were found?

9           A. Yes. That I'm sure of.

10          Q. These are the exact items that were located there?

11          A. Yes. They are.

12          Q. Let me hand you what's been labeled as State's  
13 exhibit 25 and if you will look inside of there. That's a  
14 brown paper bag. Look inside is what we are really  
15 interested in.

16          A. It's two cans.

17          Q. Okay. What kind of cans are they?

18          A. Metal cans. Look like paint cans possibly.

19          Q. Okay. Where were those located?

20          A. Those were located in one of the kitchen cabinets.

21          Q. Okay. Were you there when that item was found?

22          A. Yes.

23          Q. Okay. Did you find it?

24          A. Yes. I did.

25          Q. Okay. What was inside of that can?

1           A. Various or different types of drugs, pills, crack  
2 and powder cocaine.

3           Q. Okay. Were there any other drugs to your knowledge  
4 that were found in the kitchen?

5           A. Yes.

6           Q. Where were they located?

7           A. There was a bag of marijuana that was right next to  
8 the cans.

9           Q. Did you find that as well?

10          A. Yes. I did.

11          Q. Okay. So you found the can and the marijuana that  
12 were found in the kitchen cabinet?

13          A. Yes. I did.

14          Q. Were there any other drugs found in the kitchen?

15          A. Just the marijuana, the pills, and the crack as well  
16 as the powder cocaine.

17          Q. So the pills, the crack and the cocaine were found  
18 in the can and the marijuana was found sitting beside the  
19 can?

20          A. That's correct.

21          Q. All in the same cabinet?

22          A. Yes.

23          Q. Okay. So nobody touched that before you found it?

24          A. No.

25          Q. Okay. That's State's 25. All right. Now, let me

1 approach and show you State's 30. Do you recognize that?

2 A. This was different drugs found in the kitchen.

3 Q. Okay. Were drugs -- Are there drugs in there that  
4 were found from any other location?

5 A. Yes. There are.

6 Q. Okay. Let me just put it this way: Is that the  
7 drugs found in the house?

8 A. Yes. These drugs were found in the house.

9 Q. Are those the only drugs found in the house?

10 A. I would have to open it up.

11 Q. Okay. Is that the BEST bag that you submitted?

12 A. Yes, sir. The BEST bag that I submitted in here.

13 Q. Is that the only BEST bag that you submitted from  
14 the search warrant?

15 A. Yes.

16 Q. Okay. But you didn't put it in the outside bag, but  
17 those are the drugs that you put inside of that BEST bag  
18 right there?

19 A. Yes.

20 Q. Okay. And you're the person who collected those  
21 items at the search warrant?

22 A. Yes.

23 Q. You put them in the BEST bag?

24 A. Yes.

25 Q. And you took the BEST bag to evidence?

1 A. That's correct.

2 Q. Okay. During the time from when they were found to  
3 the time that you submitted them to evidence, did anybody  
4 tamper with those, change those, alter those in any way?

5 A. No. They stayed in my custody.

6 Q. They are in the same condition as when you found  
7 them?

8 A. Yes.

9 Q. Okay. All right. Who found the drugs in the  
10 defendant's bedroom?

11 A. I know I saw them in there. They had not been  
12 moved.

13 Q. So you don't -- They had not been touched prior to  
14 you seeing them?

15 A. That's correct. Other people saw them as well but I  
16 know I saw them before they were moved.

17 Q. Okay. All right. You said Marc Miramontes took  
18 these pictures; is that right?

19 A. That's right.

20 Q. Were you with him when the pictures were taken?

21 A. I was not with him for every single picture. No,  
22 sir.

23 Q. But some you were?

24 A. That's correct. Mainly if I found something, I  
25 called him back to take a picture of it.

1 Q. Did you find anything in the co-defendant's  
2 bedroom?

3 A. Yes. I did.

4 Q. What did you find there?

5 A. There was --

6 Q. I say co-defendant. To be clear Mr. Sims' bedroom.

7 A. Correct.

8 Q. Okay.

9 A. There was a small amount of marijuana, crack  
10 cocaine, couple cell phones, .22 caliber rifle and a magazine  
11 with 12 .22 caliber rounds in it.

12 Q. You found those items in the co-defendant's  
13 bedroom?

14 A. Yes.

15 MR. SPIVEY: No further questions.

16 THE COURT: Do you have any cross examination of  
17 this witness related to what was found during the  
18 search?

19 CROSS EXAMINATION

20 BY MR. WILLIAMS:

21 Q. Officer, when y'all, I guess, broke down the door,  
22 you have a floor plan, do you not, or a plan which sets forth  
23 where each officer goes in the house after you secure the  
24 perimeter; is that correct?

25 A. That's correct.



1           Q. So when you went inside Mr. Wilson's house, you had  
2 a list of officers and they were told which rooms that they  
3 would be going in to search or check and then is that the way  
4 the search was conducted?

5           A. Well, let me back up for a second. I misunderstood  
6 your question. We have an office plan as to whether people  
7 are going to be searching or who is going to be taking  
8 pictures. We don't know the exact layout of the house. So  
9 to answer your first question, no. I don't have a plan that  
10 says this officer is going to this room, this officer is  
11 going to this room, because most of the time we don't have a  
12 layout of the house.

13          Q. I guess the reason I was asking the question is  
14 because you had Charles Holloway finding several of the items  
15 in the kitchen and you also had him finding drugs in the  
16 bedroom when you were supposedly in the master bedroom. Was  
17 he in charge of searching everything? And if so, wouldn't he  
18 be the one to know whether or not anything was moved or  
19 not?

20          A. He was not in charge. No. But he did find drugs in  
21 multiple places. We only had myself, Charles, and - it was  
22 mainly myself, Charles Holloway and Marc Miramontes actually  
23 searching so there was only three of us.

24          Q. Miramontes was taking pictures, right?

25          A. He was taking pictures. Yes.

1 Q. You and Charles were searching the house?

2 A. That's correct.

3 Q. I assume someone was watching the three individuals  
4 who were in the house?

5 A. That was Lieutenant Gunter had them outside.

6 Q. So how can you testify as to whether or not  
7 something was moved or not moved if the other officer, the  
8 only other officer who was doing the searching was the one  
9 that found those particular items? You're reading off a bag  
10 in regards to where something was found so you wouldn't have  
11 been there when he found it?

12 A. Like I said, I'm testifying as to how I saw it.

13 Q. The only thing you can testify to really is the  
14 bedroom, right? Oh, you're testifying as to how you found  
15 it. How you saw it. Whether or not it had been moved or not  
16 you don't know?

17 A. It's not general practice to move items before they  
18 are photographed as I have testified previously.

19 Q. But you can't testify on this particular day when  
20 this search was conducted whether or not those items were  
21 moved or not moved since you didn't find them?

22 A. I can't tell you one hundred percent. No. I  
23 can't.

24 MR. WILLIAMS: That's all the questions I have, Your  
25 Honor.

1 THE COURT: Okay. Anything further?

2 MR. SPIVEY: In terms of argument, Your Honor, some  
3 of these items are fungible and non-fungible. The  
4 fungible items are the drugs that were found. A strict  
5 chain of custody is needed to be proved as to where they  
6 were found. The officer testified that he was certain  
7 where the drugs, each of the items of drugs were located  
8 and that those were not moved prior to them being  
9 touched. He was the person who bagged them up. The  
10 other items, the non-fungible items, the scales, the  
11 gun, he can testify that those were the items found at  
12 the location. I think specifically whether or not they  
13 were touched, he could argue to the jury that maybe they  
14 were moved or maybe they were hidden under a blanket or  
15 something like that, but he can testify that these were  
16 the items seized out of that house.

17 MR. WILLIAMS: Your Honor, the reason, I guess, it's  
18 a sticking point with me is not necessarily in regards  
19 to chain of custody or whether or not the drugs were  
20 actually going to meet the ultimate test of being  
21 tampered with or not, whether or not that tested out to  
22 be drugs or not, but we have three people who were  
23 charged with trafficking in drugs. We understand that  
24 there is a room which supposedly is the room of my  
25 client and his wife. Supposedly there is a room which

1 is the room of his brother. Our theory is is that the  
2 brother was selling drugs and my client didn't know  
3 anything about it. So my concern is not just as to  
4 whether these items were found in the house but in what  
5 part of the house they were found so that the jury  
6 doesn't get -- Because obviously whether or not my  
7 client could see these drugs were in the house or not is  
8 important in determining his culpability in this charge.  
9 So if they were hiding in a cabinet might be different  
10 from sitting out on a counter. So that's my objection,  
11 that this officer should not be allowed to testify to  
12 location of items unless he is the one who found the  
13 item.

14 THE COURT: Well, all right. On 33 he testified  
15 that he saw it before anyone touched it so it was in  
16 it's original location even though Holloway actually, I  
17 guess, physically picked it up. That was 33.. 31, this  
18 officer found it. 28 this officer found it. 26, 27, 29  
19 Holloway finds it and this officer can't testify whether  
20 he saw it before or after it was touched. I think you  
21 can get Holloway up here, can't you, Solicitor? I think  
22 you may have already kind of put those to the side maybe  
23 anticipating how this will shake out. He found 25  
24 himself, and he found 30, if my notes are correct. So I  
25 think he certainly, what he personally found or what he

1 saw before it was moved or touched by anyone he can  
2 certainly, that certainly can come in. And then we  
3 bring Holloway to testify as to what he found and I  
4 think that kind of solves the issue.

5 MR. WILLIAMS: Yes, sir.

6 MR. SPIVEY: Yes, sir, Your Honor. We'll call  
7 Charles Holloway. We had already planned on bringing  
8 Marc Miramontes. His name is on the outside of some of  
9 these bags as well. We'll make sure we have everybody  
10 who searched and found something testify.

11 THE COURT: I think that would take care of the  
12 concern right now.

13 MR. SPIVEY: Your Honor, in terms of the pictures,  
14 the witness testified that he knew that those pictures  
15 were taken. They were in the same - those were fair and  
16 accurate representations of the items that were  
17 photographed on that day. He's not saying that's  
18 necessarily where they were found, but that's what was  
19 photographed that day. I think that meets the standard  
20 for admission of photographs.

21 MR. WILLIAMS: Your Honor, if the photographs are  
22 purporting to show the location of something in the  
23 house when it really wasn't found at that location in  
24 the house, then we go back to the substantive argument  
25 that we just had because if you're just gonna be able to

1 introduce the photographs to show that they were in this  
2 location when they were found in another location,  
3 that's a problem indeed. Your Honor, I think truthfully  
4 he should have to testify, Holloway should have to  
5 testify and Miramontes would have to testify in regards  
6 to, or maybe the two of them testify that in looking at  
7 Miramontes' photographs this is an accurate picture of  
8 where I found them.

9 THE COURT: Right.

10 MR. WILLIAMS: I don't know that you have to have  
11 Miramontes here.

12 THE COURT: I think the Solicitor is planning to.  
13 I'm certainly not trying to tell you, Solicitor, how to  
14 try this case. You can certainly ask this officer as  
15 supervising agent of this search are these photographs  
16 to your understanding photographs of everything that was  
17 found and seized in the home. They're marked for  
18 identification. Don't put them into evidence until  
19 you've got your other two guys up here to confirm  
20 everything.

21 MR. SPIVEY: Yes, sir. I'll make sure to be clear  
22 when I ask that question of him, not to suggest that  
23 these were necessarily exactly where the items were  
24 found, just that these pictures were taken during  
25 execution of the search warrant.

1 THE COURT: Don't actually get them into evidence  
2 where the jury can see them until you get the other two  
3 officers here to testify.

4 MR. SPIVEY: Yes, sir.

5 THE COURT: Okay. Y'all need to take a real short  
6 break before we bring the jury out?

7 MR. WILLIAMS: Whatever the Court wants to do, Your  
8 Honor.

9 THE COURT: I'm good either way.

10 MR. WILLIAMS: We're okay.

11 MR. SPIVEY: I would like to take a break, Your  
12 Honor.

13 THE COURT: Okay. Let's take a real short break.  
14 (Short break.)

15 BAILIFF: All rise.

16 THE COURT: Have a seat. Anything else before we  
17 bring the jury out?

18 MR. WILLIAMS: No, Your Honor.

19 THE COURT: Bring the jury out please, sir.  
20 (Whereupon, the jury returned to the courtroom at  
21 3:07 p.m.)

22 THE COURT: All right. Let the record reflect the  
23 jury is back in. Solicitor, you may proceed.

24 MR. SPIVEY: Thank you, Your Honor. All right.  
25 Investigator Hodges -- May I approach, Your Honor?

1 THE COURT: Yes, sir.

2 MR. SPIVEY: Just to get the stuff I left up there.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. SPIVEY:

5 Q. Investigator Hodges, when we broke just a minute  
6 ago, I had handed you just some general, what you described,  
7 I believe, as photographs. Let's just go through that again.  
8 I have forgotten where we were in that process. Can you tell  
9 me the first exhibit number and the last exhibit number of  
10 the photographs that you've got up there?

11 A. The first number is 11. The last number is 24.

12 Q. Okay. And do you recognize those?

13 A. I do.

14 Q. Are they fair and accurate representations of what  
15 was found, not necessarily which location it was found but  
16 what was seized that day?

17 A. Yes. They are.

18 Q. Okay. All right. I want to hand you what's been  
19 pre-marked as State's exhibit number 31. Do you recognize  
20 that item?

21 A. I do.

22 Q. Okay. How do you recognize that item?

23 A. It was seized at the location during the search  
24 warrant.

25 Q. Okay. And is that the item that was seized?



1 A. Yes. It is.

2 Q. Who found that item?

3 A. I did.

4 Q. Okay. Where did you find that item?

5 A. In the bedroom shared by Christopher Wilson and  
6 Brittany Jay.

7 Q. That's the defendant and Ms. Jay?

8 A. That's correct.

9 Q. Where in the bedroom was it?

10 A. On the dresser.

11 Q. What is that item?

12 A. It's a high point nine millimeter handgun.

13 MR. SPIVEY: Okay. At this point, Your Honor, I  
14 would move that into evidence, Your Honor.

15 THE COURT: Okay. Mr. Williams.

16 MR. WILLIAMS: Are you offering it into evidence  
17 now?

18 THE COURT: Yes.

19 MR. WILLIAMS: Without objection, Your Honor.

20 THE COURT: Without objection State's 31 is in  
21 evidence.

22 MR. SPIVEY: Thank you, Your Honor.

23 BY MR. SPIVEY:

24 Q. I'll hand you what's pre-marked as State's exhibit  
25 number 28. All right. Can you describe what State's exhibit

1 28 is? Do you recognize that?

2 A. I do.

3 Q. Okay. Did you find that?

4 A. I did.

5 Q. Okay. Where did you find it?

6 A. It was outside over the front door of the house at  
7 [REDACTED] Road.

8 Q. What is that item?

9 A. It's a camera lens.

10 Q. Okay. Is that the camera lens that you found at [REDACTED]  
11 [REDACTED] Road?

12 A. Yes.

13 MR. SPIVEY: Your Honor, I move State's exhibit 28  
14 into evidence at this time.

15 THE COURT: What says the defense?

16 MR. WILLIAMS: No objection, Your Honor.

17 THE COURT: Without objection number 28 is in  
18 evidence on behalf of the State.

19 MR. SPIVEY: Thank you, Your Honor. May I approach?

20 THE COURT: Yes.

21 BY MR. SPIVEY:

22 Q. I'll hand you what's pre-marked as State's exhibit  
23 25. Do you recognize -- And we are talking about the items  
24 inside of bag 25. Do you recognize those items?

25 A. I do.

1 Q. Who found those items?

2 A. I did.

3 Q. Okay. Where did you find those items?

4 A. They were in the kitchen in the cabinet.

5 Q. Was that cabinet locked in any way?

6 A. No. It was not.

7 Q. Was it a top cabinet or a bottom cabinet?

8 A. It was a top cabinet.

9 Q. Okay. What are the items inside of that bag?

10 A. Two metal cans.

11 Q. Okay. What do those metal cans have inside of  
12 them?

13 A. They contain drugs.

14 MR. SPIVEY: Your Honor, at this point I move  
15 State's exhibit 25 into evidence at this time.

16 MR. WILLIAMS: Without objection, Your Honor.

17 THE COURT: Without objection 25 is in evidence on  
18 behalf of the State.

19 BY MR. SPIVEY:

20 Q. Moving forward, I'll hand you what's been pre-marked  
21 as State's exhibit number 30. Do you recognize that item?

22 A. I do.

23 Q. Okay. Tell us a little bit about how you recognize  
24 that item.

25 A. I recognize it. First of all, I recognize the bag.

1 Inside of the bag is what we call a BEST kit. It's what we  
2 submit drugs in.

3 THE COURT: Spell that for the jury so they know  
4 when you use that term.

5 BY THE WITNESS:

6 A. B-E-S-T K-i-t.

7 BY MR. SPIVEY:

8 Q. Okay. What are BEST bags used for?

9 A. They are used for all drugs except for marijuana.

10 Q. Okay. What -- Essentially how do they get into the  
11 BEST bag? How do the drugs get into the BEST bag?

12 A. I put them in there.

13 Q. Describe for us a little bit about how the drugs  
14 went from being in this house to winding up in that bag?  
15 What's the process that y'all use?

16 A. After the drugs are gathered up at the house, before  
17 we leave I gather them up and I take them with me and then I,  
18 either my office or I will go to the evidence room and I will  
19 have the drugs with me and before I submit them into our  
20 evidence room, I will put them into the BEST kit and the BEST  
21 kit then is sealed up.

22 Q. Okay. I want to make sure we are clear about this.  
23 The items, some of those items in that bag were found by you;  
24 is that correct?

25 A. Correct.

1 Q. Do you remember which items those were?

2 A. I know there's some crack in there that was found by  
3 me.

4 Q. Where was that located?

5 A. That was located in the master bedroom, the bedroom  
6 of the defendant.

7 Q. Okay. That's room 4?

8 A. That's correct.

9 Q. Okay. And you're the person who found that?

10 A. Yes.

11 Q. And so you put that into that bag?

12 A. That's correct.

13 Q. Okay. Tell us about the -- Did you find -- Excuse  
14 me. Are the drugs that were found in those black cans that  
15 we just put in evidence, are those in that bag right there?

16 A. Yes. They are.

17 Q. Did you find those items?

18 A. I did.

19 Q. Okay. So those items were found by you and they're  
20 in that bag?

21 A. That's correct.

22 Q. Okay. What items do they appear to be? What do  
23 they appear to be?

24 A. Appear to be different types of pills as well as  
25 crack cocaine and powder cocaine.

1 Q. Okay. And that is - that's the kitchen or room  
2 number 2?

3 A. Yes, sir. Room number 2, the kitchen.

4 Q. I'm trying to make sure I understand exactly where  
5 everything was found because this stuff gets a little  
6 confusing. You found the drugs in Wilson's bedroom that  
7 appeared to be crack cocaine?

8 A. That's correct.

9 Q. You found a black can in the kitchen and inside of  
10 there were some more drugs which appeared to be cocaine and  
11 crack cocaine as well as some pills?

12 A. That's correct.

13 Q. Was there anything else found beside the black can  
14 in the kitchen?

15 A. There was a bag of marijuana found beside the  
16 cans.

17 Q. Did you find that?

18 A. I did.

19 Q. Okay. Is that - are there two bags of marijuana in  
20 there? Or let me ask the question this way. Is that bag of  
21 marijuana in that BEST kit the one that was in the kitchen?

22 A. The bag of marijuana that was found in the kitchen  
23 is inside this bag.

24 Q. Okay. So you see it in there?

25 A. Yes.

1 MR. SPIVEY: Your Honor, I don't have any further  
2 questions at this time. If you would answer any  
3 questions the defense attorney may have.

4 THE COURT: Okay. Mr. Williams, any cross  
5 examination?

6 MR. WILLIAMS: Yes, Your Honor. Thank you.

7 CROSS EXAMINATION

8 BY MR. WILLIAMS:

9 Q. Officer Hodges, we have been talking about these  
10 items here. Can you give me the date when these items were  
11 seized and/or found?

12 A. The items were seized on the search warrant on June  
13 14th of 2013.

14 Q. Wait time of day was that?

15 A. We executed the search warrant at 7:00 a.m.

16 Q. That's June 14th, 2013; is that right?

17 A. Yes, sir.

18 Q. At 7:00 a.m.?

19 A. That's what time we executed the search warrant.

20 Q. Who was present with you when you went in?

21 A. Initially it was myself as well as members of the  
22 Lexington County SWAT team as well as Agent Charles Holloway,  
23 Agent Marc Miramontes, Lieutenant Sam Gunter and Agent Scott  
24 Morris.

25 Q. And how many members are there with the SWAT team?

1 A. I don't recall.

2 Q. Were there more than four?

3 A. Really I would be speculating.

4 Q. You said SWAT team, then you listed off a bunch of  
5 narcotic people. Is the SWAT team different from narcotics  
6 or did they consist of some narcotic officers on the SWAT  
7 team?

8 A. There are a couple that are, that do both, but I  
9 don't remember. I don't recall who was on the SWAT.

10 Q. All right. When you arrived at the scene, it was  
11 7:00; is that right? 7:00 would be daylight because it's in  
12 June, right?

13 A. That's correct.

14 Q. Who was the first person through the door?

15 A. Again, I don't recall. That would be the SWAT  
16 team.

17 Q. After the SWAT team goes through, is that when you  
18 come in?

19 A. Once the SWAT team deems that the residence is all  
20 secure, then at that point that's when we can enter.

21 Q. So the SWAT team is a distinct different unit from  
22 you? As a general rule when y'all do this, you have the SWAT  
23 team that comes in, then the narcotics officers come in  
24 behind the SWAT team once they deem everything is okay?

25 A. That's correct.



1 Q. How many normally does a SWAT team consist of?

2 A. There again you are asking me to speculate. I'm on  
3 the narcotics enforcement team. I'm not on the SWAT team.

4 Q. But you were in charge of this raid, weren't you?

5 A. I'm the agent in charge as far as the collection.  
6 The SWAT team, they do their own preparation.

7 Q. Who put the plan into operation as to go into this  
8 house and how the search was going to be conducted and all  
9 the basis for the search warrant? Who was in charge of all  
10 of that?

11 A. Ask that again. I'm sorry.

12 Q. Were you not the person in charge of securing the  
13 search warrant, putting the SWAT team together and the  
14 narcotics officers and setting forth when you would go in to  
15 raid this house?

16 A. I'm in charge of obtaining the search warrants and  
17 after the SWAT team has made the initial entry of conducting  
18 the search. The SWAT team, they do their own preparation.  
19 I'm not a part of that.

20 Q. To the point that you don't even know who was on the  
21 SWAT team or how many people are coming in?

22 A. That's correct.

23 Q. All right. Well, did the SWAT team come in the  
24 front and the back doors of the house?

25 A. They entered through the front door.

1 Q. No one came through the back door?

2 A. Not to my knowledge. No.

3 Q. Well, you were there, right?

4 A. I was.

5 Q. So you would have observed any of the SWAT team  
6 going in the front and the back, right?

7 A. I was watching to make sure that the perimeter was  
8 secure.

9 Q. What did that consist of? What is watching to make  
10 sure the perimeter is secure? What does that mean?

11 A.. Making sure that nobody outside tries to come in and  
12 also if anybody inside were to start firing outside.

13 Q. Well, the SWAT team was doing that, weren't they,  
14 when they came in and secured anybody that was in there?

15 A. Their job is to go inside the residence.

16 Q. So the first people in the house who would have seen  
17 any drugs or anything in the house would have been the SWAT  
18 team, right?

19 A. That's correct.

20 Q. So they would have been the first ones to see where  
21 any drugs, any guns, anything was located, right?

22 A. Not necessarily.

23 Q. Well, they are the first ones in the house, right?

24 A. They are the first ones in the house.

25 Q. What did you observe on the outside after the SWAT

1 team got through with whatever they were doing? What did you  
2 observe before you went in?

3 A. I observed them bringing three people out.

4 Q. So after the three individuals who were in the house  
5 were brought out of the house is when you go inside the  
6 house, correct?

7 A. Correct.

8 Q. This is after the SWAT team has gone in and searched  
9 all the areas of the house and then they let you in?

10 A. When you say search the areas of the house, what do  
11 you mean by that?

12 Q. I mean exactly what I said. Searched. I don't know  
13 how else to say it. They look and see if there is anybody  
14 there, if there is anything dangerous or whatever they see  
15 that might be of interest when they go through. You do a  
16 detailed search I understand, right?

17 A. I do. Yes.

18 Q. But they search also?

19 A. They search for people.

20 Q. Or other items like guns, right?

21 A. No. They search for people.

22 Q. Now, who is the head of the SWAT team that went  
23 in?

24 A. There again, I do not know who headed up the SWAT  
25 operation.

1 Q. So where was my client? Where was Chris Wilson when  
2 the SWAT team came in?

3 A. He was inside the residence.

4 Q. Where inside the residence?

5 A. That I'm not sure.

6 Q. Well, that would be important, wouldn't it? That  
7 would be important where he was in the residence, wouldn't  
8 it?

9 A. I don't believe so. He was inside the residence.

10 Q. Well, where was Ms. Jay when the SWAT team came  
11 in?

12 A. There again, I did not enter when the SWAT team went  
13 in.

14 Q. Where was the deceased Mr. Sims when the SWAT team  
15 came in?

16 A. There again, I did not enter with the SWAT team. I  
17 do not know.

18 Q. So after the SWAT team gets through, they handcuff  
19 all three individuals who are in the house along with, I  
20 guess, the children that would have been in the house, too?  
21 What did they do with the children?

22 A. They bring the children out. They do not put the  
23 children in handcuffs.

24 Q. Where did the children go?

25 A. They went outside in the front yard.

1 Q. All right. Where?

2 A. In the front yard.

3 Q. Did you see the children?

4 A. I did.

5 Q. How many children were there?

6 A. If I recall correctly, I believe there was two  
7 children but don't quote me on that.

8 Q. Well, we're in a trial where you are sworn to tell  
9 the truth so I need to quote you on that.

10 A. I don't remember how many children exactly.

11 Q. All right. So do you recall who had custody of my  
12 client?

13 A. As far as which individual officer from the SWAT  
14 team?

15 Q. Yes.

16 A. I do not.

17 Q. So who goes into the house now, you, Charles  
18 Holloway with the Batesburg Police Department and Miramontes  
19 with the Lexington Police Department?

20 A. That's correct. As well as Lieutenant Gunter.

21 Q. Sam Gunter?

22 A. Yes.

23 Q. So you are the only four individuals in the house at  
24 this point in time, right?

25 A. There might have been a member of SWAT that came

1 back in. I don't recall.

2 Q. All right. So can you give me a layout of what the  
3 inside of the house looks like since you have been inside of  
4 it?

5 A. When you come in, there is a living room. Kind of  
6 catty-corner from the living room is the kitchen and off the  
7 kitchen there's a family room and there's a, I know Mr. Sims  
8 bedroom, that was, as you're looking at the home from the  
9 outside would be on the left-hand side and the bedroom that  
10 the defendant Mr. Wilson and Ms. Jay shared that was on the  
11 right-hand side as you're looking at it from the outside.

12 Q. You call Mr. Sims bedroom as being Mr. Sims bedroom.  
13 Does Mr. Sims go inside the house and point his bedroom out  
14 to y'all saying this is my bedroom?

15 A. No. He did not go back inside.

16 Q. How is it that you make the determination that  
17 Mr. Sims bedroom was Mr. Sims bedroom?

18 A. There were articles in there that had his name on  
19 it.

20 Q. So you found a piece of paper inside the bedroom  
21 that had Mr. Sims name on it?

22 A. Actually we found a jacket that he wore in one of  
23 the purchases that we did.

24 Q. So you found a jacket in the bedroom on a purchase  
25 that you made from Mr. Sims that was in that room so you

1 determined that that must be his bedroom?

2 A. That's correct.

3 Q. That was the basis of your determination whose  
4 bedroom was whose in terms of Mr. Sims anyway, right?

5 A. That's correct.

6 Q. And the reason you chose the master bedroom and made  
7 the determination that it was my client's and Ms. Jay's is  
8 because it was the biggest bedroom, correct?

9 A. Well, it had mens and womens clothing in it. And it  
10 also had your client's identification card in it.

11 Q. What was the address on my client's identification  
12 card?

13 A. I would have to go back and look at it.

14 Q. In wasn't that location, was it?

15 A. I don't recall.

16 Q. Let me ask you to not publicize what's in this item  
17 because it hasn't been placed into evidence. Tell me if that  
18 refreshes your memory?

19 MR. SPIVEY: Your Honor --

20 THE COURT: Wait a minute. I've got an objection.

21 MR. SPIVEY: I would object, Your Honor, if he's  
22 gonna try to refresh his memory with something that's  
23 not in evidence. It needs to be in evidence. We're  
24 gonna talk about it.

25 MR. WILLIAMS: Your Honor, every day a police

1 officer testifies from looking at their notes to refresh  
2 their memory. I'm simply showing him a document to see  
3 if that refreshes his memory. I'm not introducing it  
4 into evidence.

5 THE COURT: In order to attempt to answer the  
6 question you have asked?

7 MR. WILLIAMS: As to whether or not he remembers.

8 THE COURT: Okay. All right. I'll allow it.

9 Overruled. You may want to ask the question again and  
10 then see if that helps him any to answer.

11 BY MR. WILLIAMS:

12 Q. Do you recall having looked at that item as to  
13 whether or not your memory has been refreshed as to whether  
14 or not the ID which you referenced was an indication that he  
15 lived at that location which is [REDACTED] or not?

16 A. That address is not on there.

17 Q. Okay. So you go into which room first?

18 A. I don't recall which room I went into first.

19 Q. Well, you went through the front door and did  
20 Holloway go behind you or did Holloway go first and you went  
21 behind Holloway?

22 A. I don't recall the order that we went into the  
23 room.

24 Q. There are only two officers that do any searching  
25 whatsoever, right?



1           A. I don't recall if the third one did or not.

2           Q. Well, now, the third officer you're referencing  
3 would be Miramontes, right?

4           A. That's correct.

5           Q. Isn't he in charge of taking photographs of whatever  
6 items that you and Holloway find inside this place?

7           A. That's correct.

8           Q. So to your knowledge since you're the person in  
9 charge of this search, did Miramontes find anything in the  
10 house?

11          A. I don't recall if he actually found anything or  
12 not.

13          Q. So you were testifying that you found some paint  
14 cans in the kitchen cabinet which were up high as opposed to  
15 down low and that you were the ones that found the paint  
16 cans; is that correct?

17          A. Yes.

18          Q. And so that would be in room 2 I believe you  
19 referenced, right?

20          A. Yes. Room 2 of the kitchen.

21          Q. So where would Holloway have been if you were  
22 searching the kitchen?

23          A. I don't recall where he was at the exact time.

24          Q. Well, when you seize these paint cans that  
25 purportedly have these items which appear to be drugs, did

1 you take the paint cans and turn them over to forensics to  
2 see if there were any types of fingerprints that could be  
3 drawn from the sides of the paint cans?

4 A. No. I did not.

5 Q. Why is it that you did not turn the paint cans over  
6 to forensics to see who had actually touched the cans?

7 A. We had -- We conducted controlled purchases from  
8 this residence from the defendant. I did not feel it was  
9 necessary to conduct forensics.

10 Q. Well, you had also, according to your testimony a  
11 while ago, you testified that you had made a purchase from  
12 Mr. Sims; is that correct?

13 A. That's correct.

14 Q. So why is it that you didn't test the paint cans to  
15 see what fingerprints were on the paint cans?

16 A. Again, we made controlled purchases of drugs from  
17 this location from two individuals. That was not necessary.  
18 It's not standard practice to conduct forensics of drugs  
19 found in the house.

20 Q. Well, now, we are not trying any alleged purchases  
21 that you made today on those charges today, are we? We are  
22 just trying what you found in the house, right?

23 A. Correct.

24 Q. Okay. So how do we know who touched those paint  
25 containers and who had possession of those items that were in

1 that house?

2 A. I was told by the confidential informant that drugs

3 --

4 MR. WILLIAMS: Your Honor, I would object to  
5 speaking -- I didn't call for hearsay I don't think by  
6 that question.

7 MR. SPIVEY: Your Honor, he asked the question how  
8 do we know. He's answering how he knew.

9 THE COURT: You've got to take what you get.

10 MR. WILLIAMS: I'll take it, Your Honor. I'll take  
11 it.

12 THE COURT: All right. You may proceed.

13 BY THE WITNESS:

14 A. I was told by the confidential informant that the  
15 drugs were kept in a kitchen inside of cans and that's  
16 initially what attracted my attention to these cans was I saw  
17 the cans. I remembered what the confidential informant told  
18 me.

19 BY MR. WILLIAMS:

20 Q. Well, let's talk about that confidential informant.  
21 That confidential informant was a gentleman that came to you  
22 because he had charges in Springdale which the Springdale  
23 Chief of Police sent you, said look, you can use this guy to  
24 make some purchases, right?

25 A. I was informed by the Chief of Springdale that the

1 confidential informant had some charges and was willing to do  
2 some work.

3 Q. How many charges did he have?

4 A. That I don't recall.

5 Q. Do you know what the charges were?

6 MR. SPIVEY: Your Honor, I have to object at this  
7 point.

8 THE COURT: Okay. Let me see the lawyers for just a  
9 minute please.

10 (Side bar off the record.)

11 BY MR. WILLIAMS:

12 Q. Do you know what the charges were without stating  
13 what the charges were?

14 A. I know generically, in just speaking generically.  
15 There were some drug charges as well as --

16 MR. SPIVEY: Objection, Your Honor.

17 THE COURT: I think the question was without stating  
18 what the charges were, do you know what they are without  
19 actually stating what they are?

20 BY THE WITNESS:

21 A. I do.

22 THE COURT: Okay.

23 BY MR. WILLIAMS:

24 Q. Okay. Now, the individual who gave you this  
25 information about this paint container, what's his name?

1 A. Justin Flake.

2 Q. I'm sorry.

3 A. Justin Flake.

4 Q. And he's going to testify in a little bit, right, as  
5 far as you know?

6 A. I'm not sure.

7 Q. Well, since you know that these drugs came from this  
8 container, can you tell me what prevented you from taking  
9 fingerprints from this paint container?

10 A. It's not standard practice for us to do that.

11 Q. All right. Well, how long have you been with  
12 Lexington County Sheriff's Department?

13 A. Since October of 2008.

14 Q. And have you had training in the lifting of  
15 fingerprints?

16 A. I have.

17 Q. So you know how to lift fingerprints on your own,  
18 right? As a matter of fact, almost everybody at Lexington  
19 County know how to lift fingerprints, don't they?

20 A. I can testify I know how to lift fingerprints.

21 Q. Well, isn't it kind of like a standard rule when you  
22 go to work at Lexington County you have to learn how to lift  
23 fingerprints?

24 A. You're asking me to speculate as to what others do  
25 and do not know how to do.

1 Q. And you have taken fingerprints before?

2 A. I have.

3 Q. But you didn't do it on these paint containers that  
4 would have contained the drugs, alleged drugs that were  
5 inside of it?

6 A. I did not take fingerprints.

7 Q. Did you take any fingerprints off the bags that were  
8 inside the paint containers?

9 A. No. I did not.

10 Q. And again, you certainly know how to do that,  
11 right?

12 A. I have been trained in lifting fingerprints. Yes.

13 Q. Now, the weapon, did you call it a nine millimeter?  
14 Is that what you called it?

15 A. It's a high point nine millimeter.

16 Q. A high point nine millimeter that was found in the  
17 master bedroom?

18 A. That's correct.

19 Q. What does a weapon have on the side of it that  
20 separates it from other nine millimeter high point weapons?

21 A. I assume you're talking about the serial number?

22 Q. I am. So it's got a serial number on it, right?

23 A. Yes. It does.

24 Q. It has not been filed off or anything?

25 A. No.

1 Q. Did you check to see who the registered owner of  
2 this weapon was?

3 A. I checked to see whether it was stolen or not.

4 Q. Did you check to see who the registered owner of the  
5 weapon was?

6 A. I did not have HF conduct a trace of it.

7 Q. But you could certainly have done that and it would  
8 have given you a name as to who actually owned the weapon?

9 A. Yes.

10 Q. Now, did you conduct any fingerprint analysis off of  
11 the weapon?

12 A. No. I did not.

13 Q. All right. Now, let's see if I can remember all the  
14 items. Now, this is a lens off of the front of the house to  
15 show home security; is that right?

16 A. It was connected to a surveillance system.

17 Q. Surveillance system. Is that the same thing as a  
18 home security system, right?

19 A. Yeah. You could call it that.

20 Q. As a matter of fact, inside the house, if you look  
21 inside the house, you will see motion detectors inside the  
22 house that indicates when somebody breaks inside the house,  
23 it indicates that somebody has come into the house, won't  
24 it?

25 A. I do not recall if they had motion detectors inside

1 this particular residence.

2 Q. On the walls of the house when you see those little  
3 square things pinned up on the walls, do you know what those  
4 are?

5 A. Referring to key pads?

6 Q. No. I'm not talking about key pads. They're higher  
7 than your head up on the top part of the wall. Did you see  
8 anything that looked like that on the top part of the wall?

9 A. I'm sorry, Mr. Williams, I'm not sure I know what  
10 you're talking about.

11 Q. Well, you thought it was important to secure the  
12 lens which was on the front of the house because you think  
13 it's a surveillance system. Was there a surveillance system  
14 on the back of the house?

15 A. I don't remember seeing any on the back of the  
16 house.

17 Q. Well, if you were surveilling, wouldn't it be  
18 important if they were coming in the front or the back?

19 A. There again that's all in who has it set up.

20 Q. So what is the significance of this camera?

21 A. Are you asking me why I thought it was significant?

22 Q. Obviously you took it?

23 A. I just wasn't in --

24 Q. Why do you think it's significant?

25 A. A lot of times people that conduct drug sales in



1 their homes they have surveillance systems set up to see who  
2 is coming up and also to potentially watch out for law  
3 enforcement coming up as well.

4 Q. You know AT&T sells those things too, right? I mean  
5 ADT sells those things too, right?

6 A. Okay.

7 Q. Didn't you just say that you were out there because  
8 there were a lot of burglaries in the neighborhood?

9 A. I did.

10 Q. So you knew there were a lot of burglaries in the  
11 neighborhood and they had a surveillance system and you  
12 assumed that that was related to some sort of drug sales,  
13 right?

14 A. Possibly. Yes.

15 Q. Well, in your search of the house did you find any  
16 tapes or any disks that would indicate any type of drug  
17 trafficking? Meaning did you have recordings showing that  
18 somebody had come into the house and purchased drugs or any  
19 particular discs that would have been saved showing that?

20 A. We did not find any.

21 Q. Did you search for it?

22 A. I mean, searching for that particular -- We search  
23 for everything and anything that could be associated with  
24 this case, but we did not come across that.

25 Q. So aside from the gun and the paint can and the bag

1 of what appeared to be marijuana on the top part of the  
2 shelves, did you find anything else in all these items that  
3 you seized?

4 MR. SPIVEY: Your Honor, I have to object. It's  
5 just confusion. I'm confused. I'm not sure what he's  
6 asking.

7 THE COURT: Restate the question. Rephrase the  
8 question rather, Mr. Williams. And then, Solicitor, if  
9 you still have an objection, you can renew it.

10 BY MR. WILLIAMS:

11 Q. You said that when you came in the house, you found  
12 this pistol on the bedside table. You found this monitor or  
13 this lens on the front of the house. I assume you took it  
14 down, right? Or was it laying on the ground?

15 A. No. It was up above the house.

16 Q. Was it working?

17 A. It appeared to be working. Yes.

18 Q. Did you check it to see if it was working?

19 A. It appeared to be working.

20 Q. Okay. But you took those two items and you took the  
21 paint container which had some items that appeared to be  
22 drugs and then some marijuana and those two items were in the  
23 top part of the cabinet which was closed in the kitchen. Did  
24 you individually find any other items before anyone else  
25 found them?

1           A. I don't know if I found anything else before anybody  
2 found it but I did find other items.

3           Q. Okay. Well, what you are saying is you might have  
4 found something after someone else found something; is that  
5 right?

6           A. That's correct.

7           Q. Who would that have been, Mr. Holloway?

8           A. That is correct. He was in there searching as  
9 well.

10          Q. Did you -- I believe you had said -- Maybe you  
11 didn't. Did you check to see who the registered owner of the  
12 house was? Who the title owner of the property was?

13          A. I did not.

14          Q. Well, now, if you wanted to verify who the owner of  
15 the property is, all you have to do is go check a tax notice  
16 or RMC or something like that and see who owns the house?

17          A. That's correct.

18          Q. Did you check with the telephone company to see --  
19 Was there a land line there?

20          A. I do not recall seeing a land line but I'm not  
21 saying that there wasn't one. I don't recall seeing one.

22          Q. Did you find a bunch of bills that had my client's  
23 name on it as being the owner of the property or extending  
24 how long he had been at the property like maybe some old  
25 bills from say April or May of that year?

1 A. I don't remember seeing any bills.

2 Q. So if my client was staying there, you don't know  
3 how long he had been there based on what you discovered at  
4 the house, right?

5 A. I know he had been there since March 22nd of 2013.

6 Q. Well, you know that somebody told you that he was  
7 there on that day, right?

8 A. No. He was there March 22nd, 2013.

9 Q. Well, did you check the registration on any vehicles  
10 that he has?

11 A. I was not able to get the registration prior to.

12 Q. Okay. On the cabinet which was up high, did you do  
13 any fingerprints on the cabinet to see whether or not my  
14 client had ever touched that cabinet?

15 A. Are you talking about the kitchen cabinet?

16 Q. I'm talking about the cabinet where the paint  
17 container, where the paint cans were that had the alleged  
18 drugs in them?

19 A. The kitchen cabinet?

20 Q. Yes.

21 A. No. I did not.

22 Q. Well, you certainly were able to do that. That  
23 would have indicated whether or not my client had ever  
24 touched the items way up high, wouldn't it?

25 A. It depends on whether they were wood cabinets or

1 not. If they were painted. There's a lot of -- Sometimes  
2 you can get fingerprints off of that type of surface and  
3 other times you can't.

4 Q. What kind of cabinets were they?

5 A. I would have to look at a picture.

6 Q. So you don't know?

7 A. Not off the top of my head. No.

8 Q. Did you find any drugs whatsoever on my client?

9 A. No. I did not.

10 MR. WILLIAMS: That's all I have, Your Honor.

11 THE COURT: Redirect, Solicitor.

12 MR. SPIVEY: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SPIVEY:

15 Q. Did you find any drugs on the co-defendant?

16 A. No. I did not.

17 Q. Okay. Did they have any cash on them? Did Mr. Sims  
18 have any cash on him?

19 A. No. He did not.

20 Q. Did Ms. Jay have any cash on her?

21 A. No.

22 Q. And neither of them had drugs on them?

23 A. Correct.

24 Q. The defendant had told you he lived there?

25 A. He did.

1 Q. It was 7:00 a.m. in the morning when you found the  
2 defendant - when the defendant was present?

3 A. That's correct.

4 Q. Okay. Did you see any articles of clothing in the  
5 master bedroom that you knew from your investigation belonged  
6 to the defendant?

7 A. I did.

8 Q. Okay. What item of clothing specifically did you  
9 find?

10 A. Specifically it was a pair of camouflaged shorts  
11 that were present on video from March 22nd.

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

13 THE COURT: Anything on recross?

14 MR. WILLIAMS: No, Your Honor.

15 THE COURT: Thank you for your testimony, officer.  
16 You may step down.

17 MR. SPIVEY: Your Honor, I call Justin Flake. He's  
18 going to step out and retrieve him.

19 THE COURT: Okay. Sure.

20 Thereupon,

21 JUSTIN FLAKE

22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please have a seat. After you're  
24 seated, please state your full name spelling your last  
25 name for the record.

1 THE WITNESS: Justin Flake, F-l-a-k-e.

2 THE COURT: Let me see the lawyers just very  
3 briefly.

4 (Side bar off the record.)

5 THE COURT: Ladies and gentlemen of the jury, before  
6 we start the testimony of this particular witness, we're  
7 gonna take a short break so I ask that you go back to  
8 your jury room. Again, don't begin any discussion  
9 concerning this case and we'll get you back out shortly.

10 (Whereupon, the jury entered the jury room at 3:50  
11 p.m.)

12 THE COURT: Solicitor, give me one second before you  
13 start. Okay. Solicitor, I think what we'll do in  
14 camera is to take some testimony from Justin Flake on  
15 the issue of the anticipated in court identification of  
16 the defendant based upon the issues related to the  
17 photographic lineup. As I ruled earlier that while I  
18 did not believe necessarily that the photographic lineup  
19 utilized in this case was unduly suggestive, out of an  
20 abundance of caution I believe that we need to go into  
21 the second prong of the test concerning reliability and  
22 to elicit some testimony from this witness in order for  
23 me to make an official ruling on the issue, okay?

24 MR. SPIVEY: Yes, sir, Your Honor.

25 THE COURT: You may proceed. Thank you.

## 1 PROFFERED TESTIMONY OF JUSTIN FLAKE

## 2 DIRECT EXAMINATION

3 BY MR. SPIVEY:

4 Q. Mr. Flake, how old are you?

5 A. I'm 28.

6 Q. Do you work?

7 A. Yes, sir.

8 Q. Where? What's your job?

9 A. I'm - right now I'm working for my cousin framing  
10 houses, but I'm a certified welder. I work for Jim's Welding  
11 Service most of the time but lack of work.

12 Q. Okay. And you had some criminal charges pending,  
13 correct?

14 A. Yes, sir.

15 Q. Your goal was to try to work off the charges. Is  
16 that why you decided to help the police, correct?

17 A. Yes, sir.

18 Q. How did you know the defendant?

19 A. I met him through a friend.

20 Q. Okay. And what was your experience in dealing with  
21 the defendant prior to you getting involved with police?

22 A. Excuse me.

23 Q. Before you started working for the police, how many  
24 times did you interact with the defendant?

25 A. Maybe eight, 10.



1 THE COURT: How many, sir?

2 BY THE WITNESS:

3 A. About 10 maybe, approximately. I don't remember.

4 BY MR. SPIVEY:

5 Q. That's your best estimation?

6 A. Yes, sir.

7 Q. How long had you known him prior to your dealings  
8 with the police?

9 A. Two years.

10 Q. Okay. When you dealt with the defendant, what  
11 location would you meet him at?

12 A. His house.

13 Q. Okay. Where was that?

14 A. [REDACTED] Road.

15 Q. That's in Gaston, right?

16 A. Yes, sir.

17 Q. Okay. Each time that you met with him approximately  
18 how long would you be around him?

19 A. Every time I went there I was in and out of the  
20 house within 15 minutes. Most of the times five or ten.

21 Q. Five, 10, 15 minutes each time you met him for about  
22 ten times. So you're familiar with him but you would know  
23 him as say an acquaintance?

24 A. Yes, sir.

25 Q. All right. Let's make sure we are talking about the

1 same person. Is that person here today?

2 A. Yes, sir.

3 Q. When I say that person, I'm talking about  
4 Christopher Tywhun Wilson. Is he here today?

5 A. Yes, sir.

6 Q. Can you point at him?

7 A. Yes, sir.

8 Q. Will you?

9 A. (Indicating.)

10 MR. SPIVEY: Let the record reflect he's pointing to  
11 the defendant.

12 THE COURT: Okay. Let me just make sure I  
13 understand. This defendant claims that he knew the  
14 defendant prior to these alleged drug purchases; is that  
15 correct?

16 MR. SPIVEY: Yes, sir, Your Honor.

17 THE COURT: Okay. Well, in light of that we really  
18 don't have to go through a Neil versus Biggers  
19 examination under the Singleton case because if he knew  
20 him before the drug buys, then his identification  
21 through the photographic lineup would not be suggestive.  
22 I would be glad if you want to put anything on the  
23 record, Mr. Williams. I just did not know that this  
24 gentleman had some dealings with the defendant prior to  
25 the drug buys.

1 MR. WILLIAMS: Well, the curiosity, Your Honor, it's  
2 my understanding that there were at least two lineups  
3 which were shown to him which he could not identify or  
4 he didn't know the person in the lineup. If he knew my  
5 client, then he wouldn't have been fooled by showing the  
6 lineup of Ty Pender to him. I'm not sure he actually  
7 knew my client's name or anything like that. I'm trying  
8 to figure it out myself is when he says he knew him  
9 because he could have just told the police what my  
10 client's name was if that's true.

11 BY MR. SPIVEY:

12 Q. Who did you know the defendant as?

13 A. Ty.

14 Q. Did you know his real name?

15 A. All I knew was Ty.

16 MR. SPIVEY: Okay?

17 THE COURT: Okay.

18 BY THE WITNESS:

19 A. Or T-y.

20 THE COURT: Well, I'm going to find that if, in fact  
21 -- Well, he's already in camera identified the  
22 defendant, but if he identifies the defendant on the  
23 record before the jury as the same one he made drug  
24 buys, I'm going to allow that into evidence finding that  
25 the photographic lineup was not unduly suggestive by

1 virtue of the fact that he knew the defendant prior to  
2 the drug buys. So I think we can go ahead and bring the  
3 jury back in and start anew with your examination.

4 MR. WILLIAMS: Your Honor, while we are at this  
5 break, is it possible to inquire as to his convictions  
6 on his record? Because one of the items that we are  
7 concerned about is he's got some convictions for I want  
8 to say stealing gas from gas places and stuff like that  
9 which we would think is a crime of moral turpitude. But  
10 he's also got those charges that we were bringing up  
11 about that he was charged with drugs in June of 2013 as  
12 well as giving false information to a police officer.  
13 There is no disposition here with regards to whether or  
14 not he was convicted or not convicted or whether or not  
15 they are still pending. Obviously if he's been  
16 convicted, we don't have access to it. We don't want to  
17 screw up, but we would sure like to ask him that if it's  
18 true.

19 THE COURT: Solicitor, do you have knowledge  
20 concerning any prior record that he might have as far as  
21 convictions number 1? I think Mr. Williams is making  
22 some inquiry as to the status of these quote "charges"  
23 that were discussed in some fashion related to his  
24 cooperation with law enforcement.

25 MR. SPIVEY: Yes, sir, Your Honor. I don't think

1           there's been any. To my knowledge there was no  
2           resolution to the pending charges that he's trying -  
3           that he thought he was going to help himself on. There  
4           is a 2006 stealing gas. We agree it's a crime of moral  
5           turpitude. I'm going to bring that out myself.

6           MR. WILLIAMS: Can I just ask him, Your Honor?

7           THE COURT: Sure. Go ahead.

8                           CROSS EXAMINATION

9           BY MR. WILLIAMS:

10           Q. Mr. Flake, you were charged in June of 2013 of lying  
11           to law enforcement and to drugs, possession of drugs. What  
12           is the disposition on those drug offenses and what is your  
13           understanding with regards to what will happen to those drug  
14           offenses?

15           A. Are you talking about in Orangeburg County?

16           Q. Calhoun County.

17           A. Yes, sir. They are actually -- I got a letter in  
18           the mail. What had happened with that was that was before  
19           I went and got some help at that time and I was addicted to  
20           pain medication from my surgeries and all and I went and  
21           filed a false police report saying my medicine had gotten  
22           stolen to try to get more and then I went to jail for that  
23           and they found one Soma pill on me and anyway I went to court  
24           for that and the Assistant Solicitor Ted Lumpton or whatever,  
25           they said that if I voluntarily went to rehab, once I got

1     bailed out of jail the day I went to court they said if I  
2     voluntarily went to rehab for three or more weeks with a  
3     completion and by April 24th of that year then they would  
4     drop all charges and I went to Morris Village. I have the  
5     paperwork. I think Sarah has some of it, too, and I got  
6     a letter stating they were going to drop it.

7           Q. Now, is that Solicitor the same one that works for  
8     Lexington County dealing with DUIs in Lexington County? Same  
9     person that represents the Sheriff's Department in Lexington  
10    County?

11          A. I have no clue.

12           THE COURT: All right. Anything further?

13           MR. WILLIAMS: No, Your Honor.

14           THE COURT: All right. Bring the jury out, please.

15           BAILIFF: Yes, sir, Your Honor.

16           MR. SPIVEY: Your Honor, just to be clear, are you  
17     allowing his discussion of the false information in or  
18     are you going to allow him to be impeached on that?

19           THE COURT: No. I think my ruling remains the same.

20           MR. WILLIAMS: It does, Your Honor. I understand  
21     it to be that I can't play with that area.

22           THE COURT: Right. You can't bring out what the  
23     charges were, but certainly the fact that charges  
24     involve some motive related to his testimony, certainly  
25     that would be permissible. But the actual charges

1           itself are not going to be brought out.

2           MR. SPIVEY: Mr. Flake, do you understand that? I  
3           haven't talked with you about this prior to this because  
4           you were sequestered. I'm going to ask you, were you  
5           working charges off? Were you attempting to work  
6           charges off? You don't have to tell us what those  
7           charges were. Do you understand that?

8           THE WITNESS: Mm-hmm.

9           MR. SPIVEY: Okay.

10          (Whereupon, the jury entered the courtroom at 4:00  
11          p.m.)

12          THE COURT: Let the record reflect the jury is back  
13          in. Solicitor, you may proceed.

14          MR. SPIVEY: Thank you, Your Honor.

15                         DIRECT EXAMINATION CONTINUED

16          BY MR. SPIVEY:

17                 Q. Just to start over, Mr. Flake, what's your name?

18                 A. Justin Flake.

19                 Q. You work as a welder?

20                 A. Yes, sir.

21                 Q. Okay. How long have you been a welder?

22                 A. Since '05.

23                 Q. Okay. My understanding is that you had some  
24          criminal charges that you were trying to work off; is that  
25          correct?

1 A. Yes, sir.

2 Q. Okay. Mr. Flake, are you a drug addict?

3 A. Yes, sir.

4 Q. Okay. What is your drug of choice?

5 A. Opiates.

6 Q. How did you become addicted to opiates?

7 A. The first surgery I had I imagine I got, was  
8 addicted. You know, it wasn't the first time I started  
9 taking them but I have had probably six surgeries.

10 Q. What were the surgeries for?

11 A. I had a joint replacement in my right foot. A boat  
12 motor almost cut my arm off right here. I broke my neck on a  
13 rope swing at the river several years back and I had broke my  
14 hand and had some pins put in my hand and broke my leg snow  
15 skiing when I hit a tree.

16 Q. Okay. Mr. Flake, so they prescribed you opiate  
17 medication?

18 A. Yes, sir.

19 Q. You became addicted to it?

20 A. Yes, sir.

21 Q. Mr. Flake, back in 2006 were you convicted of taking  
22 gasoline without paying for it?

23 A. Yes, sir.

24 Q. Okay.

25 A. Six dollars.



1 Q. How much was it?

2 A. Six dollars in gas.

3 Q. What were the circumstances surrounding that?

4 A. My girlfriend at the time and I had, we were still  
5 in high school. We had been partying. We got to the gas  
6 station. That was when you could pump before you paid and I  
7 started pumping and realized I didn't have my wallet. I  
8 stopped. She didn't have her purse in the car. We just went  
9 to a store right near our house so I went in there and handed  
10 them my license and told them that it was an accident. I  
11 would be back to pay. Came back to pay and a different clerk  
12 was working and said they didn't have my license and that  
13 they didn't know what I was talking about so I don't even  
14 remember exactly how I found out I owed but like two years  
15 later I got pulled over for not wearing a seat belt. They  
16 said there was a warrant for my arrest.

17 Q. So you didn't pay for the gasoline?

18 A. No, sir. They wouldn't take the money.

19 Q. But you pled guilty to taking that gasoline; is that  
20 correct?

21 A. Yes, sir.

22 Q. All right. I want to talk specifically, you spoke  
23 with two different police agencies about your cooperation.  
24 What did the Springdale Police Department, what did they tell  
25 you in terms of what they would give you in terms of your

1 cooperation?

2 A. They explained it to me on the day I sat and went to  
3 their office when I got out of jail, they sat me down in a  
4 room, Brandon Pooling, officer, Captain Cornet and they  
5 basically said this is how it usually works. That if you can  
6 help law enforcement bust someone with more charges than  
7 yours or more serious charges than yours, then normally your  
8 charges will be dropped and I was willing to do anything to  
9 benefit, you know, myself at the time and cooperated with law  
10 enforcement.

11 Q. Okay. Did they refer you to the Lexington County  
12 Sheriff's Office? Let me put it this way: How did you get  
13 in touch with Investigator Hodges?

14 A. Yeah. I think they gave me his number or either  
15 vice versa and we went from there. I talked to my  
16 attorney.

17 Q. Okay. What did Investigator Hodges tell you in  
18 terms of what you would be given for your cooperation?

19 A. Detective Hodges always told me that, basically kept  
20 it short and we can't make you any promises. I mean, it  
21 doesn't look like you're hurting yourself at all by doing  
22 this but we cannot promise you anything and which always made  
23 me nervous but, you know, I was willing to go to any  
24 length.

25 Q. Okay. When you met with Investigator Hodges, did

1 you tell him -- How did it come up in terms of what work you  
2 were going to do for him? What did y'all discuss that you  
3 were going to do?

4 A. I was -- We had met close to my home and him and  
5 another agent and I had gotten in with them and he read me my  
6 rights or whatever and then explained everything from the  
7 beginning to the end pretty much and he made it very clear  
8 that he would never put me in a situation to where I had to  
9 buy a drug that would tempt me or make me want to go back out  
10 and use because I was clean at the time.

11 Q. Okay. And so --

12 A. If that answers your question.

13 Q. Yes. Did you tell him that you thought you could  
14 purchase drugs from the defendant?

15 A. Yes, sir.

16 Q. Okay. Did y'all come up with a plan for purchasing  
17 drugs from the defendant?

18 A. Yes, sir.

19 MR. WILLIAMS: Your Honor, I think we have a matter  
20 of law to take up outside the presence of the jury.

21 THE COURT: Madam Forelady, ladies and gentlemen of  
22 the jury, something I need to discuss with the lawyers  
23 so if you will go to your jury room please.

24 (Whereupon, the jury entered the jury room at 4:10  
25 p.m.)

1 THE COURT: Okay. Mr. Williams, you indicated that  
2 you have got a matter of law?

3 MR. WILLIAMS: Yes, Your Honor. There appears to be  
4 two videos which the Solicitor is anticipating showing.  
5 These would be videos of alleged purchases which  
6 occurred at that address. While we think that that  
7 might be sufficient for a search warrant to be issued,  
8 the videos, we happen to know that the alleged purchases  
9 on March 22nd, those drugs have never been tested so we  
10 have no idea whether or not what he purchased was or was  
11 not drugs. One of the transactions that occurred  
12 actually involves the dead brother who sold the drugs to  
13 him. So, Your Honor, we would move to suppress those  
14 videos because obviously you can't very well convict my  
15 client by using the videos showing from the dead brother  
16 where the dead brother is the one who actually sold him  
17 the drugs and the other one is because there was no  
18 drugs that was actually purchased.

19 THE COURT: All right. So we have got two videos,  
20 one is a drug purchase.

21 MR. SPIVEY: Your Honor, it's two disks that contain  
22 four videos.

23 THE COURT: All right. Four videos, two disks.  
24 Okay. And we have got -- And they are -- Tell me,  
25 Solicitor, what they have got. Mr. Williams referred to

1 two of them. Tell me all four of them what they show.

2 MR. SPIVEY: Your Honor, the first video is the best  
3 quality video. They show the defendant meeting with the  
4 informant at the front of the residence, then they go  
5 around to the back and the informant has told me in  
6 meetings with him that he purchased drugs and it sounds  
7 like there's a drug transaction on the video. You do  
8 not actually see a hand to hand transaction. But the  
9 informant says he took those drugs, he gave those drugs  
10 to Marc Miramontes and Investigator Hodges and that they  
11 believed it was cocaine. The evidence never - they were  
12 submitted into evidence. In fact, they are here. We  
13 can prove chain of custody. They were never given to  
14 the chemist for some reason to be tested. I don't  
15 purport to understand the logic of that. We found that  
16 out just within the past week or so that they were never  
17 actually tested.

18 THE COURT: Okay. And the date of that alleged drug  
19 buy was what?

20 MR. SPIVEY: March 22nd, Your Honor.

21 THE COURT: All right. It shows something you want  
22 to bring out with this witness to testify that he bought  
23 drugs but we don't know if they were, in fact, drugs  
24 because they have never been tested.

25 MR. SPIVEY: Your Honor, we can say with some degree

1 of certainty that they appear to be drugs and that the  
2 officers will be able to tell us that, in fact, the  
3 drugs that they were handed appeared to be those  
4 particular drugs. With a hundred percent certainty, no,  
5 we cannot say that they are drugs. I would argue it's  
6 an issue of not necessarily admissibility, but it's more  
7 of a credibility type thing. Whether or not the jury  
8 believes it is an entirely different issue than whether  
9 or not it should be admissible. He's certainly allowed  
10 to argue. We can't say for certain these drugs were  
11 tested. In fact, the other videos that we put in we are  
12 not going to even put the chemist up for those to show  
13 that those are proof unless you tell us we need to do  
14 that otherwise. But from my understanding from reading  
15 particular cases you can just have an informant testify  
16 I bought drugs from that person before or I saw that  
17 person sell drugs to someone else before. The question  
18 is whether or not you can prove it to a clear and  
19 convincing standard is what I understood it to be.

20 THE COURT: All right. Just kind of jumping forward  
21 just a little bit, it's my understanding that we are not  
22 going to have any expert testimony that any of this is  
23 drugs?

24 MR. SPIVEY: Excuse me, Your Honor.

25 MR. WILLIAMS: None of those. None of these

1 items.

2 MR. SPIVEY: The search warrant drugs, yes, we are.  
3 But the prior distributions we had not intended to  
4 submit.

5 THE COURT: Tell me, give me the info on the other  
6 video so I kind of get a feel for what we have got and  
7 then I can attempt to make a ruling. So the first one  
8 March 22nd shows that the defendant and this witness  
9 doing something and he's prepared to testify that it was  
10 a drug buy?

11 MR. SPIVEY: Yes, sir, Your Honor. The second video  
12 is April 4th, I believe, just going off the top of my  
13 head. The informant is going to testify that he went to  
14 go purchase drugs from the defendant and the defendant  
15 was unavailable or he was told either unavailable or not  
16 present at the time. He speaks with the defendant's  
17 brother who is deceased. The defendant's brother  
18 proceeds to sell him drugs at the back of the house.  
19 They go around to the back of the house. Again he says  
20 that, the informant says that he purchased drugs from  
21 the defendant's brother. He says as he's about to  
22 conclude that particular transaction the defendant  
23 actually opens a window and yells out the window and has  
24 a discussion with the informant regarding saying we  
25 don't want to have any funny stuff, in essence is what

1       he's getting at. You better not be messing with me. We  
2       don't want any funny stuff the way I recall that  
3       particular video.

4               THE COURT: Okay. This is at the house, too?

5               MR. SPIVEY: Yes, sir, Your Honor. These videos all  
6       go to intent as to whether or not number 1, he possessed  
7       the drugs, and number 2, whether or not they were acting  
8       in a conspiracy with each other. One of the things that  
9       we have alleged in the indictment is that they were  
10      conspiring together and this video is perfect evidence.  
11      His testimony is perfect evidence that there was actual  
12      conspiracy, not just that they got found in a house and  
13      there were drugs in a common area. So this is important  
14      to show the intent of the defendant and of the  
15      co-defendant that they were actually conspiring  
16      together, Your Honor.

17              THE COURT: And the third video?

18              MR. SPIVEY: The third video is a very, very dark,  
19      you can hear things but the actual video quality itself  
20      is very poor. I believe that you can see that it takes  
21      place in the kitchen. A facial identification is not -  
22      I couldn't look at the video and tell you that's the  
23      defendant for sure. The informant says he can because  
24      he was there and that's what took place, but it does  
25      show that the drug deal took place in the kitchen of the



1 residence where these black cans were found which gives  
2 further, sort of bolsters itself in the fact that these  
3 are the black cans that were found. The defendant who  
4 met with the informant in the kitchen went and touched  
5 that can and put it on the counter and weighed drugs  
6 out. That's what he's going to testify to.

7 THE COURT: Right. Okay. And the fourth one?

8 MR. SPIVEY: The fourth video is another drug  
9 transaction. Again, it's not very clear.

10 THE COURT: Similar to the third one?

11 MR. SPIVEY: I'm not even sure if you see really  
12 that much in it. It's not -- I would not describe video  
13 number 3 or 4 to be of particularly good quality, Your  
14 Honor.

15 THE COURT: Okay. All right. So, Mr. Williams,  
16 your issue, I guess, is with respect to the first and  
17 second one.

18 MR. WILLIAMS: Well, Your Honor, I think it's, there  
19 is an admission by the Solicitor's Office or the  
20 Solicitor that the third and fourth videos don't show my  
21 client. You can't tell if my client is selling drugs or  
22 not selling drugs so obviously aside from relevance,  
23 it's certainly of no use in this particular trial. The  
24 first -- Particularly the second, Your Honor. I don't  
25 know how in the world he can have the dead brother sell

1 drugs to him and then somehow introduce that video  
2 against my client and say that he can introduce that  
3 because my client came to a window and yelled something  
4 out of the window. Nothing in regards to drugs or  
5 nothing in regards to money. Nothing in regards to  
6 anything in regards to that. If we were trying a  
7 distribution case, Your Honor, I might see the relevance  
8 of them introducing this video. But we are not trying a  
9 distribution case. We are trying a trafficking case  
10 which is based on the search warrant.

11 MR. SPIVEY: Your Honor, the trafficking case is  
12 also based upon conspiracy with other people. This  
13 shows that this house was used and the defendant acted  
14 in concert with his brother. What he's going to tell  
15 you, the informant's testimony, it's not necessarily  
16 video by itself, it's the informant's testimony with the  
17 video. The video is merely to help corroborate and  
18 really bolster. It stands on its own to some extent but  
19 it proves that our informant who is working charges off  
20 is telling us truthful testimony. It's a way to  
21 corroborate that, hey, he did wear a wire. He did walk  
22 to this house. He was dropped off at this house. He  
23 did purchase drugs and he brought them back and he  
24 didn't stop anywhere along the way. He's dropped off  
25 having been searched with no drugs on him and he comes

1 back with drugs and the only place the video shows that  
2 he's been at is the defendant's house. He interacts  
3 with the defendant. It shows he interacts with the  
4 defendant's brother on one occasion and then is  
5 addressed specifically by the defendant in regards to  
6 the transaction that just took place. He doesn't say,  
7 hey, you just bought drugs from my brother, but he is  
8 talking about, listen, you don't need to be trying any  
9 funny stuff, knowing that the only reason the informant  
10 is there is to purchase drugs. He didn't go over there  
11 socially. He went over there as an acquaintance to  
12 purchase drugs.

13 MR. WILLIAMS: Your Honor, I don't know how we know  
14 that from that statement. I think the Solicitor is  
15 speculating on why he would have made that statement.  
16 But the point of this also is, Your Honor, is that we  
17 are certainly not trying a distribution case. If we're  
18 gonna do that, we might as well drag up all the  
19 witnesses in the chain of custody. We might as well try  
20 the distribution case if that's the situation,  
21 particularly knowing that the first case they don't even  
22 have a drug analysis. So now they are trying to convict  
23 him based on a case with no drug analysis. They are  
24 trying to convict him on a case which the brother is the  
25 one who made the drug transaction and then they're

1       trying to convict him on the two videos, but you can't,  
2       even tell what he's doing. That's what those four video  
3       are for.

4               MR. SPIVEY: Can I approach, Your Honor?

5               THE COURT: Yes.

6               MR. SPIVEY: Your Honor, this is a case State v.  
7       Wilson, 345 SC1 2001 from I believe it's our Supreme  
8       Court of South Carolina, Your Honor. Just briefly, in  
9       the facts section a defendant was being charged with  
10      possession of drugs. He and his girlfriend were  
11      charged. They found them as a result of a search  
12      warrant at a motel. Your Honor, the girlfriend of the  
13      defendant testified that she had seen the defendant sell  
14      drugs to an unidentified woman a couple of days earlier.  
15      So there is not even a chain of custody from that sale.  
16      All you had was the reliability of the defendant's  
17      girlfriend is that case who said I saw him sell drugs in  
18      the past. We don't even know if there were drugs. It  
19      was simply a matter of credibility whether you believe  
20      the defendant's girlfriend or not whether they sold  
21      drugs.

22              This case in terms of whether or not we can believe  
23      the informant, whether or not we can believe this video,  
24      that's a matter for the jury to decide whether or not  
25      he's a credible witness. It's not whether or not this

1 evidence is admissible. The Court talks about in order  
2 to prove -- You can admit evidence of other prior bad  
3 acts if it is used to show intent. We are trying to  
4 show intent that he possessed these drugs and also  
5 intent that he acted in conspiracy with his brother to  
6 sell these drugs. That's all we are trying to say.

7 He's going to testify that he went to purchase  
8 drugs from the defendant. Knocks on the door. Says is  
9 he here? He says no, but I can get you what you need.  
10 Does a transaction with the brother allegedly on behalf  
11 of the defendant or whatever you want to take from that  
12 interaction. But that's again a fact to be determined  
13 by the jury not for us to sit here and speculate as to  
14 what -- I can give you my perspective what I think it is  
15 but it's really a question for the jury.

16 THE COURT: Let me finish reading this case.

17 MR. SPIVEY: May I approach one more time, Your  
18 Honor? This is the other case I have. It's extremely  
19 close in terms of -- This speaks to just Rule 404B and  
20 what is admissible under Lyle in terms of a search  
21 warrant and what prior drug distributions might be  
22 admissible. There is not enough factual scenario to  
23 know exactly what evidence came out in terms of  
24 distributions, but this does say it's appropriate in a  
25 case where there was a search warrants, multiple people

1        were in the house, the drugs are found there. That case  
2        says drug distributions may be used to prove intent that  
3        there was some sort of constructive possession or intent  
4        to distribute if that is one of the charges.

5            MR. WILLIAMS: And again, on that particular case  
6        they use the magic phrase like they do on everything is  
7        we conclude the probative value of this evidence  
8        outweighs its prejudicial effect and find no error in  
9        the trial judge's decision. In this particular case we  
10       have a case where there's a video which there's no  
11       drugs. The second part is sale to a defendant - to a  
12       co-defendant who is not present that could be properly  
13       cross examined not as to my client and two videos which  
14       the Solicitor candidly admits that you can't tell what  
15       happened. So here clearly the prejudicial value  
16       outweighs the probative value which is the ultimate  
17       decision, I guess, in the introduction of any evidence  
18       that you attempt to slide in through Lyle.

19            THE COURT: Well, I mean, it's a three step process.  
20        First I have to determine relevancy. And then I have  
21        got in this situation under a State versus Lyle  
22        analysis. And then, of course, ultimately determining  
23        whether or not the value of the evidence is more  
24        probative than prejudicial. That's what I have got to  
25        do basically with any of it especially with evidence of

1 this type. Are you also objecting, Mr. Williams, to  
2 this witness testifying as to any of these drug buys?

3 MR. WILLIAMS: No, sir. I think that's different.

4 THE COURT: Okay.

5 MR. WILLIAMS: I think it's different. And I  
6 understand where the Court is going with that. To a  
7 certain extent it's highly prejudicial but I think when  
8 you introduce the videos, that only goes, I would  
9 question, Your Honor, to intent. Why they went to this  
10 house is that the alleged -- And I assume he's not going  
11 any further than that. They are not going to introduce  
12 any drug analysis from any of those drug analysis. I  
13 assume he's going to say he bought it from his brother,  
14 too.

15 THE COURT: So you don't have an objection to his  
16 testimony as to what the videos depict. You just have  
17 an objection to the actual videos being shown?

18 MR. WILLIAMS: If that's as far as he goes and if  
19 there is an instruction from the Court that says that  
20 that testimony is not introduced for any other purpose  
21 other than to prove intent or motive.

22 MR. SPIVEY: The purpose of any of these discussions  
23 whether or not this is distribution which comes from his  
24 mouth and the video, they are the same substance. The  
25 distributions, his testimony and the video testimony,

1       they are, one is oral testimony and one is some actual  
2       evidence. Like a shoplifting, have a manager say he  
3       shoplifted and then also putting in a video showing that  
4       he, in fact, shoplifted.

5           MR. WILLIAMS: Well, the Solicitor uses the word  
6       bolster. Bolster is the word he keeps using. Your  
7       Honor, clearly I don't want him to introduce any of  
8       this. But I have got a feeling from the Court that it  
9       is at least inclined to look at the testimony because  
10      that's how they got the search warrant. But I guess  
11      there has to be a level which the Court can intervene  
12      and make a decision as to whether or not -- Some is not  
13      as bad as the whole card. Meaning I don't know if  
14      you're weighing evidence when you do that or not. I  
15      hope you're not because I think that's what the jury  
16      does. But I worry about that decision right there. I  
17      don't know if you -- Does that mean that you get to, you  
18      know, that you have to try all four cases again because  
19      that's what Lyle has done to us over the last years. We  
20      are no longer defending one case. We are defending like  
21      50 cases in one case. So what happens is when you have  
22      a bunch of terrible cases you can't prove, you get this  
23      one case where you know you have got them in that and  
24      then you can bring out all this other stuff to bolster  
25      that case. That's a comment, I guess, on Lyle.



1 MR. SPIVEY: Your Honor --

2 THE COURT: Well, regardless of whether I agree or  
3 disagree with your analysis of Lyle, it is what it is.  
4 I mean, that's the law that we operate under and it  
5 certainly seems to me that, and we don't really know how  
6 much these videos are going to help the State's case  
7 because several of them are poor quality, but  
8 nevertheless this witness testified as to these alleged  
9 drug purchases which I think goes to the intent and kind  
10 of the whole res gestae of the trafficking charges that  
11 there is drug activity that's going on at this house  
12 whether it's by the defendant or the defendant's brother  
13 or anybody else, I think it would be more probative than  
14 prejudicial. I think certainly it should come in. So  
15 I'm going to find that it is relevant. I'm going to  
16 find that the drug buys are similar in nature to the  
17 actual crimes charged and that probative value does  
18 outweigh any prejudicial, if any, effect that results to  
19 the defendant.

20 MR. WILLIAMS: I assume cross, Your Honor, would not  
21 be limited, meaning that I would be able to just cross  
22 him on just about everything on those alleged sales.

23 THE COURT: Well, without pre-judging anything it  
24 would seem like to me that you would have wide latitude  
25 concerning cross examination.

1 MR. WILLIAMS: Thank you, Your Honor.

2 THE COURT: But again, I can't pre-judge any  
3 objections that may come my way.

4 MR. WILLIAMS: Yes, sir.

5 THE COURT: But I would think so. So I'm going to  
6 rule that the videos do come in. Just kind of a time  
7 thing, how are we looking on time and I'm not trying to  
8 cut short anything, just trying to figure out time with  
9 this witness.

10 MR. SPIVEY: Your Honor, he's going to be at least  
11 5:00. We will be at least 30 minutes if not closer to  
12 an hour would be my guess.

13 MR. WILLIAMS: These videos are extremely long.

14 MR. SPIVEY: And he has cross. I don't plan on  
15 publishing the entire video.

16 MR. WILLIAMS: Well, Your Honor, I'm gonna object if  
17 he doesn't show the whole video.

18 MR. SPIVEY: He can show the rest of it if he wants  
19 to.

20 THE COURT: Well, what I'm going to have to do then  
21 if there is a disagreement among you fine lawyers  
22 concerning how much of the video is going to be shown,  
23 then I think it would be incumbent upon me to view the  
24 videos in camera to try to make some determination first  
25 of all finding out from the Solicitor what parts he

1 wants to view and does not want to show. So with that  
2 in mind it may be a situation where we need to go ahead  
3 and adjourn for the day with respect to the jury.

4 MR. WILLIAMS: Yes, sir.

5 MR. SPIVEY: Your Honor, before we get into the  
6 videos, let me see if I can -- I just want to check real  
7 quick. I don't want to waste anybody's time. If we  
8 have a little bit more time in the afternoon unless  
9 you want to break now.

10 THE COURT: No. I'll go as long as necessary. But  
11 if I have got to view the videos and then rule and then  
12 plus everything is going to take potentially an hour or  
13 longer.

14 MR. SPIVEY: I think I have asked all the questions  
15 I'm going to ask other than about the videos and I think  
16 --

17 THE COURT: Okay. All right. How long are the  
18 videos in total?

19 MR. SPIVEY: Your Honor, most of these videos are  
20 about 20 minutes a piece and there are four of them so  
21 an hour and 20 minutes. Again I'm not planning to  
22 publish all of it. The defense has a right to have all  
23 of it published. He can put in some or all of it is how  
24 I understand it. He can certainly do that.

25 THE COURT: Well, it would seem like to me that if

1       that's the situation, it ought to be shown all at one  
2       time instead of piecemeal. The thing is if that's the  
3       ultimate outcome instead of part of the video in the  
4       State's case, part of the videos in the defense case, it  
5       seems like to me to play the whole thing again if that's  
6       the ultimate outcome.

7               MR. SPIVEY: I'm not opposed to that. I don't want  
8       to be the guy who's wasting your time. There's a lot of  
9       dead space. I understand where he's coming from. He's  
10      succeeded in making me look like the bad guy.

11             THE COURT: Let's do this. Let me get the jury out  
12      and go ahead and cut them loose for the day and then we  
13      can further this discussion about the videos and how we  
14      want to handle it. So, Mr. Witness, just have a seat  
15      back in the gallery and let me get the jury out.

16             MR. CASKEY: Your Honor, what time do we plan to  
17      start in the morning? I just want to let the rest of  
18      our witnesses go.

19             THE COURT: 9:30. I have a phone conference in  
20      something else at 9:15. Let me make sure that's 9:15.

21             MR. CASKEY: That's sufficient, Your Honor.

22             THE COURT: Well, I may want to start a little  
23      earlier if I don't have a phone conference. Yes. I do  
24      have a phone conference at 9:15. We'll start at 9:30.

25             MR. CASKEY: Thank you.

1 (Whereupon, the jury entered the courtroom at 4:35  
2 p.m.)

3 THE COURT: Okay. Let the record reflect the jury  
4 is back in. Madam Forelady, ladies and gentlemen of the  
5 jury, even though I do like to utilize all the time that  
6 we have available, it looks like if we were to continue  
7 with you, we would probably go way past 5:30, maybe  
8 6:00, 6:30. I don't want to do that at least the first  
9 day of trial. I'm not suggesting that we'll never go  
10 late but I think today I don't want to go that late so  
11 we're gonna go ahead and break for the day and we are  
12 going to start back promptly at 9:30 in the morning.

13 Now, there will probably be some matters that I  
14 will need to deal with before 9:30. We'll try to start  
15 back at 9:30 with you folks. So we're gonna go ahead  
16 and adjourn for the day. Again, I remind you you may  
17 have some real curious people, family, friends that you  
18 come into contact with and they want to ask you all  
19 about what you have been doing today and all you can  
20 tell them is that I am on a jury. That's it. Don't  
21 discuss anything about the case with them and just tell  
22 them if they press you, just tell them the Judge has  
23 told me I can't talk about the case and leave it at  
24 that, okay? So we'll get a good night's rest. We'll  
25 work really hard tomorrow so rest up, okay? See you in

1 the morning at 9:30.

2 (Whereupon, the jury was released for the evening at  
3 4:36 p.m.)

4 THE COURT: Okay. Let's talk a little more about  
5 the videos. Solicitor, you're not wanting to play the  
6 entire video because is there some like I'll call it  
7 dead space where nothing is happening, nothing going on?

8 MR. SPIVEY: Yes, Your Honor. They start off at a  
9 location maybe a mile or two away. I don't know how far  
10 away. Then they drive him some place. In the first one  
11 they drive him all the way there. There is a car ride  
12 where nothing happens. He gets out, talks with them,  
13 and then he gets back in the car and they leave and  
14 there's some more car riding. In the last three they  
15 drop him off at some distance away so all you see is  
16 literally him walking across a field. He doesn't  
17 interact with anybody at that point. I plan to play the  
18 points where he interacted with people. And the time  
19 where he's traveling in a car, if Mr. Williams wants to  
20 watch that, he's welcome to show it to the jury. We are  
21 putting it in evidence. The jury has a right to see all  
22 of it. I'm not saying that. It's just a waste of time  
23 to sit here and publish it.

24 THE COURT: Yeah. If there is some dead space in  
25 there that really doesn't show anything, there's really

1 no relevance to that, really I can rule that it's not  
2 admissible. What I have typically done in the past is  
3 if we don't show complete video or something, I will  
4 instruct the jury that the reason why you didn't see the  
5 whole video is because portions of it doesn't contain  
6 anything that is of any benefit to you the jury in  
7 weighing this particular evidence and so I will be  
8 inclined to allow the Solicitor to show what he wants to  
9 show. Now, if there is something other than dead space  
10 that you feel like he's not shown, then certainly you  
11 would have the right to get into that.

12 MR. WILLIAMS: Your Honor, I don't really have any  
13 concern about the dead space. Part of my concern is  
14 whether or not they will have someone here to testify to  
15 the authenticity of the tape that we are using because  
16 obviously if this guy is walking around with a tape or  
17 he looks at the tape, he's not gonna know if anything  
18 has been added, subtracted or what have you. So I  
19 assume they're gonna have somebody from the Sheriff's  
20 Department testify about that in regards to whether or  
21 not the tape has been --

22 MR. SPIVEY: Your Honor, the informant can clearly  
23 look at the video and see if that is the event as he  
24 observed it himself. That is all that's required under  
25 the rule of evidence in regard to video. Whether or not

1       it's a fair and accurate representation of what was  
2       recorded that day. The informant, he was there. He  
3       should be able to tell you whether or not it was edited  
4       in any way.

5           THE COURT: Right. It's kind of like a photograph  
6       in the sense that you can show a witness does this  
7       fairly and accurately represent whatever the photograph  
8       shows and so I think he can look at that and he can  
9       authenticate it.

10          MR. SPIVEY: In terms of the actual videos, Your  
11       Honor, when I brought the informant in last week to my  
12       office and we watched these, when he got done watching  
13       them, he initialed that he watched them on March 10th,  
14       2015, J.F., and March 10th, 2015, J.F. So if he can say  
15       when I show him these without having to play any of it  
16       that these are the videos that he watched and that there  
17       is nothing else on there except the videos that he made.

18          MR. WILLIAMS: I guess that's fine, Your Honor.  
19       He's done it like a DUI tape. I guess he's going to say  
20       that that's-- I guess the editing part has to do with  
21       where we start and where we stop when we show the video  
22       because we are not in control of that particular item.  
23       Hopefully we'll just take out where he's just riding in  
24       the vehicle, right?

25          MR. SPIVEY: If you want us to go and edit them and



1 redact that portion, we can. I was just not gonna - I  
2 was just gonna take the little forward part, the fast  
3 forward button and go to what I thought was relevant and  
4 then if the jury had any question about whether or not  
5 we were being truthful with him about dead space or not,  
6 they can go back in the jury room or come out here and  
7 we can watch the whole thing.

8 THE COURT: Let's do this. Just make sure  
9 Mr. Williams has a pretty good idea because I'm sure  
10 that he has viewed the videos, make sure he has a pretty  
11 good idea of what you intend to show and what you intend  
12 to fast forward so it doesn't really come as a shock in  
13 what you present and then if there is something that he  
14 feels like is relevant and needs to be shown to the  
15 jury, I'll certainly give him that opportunity. I'll  
16 give you some leeway and not showing the whole thing.

17 MR. SPIVEY: Thank you, Your Honor.

18 THE COURT: Okay. All right. Anything else?

19 MR. WILLIAMS: One thing I would like the record to  
20 note, that I do understand the Court's ruling and I  
21 would just note that I do object to the introduction of  
22 the videos even though the Court has --

23 THE COURT: Sure. You're protected on the record.

24 MR. WILLIAMS: Thank you, Your Honor. Your Honor,  
25 he is out on bond. We discussed that earlier. I think

1 I have got the note.

2 THE COURT: Right. I'm going to allow the bond to  
3 remain in effect and not revoke it and put him in  
4 custody.

5 MR. SPIVEY: Can I ask for a no contact provision  
6 with the informant or anybody he's related to or  
7 anything like that?

8 MR. WILLIAMS: Not a problem.

9 MR. SPIVEY: Not that anything would happen, Your  
10 Honor, but to protect myself.

11 THE COURT: Right. Mr. Wilson, let me just caution  
12 you on several things. I have the right, I'm sure  
13 Mr. Williams has informed you of this, I have the right  
14 since we have started the trial and the jury has been  
15 sworn, I have the right to revoke your bond and put you  
16 into custody throughout the entire trial. Judges do  
17 that routinely. I typically don't, but nonetheless  
18 because I'm allowing you to remain out on bond, that  
19 requires of you several things. One is for you to show  
20 up everyday that we have this trial because if you  
21 don't, we are going to go forward anyway and you will be  
22 tried in your absence so you need to be back here in the  
23 morning and whatever time prior to 9:30 as Mr. Williams  
24 instructs you to be.

25 And secondly, you're to have no contact with any of

1 the State's witnesses whether it's Mr. Flake or any of  
2 the other potential witnesses for the State. There's to  
3 be absolutely no contact. If you were to have contact  
4 with a State's witness and that's brought to my  
5 attention, then that would be a basis to revoke your  
6 bond and keep you in custody throughout this proceeding,  
7 okay? You understand all that, sir?

8 MR. WILSON: Yes, sir, Your Honor. I thank you,  
9 Your Honor.

10 THE COURT: Okay. All right. Okay. Anything  
11 further?

12 MR. WILLIAMS: No, Your Honor.

13 MR. SPIVEY: No, sir, Your Honor.

14 THE COURT: Thank you very much. We will be  
15 adjourned until 9:30 in the morning.

16 (Whereupon, court was recessed for the evening at  
17 4:50 p.m.)

18  
19  
20  
21  
22  
23  
24  
25

1 MARCH 17, 2015

2 BAILIFF: All rise. Court is now in session. The  
3 Honorable Donald Hocker presiding.

4 THE COURT: Thank you very much. Please have a seat  
5 please. How is everybody this morning?

6 MR. SPIVEY: Very well, Your Honor.

7 MR. WILLIAMS: Fine, Your Honor.

8 THE COURT: Good. You need to put anything on the  
9 record before we bring the jury out?

10 MR. SPIVEY: No, sir, Your Honor.

11 THE COURT: Mr. Williams?

12 MR. WILLIAMS: Your Honor, there is one  
13 administrative thing that I think the Court probably  
14 should be aware of. The co-defendant who is not being  
15 tried in this case, we do envision calling her to  
16 testify. We have talked to, both the Solicitors and I  
17 have talked to Mark Whitlock who is her attorney and he  
18 says he needs about an hour to get here so I just have  
19 to let him know.

20 THE COURT: She wants to be present when she  
21 testifies?

22 MR. WILLIAMS: He does.

23 THE COURT: Okay. That's natural. Okay. Sure.  
24 That's good. Let's bring the jury out please.

25 (Whereupon, the jury entered the courtroom at 9:35

1 a.m.)

2 THE COURT: Let the record reflect the jury is back  
3 in. Good morning everybody. Hope you had a good  
4 restful night and ready to get to work today. Okay.  
5 Solicitor, ready to proceed?

6 MR. SPIVEY: Thank you, Your Honor. We'll call  
7 again Justin Flake to the stand.

8 THE COURT: Madam Clerk, if you will re-swear  
9 Mr. Flack please, ma'am.  
10 Thereupon,

11 JUSTIN FLAKE (Recalled)  
12 after having been first duly sworn, testified as follows,

13 THE CLERK: Please have a seat. After you're  
14 seated, please state your full name for the record.

15 THE WITNESS: Justin Flake.

16 DIRECT EXAMINATION

17 BY MR. SPIVEY:

18 Q. Mr. Flake, we started a little bit yesterday talking  
19 about who you were and that you were cooperating with police  
20 and we started talking about you purchasing drugs from the  
21 defendant. Before you went each time to purchase drugs from  
22 the defendant, were you searched?

23 A. Yes, sir.

24 Q. Okay. Did they tell you why they were searching  
25 you?

1 A. Yes, sir.

2 Q. What is your understanding of why they were  
3 searching you?

4 A. Well, first pretty much said that so I couldn't buy  
5 any drugs for myself while I was in there or give anything,  
6 do anything illegal.

7 Q. Okay.

8 A. Basically.

9 Q. So you wore a camera during these transactions?

10 A. Yes, sir.

11 MR. SPIVEY: May I approach the witness, Your Honor?

12 THE COURT: Certainly.

13 BY MR. SPIVEY:

14 Q. I'll hand you what's been pre-marked as State's  
15 exhibit 34 and 35. Do you recognize those?

16 A. Yes, sir. I do.

17 Q. How do you recognize those?

18 A. Because I initialed them.

19 Q. When did you initial those?

20 A. When I watched them with you.

21 Q. And when was that?

22 A. Last week.

23 Q. Okay. When you watched them, were those fair and  
24 accurate representations of the videos from the camera that  
25 you wore during those transactions?

1 A. Yes, sir.

2 MR. SPIVEY: Your Honor, at this time I would move  
3 exhibits 34 and 35 into evidence.

4 MR. WILLIAMS: Subject to my prior objections of  
5 yesterday, Your Honor.

6 THE COURT: Okay. Certainly. They are in evidence  
7 on behalf of the State, 34 and 35.

8 BY MR. SPIVEY:

9 Q. Mr. Flake, each time that you were going to purchase  
10 drugs, which drugs were you going to purchase?

11 A. Crack cocaine.

12 Q. How would you communicate with the defendant to set  
13 up these purchases?

14 A. I would call him on his cell phone.

15 Q. What would you tell him when you called him?

16 A. That I needed some dope, how much I needed and when  
17 I would be there.

18 Q. Okay. Where would you go to meet with the  
19 defendant?

20 A. [REDACTED] Road.

21 MR. SPIVEY: If I may approach the witness, Your  
22 Honor?

23 THE COURT: Certainly.

24 MR. SPIVEY: Your Honor, if I may publish portions  
25 of these videos?

1 THE COURT: Okay. Solicitor, do you want the lights  
2 down more?

3 MR. SPIVEY: Yes, sir. That would be helpful. I  
4 think that would help us see it a little bit better.

5 (Whereupon, State's exhibit 34, a video, played for  
6 the jury.)

7 BY MR. SPIVEY:

8 Q. Mr. Flake, can you read that date for us just for  
9 the record. Let's see if I can move that out of the way.

10 A. April 26th, 2013.

11 MR. SPIVEY: Thank you.

12 (Playing video for the jury.)

13 BY MR. SPIVEY:

14 Q. Mr. Flake, did you, when you were taken to this  
15 location, how did you get to the defendant's location?

16 A. Agent Hodges and one of his fellow agents came and  
17 picked me up.

18 Q. During the March 22nd transaction, how did you get  
19 there?

20 A. Agent Hodges and one of his fellow agents picked me  
21 up.

22 Q. Did they drive you straight to the residence?

23 A. No. No, sir.

24 MR. WILLIAMS: Your Honor, I would like to entertain  
25 an objection from what I thought I was seeing on video



1 was April 26th and now I'm seeing March 22nd.

2 THE COURT: I noticed the same thing.

3 MR. SPIVEY: Yes, sir, Your Honor. Just  
4 procedurally when it hit auto play, it started with the  
5 first one it listed. Now I have changed it to a  
6 different one so we'll go in order.

7 THE COURT: Okay. You want to go in chronological  
8 order?

9 MR. SPIVEY: Yes, sir. I thought that would be the  
10 best way to present it.

11 THE COURT: Does that clear it up for you?

12 MR. WILLIAMS: A lot better, Your Honor.

13 BY MR. SPIVEY:

14 Q. What's the date on this video, Mr. Flake?

15 A. March 22nd, 2013.

16 (Playing video for the jury.)

17 BY MR. SPIVEY:

18 Q. Mr. Flake, from this point forward you're traveling  
19 to the residence?

20 A. Yes, sir.

21 Q. All right. Mr. Flake, what address is this that we  
22 are looking at here?

23 A. [REDACTED] Road.

24 Q. That's the defendant's residence?

25 A. Yes, sir.

1 (Playing video for the jury.)

2 BY MR. SPIVEY:

3 Q. Mr. Flake, it's a little bit hard to hear on the  
4 video. Tell us about what we just heard there.

5 A. That's the first time I had seen him in a while. I  
6 pulled up and I was somebody he didn't know and he was very  
7 nervous about selling anything to me. He told me to go  
8 around back and after he decided to and I walked around to  
9 the back of the house.

10 (Playing video for the jury.)

11 BY MR. SPIVEY:

12 Q. Okay. Who was that there, Mr. Flake?

13 A. That was the child of one of the neighbors.

14 (Playing video for the jury.)

15 BY MR. SPIVEY:

16 Q. I'll pause it there for a moment. What did we just  
17 see there? Whom are you speaking with?

18 A. Ty.

19 Q. Is he here today?

20 A. Yes, sir.

21 Q. Can you point to him please?

22 A. (Indicating.)

23 MR. SPIVEY: Your Honor, let the record reflect he's  
24 pointing at the defendant.

25 THE COURT: Okay. So noted.

1 BY MR. SPIVEY:

2 Q. Okay. Tell us about how that transaction took  
3 place. Did he hand you something?

4 A. He set it down on the steps.

5 Q. Okay. Then what happened?

6 A. I gave him the money.

7 Q. Did you pick up the drugs that he put down on the  
8 steps?

9 A. Yes, sir.

10 Q. Okay. And y'all are talking about perhaps  
11 purchasing a dog. Is that what I heard?

12 A. Yes, sir. That's - I was really nervous and making  
13 small talk.

14 (Playing video for the jury.)

15 BY MR. SPIVEY:

16 Q. What just happened there?

17 A. Uhm, that must have been when I handed him the  
18 money.

19 THE COURT: Speak up, sir.

20 BY THE WITNESS:

21 A. That must have been when I handed him the money.

22 BY MR. SPIVEY:

23 Q. Okay. What does loot mean?

24 A. Money.

25 Q. Okay. What else did you talk with him about

1     there?

2             A.   Uhm, I think it was - I know we talked about the  
3     dogs but he had - I think he had not enough of powder cocaine  
4     so I had to buy some crack, hard cocaine for the amount of  
5     money that I had.

6             (Playing video for the jury.)

7     BY MR. SPIVEY:

8             Q.   All right.  Mr. Flake, did you leave the residence  
9     at that time?

10            A.   Yes, sir.

11            Q.   Okay.  Let me show you the next one.  I apologize.  
12     We'll switch this so we can keep the chronological order.

13            (Playing video for the jury.)

14     BY MR. SPIVEY:

15            Q.   Mr. Flake, what date is this?

16            A.   April 4th, 2013.

17            Q.   Did you purchase drugs from the defendant on that  
18     date?

19            A.   Yes, sir.

20            Q.   Okay.  Was it your intent to go at this point to go  
21     purchase drugs from the defendant?

22            A.   Yes, sir.

23            Q.   And you had contacted him by phone?

24            A.   Yes, sir.

25            Q.   Did you give him a time - did y'all discuss a time

1 and place that y'all were going to meet?

2 A. Yeah. I called him and told him I was on the way to  
3 his house. I never met him anywhere else.

4 THE COURT: You need to speak up, sir.

5 BY THE WITNESS:

6 A. I would call him and tell him I was on my way to his  
7 house. I never met him anywhere else.

8 BY MR. SPIVEY:

9 Q. All right.

10 (Playing video for the jury.)

11 BY MR. SPIVEY:

12 Q. Mr. Flake, you said T-y on the video. Who is  
13 that?

14 A. Christopher Wilson.

15 Q. Okay. Did you call him Ty at times?

16 A. Yes. That's the only name I knew him by.

17 Q. So you either called him T-y or Ty?

18 A. Yes, sir.

19 (Playing video for the jury.)

20 BY MR. SPIVEY:

21 Q. Mr. Flake, who is that?

22 A. Baby Dee, Ty's little brother.

23 Q. So that's not the defendant?

24 A. No, sir.

25 Q. Okay. Why are you meeting with who you are

1 referring to as Baby Dee instead of the defendant?

2 A. At first I didn't think Ty was home but I think  
3 later I found out as I was leaving the residence that it was  
4 because he was nervous with me walking up.

5 Q. Okay. So you intended to purchase drugs from the  
6 defendant?

7 A. Yes, sir.

8 Q. Okay. But instead you met the defendant's  
9 brother?

10 A. Yes, sir.

11 Q. And just then what were y'all discussing?

12 A. How much an 8 ball cost which is three and a half  
13 grams.

14 Q. Three and a half grams of what?

15 A. Cocaine.

16 Q. What did he say it cost?

17 A. 245 and I only had 200 on me.

18 Q. Did he tell you -- It was hard to hear a little bit.  
19 Did he tell you anything about where the defendant was?

20 A. He didn't say anything about that that I could  
21 remember.

22 Q. Okay.

23 (Playing video for the jury.)

24 BY MR. SPIVEY:

25 Q. Who is he referring to?

1       A. Ty.

2       Q. Okay. He said he just woke him up?

3       MR. WILLIAMS: Objection to leading.

4       THE COURT: Rephrase your question, Solicitor.

5       MR. SPIVEY: Yes, sir, Your Honor.

6 BY MR. SPIVEY:

7       Q. What did you hear him say?

8       A. I heard him say that Ty said that he only had a  
9 hundred dollars worth of girl which is powder cocaine.

10       (Playing video for the jury.)

11 BY MR. SPIVEY:

12       Q. Mr. Flake, what is boy?

13       A. Crack cocaine.

14       (Playing video for the jury.)

15 BY MR. SPIVEY:

16       Q. Mr. Flake, who is that you're speaking with?

17       A. Ty.

18       Q. Okay. What is that up on the screen there?

19       A. That's the window he opened as I was going to leave  
20 and told me I better not be playing no funny shit.

21       (Playing video for the jury.)

22 BY MR. SPIVEY:

23       Q. It's kind of hard to see but who is that silhouette  
24 right there in the window?

25       A. Ty.

1 (Playing video for the jury.)

2 BY MR. SPIVEY:

3 Q. What time does that say, Mr. Flake, or what date?

4 A. April 26th, 2013.

5 Q. Okay. Were you working undercover with the police  
6 at that time?

7 A. Yes, sir.

8 Q. Okay. Did you set up a deal to purchase drugs?

9 A. Yes, sir.

10 Q. Okay. Who did you set that deal up with?

11 A. With Ty.

12 Q. Okay. And your plan again was to meet him at [REDACTED]

13 [REDACTED] Crossing?

14 A. Yes, sir.

15 (Playing video for the jury.)

16 BY MR. SPIVEY:

17 Q. Mr. Flake, where are you?

18 A. I'm in the kitchen.

19 Q. Okay. Who is that you're speaking with?

20 A. Ty.

21 Q. Okay. What is he doing at the moment?

22 A. He was getting the drugs out of the cabinet.

23 Q. Okay. What were the drugs in?

24 A. A paint can.

25 Q. Okay. Where were they in the kitchen exactly, do



1 you remember?

2 A. Under the sink and then sometimes above in the top  
3 cabinet.

4 (Playing video for the jury.)

5 BY MR. SPIVEY:

6 Q. Did he give you drugs just then?

7 A. Yes, sir.

8 Q. And you left?

9 A. Yes, sir.

10 Q. What date does the camera say, Mr. Flake?

11 A. April - or June 4th, 2014.

12 Q. Mr. Flake, where are you in this video?

13 A. In the kitchen.

14 Q. Who is that you're speaking with?

15 A. Ty.

16 Q. What is he doing at this time?

17 A. Getting the drugs from under the sink.

18 Q. What were the drugs stored in?

19 A. Paint can.

20 (Playing video for the jury.)

21 BY MR. SPIVEY:

22 Q. Mr. Flake, tell us about what just happened there?

23 A. You, uhm, do you mean as far as when I left?

24 Q. Yeah. Yeah. You left and walked somewhere. Where  
25 were you walking?

1           A. When I left there, I walked - I was to the end of  
2           ██████████ to the stop sign and jumped in the truck with  
3           Agent Hodges.

4           Q. Well, it looked like you left --

5           MR. WILLIAMS: Objection to leading, Your Honor.

6           THE COURT: Try to rephrase and not lead.

7           BY MR. SPIVEY:

8           Q. Okay. When you left from Ty's house, you walked  
9           somewhere. What happened next?

10          A. I don't know.

11          Q. Okay. What did we just watch?

12          A. We watched a video of me buying drugs from Ty, then  
13          I left and that's all.

14          MR. SPIVEY: May I approach the witness?

15          THE COURT: Certainly.

16          BY MR. SPIVEY:

17          Q. Mr. Flake, I'm going to hand you what's been  
18          pre-marked as State's 9 and 10.

19          A. Yes, sir.

20          Q. Do you recognize that?

21          A. Yes, sir.

22          Q. Okay. Is that a fair and accurate representation of  
23          a part of the video from March 22nd, 2013?

24          A. Yes, sir.

25          Q. That's the first video we watched?

1 A. Yes, sir.

2 Q. And those are fair and accurate representations of  
3 just snapshots from those videos?

4 A. Yes, sir.

5 MR. SPIVEY: Your Honor, I move those into evidence  
6 at this time.

7 MR. WILLIAMS: Subject to prior objections from  
8 yesterday, Your Honor.

9 THE COURT: So admitted into evidence, 9 and 10 on  
10 behalf of the State.

11 MR. SPIVEY: Thank you, Your Honor. May I publish  
12 those to the jury?

13 THE COURT: Sure. You may want to ask him what  
14 those show.

15 MR. SPIVEY: Thank you, Your Honor. Jumping ahead  
16 of myself.

17 BY MR. SPIVEY:

18 Q. Describe to us what that still shot shows,  
19 Mr. Flake.

20 A. It shows Ty at the back door of his house it looks  
21 like.

22 Q. Okay.

23 A. And this one it shows him holding something in his  
24 hands. It looks like when I returned from the dog pen  
25 talking about the dogs when he was on the porch.

1 Q. Okay.

2 A. Excuse me. I'm a little bit sick.

3 MR. SPIVEY: Your Honor, I don't have any further  
4 questions for this witness.

5 THE COURT: Okay. All right. Cross examination,  
6 Mr. Williams.

7 MR. WILLIAMS: May it please the Court.

8 THE COURT: Certainly.

9 CROSS EXAMINATION

10 BY MR. WILLIAMS:

11 Q. Mr. Flake, I believe at the beginning part of your  
12 testimony one of the lines, one of the statements that you  
13 made was that you were willing to go to any length to work  
14 those charges off; is that right? Is that what you said?

15 A. That's what I said.

16 Q. And you meant it?

17 A. I don't remember.

18 Q. You don't remember if you meant it or not?

19 A. Well, yeah. I probably did.

20 Q. You just said it yesterday.

21 A. Yes.

22 Q. Have you changed your mind since yesterday?

23 A. No, sir.

24 Q. So you meant that you would do whatever you had to  
25 do to work those charges off?

1 A. (No response.)

2 THE COURT: You need to respond to the question,  
3 sir.

4 BY THE WITNESS:

5 A. Yes, sir.

6 BY MR. WILLIAMS:

7 Q. Okay. Now tell me about your drug addiction. You  
8 said that you're a drug addict and that's all because you had  
9 some injuries so all of these problems that you're having  
10 that leads you to working off these charges is because of  
11 your drug addiction; is that right?

12 A. Yes, sir.

13 Q. What was the hesitation for? Why did you  
14 hesitate?

15 A. I just feel a little nervous to be honest.

16 Q. All right. So when you were out here doing these,  
17 when you say these are buys, you were doing this because you  
18 wanted to work off your charges or because of your drug  
19 addiction?

20 A. Because I wanted to work my charges off.

21 Q. Because you didn't have a drug addiction at this  
22 time?

23 A. Yes. I have always had a drug addiction.

24 Q. Still using?

25 A. Still using? When?

1 Q. Are you still using drugs?

2 A. It's been -- I'm still battling. It's been several  
3 days, but since last week when I visited the Solicitor.

4 Q. You stopped using drugs after you visited with the  
5 Solicitor?

6 A. I have been doing my best to not do any drugs, to  
7 stay clean.

8 Q. What does that mean? Does that mean you used drugs  
9 last night or this morning before you came in here to  
10 testify?

11 A. No, sir. I did not use drugs last night or this  
12 morning.

13 Q. Now, I believe your drug of choice is opiates; is  
14 that right?

15 A. Yes, sir.

16 Q. But according to your testimony here what you were  
17 actually doing is you were purchasing cocaine or crack  
18 cocaine?

19 A. Yes, sir.

20 Q. Now, we have four tapes here on four different dates  
21 and you have got it on some kind of camera. Where is the  
22 camera located?

23 A. On the watch that I was wearing.

24 Q. Like right here (indicating)? You had it on a watch  
25 like that?

1 A. Yes, sir.

2 Q. Left hand or right hand?

3 A. Left hand.

4 Q. All right. Who fitted you up with that watch?

5 A. Agent Hodges.

6 Q. So you knew that this watch was recording everything  
7 that you saw and recording everything that you heard,  
8 right?

9 A. Yes, sir.

10 Q. So you were in charge of how this watch videotaped  
11 whatever was occurring; is that correct?

12 A. Yes, sir.

13 Q. So you could make it show wherever you wanted it to  
14 show because you knew it was on your hand?

15 A. No, sir.

16 Q. Oh, you couldn't do that?

17 A. No, sir.

18 Q. So if it's on your hand, you can't have your hand  
19 looking like that and it's videotaping you or turning to the  
20 jury and you would be videotaping the jury or even holding it  
21 right here and videotaping that fire alarm, you couldn't do  
22 that?

23 A. I could but if I was doing that in the house, he  
24 would know that something was going on.

25 Q. So if you put your hand down like that or hold it

1 like that (indicating)?

2 A. I understand what you're saying.

3 Q. Right. So you showed what you wanted to show on  
4 this videotape, didn't you?

5 A. No, sir. I tried.

6 Q. Let's talk about when you first got outfitted with  
7 this videotape. I assume this videotape since you're  
8 offering that to show what transpired that day, did this  
9 videotape show you being searched prior to walking down to  
10 that location?

11 A. No, sir.

12 Q. I'm sorry?

13 A. No, sir.

14 Q. All right. As a matter of fact, none of those tapes  
15 showed you being videotaped checking you out to see if you  
16 had any drugs on you or not?

17 A. No, sir.

18 Q. And did this tape show at any point in time you  
19 going back to the - what vehicle you were in and being  
20 searched to make sure that you didn't have any drugs on you  
21 at that time?

22 A. No, sir.

23 Q. So this videotape didn't show any of that, the part  
24 to secure the fact that you didn't have any drugs on you  
25 before or drugs on you - or that you only had drugs on you



1 when you left?

2 A. It showed the location to where I was searched.

3 Q. How about the money. Does this videotape show the  
4 money that you received?

5 A. No, sir.

6 Q. All right. How much money did you receive to take  
7 down to the location before these sales were conducted?

8 A. Usually \$200.00.

9 Q. \$200.00. Well, now, on the first tape you said  
10 something about a hundred dollars in that tape, didn't you?

11 A. Yes, sir.

12 Q. So did you have \$200.00 on that time or not?

13 A. I had \$200.00. He only had a hundred dollars of  
14 powder cocaine so I bought that, and then I bought the other  
15 hundred dollars hard cocaine.

16 Q. The only thing that you can hear on that first tape  
17 that was reference to a hundred dollars had to do with buying  
18 a dog; isn't that right?

19 A. I was talking about my wife buying a dog later on.

20 Q. So the tape had you talking about buying one of the  
21 puppies and you couldn't believe you could by one for a  
22 hundred dollars?

23 A. Yes, sir.

24 Q. On that first tape did you make the conversation or  
25 did you have the conversation -- And let's make sure we are

1 talking about the correct tape. That first tape is the one  
2 from which these stills are produced; is that correct?

3 A. Yes, sir.

4 Q. There's no stills produced from any of the other  
5 three tapes that we are talking about?

6 A. No, sir.

7 Q. So the only stills that you have are on that date  
8 when you went over there and asked him about purchasing a dog  
9 for a hundred dollars?

10 A. And when I bought some crack and powder.

11 Q. Okay. All right. Where, where on State's exhibit  
12 number 9 or State's exhibit number 10 does it show that he  
13 had money and/or drugs in his hands?

14 A. You can't see the money or the drugs in those  
15 pictures.

16 Q. Is this before or after a drug transaction?

17 A. I think that's before and that's after. I think.

18 THE COURT: Mr. Williams, approach the witness so  
19 he, we can identify. He's just pointing. We don't know  
20 which exhibit he's referring to.

21 BY THE WITNESS:

22 A. Yeah. That's afterwards.

23 THE COURT: Mr. Witness, indicate the number when  
24 you refer to before or after please.

25 THE WITNESS: The number?

1 BY MR. WILLIAMS:

2 Q. On the bottom. You have got a number 9 on here and  
3 a number 10 on the other one.

4 A. Number 9 is after.

5 Q. What is number 10?

6 A. After.

7 Q. Okay. So State's exhibit number 9 and State's  
8 exhibit number 10 are both after this alleged drug purchase;  
9 is that correct?

10 A. Yes, sir.

11 Q. And you say that because his hand is clenched; is  
12 that right? That's why you say that he's done some drug  
13 transaction. You can't see it in his hand but his hand is  
14 clenched so you think that --

15 A. I saw it. The camera did.

16 Q. Let me ask you about State's exhibit number 9.  
17 Which hand is clenched in that?

18 A. It looks like he's holding his belt with his right  
19 hand but I would say right if I had to pick.

20 Q. Are you saying that his right hand is clenched in  
21 State's exhibit number 9?

22 A. Yes, sir.

23 MR. WILLIAMS: Sorry, Your Honor. It's the best way  
24 to show it.

25 BY MR. WILLIAMS:

1 Q. All right. So looking at State's exhibit number 9  
2 the hand which is clenched is his right hand, right?

3 A. Yes, sir.

4 Q. Because he's facing you?

5 A. Yes, sir.

6 Q. And if he's facing you, that's his right hand?

7 A. Yes, sir.

8 Q. Which hand is clenched there?

9 A. His left.

10 Q. Well, if this is some sort of drug transaction in  
11 which he has the drugs in his hand and is clenched so nobody  
12 can see it, how is it -- But you say both of these shots are  
13 shots after, after some sort of drug transaction, why don't  
14 the drugs fall out of his right hand and go to the left hand?  
15 I mean, how does that happen? I mean, is it some sort of  
16 magic act that he performs for everybody?

17 A. I don't know.

18 Q. It was a magic act, wasn't it?

19 A. I doubt it.

20 Q. You understand what I'm saying, don't you? You just  
21 described the fact that both of those shots came after a drug  
22 transaction. You're indicating to the jury that the reason  
23 why it's a drug transaction is because even though you can't  
24 see anything in his hands, he's got something in his hands  
25 and you're saying that it's in his right hand on one

1 occasions and then it's in his left hand on the other  
2 occasion?

3 A. All I remember is that he dropped the drugs on the  
4 steps. I picked them up and I paid him. That could have  
5 been the money for all I know.

6 Q. Okay.

7 A. I mean, that was two or three, almost three years  
8 ago.

9 Q. So the reason you don't know what happened is  
10 because it happened a long time ago?

11 A. I didn't say I don't know what happened. I just  
12 think -- I don't remember everything.

13 Q. You would have to admit that's inconsistent, isn't  
14 it? Isn't this inconsistent with what you just testified  
15 to?

16 A. Seems like it. Yes, sir.

17 Q. It does. So where in this video do we see these  
18 drugs which you say he leaves on the porch?

19 A. Where in the video?

20 Q. Yeah.

21 A. Well, when I watched it, I remember you could hear  
22 him saying -- I don't think it showed it at all, but I could  
23 remember him saying you get it. It's right there or  
24 wherever.

25 Q. Where in the video does it show him receiving money

1 from you?

2 A. It doesn't.

3 Q. And how much money is it that you testified that you  
4 gave to him?

5 A. \$200.00.

6 Q. And how was that \$200.00 broken down?

7 A. I think it was 20's.

8 Q. Do you remember?

9 A. No, sir.

10 Q. Well, now you have been doing this confidential  
11 informant work for on many occasions. You didn't just do it  
12 against Ty, have you?

13 A. No, sir.

14 Q. You have done it against several people, haven't  
15 you?

16 MR. SPIVEY: Your Honor, I would object.

17 THE COURT: Okay. The nature of your objection?

18 MR. SPIVEY: Yes, sir, Your Honor.

19 Confidentiality.

20 THE COURT: Okay.

21 MR. WILLIAMS: I'm just asking how many times he's  
22 tried to set people up, Your Honor.

23 THE COURT: I think without any identifying  
24 information requested from the witness, I think I can  
25 allow that so I'll overrule the objection. Mr.

1 Williams, don't request any identifying information.

2 BY MR. WILLIAMS:

3 Q. How many times have you tried to set people up?

4 A. Twice.

5 Q. Twice?

6 A. Yes, sir.

7 Q. We just saw four videos so it's got to be more than  
8 twice.

9 A. For one person.

10 Q. So are you saying that you have only tried to set up  
11 two people?

12 A. Yes, sir.

13 Q. So you set up my client and another person?

14 A. Yes, sir.

15 Q. Now, having done it, how many times did you try to  
16 set the other person up? Because we know four times with  
17 this guy. So how many times did it take to set the other guy  
18 up?

19 A. I think it was three.

20 Q. Three times. So you have got at least the  
21 experience of nine times going out and trying to set people  
22 up, right?

23 A. Right.

24 Q. So you know the routine. You know that you get paid  
25 a certain amount of money, and you have a watch, and you

1 videotape, you're supposed to show the drug transactions  
2 happening, but none of these videos that we have seen here  
3 today show any money in your possession or being transferred,  
4 right?

5 A. That's right. But I wasn't going -- No matter what,  
6 I wasn't going to go in there and get myself shot or anything  
7 so whatever I had to do to make myself seem like normal, I  
8 wasn't going to walk around showing my watch.

9 Q. Well, your words were that you were willing to go to  
10 any length. Isn't that what you said at the beginning of  
11 this?

12 A. Yes, sir.

13 Q. So when you got back to your location wherever this  
14 drug transaction had transpired, there was no danger there,  
15 was there? You could show the videotape showing the drugs  
16 that you took?

17 A. When?

18 Q. When you get back from buying these drugs? You had  
19 the drugs, right?

20 A. Yes, sir.

21 Q. You could have shown those on the videotape,  
22 couldn't you?

23 A. I could have. Yes, sir.

24 Q. But you didn't do that?

25 A. No, sir.



1 Q. What about before, before you went out to this  
2 location, you could have shown the money, couldn't you?

3 A. Yes, sir.

4 Q. The money is documented, isn't it?

5 A. Yes, sir.

6 Q. Because you take the money from law enforcement.  
7 Law enforcement actually documents the serial numbers on the  
8 money which they give you, don't they?

9 A. Yes, sir.

10 Q. So that way since you allegedly have given money to  
11 someone to purchase drugs, if someone had come in and found  
12 the money on somebody who was charged, then they would be  
13 able to say that they received the money as part of a drug  
14 transaction?

15 A. Yes, sir.

16 Q. And that was not done in this case, was it?

17 A. No, sir.

18 Q. Well, let's go on to the second video that we have  
19 looked at. Who is the guy with the blue jeans and T-shirt on  
20 in the March 22nd tape?

21 A. I would like to see the picture, if I could.

22 Q. You don't remember a guy on the March 22nd tape that  
23 had blue jeans and a white T-shirt on?

24 MR. SPIVEY: Your Honor, I think he's suggesting  
25 facts that aren't necessarily in evidence at this point.

1 MR. WILLIAMS: I'm simply asking a question about  
2 an individual that I saw on the March 22nd tape.  
3 That's all. Either he remembers or he doesn't, Your  
4 Honor.

5 MR. SPIVEY: Your Honor, I don't remember anybody  
6 with blue jeans and a white T-shirt. The pictures that  
7 we have entered from March 22nd -- Maybe he means a  
8 different date.

9 MR. WILLIAMS: No.

10 MR. SPIVEY: Are you talking about the second date  
11 or the first date?

12 MR. WILLIAMS: I'm talking about on March 22nd when  
13 he went out there, there was an individual walking  
14 around in the yard that had blue jeans and a white  
15 T-shirt on.

16 THE COURT: You okay now, Solicitor, with it?

17 MR. SPIVEY: Yes, sir, Your Honor.

18 THE COURT: Repeat your question to the witness,  
19 Mr. Williams.

20 BY MR. WILLIAMS:

21 Q. Who was the individual walking around in the yard  
22 with the blue jeans on and the white T-shirt on?

23 A. Ty.

24 Q. That was Ty?

25 A. I don't know to be honest.

1 Q. Well, if that's Ty, who is this in State's exhibit  
2 number 9?

3 A. That is Ty.

4 Q. Well, does he have blue jeans on?

5 A. No, sir.

6 Q. So it couldn't have been Ty, could it?

7 A. That was Ty in that picture.

8 Q. But the guy with the blue jeans and the white  
9 T-shirt could not have been Ty, could it?

10 A. No, sir. If it was the same day, then no, sir.

11 Q. All right. Let me take you to April the 4th.  
12 Clearly on that tape the only person that we see on that tape  
13 on April the 4th is a picture of Mr. Sims; isn't that  
14 correct?

15 A. Yes, sir.

16 Q. What's his first name?

17 A. All I know is Baby Dee.

18 Q. You call him Baby Dee. How long have you known Baby  
19 Dee?

20 A. That was probably the first time I met him or  
21 second.

22 Q. First time you met Baby Dee was on April the 4th of  
23 2013?

24 A. The - when - the first time you see Baby Dee in the  
25 video whenever that was, that was the first time I ever

1 really met him other than seeing him somewhere, you know. I  
2 didn't know him personally or anything.

3 Q. On March the 22nd when you came up to the trailer  
4 and you were talking to my client about the purchase of a dog  
5 for a hundred dollars, didn't you make the comment on that  
6 tape saying that your brother won't answer my calls  
7 anymore?

8 A. Yeah.

9 Q. So you say on April the 4th, 2013, the only video  
10 which shows Baby Dee who you state is the one who gave you  
11 the drugs and that's the first time you have ever seen him,  
12 prior to that date on March 22nd you talked to my client and  
13 you say your brother doesn't answer my calls anymore?

14 A. Yeah. Yes, sir.

15 Q. Well, is that inconsistent with what you just  
16 said?

17 A. Yes, sir.

18 Q. It's inconsistent because it's not true, isn't it?

19 A. No, sir. The reason I said that is because I must,  
20 like I said before, it was several years ago so it's taken me  
21 a minute to get remembering. Now that we have talked about  
22 it I remember that Ty had given me Baby Dee's number a while  
23 back if I wanted crack, if I needed hard cocaine, because  
24 that's what he sold mostly. And if I wanted soft cocaine, I  
25 got Ty's number. I mean, or I call Ty for it. So evidently

1 I was wrong when I told you that that was the first day I had  
2 met him.

3 Q. What did you say at the beginning of your testimony?  
4 Do you remember the first words that you said about what you  
5 would do to get those charges off of you?

6 A. Yes, sir. I do.

7 Q. What did you say?

8 A. That I was willing to go to any length to work or to  
9 get rid of my charges.

10 Q. Did you have a relationship with Mr. Sims in regards  
11 to the selling of -- Were you buying drugs from Mr. Sims or  
12 was he buying drugs from you?

13 A. The only time I have ever met him was when I bought  
14 crack from him.

15 Q. So you weren't selling pills to him?

16 A. No, sir.

17 Q. Where is Mr. Sims now?

18 A. I heard he died.

19 Q. He's dead now, isn't he?

20 A. Yes, sir.

21 Q. Well, let's go on back to April the 4th. You  
22 clearly are doing something with Baby Dee, who, if that's the  
23 first time you met him, Mr. Sims, that's his name, isn't  
24 it?

25 A. Mm-hmm.

1 Q. And when you were telling law enforcement about who  
2 you were dealing with, you were shown identification line-ups  
3 and you were questioned about an individual by the name of Ty  
4 Pender, weren't you?

5 A. Yes, sir.

6 Q. So law enforcement thought that you were buying from  
7 Ty Pender at the time, didn't they?

8 A. I wasn't sure. They didn't tell me that. They just  
9 asked me if I recognized the people.

10 Q. And he told you his name was Ty Pender, right?

11 A. I think so.

12 Q. Because you didn't even know my client, did you?  
13 Because his name is what, Chris Wilson, isn't it?

14 A. Yes, sir. His name is Chris Wilson. I didn't find  
15 that out until probably after about the fourth buy was over  
16 or after the - I think I found it out at the line-up, the  
17 last line-up.

18 Q. His middle name, he happens to have the middle name  
19 of what is it?

20 A. Tyrone.

21 Q. Tyrone. But he goes by Chris, doesn't he?

22 A. Everybody in Gaston, Swansea and Columbia knew him  
23 by Ty.

24 Q. Okay. Are you going to have them all come  
25 testify?

1 MR. SPIVEY: Objection, Your Honor.

2 THE COURT: Sustained. Sustained.

3 BY THE WITNESS:

4 A. No. I'm not.

5 THE COURT: Don't answer the question.

6 BY MR. WILLIAMS:

7 Q. So let's see. You have this deal with Mr. Sims and  
8 you have no interaction whatsoever with my client until you  
9 say he comes to the window and he uses the following words,  
10 you better not be doing any funny "s", right?

11 A. Yes, sir.

12 Q. Didn't he tell you to leave that property and to  
13 leave his brother alone?

14 A. No.

15 Q. Didn't he question what you were doing with his  
16 brother?

17 A. No.

18 Q. You knew his brother was an addict, didn't you?

19 A. No.

20 MR. SPIVEY: Objection, Your Honor. Speculation.

21 THE COURT: Well, he can ask him if he knew it or  
22 not. I'll allow it.

23 BY MR. WILLIAMS:

24 Q. Well, let's go back. You said when you were talking  
25 about April the 4th of 2013, you said that he came to that

1 window and he made the comment to you because he was nervous  
2 because you were walking up and that's what that conversation  
3 was about, about you better not be doing any funny shit.  
4 That's what that comment meant to you? He suspected that you  
5 might be a narc?

6 A. Working for the law. That was when I was leaving  
7 after the drugs were sold.

8 Q. Because he was nervous that you might be a narcotics  
9 person?

10 A. Yes, sir.

11 Q. Well, you're talking about the same guy that  
12 supposedly sold you drugs on March the 22nd, right, of  
13 2013?

14 A. I don't -- The dates are not really lining up with  
15 me so all I can tell you is that when I bought - I bought the  
16 drugs from Baby Dee one time and then it was because I guess  
17 Ty didn't want to get up or whatever, but I bought them from  
18 Ty every other time. And as far as the dates go I don't - I  
19 can't, you know, put them together with the pictures in my  
20 head without sitting here and looking at them.

21 Q. Well, clearly the second time when you bought from  
22 Baby Dee and, of course, how the Solicitor gave his  
23 presentation which would have been April the 4th, that is  
24 allegedly, if we are conducting some sort of chronological  
25 situation here, would have been the second time if you



1 believe what the videotape says that you had been to the  
2 house for purchase of drugs, right?

3 A. Yes.

4 Q. Because we just looked at it, right?

5 A. Yes..

6 Q. Because remember this is March 22nd. State's  
7 exhibit 9 and 10 are March 22nd which is before April the  
8 4th.

9 A. Yes.

10 Q. So if he's nervous about you walking up, why would  
11 he be nervous if he's already had a drug distribution to you  
12 if that's true?

13 A. This wasn't - he wasn't nervous about me walking up.  
14 I mean, he didn't tell me that until I was leaving. What do  
15 you mean he was nervous about me walking up? He was nervous  
16 in general about me being there at that time and the next  
17 time I bought from him he seemed - he let me in his house and  
18 I guess because he saw that he didn't get busted the day that  
19 he was nervous so I don't know.

20 Q. Didn't you say on direct that the reason he made  
21 that comment out the window was because he was nervous  
22 because you were walking up? Isn't that what you said?

23 A. Because I was walking up?

24 Q. Yes.

25 A. Oh, yes. Because someone wasn't driving me up in

1 his yard because most people who come to buy drugs are  
2 driving and not walking unless you live in the project or  
3 something.

4 Q. Let's talk about the other two tapes that you had.  
5 What in those other two tapes, and we were referencing the  
6 dates of April the 26th, 2013 and June the 4th, 2013. Do  
7 either one of those tapes show you receiving drugs and paying  
8 money?

9 A. Yeah.

10 Q. They do?

11 A. They don't show the physical drugs or physical money  
12 but yes.

13 Q. They don't show the money. They don't show the  
14 drugs. But they do show you having a drug transaction?

15 A. Well, that's what I was doing there. I have never  
16 hung out over there or anything.

17 Q. Okay. Now, do either one of those tapes show you  
18 receiving the money that you're going to go spend for drugs  
19 on those dates?

20 A. No, sir.

21 Q. Do either one of those tapes show you being checked  
22 to make sure you didn't have drugs on you when you went over  
23 there?

24 A. No, sir.

25 Q. Do either one of those tapes show you coming back

1 with the drugs that were over there?

2 A. Yeah. It showed me walking back. They were in my  
3 pocket.

4 Q. In your pocket?

5 A. Yes, sir.

6 Q. Well, what about those serial numbers. Did law  
7 enforcement record the serial numbers before you made the  
8 drug transaction?

9 A. Yes, sir.

10 Q. What is the point of writing down the serial numbers  
11 for the drug transaction?

12 A. I guess so whenever they do bust him, they found  
13 their money on him.

14 Q. Did law enforcement to your knowledge secure any  
15 monies that they gave you?

16 A. Can you explain secure?

17 Q. Secure means did they obtain, did they receive, did  
18 they evidence, did they have a copy of, did they show  
19 anything to indicate that what you are saying actually  
20 happened?

21 A. They have receipts.

22 Q. They have receipts?

23 A. Or some type of thing that shows like you would get  
24 paid if you're not working to work your charges off and it  
25 showed I signed every one of them. It says zero dollars and

1 it was recorded how much money he gave me every time.

2 Q. Well, if I have got money in my pocket, we got  
3 serial numbers on the money and they recorded those numbers  
4 whether it be F540539, whatever it is, they wrote that stuff  
5 down and when they arrest somebody and they seize money or  
6 they look for money, then they would record that money and  
7 compare it to the money they gave you, right?

8 MR. SPIVEY: Your Honor, I object. This witness  
9 does not know what the police would do after arresting  
10 somebody. It's the wrong witness to ask this question  
11 to.

12 MR. WILLIAMS: I don't know.

13 THE COURT: Well, I mean, he's not -- You can ask  
14 him -- Don't ask about police procedure but do you know  
15 in this particular case whether or not the money that  
16 they give him to use was ever obtained at some future  
17 point in time. Whether or not he knows that and then  
18 move onto something else.

19 BY MR. WILLIAMS:

20 Q. Do you know whether or not law enforcement ever  
21 received those monies that they gave you and documented?

22 A. No.

23 Q. Now, my client was not arrested on March the 22nd,  
24 was he?

25 A. I don't know when he was arrested.

1 Q. To your knowledge, he wasn't arrested -- Well, if he  
2 was arrested on March 22nd of 2013, then you wouldn't have  
3 been able to do a drug deal with his brother on April 4th,  
4 would you, of 2013?

5 A. I don't know. All I know is the - the only way I  
6 knew he was arrested was because I got a call from him from  
7 his phone number telling me that he knew it was me. That he  
8 was going to find me.

9 Q. So you've got that recorded, too?

10 A. I don't have anything recorded.

11 Q. So it's your testimony that there were at least four  
12 or five drug transactions, four drug transactions out of that  
13 house but he wasn't arrested until one time sometime out in  
14 the future after those dates? He wasn't arrested in between  
15 the drug transactions, was he?

16 A. Not that I know of.

17 Q. Okay. Well, the point of this is that obviously --

18 MR. SPIVEY: Your Honor, I object.

19 THE COURT: Don't make your argument to the witness.

20 Ask a question, Mr. Williams.

21 BY MR. WILLIAMS:

22 Q. If the money was with him, how long do you think  
23 money would have resided with an individual after they  
24 received it?

25 A. It could only be an hour. Somebody give me \$20.00,

1 I go to the store to get something. That money is gone.

2 Q. So if the point was to document money, then you  
3 would expect someone to be arrested in close proximity to the  
4 time of the giving of the money, wouldn't you?

5 A. You would think.

6 Q. Now, you said the paint containers were underneath  
7 the sink?

8 A. There was a paint container under the sink painted  
9 black that he pulled drugs out of and sold to me several  
10 times.

11 Q. Underneath the sink?

12 A. Yes, sir.

13 Q. Was his wife present when this was going on?

14 A. When what? Every one of them or --

15 Q. Any of them?

16 A. Yes, sir.

17 Q. Which one?

18 A. I think it was the third.

19 Q. The third?

20 A. I believe so. I'm not sure but I think so.

21 Q. Did she hand you any drugs?

22 A. No, sir.

23 Q. It's your testimony he gave you drugs?

24 A. Yes, sir.

25 Q. Did she see him hand you any drugs?

1 A. Yes, sir.

2 MR. WILLIAMS: That's all I have, Your Honor.

3 THE COURT: Any redirect, Solicitor?

4 MR. SPIVEY: Yes, sir, Your Honor.

5 THE COURT: If you anticipate taking some time with  
6 redirect, I would like to go ahead and take a break.

7 MR. SPIVEY: We should take a break, Your Honor.

8 THE COURT: All right. Madam Forelady, ladies and  
9 gentlemen of the jury, we'll take a morning break.  
10 Again I remind you, caution you not to begin any  
11 discussions among yourselves related to this case and  
12 we'll get you back out in about 15 minutes, okay?

13 (Whereupon, the jury entered the jury room at 11:10  
14 a.m.)

15 THE COURT: We'll be in recess about 15 minutes.  
16 Mr. Flake, you're welcome to step down. Do not discuss  
17 your testimony with the lawyers. You're free to step  
18 down, if you like.

19 (Short break.)

20 BAILIFF: All rise.

21 THE COURT: Have a seat.

22 MR. SPIVEY: Your Honor, the witness, I believe, is  
23 on the way in.

24 THE COURT: Okay. Mr. Knight, bring the jury in  
25 please, sir.

1 BAILIFF: Yes, sir, Your Honor.

2 (Whereupon, the jury entered the courtroom at 11:25  
3 a.m.)

4 THE COURT: Let the record reflect the jury is back  
5 in. Solicitor, are you ready to proceed?

6 MR. SPIVEY: Yes, sir, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. SPIVEY:

9 Q. All right. Mr. Flake, we are back again.

10 Mr. Flake, I'm going to hand you what's been marked as  
11 State's exhibit 1, 2, 3, 4, 5, 6, 7, and 8. If you could  
12 just tell me, if you will look at those and let me know if  
13 you recognize those. Take a minute and look at each one.

14 A. (Witness complies.)

15 Q. Mr. Flake, do you recognize what I just handed  
16 you?

17 A. Yes, sir.

18 Q. Okay. What are those items?

19 A. The photo line-ups we did with Agent Hodges.

20 Q. Investigator Hodges presented those lineups to  
21 you?

22 A. Yes, sir.

23 Q. You did that sometime during this investigation?

24 A. Yes, sir.

25 MR. SPIVEY: Your Honor, I would admit into evidence



1 at this point the photo lineups that the defendant has.

2 MR. WILLIAMS: Your Honor, I would object to that  
3 because there's not been a proper foundation established  
4 for the introduction of those lineups at this time.

5 THE COURT: Okay. Let me have a side bar to see if  
6 we can deal with this issue.

7 (Side bar off the record.)

8 THE COURT: Madam Forelady, ladies and gentlemen of  
9 the jury, we have a legal matter that I need to take up  
10 with the lawyers and I appreciate your patience with us.  
11 It's just one of those necessary things. I ask that you  
12 go back to the jury room and hopefully it won't be too  
13 long.

14 (Whereupon, the jury entered the jury room at 11:30  
15 a.m.)

16 MR. WILLIAMS: I apologize. I can't remember the  
17 name of the case, Your Honor.

18 THE COURT: We'll take a look at it.

19 MR. WILLIAMS: Okay.

20 MR. SPIVEY: Your Honor --

21 THE COURT: Just hold your thoughts for just a  
22 second.

23 MR. SPIVEY: Your Honor, I apologize. I don't want  
24 to interrupt you but I withdraw my request to put them  
25 into evidence. I'm not sure they are going to further

1 the case that much. It will save us this hassle. My  
2 esteemed co-counsel has made that point to me a little  
3 after we started it. I'm sorry we excused the jury  
4 before I talked with him.

5 THE COURT: That's okay.

6 MR. SPIVEY: That's all.

7 MR. WILLIAMS: As far as I'm concerned if you're not  
8 offering it, I'm good.

9 THE COURT: I'm just curious now. Give me one  
10 second. I want to see if that recent case says what  
11 you're suggesting. We'll just look at it over lunch  
12 break. I don't want to take up any more time. Mr.  
13 Knight, bring the jury back in please.

14 BAILIFF: Yes, sir, Your Honor.

15 (Whereupon, the jury entered the courtroom at 11:35  
16 a.m.)

17 THE COURT: Let the record reflect the jury is back  
18 in. Solicitor, you may proceed.

19 MR. SPIVEY: Thank you, Your Honor. May I approach  
20 the witness?

21 THE COURT: Certainly.

22 BY MR. SPIVEY:

23 Q. I'll hand you what's been entered into evidence as  
24 exhibit 25. If you will open that bag which is actually what  
25 was admitted into evidence as the contents inside of it.

1 Tell us what that is. All right. Mr. Flake, what is that  
2 you are looking at?

3 A. Paint can.

4 Q. Okay. Do you recognize that paint can?

5 A. Yes, sir.

6 Q. Where do you recognize that from?

7 A. From the one that was under the sink.

8 Q. Okay. Is that the paint can the defendant held?

9 MR. WILLIAMS: Objection to leading.

10 THE COURT: Try to rephrase.

11 BY MR. SPIVEY:

12 Q. What's the relevance of that paint can, Mr. Flake?

13 A. The blue paint on top and how he painted it black  
14 around the outside, it just looks exactly the same as the  
15 one.

16 Q. Are you saying that's the one from the video?

17 A. The one that I -- Yeah. From the videos and the one  
18 when I bought the drugs. He pulled that out every time.

19 Q. Okay. All right. Mr. Flake, when you met with the  
20 investigators about performing distributions, did you talk  
21 about safety at all?

22 A. Yes, sir.

23 Q. Okay. Did those discussions involve conversations  
24 about wearing a camera?

25 A. Yes, sir.

1 Q. Okay. Tell us about the - about what you understood  
2 -- Essentially how did you plan to remain safe while wearing  
3 a camera? Tell us that.

4 A. To make sure that he didn't see me pointing it at  
5 anything. I mean, to just, you know, try to be as nonchalant  
6 as possible with it and do my best to get a shot of what was  
7 going on.

8 Q. Okay. You said that when the defense attorney was  
9 questioning you, he asked you whether or not you were afraid  
10 in terms of holding the camera up; is that correct?

11 A. Yes, sir.

12 Q. Okay. Were you afraid of the defendant?

13 A. Yes, sir.

14 Q. Okay. Why were you afraid of him?

15 A. Because I knew he had guns. I knew from people  
16 talking --

17 MR. WILLIAMS: Your Honor, I have a matter of law to  
18 take up with the Court outside the presence of the  
19 jury.

20 THE COURT: Okay. All right. Madam Forelady,  
21 ladies and gentlemen of the jury, I have a matter to  
22 take up with the attorneys. If you would go back to  
23 your jury room.

24 (Whereupon, the jury entered the jury room at 11:40  
25 a.m.)

1 THE COURT: Okay. Mr. Williams.

2 MR. WILLIAMS: Your Honor, I would move for a  
3 mistrial. There is no way which this witness can  
4 testify about him knowing that he has guns and to bring  
5 in what people in the community say about him. He was  
6 getting ready to say that people have said that he's  
7 violent, things of that nature. He certainly can't  
8 bring in his reputation.

9 THE COURT: Okay. All right. Now, all right. The  
10 question you asked, Solicitor, was what?

11 MR. SPIVEY: I asked why was he concerned for his  
12 safety.

13 THE COURT: Right. And the witness said I knew he  
14 had guns and then I didn't quite catch because you were  
15 pretty much up on your objection. So what did he  
16 specifically say after I knew he had guns?

17 MR. WILLIAMS: He said from talking to the people in  
18 the community and then I tried to cut him off as soon as  
19 I could because the next words are going to be that he's  
20 violent. He's heard other people --

21 THE COURT: He didn't say that.

22 MR. WILLIAMS: I thought it was best to cut him  
23 off.

24 THE COURT: Right. I understand. I understand.

25 MR. SPIVEY: Your Honor, it's my understanding from

1        talking with the informant in preparation for trial that  
2        he had actually talked with the defendant on prior  
3        occasions about having guns and that he had seen a  
4        handgun that the defendant had and so I think he does  
5        have direct knowledge of the defendant having guns.

6                THE COURT:    Okay.    I do remember this witness on  
7        either direct or cross making some reference that  
8        everybody knew Ty.

9                MR. WILLIAMS:    He did say that.

10               THE COURT:    I don't know if he elaborated anymore,  
11        but something to that effect.    Everybody in Gaston and  
12        he named a couple communities or towns.    Everybody from  
13        these towns or communities knew Ty.    All right.    Well, I  
14        certainly don't believe that whatever this witness said  
15        would rise to the level of justifying a mistrial.    I'm  
16        trying to think as far as if a curative instruction is  
17        necessary or just directing the defendant not to testify  
18        as to whatever he has heard about the defendant in the  
19        community.    Sometimes if you kind of leave it alone, and  
20        I appreciate, Mr. Williams, you kind of cutting it  
21        off.

22               MR. SPIVEY:    I don't have any objection.    It may  
23        draw more attention to it where we are going.

24               THE COURT:    That's right.    I think what I'm gonna do  
25        is deny the motion for a mistrial and direct this

1 witness not to offer testimony as to anything that he  
2 has heard from other people in the community; that he  
3 has to testify as to whatever direct knowledge that he  
4 has. Now, you may want to, Solicitor, insofar as the  
5 gun issue, you may want to ask him, you say you knew he  
6 had guns. How do you know that? You may want to do  
7 that before we bring the jury out to make sure that his  
8 knowledge is not from the community but from whatever.

9 MR. SPIVEY: His own personal interaction.

10 MR. WILLIAMS: That's good, Your Honor. Thank  
11 you.

12 THE COURT: So you may want to ask him that before  
13 we bring the jury out about his knowledge about the gun.

14 MR. SPIVEY: Yes, sir. I want to -- It's hard to  
15 get that question out without leading and get the proper  
16 foundation at the same time, Your Honor. I'm still  
17 learning how to do this.

18 THE COURT: I understand. You're doing fine. Go  
19 ahead and ask him before we bring the jury out and make  
20 sure we don't have any other issues.

21 BY MR. SPIVEY:

22 Q. Mr. Flake, how did you know the defendant had  
23 guns?

24 A. The cabinet that I told you above the sink, when he  
25 opened it every now and then I would see a gun up there and

1 maybe one on the counter.

2 Q. What type of gun did you see?

3 A. Could have been a -- I don't know what brand. It  
4 was a black nine millimeter or something like that.

5 MR. SPIVEY: Okay.

6 THE COURT: All right. Let's bring the jury out and  
7 again, Mr. Witness, you understand what you are not  
8 permitted to testify to?

9 THE WITNESS: Yes, sir.

10 THE COURT: Thank you very much.

11 (Whereupon, the jury entered the courtroom at 11:55  
12 a.m.)

13 THE COURT: Let the record reflect the jury is back  
14 in. Solicitor, you may proceed.

15 MR. SPIVEY: Thank you, Your Honor.

16 BY MR. SPIVEY:

17 Q. Mr. Flake, you just told us that you thought he had  
18 a weapon. How did you know that he had a weapon?

19 A. From the times that a bought drugs from him where he  
20 kept them in the cabinet above the sink I would see a handgun  
21 up there or sometimes I would walk in and there would be one  
22 on the counter in the kitchen.

23 Q. Okay. Mr. Flake, I'm going to approach with State's  
24 exhibit 9 and 10 which are in evidence. Grab these back.

25 All right. Mr. Flake, will you read the time stamp on those?



1 Do you know what I'm talking about, the time stamp?

2 A. (Indicating.)

3 Q. I'll tell you what, Mr. Flake. Let's put them up on  
4 the overhead so we can all see it. All right. This part  
5 right here, Mr. Flake, what does that say?

6 A. 16:49:47.

7 Q. Okay. And this is the one where he's got, we  
8 talked, y'all talked about on cross examination that he has,  
9 what appeared to be his right hand?

10 A. Yes, sir.

11 Q. Okay. So that's 16:49:47. Now, tell me about the  
12 time stamp on this one?

13 A. 59.

14 Q. So the seconds place is at 59?

15 A. Yes, sir.

16 Q. So 12 seconds had elapsed from the time he had his  
17 right hand clenched until the time he had his left hand  
18 clenched?

19 A. Yes, sir.

20 Q. All right. Thank you. Mr. Flake, you talked about,  
21 you told us that you would do whatever it takes to help  
22 yourself out, correct?

23 A. Yes, sir.

24 Q. Okay. If Mr. Sims, you said, I think the defense  
25 attorney asked you about you having prior dealings with Mr..

1 Sims, correct?

2 A. Yes, sir.

3 Q. Why didn't you just set up Mr. Sims?

4 A. I mean, I didn't know -- I didn't even know -- I  
5 didn't have his number or I'm pretty sure I never knowed his  
6 brother until I, you know, I started making the buys.

7 Q. So why did you set up the defendant?

8 A. Because I knew I could buy drugs from him.

9 Q. So you knew you could buy drugs from the  
10 defendant?

11 A. Yes, sir.

12 Q. But did you ever buy drugs from the defendant's  
13 brother before?

14 A. Not before working with Hodges.

15 Q. Okay. All right. You told us that the defendant  
16 seemed skiddish; is that correct?

17 A. Yes, sir. That one day.

18 Q. Okay. What do you mean by that?

19 A. He was just nervous. He kept talking about how I'm  
20 walking up and not driving up or someone bringing me and how  
21 I come from walking way down the road.

22 Q. Okay.

23 A. He said it made -- I felt like he was telling me  
24 that that made him nervous, that I was working for the  
25 police.

1 Q. Okay. And you stated to the defense attorney that  
2 ultimately you were allowed to come into the house?

3 A. Yes, sir.

4 Q. Okay. I guess what happened, why were you allowed  
5 to come into the house later as opposed to not being allowed  
6 to come to the house initially?

7 A. Because the more buys the more comfortable he got.

8 Q. Okay. All right. I'm going to switch this over  
9 real quick. I want to point a few things out, a few moments  
10 on this video that we watched. I made a few notes. What's  
11 the date of this video, Mr. Flake?

12 A. March 22nd, 2013.

13 (Playing video for the jury.)

14 BY MR. SPIVEY:

15 Q. Okay. What just happened there, Mr. Flake?

16 A. He made me leave and go around back.

17 (Playing video for the jury.)

18 BY MR. SPIVEY:

19 Q. All right. Skip ahead a little bit. Mr. Flake, who  
20 is that?

21 A. At that time I thought it was the neighbor's child  
22 because it looked like he was coming from the neighbor's  
23 house.

24 Q. What's that person wearing?

25 A. A white T-shirt and blue jeans.

1 Q. So is that the person that the defense attorney was  
2 referring to a few minutes ago?

3 A. Yes, sir.

4 Q. So that's not the defendant?

5 A. No, sir. It's a child.

6 (Playing video for the jury.)

7 BY MR. SPIVEY:

8 Q. Who did he say the dogs belonged to?

9 A. His brother.

10 Q. So the person that -- What did he say after that? I  
11 couldn't quite hear it.

12 A. You want to holler at him about it.

13 Q. Okay. So your discussions with the defendant about  
14 his brother on that first distribution was about calling his  
15 brother about the dogs?

16 A. Yes, sir.

17 (Playing video for the jury.)

18 BY MR. SPIVEY:

19 Q. All right. I want you to pay very close attention  
20 to what you see, Mr. Flake. It's just a brief moment I want  
21 you to pay attention to, okay?

22 A. Mm-hmm.

23 Q. What do you see there, Mr. Flake?

24 A. That was him dropping the dope on the step, setting  
25 it on the step.

1 Q. What's that in his left hand?

2 A. That's a bag of powder cocaine.

3 Q. And that's the defendant right there?

4 A. Yes, sir.

5 MR. SPIVEY: Okay. Your Honor, I don't have anymore  
6 questions for this witness.

7 THE COURT: Okay. Any recross from the defense?

8 MR. WILLIAMS: Yes, Your Honor.

9 THE COURT: Okay.

10 RECROSS EXAMINATION

11 BY MR. WILLIAMS:

12 Q. Now, are you sure that's a bag of powder cocaine or  
13 are you seeing through his hand to the wooden rail which is  
14 behind his hand?

15 A. I'm sure because I bought it.

16 Q. You see what I'm talking about, don't you? You see  
17 that there is a wooden rail which goes to the step which is  
18 right behind his hand. You see his hand is like that  
19 (indicating), correct?

20 A. Yes, sir.

21 Q. So it's your testimony that this is something in his  
22 hand versus seeing through?

23 A. Yes, sir.

24 Q. Well, since we see that, do we see anything on the  
25 step?

1 A. Nope.

2 Q. How is it that we can see through his hand to this  
3 rail but we don't see anything on the step?

4 A. Because it's still in his hand. He hasn't dropped  
5 it yet.

6 Q. When does he drop it?

7 A. Probably if you keep playing it. It wouldn't show  
8 it but he dropped it.

9 Q. It wouldn't show it?

10 A. No, sir. Like I said, when he's dropping the drugs,  
11 I'm not going to hold the watch down there right there with  
12 him looking at it so he could --

13 Q. So you immediately jerked your hand up?

14 A. Not immediately. I mean, I was just trying to  
15 pretend. I didn't even have them.

16 Q. How long does it take to put something down?

17 A. A second or so.

18 Q. Second or so?

19 A. Maybe a second.

20 Q. A second?

21 A. You can make it take as long as you want it to, I  
22 guess.

23 Q. But this video doesn't show anything on the step and  
24 it could show something behind his hand, showing the wooden  
25 railing behind his hand?

1 A. This video doesn't show anything on the step.

2 Q. No, it doesn't. Let me ask you about the 12 seconds  
3 question that you had. Do you remember that they were  
4 showing the seconds, that the Solicitor was just asking you  
5 about the seconds and he was showing you that you have one  
6 hand versus the other hand and he's talking about it being 12  
7 seconds?

8 A. Yes, sir.

9 Q. Obviously time means what it is meaning there is, I  
10 don't know -- You don't have to explain time. Time is  
11 something that goes on. 12 seconds is a short period of time  
12 for something to happen. You never see him transferring  
13 anything from one hand to another, do you?

14 A. No. No, sir.

15 Q. But you clearly see his hand clenched in one hand  
16 and clenched in the other hand, right?

17 A. Yes, sir.

18 Q. And both of those allegedly occurred in State's  
19 exhibit number 9 and number 10 occurred after the drug  
20 transaction?

21 A. I think so.

22 Q. Well, it's your testimony it happened after the drug  
23 transaction.

24 A. Yes, sir. That's what -- I'm --

25 Q. Right?

1 A. Yeah.

2 Q. Let's look at those, the photographs. Taking them  
3 in the order -- State's exhibit number 9 shows my client on  
4 the top of the step, does it not?

5 A. Yes, sir.

6 Q. And I'm sorry. The time on that was 16:49:47,  
7 correct?

8 A. Yes, sir.

9 Q. State's exhibit number 10 shows my client where?  
10 Top of the step or on the landing, right?

11 A. Yes, sir.

12 Q. 16:49:59 12 seconds later, right?

13 A. Yes, sir.

14 Q. This is after the drug transaction, right?

15 A. I'm trying to figure out if that, if one of them is  
16 the front porch and the other is the back porch. I don't  
17 know because when I got there, he came out, like I said, when  
18 I went out, he came out the front door. That's what I'm  
19 trying to figure out.

20 Q. So you're saying this occurred before the drug  
21 transaction allegedly happened?

22 A. No, sir. I'm saying I can't -- I don't -- I can't  
23 figure out whether - which one is the front, if that's the  
24 front and back or if it's the back and back. I mean, both  
25 pictures are of the back.



1 Q. You don't know if this is the front door or the back  
2 door?

3 A. Not by looking at that picture I couldn't tell you,  
4 but I'm pretty sure it's the back door.

5 Q. Well, as we have already talked about it, State's  
6 exhibit number 9 is 47, right? State's exhibit number 10 is  
7 59, 12 seconds later, right?

8 A. Yes, sir.

9 Q. It was after the alleged drug transaction, right?

10 A. Yes, sir.

11 Q. He supposedly has the drugs in this hand, right?

12 A. Supposedly. Yes, sir.

13 Q. Well, if it's after the drug transaction, why are  
14 the drugs still in his hand?

15 A. I don't know if that's the drugs in his hand or the  
16 money there because it's clenched.

17 Q. Didn't you just say that was the drugs in his hand?  
18 Didn't you say this was after the drug transaction?

19 A. That's 59 so that's got to be the last one so I  
20 would be willing to bet, I would say that's the money in his  
21 hand because evidently I went walking off. I had already  
22 bought the drugs, unless he's got more drugs in his hand I  
23 didn't know about.

24 Q. Okay. So 16:47 is the one with the drugs in his  
25 hand?

1           A. I don't know what's in his hand. I can't say there  
2 is anything in his hand at that time. I don't know. He  
3 may be reaching into his pocket to get it to set it on the  
4 step.

5           Q. Well, the picture we just looked at behind the  
6 railing, do you remember that picture? And I asked you  
7 whether or not you were seeing through his hand or not?

8           A. Yes, sir.

9           Q. Clearly that is his left hand, isn't it?

10          A. Yes, sir.

11          Q. And if you are indicating that 16:49:47 is before  
12 the drug transaction, is that what you're indicating? That  
13 may have been a picture before the drug transaction?

14          A. No.

15          Q. That's after?

16          A. Yes, sir.

17          Q. So the only thing we are questioning here between  
18 State's exhibit number 9 and number 10 is how he switched  
19 whatever he had in his hands from one hand to another?

20          A. I think I made a mistake saying that that was before  
21 or that was both after. What I mean because I mean it's two  
22 years ago. I'm trying to figure out in my head like is that  
23 him going down and dropping the drugs or I don't know. I  
24 don't -- I don't understand what you're getting --

25          Q. Okay. You don't know. You don't remember. You

1 just don't know, right?

2 A. I don't know what that picture -- I'm trying -- I  
3 mean, where you are getting at I don't understand how to  
4 answer it.

5 Q. The gun. You were asked about the gun, the black  
6 gun and you said you had seen the gun before because when my  
7 client went into the paint bucket, wherever it is, when he  
8 went into the black paint bucket to get his drugs, you saw  
9 the gun up in the cabinet, right? That's what you said,  
10 right?

11 A. When he got drugs out of that can, it was under the  
12 sink at the times I got it from him. I mean, he may have  
13 pulled it out of a top cabinet once or twice but I clearly  
14 remember it being under the sink. But like I said, there  
15 were several times I bought that it wasn't in the can. All I  
16 know is he reached up in the top of the cabinet and got it.  
17 When I go to buy drugs, I'm not going to be watching and  
18 staring at every move he makes. I mean, I'm not getting --  
19 My safety was the most important thing to me when I was doing  
20 that.

21 Q. So sometimes, sometimes the paint container would be  
22 up on the top shelf with the gun. That's why you saw the  
23 gun. You wouldn't have seen the gun if the cabinet hadn't  
24 been open, right?

25 A. No. I couldn't have seen through it.

1 Q. That's right. So somebody had to open up the  
2 cabinet. The only reason why the cabinet would be open is  
3 for a drug transaction to take place, right?

4 A. Yes, sir. I guess.

5 Q. Well --

6 A. I mean, he might have had more things in the cabinet  
7 besides drugs.

8 Q. Do you remember him getting you a glass of ice tea  
9 and opening up the cabinet and there's the gun up there where  
10 the ice tea is?

11 A. No.

12 MR. SPIVEY: Your Honor, I object as to relevance.  
13 I don't know where we're going with all this. It seems  
14 to me we're going over the same stuff over and over  
15 again.

16 THE COURT: The issue of the gun was not brought out  
17 in redirect, was it?

18 MR. SPIVEY: It was brought out in redirect.

19 MR. WILLIAMS: It actually was brought out in  
20 redirect.

21 MR. SPIVEY: But we moved onto whether or not he got  
22 ice tea out of the cabinet. It seems to be asking the  
23 same question over and over again trying to confuse the  
24 witness.

25 THE COURT: I'll allow the defense counsel to

1 question him concerning the gun.

2 MR. WILLIAMS: Thank you, Your Honor.

3 BY MR. WILLIAMS:

4 Q. So the gun you testified to on redirect that came  
5 out of a cabinet when the cabinet was opened up when he was  
6 getting drugs, correct?

7 A. Yes, sir.

8 Q. And it was above? It was higher? It was not lower;  
9 is that correct?

10 A. One time I got it the paint can was above. There  
11 was some times I bought the drugs from him it wasn't even in  
12 a paint can. It was just drugs sitting in the top cabinet.  
13 Several times I bought it from him it was in the paint can  
14 under the sink. If he ever got drugs from under the sink, it  
15 was in the paint can.

16 Q. Well, you said several times there were only two  
17 times which you allege that you were even inside this house  
18 for the purchase of any kind of drugs so where does the  
19 several come from?

20 A. Well, you think that I could just, when Detective  
21 Hodges asked me if I could buy drugs from the guy, I mean,  
22 I'm a drug addict. Had I ever purchased them before? Yeah.  
23 I have purchased drugs without the law before, you know,  
24 illegally. That's the only way I knew how to buy them from  
25 him in the first place. I can't just call around a person

1 and buy drugs.

2 Q. When you were asked by the Solicitor a while ago  
3 about had you ever met his brother before --

4 A. Yes, sir.

5 Q. -- you said you had never met him before and those  
6 were his dogs, his brother's dogs?

7 A. Mm-hmm.

8 Q. But when you first come up there, you say you don't  
9 have his number? That you didn't have his number, right?

10 A. Yes, sir.

11 MR. WILLIAMS: That's all the questions I have, Your  
12 Honor.

13 THE COURT: Okay. Thank you, sir, for your  
14 testimony. You can step down.

15 MR. SPIVEY: Your Honor, may this witness be excused  
16 at this time?

17 THE COURT: Any objection from the defense?

18 MR. WILLIAMS: No, Your Honor.

19 THE COURT: Okay. All right. You're welcome to  
20 leave, sir, or you can remain with us, either way.

21 MR. CASKEY: Your Honor, at this time we are ready  
22 for the next witness.

23 THE COURT: Yes.

24 MR. CASKEY: Your Honor, at this time we call Candy  
25 Kyzer to the stand.

1 MR. SPIVEY: Your Honor, we are calling her out of  
2 order. She has a doctor's appointment. Normally we  
3 would call her a little bit later, but we'll call her  
4 now to see if we can get her out of here.

5 THE COURT: All right.

6 Thereupon,

7 CANDY KYZER

8 after having been first duly sworn, testified as follows,

9 THE CLERK: Please have a seat. After you're  
10 seated, please state your full name spelling your last  
11 name.

12 THE WITNESS: Candy Kyzer, K-y-z-e-r.

13 DIRECT EXAMINATION

14 BY MR. CASKEY:

15 Q. Ms. Kyzer, where do you work and what do you do for  
16 a living?

17 A. I work at the Lexington County Sheriff's Department.  
18 I'm an evidence custodian.

19 Q. Would you tell the jury a little bit about what an  
20 evidence custody does?

21 A. We get in the evidence and make sure that it's  
22 properly packaged and entered into the computer system and  
23 then we store it in the property location until it's needed  
24 for court or for testing purposes.

25 Q. Is the evidence room the place where evidence in

1 criminal cases is stored before trial?

2 A. Yes. It is.

3 Q. You talked about a computer system. What are you  
4 talking about?

5 A. It's our - it's called RMS and when a deputy or an  
6 investigator gets evidence in a case, they have to come and  
7 complete a voucher which is on the computer system and what  
8 they do then is they enter the evidence into the voucher and  
9 print it off and then sign it and we get the copy of that  
10 along with the property.

11 Q. Are there any other people who do what you do?

12 A. There's two other of us, a sergeant, myself and,  
13 actually a total of three. My sergeant, myself and Beth  
14 Holliman.

15 Q. Your sergeant's name is?

16 A. Sergeant Doug Novak.

17 Q. And y'all have similar responsibilities?

18 A. Yes.

19 Q. Tell the jury about what happens when you receive  
20 evidence. Well, first, how do you receive evidence again?

21 A. Either the deputy or investigators bring it in and  
22 if we are there, then they can actually hand it to us. If we  
23 are not and it's nighttime or on the weekends, we have  
24 lockers that they can put it in and it locks on their side  
25 and then we are the only ones that have keys to open it on



1 our side.

2 Q. Once that evidence is either handed to you or placed  
3 in the locker, what happens from there?

4 A. We make sure that it's properly packaged and entered  
5 into the computer system right and on the voucher and then we  
6 accept it if it is, then we print out the bar code labels and  
7 put it in its storage location.

8 Q. Did you receive evidence in this case?

9 A. I did.

10 MR. WILLIAMS: Your Honor, we have a matter of  
11 law.

12 THE COURT: Come up to the side bar.

13 (Side bar off the record.)

14 BY MR. CASKEY:

15 Q. Ms. Kyzer, I'm handing you what's been marked as  
16 State's number 36. Do you recognize that?

17 A. I do.

18 Q. What is that?

19 A. It's our printed paperwork from the computer. It's  
20 the voucher and chain of custody reports for our items.

21 Q. And again how are those documents generated?

22 A. Whenever they come in and have to turn in evidence,  
23 the deputy or the investigator sits down at the computer  
24 system and they have to complete a voucher for that evidence  
25 that they are turning in.

1 Q. In the subsequent pages there you have, what are  
2 those documents?

3 A. They are the, a copy of the voucher and the chain of  
4 custody paperwork for each item.

5 Q. Okay. And are those documents kept by you or  
6 persons that bear similar responsibilities in the evidence  
7 room in the regular and ordinary course of your business?

8 A. They are. The documents actually are scanned into  
9 the computer system and stored that way and we are also  
10 keeping paper copies of those, too.

11 Q. Are the evidence logs kept as business records for  
12 the purpose of identifying and storing evidence?

13 A. Yes.

14 Q. And are the documents you have in front of you,  
15 State's 36, are those related to this case in hand?

16 A. They are.

17 Q. Does it relate to evidence that you took into  
18 custody?

19 A. Yes, sir.

20 MR. CASKEY: Your Honor, at this time we move  
21 State's 36 into evidence.

22 MR. WILLIAMS: Subject to prior objections made,  
23 Your Honor.

24 THE COURT: So noted and will be allowed into  
25 evidence, 36 on behalf of the State.

1 MR. CASKEY: Thank you, Your Honor.

2 BY MR. CASKEY:

3 Q. Ms. Kyzer, if you would please, tell the jury what  
4 was taken, those documents you have, State's 36, what was  
5 taken into evidence?

6 A. In these documents it was a BEST kit.

7 Q. What's a BEST kit?

8 A. It's a kit that drugs go into that is not, it's  
9 other than marijuana. Anything other than marijuana goes  
10 into a BEST kit.

11 Q. Okay. Is there an identifying number associated  
12 with that BEST kit?

13 A. There is.

14 Q. What is that number?

15 A. It's C020230.

16 Q. I'm handing you what's been marked as State's number  
17 30. Do you see a BEST kit number on that?

18 A. I do.

19 Q. What is that?

20 A. C020230.

21 Q. Is that the same number as what you just read off of  
22 your evidence log?

23 A. It is.

24 Q. Okay. And that evidence log, does it indicate that  
25 that evidence has been in your sole care, custody and

1 control?

2 A. It has been.

3 Q. Was it ever released to an analyst?

4 A. It was.

5 Q. When was that?

6 A. It was signed out to Emily Homer on August the 20th  
7 of 2013.

8 Q. Who is Emily Homer?

9 A. She is our chemist.

10 Q. Who is she employed by?

11 A. Lexington County Sheriff's Department.

12 Q. Did she return that evidence?

13 A. She did on September the 10th of 2013.

14 Q. Since that time has it been in your exclusive care,  
15 custody and control?

16 A. It has been.

17 Q. Was that evidence in the same condition or  
18 substantially in the same condition when you received it as  
19 when you released it?

20 A. Yes.

21 Q. Let me ask you real quickly, are there any names  
22 that you recognize on this BEST kit?

23 A. Yes.

24 Q. What is that name?

25 A. It's Thomas Hodges.

1 MR. CASKEY: I thank you. No further questions.

2 THE COURT: Mr. Williams.

3 MR. WILLIAMS: Please the Court.

4 CROSS EXAMINATION

5 BY MR. WILLIAMS:

6 Q. Candy, when did you receive those items?

7 A. I received them on June the 14th, 2013.

8 Q. And it had the name of Hodges on it; is that  
9 correct?

10 A. Yes. It does. The BEST kit does.

11 Q. How did you receive the items?

12 A. He handed them to me.

13 Q. Do you recall what time of day he gave it to you?

14 A. He actually turned them in around lunch time that  
15 day and I signed them in later that afternoon.

16 Q. Okay. So it would have been lunch time on what  
17 day?

18 A. On June the 14th.

19 Q. Do you know where they were prior to lunch time on  
20 June the 14th?

21 A. No, sir.

22 Q. You have no independent knowledge as to which  
23 officer found any items, do you?

24 A. No, sir.

25 Q. You have no knowledge as to how they were maintained

1 before they came into your custody; is that correct?

2 A. That's correct.

3 Q. Did it include on the case number, did it include  
4 the names of the defendants who were charged?

5 A. No. It doesn't.

6 Q. All you have is a case number for your drugs?

7 A. Yes.

8 Q. So you have no knowledge as to whether or not there  
9 was one defendant charged versus three defendants charged?

10 A. No.

11 Q. And I think I have already asked you this. You have  
12 no knowledge as to where or when it was found, those items  
13 were found?

14 A. No. I don't.

15 Q. Did you perform any other test? Well, you didn't  
16 perform any test at all, did you?

17 A. No. I didn't.

18 Q. You just keep up with the stuff and give it to the  
19 chemist?

20 A. Yes.

21 Q. Do you know whether or not any analysis was done  
22 other than the drug analysis by the chemist on the containers  
23 and/or the drugs?

24 MR. SPIVEY: Your Honor, I have to object. She  
25 doesn't know that.

1 THE COURT: Well, if she doesn't know it, she  
2 doesn't know it. I'll allow it.

3 BY THE WITNESS:

4 A. No. I don't know.

5 BY MR. WILLIAMS:

6 Q. All right. Is there any other -- In your department  
7 the only persons who do analysis there are the chemists; is  
8 that correct?

9 A. As far as drugs. For marijuana we have crime scene  
10 investigators that can test those. But for other drugs she  
11 is the only one that does that.

12 Q. What about fingerprint analysis at the Sheriff's  
13 Department?

14 A. Crime scene investigators do that.

15 Q. Do you have crime scene investigators working at the  
16 Sheriff's Department?

17 A. Yes. We do.

18 MR. WILLIAMS: That's all I have, Your Honor.

19 THE COURT: Anything on redirect?

20 MR. CASKEY: Very briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. CASKEY:

23 Q. What's the case number associated with this case?

24 A. It's 13005051.

25 Q. And one more time for the record, what is the BEST

1 kit associated with this case?

2 A. The BEST kit number is C0202330.

3 MR. CASKEY: Nothing further, Your Honor.

4 THE COURT: Thank you, ma'am, for your testimony.

5 You may step down.

6 MR. SPIVEY: Your Honor, can this witness be  
7 excused?

8 MR. WILLIAMS: No objection, Your Honor.

9 THE COURT: Ma'am, you're free to leave or stay with  
10 us, either one. Do you have another witness to call?

11 MR. SPIVEY: Yes, Your Honor. Charles Holloway.

12 Thereupon,

13 CHARLES HOLLOWAY

14 after having been first duly sworn, testified as follows,

15 THE CLERK: Please have a seat. After you're  
16 seated, please state your full name spelling your last  
17 name for the record.

18 THE WITNESS: Charles Holloway, H-o-l-l-o-w-a-y.

19 DIRECT EXAMINATION

20 BY MR. SPIVEY:

21 Q. Investigator Holloway, where do you work?

22 A. I work for the Batesburg/Leesville Police Department  
23 and I'm assigned to Lexington County multi narcotics  
24 enforcement team.

25 Q. How long have you been assigned to that task



1 force?

2 A. Two years.

3 Q. What's your role on that?

4 A. I'm a narcotics agent.

5 Q. Okay. So your job is to investigate narcotics  
6 cases?

7 A. Yes, sir.

8 Q. Did you become involved with the investigation  
9 against the defendant?

10 A. Yes, sir.

11 Q. How did you get involved in that?

12 A. I was present for the search warrant at his  
13 residence.

14 Q. Okay. What was your role?

15 A. Basically to secure the perimeter and help search  
16 the residence.

17 Q. Okay. What did you do after the -- Tell us what you  
18 did.

19 A. Basically the SWAT team breached the residence, the  
20 NET agent secured the perimeter. Once the SWAT team was  
21 finished the suspects were escorted out of the residence.  
22 That's when we began search of the residence.

23 Q. What areas did you search, do you remember?

24 A. I searched the back bedroom, kitchen. Pretty much  
25 we was in the entire house together searching.

1 Q. Okay. When you say back bedroom, which bedroom was  
2 that?

3 A. The back bedroom to the left of a Samuel Sims, I  
4 think.

5 Q. Okay. How did you know it was Mr. Sims' bedroom?

6 A. There was clothing, some identification in there.

7 Q. Okay. So that was not the defendant's room?

8 A. No, sir.

9 Q. Okay. Let me approach you with some items. This is  
10 State's exhibit 27. Take a look at that.

11 A. (Witness complies.)

12 Q. You recognize that item?

13 A. Yes, sir. It's a scale that was on the kitchen  
14 counter.

15 Q. Okay. Did you find that item?

16 A. Yes, sir.

17 Q. Anybody touch that item prior to you finding it?

18 A. No, sir.

19 Q. Okay. Is that the exact same item that you found in  
20 the house?

21 A. Yes, sir.

22 MR. SPIVEY: Your Honor, I move that exhibit into  
23 evidence at this time.

24 MR. WILLIAMS: Without objection, Your Honor.

25 THE COURT: Without objection. It's number 27 for

1 the State.

2 BY MR. SPIVEY:

3 Q. Let me swap with you. This is marked as State's  
4 exhibit 26.

5 A. Yes, sir. Okay.

6 Q. Can you identify that?

7 A. Some scales that were found in the residence in room  
8 number 4.

9 Q. Okay. What was room number 4?

10 A. I think it may have been Mr. Sims' bedroom.

11 MR. WILLIAMS: I have no objection if he wants to  
12 introduce those, Your Honor.

13 THE COURT: All right. Admitted into evidence  
14 number 26 for the State.

15 BY MR. SPIVEY:

16 Q. Let me approach with what's pre-marked exhibit  
17 number 29. Tell us what that is.

18 A. These are some razor blades found in the kitchen  
19 cabinet.

20 Q. Did you find that item?

21 A. Yes, sir.

22 MR. SPIVEY: I move State's exhibit 29 in evidence.

23 MR. WILLIAMS: Without objection, Your Honor.

24 THE COURT: Without objection 29 for the State.

25 BY MR. SPIVEY:

1 Q. I hand you 33. Do you recognize that?

2 A. Yes, sir.

3 Q. Okay.

4 A. It's a calendar that was found on the kitchen  
5 counter.

6 Q. You found that item?

7 A. No, sir.

8 Q. Nobody touched it before you found it?

9 A. No, sir.

10 MR. SPIVEY: Okay. Your Honor --

11 MR. WILLIAMS: No objection.

12 THE COURT: No objection. State's 33?

13 MR. SPIVEY: Yes, sir, Your Honor.

14 THE COURT: Okay.

15 BY MR. SPIVEY:

16 Q. Mr. Holloway, did you take a look at that exhibit  
17 right there?

18 A. Yes, sir. I did.

19 Q. Okay. What did it appear to be?

20 A. It's a calendar but it also appeared to be a ledger  
21 with denominations of money on certain days with people's  
22 names beside it.

23 Q. Okay. What do you mean by ledger?

24 A. Well, what I mean is that someone was using this to  
25 keep up with money that was owed to him by individuals and it

1 was on certain days.

2 Q. You found that in the kitchen?

3 A. Yes, sir.

4 Q. Let me hand you State's number 30. Take a look at  
5 that. Agent Holloway, did you find drugs in the residence?

6 A. Yes, sir.

7 Q. Okay. Where did you find drugs?

8 A. In the back bedroom that was Mr. Sims' crack cocaine  
9 and some marijuana on the table. In the kitchen cabinet  
10 there was a quantity of marijuana.

11 Q. Okay. Is that quantity of marijuana, was that the  
12 one sitting by the black paint can?

13 A. Yes, sir.

14 Q. You found those items?

15 A. Yes, sir.

16 Q. Nobody touched those items prior to you finding  
17 them?

18 A. No, sir.

19 Q. Okay. What did you do with those items once you  
20 found them?

21 A. Once I found them, I called for Agent Miramontes to  
22 come take a picture of them. Once he photographed them, they  
23 were bagged up.

24 Q. Did you move them before he took a picture?

25 A. No, sir.

1 Q. Okay. And all of the drugs that you found in the  
2 house are in that bag?

3 A. Yes, sir.

4 Q. Okay. Did you find any weapons?

5 A. I found a .22 in the back bedroom, Mr. Sims' room  
6 and some bullets.

7 MR. WILLIAMS: No objection, Your Honor.

8 MR. SPIVEY: Your Honor, I just have a brief  
9 foundation and then we'll put this into evidence.

10 BY MR. SPIVEY:

11 Q. Take a look at this and tell us if you recognize it.

12 A. Yes, sir.

13 Q. What number is that?

14 A. 32.

15 Q. 32. Peep in there real quick. Do you recognize  
16 it?

17 A. Yes, sir.

18 Q. Is that the one? You can take it out of the box.  
19 Is that the gun you seized?

20 A. Yes, sir. It was in the closet.

21 Q. That was in the back bedroom?

22 A. Yes, sir.

23 Q. Which was Sims' bedroom?

24 A. Yes, sir.

25 MR. SPIVEY: Your Honor, I move State's 32 in

1 evidence.

2 MR. WILLIAMS: Without objection.

3 THE COURT: Without objection 32 on behalf of the  
4 State.

5 BY MR. SPIVEY:

6 Q. Agent Holloway, I want you to take, and these are  
7 out of numerical order, but it appears like we have, let's  
8 see if we can find the earliest one. This appears to be  
9 State's 11 through State's number 24 and just tell us if you  
10 recognize them. Take a minute and flip through those.

11 A. Yes, sir.

12 Q. You recognize those?

13 A. Yes, sir.

14 Q. Are those fair and accurate representations of what  
15 you saw that day?

16 A. Yes, sir. They are.

17 Q. Anything been altered in any way?

18 A. No, sir.

19 MR. SPIVEY: Your Honor, I don't have any further  
20 questions at this time for the witness.

21 THE COURT: Okay. Cross examination.

22 MR. WILLIAMS: May it please the Court.

23 CROSS EXAMINATION

24 BY MR. WILLIAMS:

25 Q. How are you, Officer Holloway?

1 A. Good, sir. And yourself?

2 Q. I'm fine. How is Batesburg?

3 A. Wonderful.

4 Q. Tell the jury how you know me.

5 MR. SPIVEY: Your Honor, I --

6 THE COURT: Ask a question please.

7 BY MR. WILLIAMS:

8 Q. The items that you have been testifying to, these  
9 are all the items that you found; is that correct?

10 A. Yes, sir.

11 Q. Can I get you to open up State's exhibit number 33  
12 for me?

13 A. (Witness complies.)

14 Q. If I can get you to publish. I'm going to ask you  
15 to take this through the book. What year is that calendar?  
16 It's a calendar, right?

17 A. Yes, sir. 2010.

18 Q. All right. And what's on the first page?

19 A. The first page you have Thursday which was the 2nd.  
20 You have the name Hopes with 470, then 50. You have the name  
21 Frankie 120, Ken 40, Steve 40, 83 with a dollar sign. Then  
22 you go down to Friday which is the 3rd. You have 145 beside  
23 that.

24 Q. And what year was that calendar?

25 A. 2010.



1 Q. If you will start with September the 6th, would you  
2 read what is marked on the various days?

3 A. September the 6th you have \$35.00.

4 Q. Does it have a name?

5 A. No, sir.

6 Q. What's on the next day?

7 A. \$25.00.

8 Q. Does it have a name?

9 A. No, sir.

10 Q. What's on the next day?

11 A. 214.

12 Q. Does it have a name?

13 A. It has a "V" in front of it.

14 Q. All right. The next day?

15 A. The 9th you have \$30.00.

16 Q. Okay. No name?

17 A. No name.

18 Q. Next day?

19 A. 10th, \$50.00, no name. 11th, 130, no name. The  
20 12th, 80, no name.

21 Q. So on those dates you're showing numerical amounts  
22 with no name; is that correct?

23 A. Correct. Except for one day.

24 Q. Except for one day.

25 A. It's got a "V" in front of it.

1 Q. How about September 13th through the 19th, tell me  
2 what's on those days.

3 A. The 13th, \$30.00.

4 Q. No name?

5 A. No name.

6 Q. Next day.

7 A. 14th, 45.

8 Q. All right. No name?

9 A. No name.

10 Q. Keep going.

11 A. 15th, 179.

12 Q. \$179.00?

13 A. Mm-hmm. With a check mark beside it.

14 Q. Okay. Next day.

15 A. The next day which is the 16th has \$65.00. The next  
16 day which is the 17th, 170.

17 Q. Any name?

18 A. No name.

19 Q. All right.

20 A. And the 18th is 150.

21 Q. How about the 20th through the 26th.

22 A. The 20th is \$69.00.

23 Q. \$69.00?

24 A. Yes, sir.

25 Q. Any name?

1 A. No name.

2 Q. Next day.

3 A. \$30.00. No name.

4 Q. Okay.

5 A. Wednesday the 22nd you got 153 with a check mark and  
6 \$94.00, and jump to the 23rd which is Thursday \$35.00 car  
7 payment.

8 Q. Car payment?

9 A. Mm-hmm. Then you got the 24th which is Friday,  
10 \$10.00.

11 Q. \$10.00?

12 A. Yes, sir.

13 Q. Okay.

14 A. Saturday the 25th you got \$35.00.

15 Q. Can I get you to do a few more days from where you  
16 left off.

17 A. All right. October the 4th, \$36.00.

18 Q. \$36.00?

19 A. Yes, sir.

20 Q. Okay.

21 A. October the 5th it's got rent \$42.00. October the  
22 6th you have got \$52.00. And you have got a "V" and \$148.00.  
23 October the 7th, \$51.00. October the 8th, \$52.00 and the 9th  
24 is \$56.00.

25 Q. Is there anymore after that?

1 A. Yes, sir.

2 Q. All right. Go ahead. It's not much.

3 A. The 11th, \$102.00. The 12th, \$35.00. The 13th,  
4 \$40.00. Then you have got a check mark with 197 beside it.

5 Q. 197?

6 A. Yes, sir. You have got the 25th, \$64.00, 26th,  
7 \$22.00, the 27th you have a check mark 146 and \$38.00.

8 Q. What date does it stop on? Maybe we'll see that.

9 A. Well, it goes into January the 3rd.

10 Q. Of what year?

11 A. 2010.

12 Q. And it stops in 2010?

13 A. Well, no. This is September. This appears to be  
14 December. You have got -- I'm sorry. You have got January  
15 3rd through the 9th, a phone number, Janet, [REDACTED]-6682.

16 Q. When does the numerical numbers stop on the  
17 calendar, on what date? The handwritten numbers, not  
18 obviously the ones that were printed in the calendar.

19 A. The handwritten? Let's see. January 2012.

20 Q. Thank you. And there is one page of February, isn't  
21 there, in with a bunch of squiggly marks on it?

22 A. Mm-hmm.

23 Q. Does that appear to be any letters or numbers?

24 A. No. I mean, that's just --

25 Q. Scribble scrabble?

1 A. Yes, sir.

2 Q. Did you do any handwriting analysis on this calendar  
3 to determine who would have written in this book?

4 A. No, sir. I wasn't the case agent.

5 Q. Did you do any fingerprint analysis on the calendar  
6 to determine who would have been touching the calendar or  
7 handling the calendar?

8 A. No, sir.

9 Q. Let me ask you about when you came in. You had --  
10 Your part of the narcotic -- Are you assigned pursuant to a  
11 NET agreement to work with Lexington County Sheriff's  
12 Department?

13 A. Yes, sir.

14 Q. And in that assignment it's you and Hodges and  
15 Miramontes who were in charge of doing this raid; is that  
16 right?

17 A. Yes, sir.

18 Q. And anybody else with the NET team?

19 A. Correct.

20 Q. That's it?

21 A. No. You had Lieutenant Gunter and Agent Morris was  
22 present and the SWAT team.

23 Q. Agent Morris?

24 A. Yes, sir.

25 Q. So the persons on scene would have been all of those

1 individuals that we just talked about?

2 A. Yes, sir.

3 Q. Agent Morris, Lieutenant Gunter, Miramontes.

4 Miramontes was taking pictures, right?

5 A. Yes, sir.

6 Q. And you and Hodges would have been the finders of  
7 matters, right? You found the stuff?

8 A. Yes, sir.

9 Q. You went in after the SWAT team came in?

10 A. Yes, sir.

11 Q. Were the three defendants already out in the yard  
12 before y'all went in?

13 A. No. They were out in the yard once we went inside  
14 the residence.

15 Q. That's what I meant.

16 A. Yes.

17 Q. So you didn't go in until after the defendants were  
18 out of the house, right?

19 A. Right.

20 Q. So you didn't see where each defendant was in the  
21 house?

22 A. No, sir. I didn't.

23 Q. And in terms of, I think you searched the back  
24 bedroom; is that correct?

25 A. Yes, sir.

1 Q. And that was Mr. Sims' bedroom?

2 A. Yes, sir.

3 Q. Did you -- You said you found identification that  
4 indicated it belonged to Mr. Sims?

5 A. Yes, sir.

6 Q. What identification did you find to indicate that?

7 A. I think there was a letter back there that had his  
8 name on it.

9 Q. So he was receiving mail at that address?

10 A. Yes, sir.

11 Q. Did you confiscate that letter?

12 A. No, sir.

13 Q. Well, why didn't you?

14 A. Just didn't.

15 Q. But clearly the letter was to him at that  
16 location?

17 A. Yes, sir. He also had clothing in the room.

18 Q. Okay. After you found some items that appeared to  
19 be drugs, you found a gun which has been introduced into  
20 evidence which is this .22 caliber rifle; is that correct?

21 A. Yes, sir.

22 Q. You found that in a closet?

23 A. Yes, sir.

24 Q. That closet was in the bedroom of Mr. Sims?

25 A. Yes, sir.

1 Q. All right. Then the other items that you found was  
2 what? Besides the bedroom stuff and the rifle what else did  
3 you find?

4 A. It was crack cocaine in there and there was a small  
5 quantity of marijuana on the table in the bedroom.

6 Q. But that's in Mr. Sims' bedroom?

7 A. Yes, sir.

8 Q. Do you know whether or not Mr. Sims was -- Well, you  
9 don't know if he was in his bed or not because you came in  
10 later, right?

11 A. Right.

12 Q. You don't know what he was doing in that room or  
13 not, right?

14 A. No, sir.

15 Q. What other room did you find items at?

16 A. The kitchen.

17 Q. Now, room 4 is the room that you were referencing  
18 that belonged to Mr. Sims; is that correct?

19 A. I would have to see the report to refresh my memory  
20 as to how the rooms are actually numbered.

21 MR. SPIVEY: Your Honor, I ask him to allow him to  
22 approach him to refresh his memory at this time.

23 THE COURT: I think Mr. Williams is looking at  
24 something --

25 MR. WILLIAMS: To refresh his memory.



1 MR. SPIVEY: Here you go.

2 BY MR. WILLIAMS:

3 Q. (Proffering.) Are you refreshed?

4 A. Yes, sir.

5 Q. Mr. Sims' bedroom was which room?

6 A. Mr. Sims' bedroom was room 10.

7 Q. Room 10?

8 A. Yes, sir. Back bedroom. Room 2 was the kitchen.

9 Q. Okay.

10 A. Room 4 was the master bedroom.

11 Q. Okay. So you found the rifle in the closet for room  
12 10; is that right?

13 A. Yes, sir.

14 Q. Did you search that room first?

15 A. Yes, sir.

16 Q. After you got through searching that room, what was  
17 the next room that you searched?

18 A. We moved into the kitchen area.

19 Q. All right. And what room would that have been?

20 A. Two.

21 Q. So you searched room 2 and you found State's exhibit  
22 number 27; is that correct?

23 A. Yes, sir. The scales.

24 Q. Where was that located?

25 A. Kitchen counter, room 2.

1 Q. All right. Now, where was Lieutenant Gunter and  
2 Agent Morris when you found those items?

3 A. Lieutenant Gunter was outside with Brittany Jay and  
4 the small children. Agent Morris transported Mr. Wilson and  
5 Mr. Sims to the detention center.

6 Q. So are you saying that my client was transported to  
7 the detention center before you found anything in the  
8 house?

9 A. Your children was transported. We found stuff after  
10 he was transported.

11 Q. So you didn't find these items before he was  
12 transported?

13 A. No, sir.

14 Q. So how long was Agent Morris on scene?

15 A. I'm -- I have no idea. I mean, I don't know how  
16 long he was there, you know, before he transported them.

17 Q. Okay. Did you find anything else in room 2 besides  
18 the scales and the book?

19 A. The quantity of marijuana.

20 Q. Where was that?

21 A. In the kitchen cabinet.

22 Q. In the kitchen cabinet?

23 A. Yes, sir.

24 Q. Was the cabinet door closed when you went in  
25 there?

1           A. Yes, sir.

2           Q. And you found anything else in the kitchen  
3 cabinet?

4           A. A paint can was found that contained various  
5 narcotics but I didn't find that.

6           Q. You didn't find it?

7           A. Not the can. No. Another agent found it.

8           Q. How is it that you found the marijuana but you  
9 didn't find the paint containers?

10          A. Because if you look at the picture here --

11           MR. SPIVEY: Your Honor, I would ask that Mr.  
12 Williams move that into evidence before we discuss the  
13 contents of it. I don't object to it but let's get that  
14 one in evidence so we can discuss it.

15           THE COURT: The photographs taken at the scene?

16           MR. WILLIAMS: Your Honor, I have no problem once he  
17 puts up the person who took the photographs. Then  
18 obviously I would have no problem.

19           MR. SPIVEY: Your Honor, may we have a side bar?

20           (Side bar off the record.)

21           THE COURT: The Court is going to have these  
22 exhibits into evidence and will not be on behalf of the  
23 State or the defense, how about that? Photographs 11  
24 through 24.

25           MR. WILLIAMS: Is the Court ruling that they are in

1 evidence now?

2 THE COURT: They are in evidence now.

3 MR. WILLIAMS: I have a matter of law to take up  
4 with the Court outside the presence of the jury.

5 THE COURT: All right. Ladies and gentlemen, take a  
6 short break. Get you back out soon.

7 (Whereupon, the jury entered the jury room at 12:50  
8 p.m.)

9 THE COURT: Now, at the side bar both attorneys  
10 indicated that they had no problems with the photos  
11 coming into evidence. The reason why I said the Court  
12 was putting them into evidence is so if you decided at  
13 some point in time that you did not want to put up a  
14 case, then I didn't want to have you having put evidence  
15 in. I was trying to do you a favor, Mr. Williams.

16 MR. WILLIAMS: Then I withdraw the motion that I was  
17 going to make, Your Honor.

18 THE COURT: Okay. All right. Both sides told me at  
19 side bar they had no problems with the photos coming  
20 into evidence so I thought let's get them in. The Court  
21 puts them in, okay?

22 MR. WILLIAMS: Yes, sir.

23 THE COURT: While we are on the record, Mr.  
24 Williams, you need to put on the record your objection  
25 made at the previous side bar concerning the pills which

1 are reflected on the custodian's log report.

2 MR. WILLIAMS: Yes, sir. Your Honor, the objection  
3 I had at that point in time was that my client has not  
4 been charged with any pills. There's been no testimony  
5 in regards to what types of pills they were so that  
6 without any identifying information it would be improper  
7 for the introduction of just pills to be placed into  
8 evidence without showing how they were connected to the  
9 charges that my client has.

10 THE COURT: Okay. All right. And at side bar I  
11 denied your motion and allowed that report to come into  
12 evidence which indicates the pills. Okay.

13 MR. CASKEY: Your Honor, just for clarity of the  
14 record, these photographs have been admitted by the  
15 Court into evidence, are we to refer to them as State's  
16 exhibits 11 through 24, however they are so marked just  
17 so that we are all clear?

18 THE COURT: I think probably just giving them  
19 another quick thought, I think I'm going to designate  
20 them as State's exhibits and the reason for that is I  
21 don't want the jury to think that the Court is, you  
22 know, placing some additional or any significance, not  
23 additional, but significance so I'll instruct the jury  
24 that these exhibits are not Court's exhibits but State's  
25 exhibits.

1 MR. WILLIAMS: Your Honor, for the record, I meant  
2 no ill will about that.

3 THE COURT: I know you didn't. I know you didn't.  
4 I know you didn't. Y'all are fine. All good. Let's go  
5 ahead and try to finish up with this witness before we  
6 break for lunch, okay? Mr. Knight, bring the jury in.

7 (Whereupon, the jury entered the courtroom at 12:53  
8 p.m.)

9 THE COURT: Let the record reflect the jury is back  
10 in. One point of clarification, ladies and gentlemen of  
11 the jury. When the Court indicated that exhibits 11  
12 through 24 which are photographs of the scene that was  
13 searched, the Court in error indicated they were Court's  
14 exhibits. They are not. They are exhibits put into  
15 evidence on behalf of the State so they are entered as  
16 State's exhibits 11 through 24. You may proceed, Mr.  
17 Williams.

18 MR. WILLIAMS: Thank you, Your Honor.

19 BY MR. WILLIAMS:

20 Q. Agent Holloway, referring to State's exhibit number  
21 22 --

22 A. Yes, sir.

23 Q. -- that is a photograph showing the black paint  
24 container as well as I think the item you referenced, that is  
25 the marijuana you found in the kitchen?

1 A. Yes, sir.

2 Q. That exhibit shows the paint container next to the  
3 marijuana which you said you found; is that correct?

4 A. Yes, sir.

5 Q. But you testified that you did not find the paint  
6 container?

7 A. I mean, right beside it. I didn't open the paint  
8 container. It was opened by someone else.

9 Q. So are you saying that you found the paint container  
10 and the marijuana at the same time?

11 A. Yeah. I mean, yeah.

12 Q. And that somebody else went into the paint  
13 container?

14 A. Yes, sir. I took the marijuana, bagged it up and  
15 another agent took the paint can and opened it up.

16 Q. Is there a reason why you simply didn't sit down  
17 there and open up the paint container?

18 A. Because I was dealing with the marijuana.

19 Q. I'm sorry. Did you designate, was there a  
20 designation as to what type of drug a particular agent was  
21 going to take charge of to introduce, to take to evidence or  
22 whatever?

23 A. No, sir. We take the drug, we fill out the bag and  
24 we place the drugs inside the bag. While I was doing that,  
25 another agent retrieved the paint can and opened it up.

1 Q. Where was that agent when you found the marijuana?

2 A. Beside me.

3 Q. So the two of y'all were searching the same area at  
4 the same time?

5 A. We were looking in the cabinets.

6 Q. Okay.

7 A. I was looking in a cabinet. He was looking in a  
8 cabinet.

9 Q. So when you were in room 10, was he in room 10  
10 searching with you in room 10 also?

11 A. No, sir.

12 Q. Where was he?

13 A. Agent Hodges was the agent in charge so he was going  
14 throughout the house.

15 Q. So he wasn't in the room where you were, right?

16 A. No, sir.

17 Q. So you don't know where he was?

18 A. No, sir.

19 Q. When you came out of that room, that was the first  
20 room you searched, right?

21 A. Correct.

22 Q. What was the next room you went to?

23 A. We went to the kitchen.

24 Q. You said "we went to the kitchen." Did he come from  
25 another location to the kitchen at the same time that



1 you went to the kitchen?

2 A. He was in the living area.

3 Q. So he had not been in the master bedroom  
4 searching?

5 A. I don't know if he was in the master bedroom or  
6 where he was at searching. I can't tell you because I was on  
7 the one end of the house.

8 Q. Okay. Who was the person who opened up the cabinet  
9 door?

10 A. I opened up the cabinet door.

11 Q. Okay. And then you set the paint container down and  
12 then he searches the paint container?

13 A. No. I got the marijuana. I filled out a bag and  
14 placed the marijuana in the bag. As I was doing that, he  
15 removed the paint container. He opened it up.

16 Q. And Miramontes somewhere in between that would have  
17 been there to take the picture of the two of them together  
18 before he searched it; is that correct?

19 A. Correct. As this picture shows right here.

20 Q. Okay. Do any of those exhibits, exhibit 11 through  
21 24, do they detail in any way where these photographs were  
22 taken?

23 A. Well, I mean, of course, the ones that we got  
24 cabinets, you can determine that that's the kitchen.

25 Q. Right.

1           A. The one that has a camera, that's outside of the  
2 residence.

3           Q. Okay.

4           A. The other ones are the bedroom.

5           Q. Can you tell which bedroom is which from looking at  
6 the photographs?

7           A. Yes, sir.

8           Q. Okay. If I can see them one more time. State's  
9 exhibit number 18, can you tell me which bedroom that is?

10          A. 18, room 10.

11          Q. Room 10. Whose bedroom is that?

12          A. Mr. Sims.

13          Q. What is shown in room 10 which is Mr. Sims'  
14 bedroom?

15               THE WITNESS: Can I step down, Judge?

16               THE COURT: Sure. Speak loud enough so the court  
17 reporter can hear you.

18 BY THE WITNESS:

19           A. All right. You got crack cocaine. You have got  
20 some names on a piece of paper. Looks like Sandy. Got  
21 another name with some money beside it and another name with  
22 some money beside it. There's some bullets in a bag right  
23 there.

24 BY MR. WILLIAMS:

25           Q. So on this document right here it has the names of

1 individuals with numbers but you say money, numbers beside it  
2 but it might be money?

3 A. Okay.

4 Q. And this document was found in Mr. Sims' bedroom; is  
5 that correct?

6 A. Yes, sir.

7 Q. Thank you. Have a seat.

8 A. (Witness complies.)

9 Q. And did you compare the handwriting from the  
10 calendar which was found in the kitchen to the handwriting  
11 which was reflected in the exhibit that we just looked at  
12 that was Mr. Sims' bedroom?

13 A. No, sir.

14 Q. And clearly, clearly it's got names next to the  
15 monetary amounts, doesn't it?

16 A. Yes, sir.

17 Q. When you normally find drugs in an area, do you  
18 always keep the drugs separate from where they are found or  
19 do you put them together for some sort of photograph to keep  
20 up with them or keep them in one area?

21 A. No. We bag them separately and put on the outside  
22 of the bag where they were found and who found them.

23 Q. Then what do you do with them?

24 A. We then place them in a bag so we can transport them  
25 outside the residence.

1 Q. Did you find any guns other than the .22 which you  
2 have referenced?

3 A. No, sir.

4 Q. And that was in a closet in Mr. Sims' bedroom?

5 A. Yes, sir.

6 Q. Did you secure any cell phones out of the  
7 residence?

8 A. No, sir.

9 Q. Did you secure anything else other than what we have  
10 just referenced in your previous testimony?

11 A. No, sir.

12 Q. What did you do with the items that you found?

13 A. What did I do with them?

14 Q. Yes.

15 A. Bagged them, labeled them and placed them inside  
16 another bag and they were transported outside the  
17 residence.

18 Q. So you had no contact with the items after you had  
19 found them?

20 A. No, sir.

21 Q. Somebody else took possession of them?

22 A. Correct.

23 Q. And then hopefully they went to the Lexington County  
24 Sheriff's Department?

25 A. Yes, sir. They went to the Lexington County

1 Sheriff's Office.

2 Q. The razor blades that you found on the kitchen  
3 counter, did you find razor blades on the kitchen counter  
4 also?

5 A. Cabinet.

6 Q. Cabinet. Were they used razor blades?

7 A. Let me see. You have got pictures of them.

8 Q. You have the pictures. It's not in here.

9 A. The picture is somewhere.

10 Q. Do you recall whether or not the razors were used or  
11 not used?

12 A. I would have to see the picture.

13 Q. Do you remember how many razor blades there were?

14 A. Two.

15 Q. Okay. And is that everything that we have  
16 referenced today that you found?

17 A. Yes, sir.

18 Q. Did you do any fingerprint analysis or DNA analysis  
19 on any of the items that you found?

20 A. No, sir.

21 MR. WILLIAMS: That's all the question I have, Your  
22 Honor.

23 THE COURT: Any redirect, Solicitor?

24 MR. SPIVEY: Yes, sir. Just briefly.

25 REDIRECT EXAMINATION

1 BY MR. SPIVEY:

2 Q. Tell us just real quick what drugs you found and  
3 again which room they were located in.

4 A. Okay. In room number 10 which was Samuel Sims'  
5 bedroom I found a plastic bag, green plant like material  
6 believed to be marijuana, three plastic bags of an off white  
7 rock like substance that were in the closet, the Mossberg  
8 rifle. There was a black and silver cell phone back there, a  
9 black LG cell phone and 12 rounds. In the kitchen there was  
10 a bag containing a quantity of marijuana and the two box  
11 cutters with the powder residue on them.

12 Q. Okay. And did you say you also found a ledger?

13 A. Yes, sir.

14 Q. Where was that?

15 A. The ledger was in the kitchen as well.

16 Q. Did you also find a set of digital scales?

17 A. Digital scales. Yes, sir.

18 Q. Where were the digital scales located?

19 A. In room 4.

20 Q. Which room is that?

21 A. That was the master bedroom.

22 Q. Okay.

23 A. And the kitchen had a set of digital scales also.

24 Q. So two sets of digital scales, one in the kitchen,  
25 one in the master bedroom?

1 A. Yes, sir.

2 Q. Whose room was the master bedroom?

3 A. Brittany Jay and Christopher Wilson.

4 Q. How do you know that?

5 A. His ID was in there and there were woman's clothing  
6 in there.

7 Q. Okay. Surely Mr. Wilson didn't wear woman's  
8 clothing. What's the significance of the woman's clothing?

9 A. Ms. Jay's clothing.

10 Q. What's the relationship of Mr. Wilson and Ms. Jay?

11 A. Boyfriend/girlfriend.

12 MR. SPIVEY: Your Honor, I don't have any further  
13 questions.

14 MR. WILLIAMS: One question on recross.

15 RECROSS EXAMINATION

16 BY MR. WILLIAMS:

17 Q. You just stated to the Solicitor that you had two  
18 cell phones that were found?

19 A. They were in the back bedroom.

20 Q. The back bedroom which is whose bedroom?

21 A. The brother, Samuel Sims.

22 Q. And the reason you secured those cell phones was  
23 what? What reason did you secure those cell phones?

24 A. So that Agent Hodges could obtain a search warrant  
25 and do a dump of the phone to get the information out of

1 it.

2 Q. To see whether or not those phones had been used for  
3 the purchase and sale of drugs?

4 A. Yes, sir.

5 Q. And these cell phones were found in Mr. Sims'  
6 bedroom?

7 A. Correct.

8 MR. WILLIAMS: That's all I have, Your Honor.

9 THE COURT: Okay. Thank you for your testimony,  
10 officer. You may step down.

11 MR. SPIVEY: Your Honor, can this witness be  
12 excused?

13 MR. WILLIAMS: No objection.

14 THE COURT: You are excused from court or you can  
15 remain with us, sir. Okay. Madam Forelady and ladies  
16 and gentlemen of the jury, I think this is a good time  
17 to break for lunch. As much exercise you got from the  
18 jury room to the courtroom back and forth you're  
19 probably hungry and would like some lunch, so we'll  
20 break for lunch. I would like for you to be back at  
21 2:15 because we still have some more work to do so have  
22 a good lunch. Again, don't talk about this case amongst  
23 yourselves or with anybody you may come into contact  
24 with. See you back at 2:15.

25 (Whereupon, the jury was released for lunch recess.)



1 THE COURT: How many more witnesses?

2 MR. SPIVEY: Two witnesses, Your Honor. The chemist  
3 and the officer who took the pictures and wrote --

4 THE COURT: Miramontes and then the other one would  
5 be Emily Homer-Conrad?

6 MR. SPIVEY: Yes, sir, Your Honor.

7 MR. WILLIAMS: Your Honor, may the Solicitor and I  
8 approach the bench?

9 (Lunch recess.)

10 BAILIFF: All rise. Court is back in session.

11 THE COURT: Mr. Knight, bring the jury out.

12 (Whereupon, the jury entered the courtroom at 2:15  
13 p.m.)

14 THE COURT: Let the record reflect the jury is back  
15 in. Ladies and gentlemen, I hope you had a good lunch  
16 and are ready to work this afternoon. Solicitor.

17 MR. CASKEY: Thank you, Your Honor. The State calls  
18 officer Marc Miramontes.

19 THE COURT: Okay. Come around please, sir.  
20 Thereupon,

21 MARC MIRAMONTES

22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please have a seat. After you're  
24 seated, please state your full name spelling your last  
25 name for the record.

1 THE WITNESS: Marc Miramontes, M-i-r-a-m-o-n-t-e-s.

2 DIRECT EXAMINATION

3 BY MR. CASKEY:

4 Q. Officer Miramontes, where are you currently  
5 employed?

6 A. I work with the Town of Lexington Police  
7 Department.

8 Q. What is your rank or position there?

9 A. I'm an investigator.

10 Q. In the spring of 2013 where were you assigned?

11 A. I was assigned to the narcotics, Lexington County  
12 narcotics enforcement team.

13 Q. What was your role there?

14 A. I was narcotics investigator and assisting with  
15 them.

16 Q. Tell the jury a little bit about what you do as a  
17 narcotics investigator?

18 A. Usually you work complaints, any complaints that  
19 come in we go out and work, follow up on them. You interview  
20 a bunch of, a lot of individuals at the jail and you start  
21 putting together names and information that we collect from  
22 them and then you also hire or get people to work with you in  
23 the investigations and you assist each other on each others  
24 investigation in the cases we are working on.

25 Q. In the course of your career how many narcotics

1 investigations have you been a part of?

2 A. I would say dozens.

3 Q. As a narcotics investigator in the ordinary course  
4 of your duties do you have to become fluent in drug, I don't  
5 know how to phrase it, drug lingo, drug practices?

6 A. Somewhat. The more you work it, the more you learn  
7 the lingo that everybody uses, what to look for and, of  
8 course, in investigations so...

9 Q. Okay. Officer Miramontes, I want to jump straight  
10 to March 22, 2013. On that date did you have cause to be  
11 involved in an investigation against the defendant  
12 Christopher Ty Wilson?

13 A. Yes, sir. I was requested to be one of the, to be  
14 the undercover investigator. I'm the one that actually drove  
15 the CI over to the house to [REDACTED].

16 Q. Tell the jury, please, what happened. What you  
17 observed that day.

18 A. I was the one driving the vehicle and when I pulled  
19 -- I was the driver. The passenger was the CI, Mr. Flake,  
20 and I pulled into the driveway, parked right in front of the  
21 trailer and I was in full view of the front of the house. I  
22 parked. He got out. He went up to the little porch on the  
23 front. He went up there and knocked on the front door.  
24 Mr. Wilson came out the door. I believe he was wearing  
25 camouflaged shorts and a wife beater shirt, came out, had a

1 conversation with the CI. He goes back in the house. The CI  
2 goes around the back of the house. A few minutes later he  
3 came back around, got in the car and we left.

4 Q. At any point did you go around the back of the  
5 house?

6 A. No, sir.

7 Q. The individual you're referring to, do you see him  
8 in the courtroom today?

9 A. Yes, sir.

10 Q. Could you point him out please?

11 A. Sitting right over there (indicating.)

12 MR. CASKEY: Your Honor, let the record reflect that  
13 the officer has pointed to the defendant.

14 THE COURT: The gentleman on the left or the right?

15 THE WITNESS: The one on the left over there.

16 THE COURT: All right. Let the record reflect that  
17 this witness has identified the defendant.

18 MR. CASKEY: Thank you, Your Honor.

19 BY MR. CASKEY:

20 Q. Did you have any further involvement with the  
21 investigation or the case on March 22nd?

22 A. Not with the buys that were done after that. I was  
23 involved in the search warrant.

24 Q. Do you recall the date that that search warrant was  
25 served?

1 A. I believe that was on June 14th, 2013.

2 Q. Between March 22nd and June 14th did you have  
3 anything to do with this case?

4 A. No, sir.

5 Q. Let's then talk about June 14th. What was your  
6 involvement that day?

7 A. June 14th I was assigned to the perimeter of the  
8 house when the SWAT team made entry so I was outside. If you  
9 look at the house, it's gonna be the corner, front left  
10 corner of the house. After the SWAT team went in and secured  
11 the home and all the individuals were secured, we went in and  
12 did the search warrant. I was assigned to do the scribe and  
13 also take pictures.

14 Q. What does it mean to be the scribe?

15 A. Usually the scribe I happen to be the lucky one with  
16 a computer and a printer, the wireless printer that worked  
17 most of the time so I was able to take all the, type in  
18 everything that is located in each room and add it to the  
19 return on the search warrant.

20 Q. Did you conduct any searching yourself?

21 A. No, sir. All I did was take the pictures.

22 Q. Officer Miramontes, what I want to do next is go  
23 through some of the evidence that's already introduced in  
24 this case. Take a look at this. I'm handing you State's 11  
25 through 24. If you would take a look at those and let me

1 know if you recognize those.

2 A. Yes, sir. This is a picture of a --

3 Q. Let me stop you right there. Just look through all  
4 of them and see if you recognize those and tell me how.

5 A. These are some of the pictures I took outside and  
6 inside the home and where all the drugs were located and also  
7 rounds. Yes, sir. I took all these pictures.

8 Q. Okay. So let's take a minute then and go through  
9 these and if you would, sir, as I put them up one by one I'm  
10 going to ask you to identify what we are looking at in the  
11 picture and where it was that these items were when you took  
12 the picture.

13 A. Okay.

14 Q. I'm putting up State's exhibit number 11. What is  
15 that a photo of?

16 A. That's the front door of the home. That is one of  
17 the surveillance camera.

18 Q. What's the address of the home again?

19 A. [REDACTED].

20 Q. Putting up State's number 12.

21 A. That is the monitor TV hooked up to the camera.  
22 Basically the cameras were at the front of the home just to  
23 keep an eye on the front of the home who is coming and  
24 going.

25 Q. This is State's number 13.

1           A. That was the driver's license that was located in  
2 the home. I believe that was in the master bedroom.

3           Q. Okay. Now, whose ID is this?

4           A. That belongs to the defendant Mr. Christopher  
5 Wilson.

6           Q. Just to be clear, the address on this ID, does that  
7 correspond to the address that you gave us just a second  
8 ago?

9           A. No, sir. The address was [REDACTED] and he's got [REDACTED]  
10 [REDACTED]

11          Q. Where was this?

12          A. In the master bedroom.

13          Q. Putting up State's number 14.

14          A. That is a picture of -- I was surprised to see  
15 those. Those were a picture of the shorts that I saw him  
16 wearing the first time I drove the individual, the CI to the  
17 house. That's the shorts he was wearing when he came out the  
18 front door.

19          Q. Where in the house was this photo taken?

20          A. In the master bedroom.

21          Q. The same master bedroom that the defendant's ID was  
22 in?

23          A. Yes.

24          Q. Putting up State's number 15. What is this a photo  
25 of?

1           A. That's a photo of some drugs in the master  
2 bedroom.

3           Q. When you say the drugs, are you referring to this  
4 white baggie here?

5           A. Yes, sir.

6           Q. You said this is the master bedroom?

7           A. Yes.

8           Q. Putting up State's number 16. That's a terrible  
9 picture. Let me have you take a look at this. What is  
10 that?

11          A. That is a picture of two digital scales that were  
12 located in the master bedroom.

13          Q. I'll just pass that around. Now I'm putting up  
14 State's number 17. What is that a picture of?

15          A. That is a picture of more drugs, basically marijuana  
16 in that baggie.

17          Q. Where was this picture taken?

18          A. That was in the back bedroom. I believe it's  
19 labeled room number 10.

20          Q. Whose bedroom was this?

21          A. That was Mr. Sims'.

22          Q. State's number 18. What is that a picture of?

23          A. That is some more drugs in the inside the baggie.

24          Q. Where was this picture taken?

25          A. That was located in the same room, the back bedroom,



1 Mr. Sims' bedroom.

2 Q. State's number 20?

3 A. That's the same bedroom. Those are some rounds that  
4 were in a baggie.

5 Q. State's number 21?

6 A. That's a picture of, in the kitchen cabinet there is  
7 a big bag of marijuana at the top next to a can.

8 Q. Is this the bag you're referring to?

9 A. Yes.

10 Q. It's not terribly clear on the overhead. I'll pass  
11 this directly to the jury. (Proffering.) State's number 22.

12 A. That's a closer shot of the same picture, the same  
13 items.

14 Q. Have these items been touched by law enforcement at  
15 the point when you took these pictures?

16 A. No, sir. Usually whenever they locate something,  
17 they just call the person that's taking the pictures and we  
18 come out and take pictures before anything is moved.

19 Q. State's number 23.

20 A. That is the can located in the, in that other  
21 picture with the lid open and that's what was inside the  
22 can.

23 Q. Where were these items?

24 A. Those were in the kitchen.

25 Q. State's number 24.

1 A. That's the kitchen counter.

2 Q. What does this appear to be a picture of?

3 A. That's the pills and the baggies of different types  
4 of drugs that we located.

5 Q. Officer Miramontes, in the course of your training  
6 as a law enforcement officer, in the course of your  
7 experience as a narcotics investigator could you tell the  
8 jury what you would expect typically to find a user of  
9 marijuana to have a quantity, that a user of marijuana to  
10 have on hand?

11 MR. WILLIAMS: Objection, Your Honor. There's no  
12 foundation for that question or answer.

13 MR. CASKEY: Your Honor, the witness has testified  
14 that over the course of his career in law enforcement  
15 he's conducted dozens, I believe is the word he used, of  
16 investigations of which range the scope of narcotics.

17 THE COURT: Let me have a side bar.

18 (Side bar off the record.)

19 THE COURT: Ladies and gentlemen, I'm not going to  
20 send you out, but I'm going to take a look at something  
21 so just be at ease for just a few moments, okay?

22 MR. CASKEY: Your Honor, I'm going to set aside that  
23 issue that we were going to go to. I'm just not going  
24 to even pursue that line of questioning.

25 THE COURT: Okay. Thank you. Appreciate it.

1 BY MR. CASKEY:

2 Q. Officer Miramontes, State's number 24, these are the  
3 drugs that were found in the common kitchen of that house,  
4 wasn't it?

5 A. Yes, sir.

6 MR. CASKEY: Thank you. No further questions.

7 THE COURT: Cross examination by the defense.

8 MR. WILLIAMS: May it please the Court.

9 CROSS EXAMINATION

10 BY MR. WILLIAMS:

11 Q. Officer Miramontes, could I borrow the pictures?

12 A. (Proffering.)

13 Q. Thank you. Officer Miramontes, I'm going to take  
14 them backwards. All right. When we look at these items in  
15 State's exhibit number 24, it's your testimony that you're  
16 the person with the camera, right?

17 A. Yes, sir.

18 Q. You were the one that took the pictures, right?

19 A. Yes, sir.

20 Q. When you arrived at the scene to take the pictures  
21 of these items, that's, I assume that's a counter top?

22 A. Yes, sir.

23 Q. In the kitchen?

24 A. Yes, sir.

25 Q. Were all of these items on the counter top in the

1 kitchen just like that?

2 A. No, sir.

3 Q. Okay. Where were the items before somebody else --  
4 Did you arrange this picture or did somebody else arrange  
5 this picture?

6 A. I arranged them. They were located inside the  
7 can.

8 Q. Okay. All right. So when you took the picture of  
9 them, they weren't that way? If you had gone over to his  
10 house or something like that, you wouldn't have seen them on  
11 his counter that way?

12 A. No, sir. I took the picture when they were inside  
13 the can.

14 Q. You certainly can't see through the can, can you?

15 A. Well, if the lid's off, you can see it.

16 Q. If the lid is off, you can. Well, speaking of the  
17 lid off, let's go back to number 23. Now, when we look at  
18 exhibit 23, this is, is that the black can that you just  
19 referenced?

20 A. That's the second can inside the black can.

21 MR. WILLIAMS: So I believe these are in evidence,  
22 Your Honor?

23 THE COURT: They are in evidence.

24 BY MR. WILLIAMS:

25 Q. So what you are saying is that you took a picture of

1 this can with that can in the middle of it with some sort of  
2 plastic inside this can?

3 A. Yes, sir.

4 Q. Now, you note that I still have an item of the paint  
5 can which is not on the paint can in this picture?

6 A. Yes, sir.

7 Q. So when you saw this can like that, was it like that  
8 (indicating)?

9 A. No, sir.

10 Q. Where was this?

11 A. Should be right next to the officer that's doing the  
12 search. The one that located it is the one that took the lid  
13 off.

14 Q. So actually the way this paint can was was like that  
15 (indicating)?

16 A. Yes, sir.

17 Q. With the plastic bags inside of this?

18 A. Yes, sir.

19 Q. So when you took pictures of, we'll call it State's  
20 exhibit number 24 which is this one and State's exhibit  
21 number 23 which is this one --

22 A. Yes, sir.

23 Q. -- that's not an accurate depiction of how it was  
24 when it was found?

25 A. Well, if you look at the picture prior to that, you

1 can see the bag next to the can and you can see how it was  
2 found.

3 Q. Okay.

4 A. The bag and the can next to each other.

5 Q. All right. So when we look at State's exhibit  
6 number 22 which is the next one, we are going backwards,  
7 aren't we? That's the exhibit that you were referring to,  
8 that's a picture of the black paint can, doesn't show the top  
9 but we can assume that the lid is on the black paint can,  
10 right?

11 A. Yes, sir.

12 Q. We show a plastic bag which is supposedly we'll  
13 assume it's marijuana whether it's been tested yet or not,  
14 we'll assume that's marijuana.

15 A. Yes.

16 Q. But really when that was found, when the police went  
17 into that location, it wasn't found like that either, was  
18 it?

19 A. What do you -- I don't understand.

20 Q. Well, were you there when the item was found?

21 A. I was in the house. Yes, sir.

22 Q. Did you see the police officer who actually found  
23 the black paint can? Did you see them find the black paint  
24 can?

25 A. No, sir.

1           Q.   So you didn't see how the black paint can was or  
2 whether or not it actually had a seal on it. You probably  
3 saw that it had a seal on it, right? Or didn't you?

4           A.   No, sir. I did not.

5           Q.   So the first time you actually saw the paint can was  
6 when it didn't have a lid on it and it was sitting down?

7           A.   When I first saw it, it was just like the way  
8 you see it.

9           Q.   You're talking about in the cabinet?

10          A.   In the cabinet next to the marijuana.

11          Q.   With the lid on it?

12          A.   Yes, sir.

13          Q.   And the cabinet door was open?

14          A.   Yes, sir.

15          Q.   But when the police officer came in and found this  
16 item, you don't know whether or not the cabinet was opened or  
17 closed, do you?

18          A.   No, sir. Because we were doing a search.

19          Q.   Right. Whoever the police officer was that found  
20 that item would be the one to testify as to whether or not  
21 the cabinet was open or closed, right?

22          A.   Yes, sir.

23          Q.   And the importance of that being that if the cabinet  
24 is closed, you can't see it, right?

25          A.   Not until you start searching.

1 Q. Right. If it's behind the cabinet door, you can't  
2 see through the cabinet door?

3 A. Yes, sir.

4 Q. You wouldn't know it was there if you didn't open up  
5 the cabinet door?

6 A. Yes, sir. I guess not, sir.

7 Q. Okay. Now, let's look at exhibit number 20. Now,  
8 this is some -- You tell me what that is.

9 A. That is the bag with the rounds in it.

10 Q. Where was that found at?

11 A. It's on the shelf in the closet back bedroom.

12 Q. So it's in the back bedroom in a closet, right?

13 A. Yes, sir.

14 Q. And is that a spoon?

15 A. Yes, sir. It appears to be a spoon.

16 Q. Okay. And it's in the back closet of the back  
17 bedroom. And whose bedroom is that?

18 A. Mr. Sims.

19 Q. So that's Mr. Sims' bedroom?

20 A. Yes, sir.

21 Q. Now, does that closet have a cabinet door or does it  
22 have a door to it?

23 A. I would have to look at the pictures. I can't  
24 remember if the doors were open or if it had a door on it.

25 Q. So when you got there, the door was open?



1           A. I don't recall if it was open or not. Like I said,  
2 we were doing a search warrant.

3           Q. Okay. If it had a door on it and it was closed, you  
4 couldn't see this item, right?

5           A. Yes, sir.

6           Q. Okay. State's exhibit number 18, where was that  
7 found?

8           A. That's directly behind the bag that you just showed  
9 me in the previous picture. That's the rounds right in front  
10 of it.

11          Q. So those are two pictures of the same item?

12          A. Two different items.

13          Q. Two different items in the closet where the back  
14 room is which is Mr. Sims'?

15          A. Yes, sir.

16          Q. When you arrived there, that's how it presented  
17 itself? You didn't find these items?

18          A. No, sir.

19          Q. State's exhibit number 17, what is that and where  
20 was that found?

21          A. It's in Mr. Sims' bedroom.

22          Q. Again?

23          A. It's a bag of marijuana. What we believe was  
24 marijuana.

25          Q. Where was that found in his bedroom?

- 1 A. That's on the counter right there.
- 2 Q. Counter?
- 3 A. Yes. It's a counter.
- 4 Q. He's got a counter in his bedroom?
- 5 A. No. It's a small --
- 6 Q. Table?
- 7 A. I'm trying to -- I'm trying to -- Yeah.
- 8 Q. Okay. But again that's how you found it there?
- 9 A. Yes, sir.
- 10 Q. In Mr. Sims' bedroom?
- 11 A. Yes, sir.
- 12 Q. All right. State's exhibit number 15. Now, you
- 13 took a picture of this and where is this?
- 14 A. That is the master bedroom.
- 15 Q. All right. And is this a shelf?
- 16 A. Yes, sir.
- 17 Q. And it's an alarm clock; is that right?
- 18 A. Next to it. Yes.
- 19 Q. What is the black wiry looking item?
- 20 A. I'm not sure.
- 21 Q. It's a cord of some kind, right?
- 22 A. Yes, sir. But the drugs are behind it.
- 23 Q. You say the drugs are behind it. Did you mark the
- 24 drugs?
- 25 A. On there?

1 Q. Were they marked and seized?

2 A. Everything that was bagged it gets marked.

3 Q. Did you mark and seize those drugs?

4 A. Yes, sir.

5 Q. You marked and seized those drugs?

6 A. Yes, sir. Because they bring everything to me and

7 everything is written down on the bag.

8 Q. You didn't seize these drugs out of the master

9 bedroom?

10 A. No, sir. They brought everything to me. I'm

11 scribing. I had to type everything down.

12 Q. Did you take pictures of it before it was brought to

13 you and you scribed it down?

14 A. Yes, sir.

15 Q. And somebody else -- Do you know who found them?

16 A. No, sir. It should be on the bags.

17 Q. In terms of knowing where everything was found

18 basically you're going by the pictures you took?

19 A. Yes, sir.

20 Q. Because you didn't find any of the items and someone

21 took you in that direction?

22 A. No, sir. Because I wasn't doing the search.

23 Q. Okay. State's exhibit number 14, picture of

24 pants?

25 A. That is the master bedroom floor.

1 Q. On the floor of the master bedroom. Were there any  
2 drugs in these pants?

3 A. I don't recall.

4 Q. Somebody searched these pants to see if there were  
5 drugs in these pants?

6 A. Yes, sir.

7 Q. Did you find any drugs in these pants?

8 A. Not that I know of.

9 Q. State's exhibit number 13, it's not a driver's  
10 license. It's an ID, right?

11 A. State ID.

12 Q. It's got a different address on it?

13 A. Yes, sir.

14 Q. Where was that found?

15 A. It was in the master bedroom.

16 Q. Where?

17 A. Where was it?

18 Q. Where?

19 A. I believe it was on one of the counters. I can't  
20 recall.

21 Q. Was it moved before you took a picture of it?

22 A. I don't think so.

23 Q. Do you know?

24 A. No. I don't.

25 Q. Now, State's exhibit number 12 is a picture of a

1 camera. I guess it's a camera shot of the front of the  
2 trailer?

3 A. Yes, sir. That's a parking area in front of the  
4 house.

5 Q. State's exhibit 11 is simply the video camera?

6 A. That is the camera.

7 Q. The camera. Is there more than one?

8 A. I believe there were two cameras. I'm trying to  
9 remember. I believe there was two cameras in the front.  
10 Maybe just one.

11 Q. Did you look to see whether or not there was  
12 actually an alarm system in the house?

13 A. No, sir. I don't recall an alarm system.

14 Q. State's exhibit number 19, where did you photograph  
15 that at?

16 A. That was in the -- I can't see it very well. That  
17 was in the back bedroom.

18 Q. Back bedroom?

19 A. Yes, sir.

20 Q. That's Mr. Sims' bedroom?

21 A. Yes, sir.

22 Q. Did you arrive by yourself to the scene? Did you  
23 ride by yourself to that location or did you come with  
24 somebody else?

25 A. No, sir. We -- I believe we - there was two of us

1 to each car. The SWAT team was in a different vehicle.

2 Q. Who was in the car with you?

3 A. Uhm, I'm sorry. I'm trying to remember. I can't  
4 recall.

5 Q. Well, after the SWAT team went in, how many members  
6 were there on the SWAT time?

7 A. On the SWAT team?

8 Q. Yes.

9 A. I don't know.

10 Q. Five or six?

11 A. Yes, sir. I have no idea.

12 Q. So what happened after the SWAT team came in?

13 A. After they went in?

14 Q. Right.

15 A. They go in and secure the building. We stay outside  
16 and secure the perimeter.

17 Q. Then what happened in the -- not what normally  
18 happens. What happened in this case?

19 A. What happened in this case? They went in and  
20 secured the building. They came out with three individuals  
21 and I was outside making sure nobody takes off running.  
22 Basically that's what perimeter does. After the individuals  
23 are secured, I was told that it was okay to go inside and I  
24 go in and set up my computer and printer.

25 Q. Okay. Where were the defendants when you went

1 inside, the three individuals, the three adults who were  
2 arrested? Where were they when you went inside?

3 A. I believe -- I'm trying to remember if there was  
4 still somebody in the living room because usually they try to  
5 move them out of the way. I think the girl had been brought  
6 outside and the other individuals was still inside but I  
7 don't recall.

8 Q. When you say the -- I'm sorry.

9 A. The other two individuals, the males. I wasn't sure  
10 if they were still inside or not. I just remember the girl  
11 being outside.

12 Q. So the only one you actually remember being outside  
13 at that time was the girl, right?

14 A. Yes. They brought her outside.

15 Q. Okay. And this is after the SWAT team came through,  
16 right?

17 A. Yes, sir.

18 Q. So at what point in time did the two male defendants  
19 leave the residence and if so, where did they go?

20 A. All three of them went to jail. They all  
21 transported.

22 Q. When, during this process while the search was going  
23 on, did they go to jail?

24 A. I don't recall. I couldn't give you a time.

25 Q. Did anyone else go into the house besides the SWAT

1 team, you and the other two members of the NET team?

2 A. It was me, the investigators that were doing the  
3 search and the SWAT team. That was all. That was everybody  
4 that was there.

5 Q. Gunter never went inside the house?

6 A. I don't recall.

7 Q. What about the other officer. Was he on the NET  
8 team or not?

9 A. Who is the other officer?

10 Q. Wasn't there another officer there besides Gunter?

11 A. Yes, sir.

12 Q. Who was that?

13 A. It was myself, Holloway, Morris, Gunter and  
14 Investigator Hodges.

15 Q. That was the only ones that were there?

16 A. That's all I have on here.

17 Q. How about Scott Morris? Where was Scott Morris  
18 during this?

19 A. I'm not sure, sir.

20 Q. He wasn't there?

21 A. Yes, sir. He was there. I just told you he was  
22 there.

23 Q. All right. You don't know if he went inside or  
24 didn't go inside?

25 A. No, sir. I don't remember if he went inside. I



1 know he transported somebody. I don't recall who.

2 Q. So as far as you know only the SWAT team and three  
3 of y'all actually went inside?

4 A. Yes, sir.

5 Q. Did anyone perform any fingerprints on any of the  
6 items inside the house?

7 A. Not that I recall.

8 Q. Did anyone do a search warrant and check the cell  
9 phones that were found in the back bedroom?

10 MR. CASKEY: Objection.

11 THE COURT: The nature of your objection?

12 MR. CASKEY: He can testify as to what he did or  
13 what he knows, but he can't testify to what others did.

14 THE COURT: And he can say he knows or he can say he  
15 doesn't know.

16 BY THE WITNESS:

17 A. I don't recall, sir.

18 BY MR. WILLIAMS:

19 Q. To your knowledge did anyone do anything to  
20 determine any type of identification techniques besides what  
21 I have discussed, that is the fingerprinting, checking cell  
22 phones to see who used the cell phone, anything like that?  
23 Nothing else as far as you know? You seized some letters,  
24 right?

25 A. I don't recall.

1 Q. Okay. You didn't do any seizing?

2 A. What's that? I'm sorry.

3 Q. You didn't do any taking? No seizing? You just  
4 took pictures?

5 A. I took pictures and I wrote down everything that was  
6 located.

7 MR. WILLIAMS: That's all the questions I have, Your  
8 Honor.

9 THE COURT: Redirect?

10 MR. CASKEY: No further questions, Your Honor.

11 THE COURT: Thank you for your testimony, officer.  
12 You may step down.

13 MR. CASKEY: May the witness be excused?

14 MR. WILLIAMS: No objection.

15 THE COURT: Without objection, officer, you're free  
16 to leave or you can remain with us. Either way. Next,  
17 Solicitor.

18 MR. CASKEY: Thank you, Your Honor. At this time  
19 the State calls Emily Homer-Conrad.

20 Thereupon,

21 EMILY HOMER-CONRAD

22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please have a seat. After you're  
24 seated, please state your full name spelling your last  
25 name for the record.

1 THE WITNESS: Emily Homer-Conrad,  
2 H-o-m-e-r-C-o-n-r-a-d.

3 DIRECT EXAMINATION

4 BY MR. CASKEY:

5 Q. Good afternoon, Ms. Homer-Conrad.

6 A. Good afternoon.

7 Q. Tell the jury where you're currently employed and  
8 what you do there?

9 A. I'm a chemist for the Lexington County Sheriff's  
10 Department.

11 Q. How long have you been employed in that position?

12 A. Since November of '05 so a little over, almost, a  
13 little over nine years.

14 Q. If you would, please, tell the jury a little bit  
15 about what a chemist at the Lexington County Sheriff's  
16 Department does.

17 A. My main job is to analyze drugs or unknown  
18 substances for possible drug cases and I also maintain and  
19 run the, our forensic drug lab and maintain instruments. I  
20 write grants. Handle budgeting. Many hats during the day.

21 Q. What training and education have you had to become a  
22 chemist?

23 A. I have a Bachelor's in chemistry from the University  
24 of South Carolina. A Master's in organic chemistry from the  
25 University of South Carolina. I have also been through the

1 SLED internship training for about six months and I also went  
2 to the DEA special testing lab for further specific testing  
3 in the area of drug analysis and I have also been through the  
4 FBI courses in forensic analysis of other materials and drug  
5 analysis.

6 Q. How many times in an average week do you test  
7 chemical substances or narcotics?

8 A. Average week, it depends on the type of case. But  
9 how many cases do I analyze in a week?

10 Q. I'm just asking generally in any given week an  
11 average number of tests you may run on substances?

12 A. It all depends on if I have a lot of evidence in one  
13 particular case and, you know, I have a recent case that was  
14 over 500 pages of data and that was 40 different samples.

15 Q. Let me ask you this: How many times have you  
16 testified or have you ever testified in General Sessions?

17 MR. WILLIAMS: Your Honor, I stipulate she is  
18 qualified in the testing of cocaine, crack cocaine,  
19 marijuana.

20 THE COURT: Okay. Very good. He's still entitled  
21 to bring out qualifications, but I'm going to go ahead  
22 and deem Ms. Homer-Conrad as an expert in the field of  
23 drug analysis.

24 MR. CASKEY: We are going to move, Your Honor, to  
25 move her as an expert in chemistry and narcotics

1 analysis.

2 THE COURT: Let me explain to the jury. Madam  
3 Forelady, ladies and gentlemen of the jury, normally a  
4 person cannot give opinion testimony. Normally when a  
5 person testifies, they must testify as to what they saw,  
6 heard, sensed by smell or something of that nature.  
7 However, there is an exception when someone is qualified  
8 because of education or experience, they are permitted  
9 to give their opinion in certain areas if the Court  
10 qualifies them in that way and I have already found this  
11 witness to be an expert qualified in the area of drug  
12 analysis. And what else are you seeking, Solicitor?

13 MR. CASKEY: Chemistry, Your Honor.

14 THE COURT: In chemistry. And certainly she would  
15 be permitted to give opinion testimony in that area.  
16 However, that does not mean that you must accept her  
17 opinion. It's evidence for you to use in any way you  
18 see fit. Give it the weight and credibility that you  
19 believe is appropriate. You may proceed, Solicitor.

20 MR. CASKEY: I thank you, Your Honor.

21 BY MR. CASKEY:

22 Q. Just very briefly. Ms. Homer-Conrad, how many times  
23 have you testified in General Sessions?

24 A. 29 General Sessions. Once in federal.

25 Q. If you would, please, tell the jury a little bit

1 about your procedure for testing evidence?

2 A. Any of the evidence I get it comes in what's called  
3 a BEST kit. It's mainly - it's in a tamper proof bag. It's  
4 a tamper evident bag. It has got writing along the edges and  
5 seals that helps me determine whether or not the evidence in  
6 that bag has been tampered with and I check the seals. If  
7 the seals are okay, then I start my analysis. But what I do  
8 with each different piece of evidence depends on what first  
9 physical characteristics I see on the evidence and then my  
10 testing goes on. I do a presumptive screening and then I do  
11 at least one confirmatory test on each piece of possible drug  
12 evidence.

13 Q. Let me just ask you very briefly. What does tamper  
14 evident mean?

15 A. It just means that you should be able to see whether  
16 or not somebody has possibly tampered with the packaging that  
17 is holding the evidence.

18 Q. You can't say anything about what happened with that  
19 evidence before it got into the BEST kit, correct?

20 A. Correct.

21 Q. Okay. Once it's in the BEST kit and sealed, you  
22 could identify whether it's been tampered with; is that fair  
23 to say?

24 A. If the seals are damaged, then I won't analyze it.

25 Q. Where do you retrieve the evidence from?

1           A. From the evidence room.

2           Q. And then subsequent that you conduct your testing?

3           A. Depends on what else I have going on that day.

4 Sometimes I'll pick up evidence and I'll either analyze it  
5 that day or I have a separate safe in the lab itself that  
6 I only have access to. If I don't analyze it that day, the  
7 evidence is put into that safe until some time frame when I  
8 have time to analyze it.

9           Q. After you conducted your analysis, what happens?

10          A. I review the data, write a report and then  
11 subsequently the report is handed out.

12          Q. What do you do then with the evidence itself?

13          A. I repackage it into a separate bag and I notate the  
14 date that I sealed that separate bag and it's sent. After  
15 the reports are sent out to the Solicitor's Office and the  
16 deputy or officers, then the evidence is sent back to the  
17 evidence room. I don't hold onto evidence after I analyze  
18 it.

19          Q. Ms. Homer-Conrad, I'll hand you what's been marked  
20 as State's exhibit number 30. Do you recognize what that  
21 is?

22          A. This is the BEST kit that pertains to the - the BEST  
23 kit number printed on the label is C020230 and that is - my -  
24 our BEST kits we have specially printed with non repeating  
25 numbers so they are unique to the paperwork that I also keep.

1 What do you want me to -- I did analyze this. What else do  
2 you want?

3 Q. That's the question, if you recognize it. So you  
4 say you performed an analysis on this BEST kit in particular.  
5 Let me ask you this: What were the results of that  
6 analysis?

7 MR. WILLIAMS: Your Honor, I would enter an  
8 objection in that the chain is not complete at this  
9 time. I think it can be, but I don't think it's  
10 complete at this time.

11 BY MR. CASKEY:

12 Q. Ms. Homer-Conrad, the evidence that you have in  
13 front of you, did you retrieve it from the evidence room?

14 A. I did from Ms. Holliman on August 20th, 2013.

15 Q. Who is Ms. Holliman and where is she employed?

16 A. She's a technician in the evidence room.

17 Q. Did you sign for that evidence --

18 A. Yes.

19 Q. -- when you retrieved it?

20 A. Yes.

21 Q. I'm handing what's been marked as State's number 36.  
22 Do you recognize this?

23 A. I don't actually get these reports but it does look  
24 like my signature.

25 Q. What would that report indicate?



1           A. I guess it shows on 8/20/2013 that I did receive,  
2 released to me and then on 9/10/2013 I signed it back in. I  
3 don't -- This is evidence room paperwork. I don't normally  
4 look at this.

5           Q. Once you took custody of the evidence from the  
6 evidence room, was it in your sole care, custody and  
7 control?

8           A. Yes.

9           Q. Ms. Homer-Conrad, did you analyze the substances in  
10 that BEST kit?

11          A. Yes. I did.

12          Q. What were the results of your analysis?

13          MR. WILLIAMS: Now we would enter the objection. It  
14 hasn't been placed into evidence yet before she  
15 publishes what the results were.

16          MR. CASKEY: Your Honor, at this time we move  
17 State's number 30 into evidence.

18          MR. WILLIAMS: No objection, Your Honor.

19          THE COURT: Okay. Thank you very much. Number 30  
20 is in evidence on behalf of the State.

21 BY MR. CASKEY:

22          Q. Ms. Homer-Conrad, if you would, please, give us the  
23 most anticipated results of your analysis.

24          A. Item 1 contains the bag labeled room 2. This is a  
25 three page report. Read it out?

1 Q. If you would, please.

2 A. Okay. Item 1 is a zip locked bag labeled room 2  
3 containing tied plastic bag containing 15 yellow oval tablets  
4 marked S901. This was Alprazolam 15 tablets.

5 THE COURT: Spell that for the record please,  
6 ma'am.

7 BY THE WITNESS:

8 A. A-l-p-r-a-z-o-l-a-m. That's a Benzodiazepine. Item  
9 2 is zip locked bag labeled room 2 containing tied plastic  
10 bag containing rock substance. This is cocaine based crack,  
11 5.14 grams. Item 3 is another zip locked bag labeled room 4  
12 containing a tied plastic bag containing rock substance.  
13 This was again cocaine based crack 11.70 grams. Item 4 a zip  
14 locked bag labeled room number 10 containing, this is  
15 containing other sub items. Sub item number 4.1 was an open  
16 plastic bag containing tied plastic bag containing rock  
17 substance was cocaine based crack 6.07 grams. Item 4.2 was  
18 another tied plastic bag containing rock substance. This was  
19 cocaine based crack 5.20 grams. Item 4.3 was a tied plastic  
20 bag contacting rock substance. This was cocaine based crack,  
21 1.63 grams. Item 5 was a zip lock bag that was labeled room  
22 2 containing, and this contained other sub items, item 5.1  
23 tied plastic bag containing powdered substance found to be  
24 cocaine. This is 7.32 grams. Item 5.2 a tied plastic bag  
25 containing powder substance. This again was cocaine 3.94

1 grams. Item 5.3 a tied plastic bag containing powder  
2 substance. This again was cocaine 6.83 grams. Item 6 was a  
3 zip locked bag containing a plastic container which contained  
4 the following sub items. 6.1 was three blue oval tablets  
5 marked G3721. This again was Alprazolam. This is three  
6 tablets. Item 6.2, 22 white rectangular tablets with  
7 markings G3722. This again was Alprazolam. 22 tablets. The  
8 item - then item 7, a zip locked bag containing tied plastic  
9 bag containing plant substance and this was marijuana 1.05  
10 grams. Item 8 was a zip locked bag that was labeled room 2  
11 containing a tied plastic bag containing another plant  
12 substance. This again was marijuana 87.87 grams. And that  
13 is it.

14 BY MR. CASKEY:

15 Q. In the course of your normal job duties do you  
16 generate a report that summarizes your findings?

17 A. I do.

18 Q. Was that done in this case?

19 A. Yes.

20 Q. Is that the document that you were just reading  
21 from?

22 A. Yes.

23 Q. Does that report reflect the opinion that you just  
24 stated?

25 A. Yes. It does.

1 MR. CASKEY: Your Honor, at this time we move what  
2 is marked as State's 37 into evidence.

3 MR. WILLIAMS: Without objection, Your Honor.

4 THE COURT: Without objection 37 for the State is in  
5 evidence.

6 BY MR. CASKEY:

7 Q. Ms. Homer-Conrad, as an expert in narcotics  
8 analysis, does this bag contain crack cocaine, cocaine,  
9 marijuana and Alprazolam?

10 A. Yes.

11 Q. And the weights are summarized at the time you  
12 tested them in your report?

13 A. Yes. They are.

14 Q. And that's exhibit number 37?

15 A. Yes.

16 MR. CASKEY: No further questions for the witness,  
17 Your Honor.

18 THE COURT: Cross examination.

19 MR. WILLIAMS: If it please the Court.

20 CROSS EXAMINATION

21 BY MR. WILLIAMS:

22 Q. Emily, the testimony you have given in so much as  
23 your participation in this particular case has just been that  
24 of analysis; is that correct?

25 A. Yes.

1 Q. Meaning you tested whatever was submitted to you and  
2 you made these chemical determinations in regards to what  
3 those items were?

4 A. Yes.

5 Q. You have no knowledge as to where the items were  
6 found, who found them, what condition they were in, where  
7 they were kept or whose they were?

8 A. All I look at mainly is like the label, room 2, room  
9 4. That's all I have knowledge of.

10 Q. You did not participate in the labeling of the bags  
11 to say they were in room 10, room 2?

12 A. No, sir.

13 Q. You have no particular knowledge where these  
14 particular items were?

15 A. No.

16 Q. You don't know what is room 2, what is room 10 and  
17 what is room 4?

18 A. No.

19 Q. Okay. In that you are an expert in chemistry and  
20 drug analysis, did you perform any type of chemical analysis  
21 to see if those packages of cocaine and/or packages of crack  
22 cocaine came from the same source referring to purity?

23 A. I don't analyze for -- I do qualitative analysis. I  
24 can tell -- Or not. That's dictated by SLED. We decipher  
25 whether or not there is a controlled substance there. I

1 don't tell the concentration. We don't do -- The only way to  
2 figure out where a drug may or may not come from, that takes  
3 months and years of study. You have to do carbon testing.  
4 It's not routinely done.

5 Q. Let me ask you this: If you had two bags of powder  
6 cocaine or two bags of crack cocaine which has a different  
7 percentage, could you determine the percentages of each one?

8 MR. CASKEY: Objection.

9 BY THE WITNESS:

10 A. I don't do that.

11 THE COURT: Nature of the objection?

12 MR. CASKEY: Calls for speculation.

13 THE COURT: Well, I mean, this is cross. She is an  
14 expert. If she knows, she knows. If she doesn't, she  
15 doesn't. Proceed. Overruled.

16 BY MR. WILLIAMS:

17 Q. So my question to you is, could you make that  
18 determination if you wished to make that determination?

19 A. No. I don't. The instruments are not set up that  
20 way and I don't do that and we don't do that in the lab so...

21 Q. Okay. Maybe I didn't phrase it the right way. If  
22 you had the instruments set up that way, could you turn your  
23 instrument that way?

24 A. It's not easy. You would have to -- There's a lot  
25 -- I would need another chemist in the lab. We would have to

1 -- No. We - I don't do that.

2 Q. Okay. So you're saying that you can't because you  
3 don't have another chemist in the lab?

4 A. There's a lot of other factors besides that. We  
5 would have to order exact -- We would have to change some  
6 things with the instruments. I would need another  
7 instrument, another gc fid detector. I would need exact  
8 concentrations to compare it to. I would have to order those  
9 concentrations from -- You could but I don't do that. The  
10 only way to -- You would also have to have another chemist in  
11 the lab in order to verify the work.

12 Q. To verify your results?

13 A. No. To verify the instruments. It's just different  
14 protocols that we don't do that and no lab in the state does  
15 it.

16 Q. SLED doesn't do it?

17 A. SLED doesn't do it.

18 Q. All right. In terms of the items that you tested,  
19 you have said that the Alprazolam, you didn't test those.  
20 You made that determination from looking at the pills, didn't  
21 you? Going to like a PDR, something like that?

22 A. No.

23 Q. You actually tested it?

24 A. Yes. On one I found Alprazolam. I did actually  
25 test that.

1 Q. Okay.

2 A. Yes. I did actually run the tgsg D and T on item  
3 6.1 and 6.2, three tablets in 6.1, and 22 tablets I did ID  
4 based off of the markings.

5 Q. Got you. So one of the pills you actually tested to  
6 see if it was what it was reported to be in your literature  
7 and the rest of them you looked at your literature to see if  
8 it matched what you were looking for?

9 A. Yes.

10 Q. Could I see your report for a second?

11 A. Mm-hmm.

12 Q. Now, is there anything illegal about the possession  
13 of these made by a company? Alprazolam, they were made by  
14 a company?

15 MR. CASKEY: I object, Your Honor.

16 THE COURT: Nature of the objection?

17 MR. CASKEY: Calls for legal conclusion.

18 THE COURT: Repeat the question. But, Madam

19 Witness, don't answer until I hear the question again.

20 BY MR. WILLIAMS:

21 Q. Is the possession of Alprazolam in itself a  
22 violation as far as you can determine?

23 MR. WILLIAMS: I can rephrase the question.

24 THE COURT: Rephrase the question but don't answer  
25 until I can make a determination.



1 BY MR. WILLIAMS:

2 Q. Is Alprazolam a drug which is manufactured by legal  
3 manufacturers?

4 THE COURT: Any objection to that, Solicitor?

5 MR. CASKEY: No, Your Honor.

6 THE COURT: Okay. Now, Madam Witness, answer that  
7 question, if you are able to.

8 BY THE WITNESS:

9 A. It's a controlled substance.

10 BY MR. WILLIAMS:

11 Q. Okay.

12 A. So it's a schedule 4. To have that you have to have  
13 a prescription dictated by a doctor's note. You have to be  
14 following that description so...

15 Q. So it's different from crack cocaine and powder  
16 cocaine, right?

17 A. And it's -- Yeah. It's a benzodiazepine. It can be  
18 written as a prescription but it's also a controlled  
19 substance because you could possibly abuse it.

20 Q. If you would --

21 A. Cocaine is a schedule 2. Alprazolam is a schedule  
22 4.

23 Q. If you would, would you tell me the names that are  
24 reflected on your drug report marked State's exhibit number  
25 37?

1 A. The suspects' names?

2 Q. Yes.

3 A. Brittany Jay, Samuel Sims, Christopher Wilson.

4 Q. Would those names be reflected on that testing  
5 sheet? Are you saying that those drug results are applicable  
6 to those three individuals?

7 A. These are the suspect names I was given.

8 MR. WILLIAMS: Thank you. That's all the questions  
9 I have, Your Honor.

10 THE COURT: Any redirect?

11 MR. CASKEY: Just one, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. CASKEY:

14 Q. Ms. Homer-Conrad, the brand name for Alprazolam is  
15 Xanax, correct?

16 A. Yes.

17 MR. CASKEY: No further questions, Your Honor.

18 THE COURT: Thank you, ma'am, for your testimony.  
19 You may step down. You're free to leave court or you're  
20 welcome to remain with us. Make sure the report stays  
21 with us.

22 THE WITNESS: I forgot to make a copy.

23 THE COURT: Just hang around for just a couple  
24 minutes with us. Solicitor.

25 MR. SPIVEY: Your Honor, the State rests.

1 THE COURT: Madam Forelady, and ladies and gentlemen  
2 of the jury, this is our afternoon break, about 15  
3 minutes or so. If you will go back to your jury room.  
4 Again I'll remind you don't begin any discussions about  
5 this case and we'll get you back out shortly.

6 (Whereupon, the jury entered the jury room at 3:15  
7 p.m.)

8 THE COURT: Somebody want to go ahead and get a  
9 copy and then we'll entertain motions. You had a copy?

10 MR. SPIVEY: I did, Your Honor.

11 THE COURT: Mr. Williams, did you have any motions  
12 that you would like the Court to entertain?

13 MR. WILLIAMS: I do, Your Honor. As I understand it  
14 there are two indictments that deal with trafficking.  
15 One being trafficking of powder cocaine and one being  
16 trafficking of crack cocaine.

17 THE COURT: Hold that thought. Let me get those  
18 indictments please. Okay. Proceed.

19 MR. WILLIAMS: Your Honor, a careful reading of the  
20 indictment indicates that my client is accused of along  
21 with other co-conspirators between the dates of March  
22 22nd of 2013 and maybe June 14th of 2013, it says up to  
23 that date, Your Honor, meaning the wording of the  
24 indictment says from March the 22nd, 2013 up to the date  
25 of June the 14th of 2013.

1           THE COURT: It says between March 22nd, 2013 to June  
2           14th, 2013.

3           MR. WILLIAMS: To that date.

4           THE COURT: So what you are suggesting is that the  
5           June 14th should be excluded from this?

6           MR. WILLIAMS: It is exactly what I am suggesting  
7           because it doesn't say on or about. It doesn't  
8           specifically include it. And if you look at the other  
9           indictments, Your Honor, they actually reference the  
10          date of June the 14th of 2013. We would move for the  
11          dismissal of both of the cocaine, the crack and the  
12          powder cocaine on the basis that the evidence which has  
13          been introduced, the drug evidence which has been  
14          introduced all relates to the seizer of items which were  
15          recovered on June 14th, 2013, not before that date.

16          THE COURT: Let me just interrupt you just for a  
17          second. The powder cocaine indictment uses the word  
18          "and". It says between March 22nd, 2013 and June 14th,  
19          2013.

20          MR. WILLIAMS: Okay. Well, on that one we would  
21          suggest that it did not include the date because it says  
22          between the dates, not on those dates.

23          THE COURT: Okay. All right. Before we address any  
24          other grounds for your motion for directed verdict,  
25          Solicitor, you want to entertain?

1 MR. SPIVEY: Yes, sir, Your Honor. Your Honor, I  
2 would argue number 1 it's a scrivener's error, if it's  
3 an error at all. I would argue first and foremost that  
4 the word "to" is inclusive of June 14th and in fact on  
5 the face of it it does include March 22nd and June 14th.  
6 I think the word "between" there means between those two  
7 dates up to and including from 1:00 in the morning on  
8 March 22nd until 11:59 p.m. on June 14th I think is what  
9 that language means in my opinion. Certainly that would  
10 be the intent upon the evidence that's been presented at  
11 trial, upon the evidence that was given to the defendant  
12 in discovery. Indictments are just notice documents,  
13 Your Honor. He's been put on notice, and again it  
14 appears like the word "to" and "and" were used on  
15 different indictments. My guess is that I was not the  
16 actual person to type these indictments. These were  
17 handled by Assistant Solicitor Michael Ross who is no  
18 longer with our office at the time, but the intent, in  
19 my opinion the intent of this document was to put the  
20 defendant on notice that he was being charged with  
21 trafficking those drugs between the dates of March 22nd  
22 and June 14th. I agree it does say the word "to." I'm  
23 not trying to say it doesn't say that.

24 THE COURT: All right. I think a reading of that  
25 would include both those dates and everything in

1       between.

2           MR. WILLIAMS: I would like to supplement that, Your  
3 Honor, and say that in the testimony that was presented  
4 there was actual testimony that was presented of three  
5 purchases that would have occurred on March 22nd, April  
6 4th, April like 26th and then June 4th of 2013 and there  
7 was testimony about drugs being purchased during those  
8 dates. So the flip side is that maybe we were  
9 referencing the trafficking during those time spans and,  
10 of course, there was no drugs which were introduced in  
11 the record.

12       THE COURT: Okay.

13       MR. WILLIAMS: So I think it's confusing in regards  
14 to that.

15       THE COURT: Okay. I am looking at State versus  
16 Adams. State versus Adams says following the true test  
17 of sufficiency of indictments not whether it could have  
18 been more definite or certain but whether it contains  
19 the necessary elements of the offense intended to be  
20 charged and sufficiently apprises the defendant of what  
21 he must be prepared to meet. Moreover in determining  
22 whether and indictment is sufficient it must be viewed  
23 with a practical eye of all surrounding circumstances or  
24 all surrounding circumstances must be considered in  
25 determining whether there is any prejudice to a

1 particular defendant.

2 So I think if I use that practical eye, even though  
3 I could certainly understand where you are coming from,  
4 but viewing it with a practical eye I think the  
5 indictments are sufficient.

6 MR. WILLIAMS: Your Honor, in regards to all four  
7 indictments and obviously there's another indictment  
8 which is a PWID marijuana, I believe, and the other one  
9 which is possession of a weapon during the commission of  
10 a violent crime, the violent crime being the drug as  
11 being the violent crime as I interpret the indictment, I  
12 think both of those reference the date of June 14th,  
13 2014, but we would move that the evidence taken in a  
14 light most favorable to the State is insufficient as a  
15 matter of law for the jury to return a verdict of guilt  
16 against my client in regards to any of those  
17 indictments.

18 THE COURT: Okay. Well, certainly knowing that you  
19 would make this motion as made in every criminal case we  
20 did some careful consideration of the evidence and  
21 looked at several cases. Again the State versus Adams,  
22 State versus Hudson and I think viewing the evidence in  
23 a light most favorable to the State there does exist  
24 evidence, certainly I don't consider the weight, but the  
25 existence of any evidence to send this case to the jury.

1       Officer Hodges testified twice that the defendant  
2       indicated that he lived at [REDACTED] Road. That  
3       would, therefore, give him the right to control and  
4       certainly knowledge can be inferred under those  
5       circumstances where there is control of the premises and  
6       so I think there is enough evidence to justify sending  
7       this case to the jury for consideration. Anything else  
8       on the record on that?

9           MR. WILLIAMS: Nothing on that, Your Honor.

10          THE COURT: Okay. All right.

11          MR. WILLIAMS: Your Honor, we intend on offering a  
12       defense and the first witness we intend on calling is  
13       Brittany Nicole Jay who is a co-defendant.

14          THE COURT: Right.

15          MR. WILLIAMS: She is outside in the hallway. I  
16       guess we probably need to check on the whereabouts of  
17       her attorney.

18          THE COURT: Before we do that, I need to give the  
19       standard instruction to the defendant concerning his  
20       right to testify or not testify. So if you have not had  
21       an opportunity to explain that to him, what I'm prepared  
22       to do here in just a minute when I pull it up, you may  
23       want to do that while I'm pulling it up.

24          THE COURT: Madam Clerk, swear the defendant in  
25       please.



1 Thereupon,

2 CHRISTOPHER T. WILSON

3 after having been first duly sworn, testified as follows,

4 EXAMINATION

5 BY THE COURT:

6 Q. Mr. Wilson, at this time I'm going to explain to you  
7 certain of your rights. If you do not understand anything  
8 that I say, please let me know. If you want me to explain  
9 anything in more detail, please let me know that as well. Do  
10 you understand, sir?

11 A. Yes, sir.

12 Q. Okay. We have now reached the stage of the trial  
13 where you may present your defense. You have the right to  
14 claim the protections given to you by the Fifth Amendment to  
15 the Constitution of the United States, and this amendment  
16 states in part no person shall be compelled in any criminal  
17 case to be a witness against himself. This means, sir, that  
18 you cannot be required to testify in this case. You have the  
19 right to testify in your own behalf, however, no one can make  
20 you testify. This is a personal right and no one can waive  
21 this right except you, sir.

22 If you decide to testify, you will be subject to the  
23 same rules that govern other witnesses and you may be  
24 examined and cross examined on any relevant issue in this  
25 case. In addition, if you have any convictions involving

1 dishonesty or false statement or for crimes punishable by  
2 imprisonment for more than one year and this Court determines  
3 that the probative value of admitting this evidence outweighs  
4 its prejudicial effect to you, the Solicitor will be able to  
5 introduce your record to attack your credibility, if you have  
6 a record, and I don't know if you do or not.

7           If you decide to testify, this decision on your part  
8 must be freely, voluntarily and intelligently made with  
9 knowledge of the protections given to you by the Fifth  
10 Amendment and the consequences of your decision to testify.

11           If you decide not to testify, I will instruct the  
12 jurors that they cannot give the fact that you did not  
13 testify any consideration whatsoever and that there is to be  
14 absolutely no prejudice to you because you did not testify.

15           It's left entirely up to you whether or not you  
16 testify. Certainly I'm sure you have spent a considerable  
17 amount of time talking with your attorney about this very  
18 same issue. Certainly you have the right to continue  
19 discussions with him, any family members, any friends, anyone  
20 else that you wish to talk to but the final decision, sir, is  
21 left entirely up to you.

22           Have you understood everything I have explained to  
23 you?

24           A. Yes, sir.

25           Q. Okay. Are you prepared to inform the Court now

1 whether or not you are going to testify?

2 A. Yes, sir.

3 Q. Okay. Have you had ample opportunity to talk with  
4 Mr. Williams and anybody else that you wish to talk to  
5 concerning this issue?

6 A. Yes, sir.

7 Q. Okay. And what is your decision concerning  
8 testifying?

9 A. I'm going to go through with it.

10 Q. You are going to testify?

11 A. Yes, sir.

12 Q. Okay. Is this decision to testify, has this been  
13 made freely, voluntarily and intelligently on your part?

14 A. Yes, sir, Your Honor.

15 THE COURT: Thank you very much, sir. You can go  
16 back to your table. All right. Well, let's take a  
17 little break. You can check and see if her lawyer is  
18 present. All right.

19 (Short break.)

20 THE COURT: Okay. We're back on the record.

21 Mr. Williams, are you ready to proceed with your case?

22 MR. WILLIAMS: I am, Your Honor. Brittany Jay is  
23 here who is a co-defendant in the case. She is present  
24 along with her attorney. Your Honor, I tried a murder  
25 case over in Richland County one time and what happened

1        was I want to say one of the co-defendants was called to  
2        testify and it was just kind of a, I guess, a bad  
3        situation. I didn't know if the Court wanted to  
4        entertain an in camera hearing to find out if she is  
5        going to assert her Fifth Amendment privileges or not or  
6        whether or not she's gonna testify.

7                THE COURT: Right. And I plan to bring her up and  
8        then question her to make sure she understands  
9        everything involved. So all right. Ma'am, would you  
10       come up here please.

11    Thereupon,

12                                BRITTANY JAY

13    after having been first duly sworn, testified as follows,

14                                EXAMINATION

15    BY THE COURT:

16                Q. Ma'am, would you state your name please?

17                A. Brittany Nicole Jay.

18                Q. Ms. Jay, I understand that you were charged along  
19    with the defendant in this case Mr. Wilson?

20                A. Yes, sir.

21                Q. Okay. And those charges I understand are still  
22    pending against you?

23                A. Yes, sir.

24                Q. Okay. Now, Mr. Williams informs me that as part of  
25    his defense case he is wanting you to testify on his client's

1     behalf. Is that your understanding?

2             A. Yes, sir.

3             Q. And you've got your attorney here today with you?

4             A. Yes, sir.

5             Q. Okay. I have to assume, and you correct me if I'm  
6     wrong, that you have discussed this issue with your attorney  
7     concerning your testimony here today and how that could  
8     possibly be used at some future point in time. Do you  
9     understand that?

10            A. Yes, sir.

11            Q. Do you have any questions regarding this issue of  
12     you testifying on behalf of Mr. Wilson?

13            A. No, sir.

14            Q. Okay. And is it your intention to testify or is it  
15     your intention to invoke your Fifth Amendment privilege that  
16     you have?

17            A. Testify.

18            Q. You're going to testify?

19            A. Yes, sir.

20            Q. Okay. All right. Do you have any questions that  
21     you want to ask the Court or ask your attorney on this  
22     issue?

23            A. No, sir.

24            Q. Okay. Your decision to testify has been made  
25     freely, voluntarily and intelligently, ma'am?

1 A. Yes, sir.

2 THE COURT: Okay. Thank you very much. Do you want  
3 to call her as your first witness?

4 MR. WILLIAMS: I do, Your Honor.

5 THE COURT: Okay. Ma'am, if you will just come up  
6 here to the witness stand. Before you do that, we'll  
7 need you to just have a seat back there because I'll  
8 need to bring the jury out and they will need to see you  
9 sworn in. If you will just do that for me. Anything  
10 else we need to take up before we bring the jury out?

11 MR. WILLIAMS: No, Your Honor.

12 MR. SPIVEY: No, Your Honor.

13 THE COURT: Mr. Knight, bring in the jury.

14 (Whereupon, the jury entered the courtroom at 3:50  
15 p.m.)

16 THE COURT: Let the record reflect the jury is back  
17 in the courtroom. Ladies and gentlemen of the jury,  
18 it's been indicated by the State that they have rested  
19 their case and now we turn over to the defense and for  
20 the defense to put up their case. Mr. Williams, you may  
21 proceed, sir.

22 MR. WILLIAMS: Your Honor, I would call Brittany  
23 Nicole Jay to the stand.

24 THE COURT: Come around, please, ma'am, and be sworn  
25 in.

1 Thereupon,

2 BRITTANY NICOLE JAY

3 after having been first duly sworn, testified as follows,

4 THE CLERK: Please have a seat. After you're  
5 seated, please state your full name for the record.

6 THE WITNESS: Brittany Nicole Jay.

7 DIRECT EXAMINATION

8 BY MR. WILLIAMS:

9 Q. All right. Ms. Jay, is your last name Jay now or is  
10 it Wilson now?

11 A. I haven't gotten my last name changed. It is still  
12 Jay.

13 Q. Are you married to Chris Wilson?

14 A. Yes, sir.

15 Q. All right. Do y'all have - do y'all share children?  
16 Do y'all have children together?

17 A. We have two children.

18 Q. What are their names and ages?

19 A. Tyler W. is five and Olivia W. is three.

20 Q. Where do you live?

21 A. I live at [REDACTED] Road, Gaston, South  
22 Carolina.

23 Q. [REDACTED] Road, Gaston, South Carolina?

24 A. Yes, sir.

25 Q. On the date of June the 14th of 2013 where did you

1 live?

2 A. I lived at [REDACTED], same city.

3 Q. All right. And are you employed?

4 A. I am.

5 Q. Where are you employed at?

6 A. I work for Whitlark and Whitlark, Incorporated.

7 Q. When you say that, what do they do for a living?

8 A. They own a chain of restaurants. I'm a general  
9 manager.

10 Q. All right. And on June the 14th of 2013 where were  
11 you working?

12 A. I have been there seven years.

13 Q. All right. Now, do you recall the events of June  
14 the 14th of 2013?

15 A. Yes, sir.

16 Q. And how do you recall those events?

17 A. I recall at 7:00 a.m. approximately hearing what I  
18 thought to be gunshots. I grabbed my child that was in the  
19 bed with me and threw him in the crib with my daughter and  
20 covered them and then the SWAT team kicked my bedroom door in  
21 and I put my hands up and they restrained me and told me to  
22 grab my kids and take them out the front door. I took my  
23 kids outside and I stood at the road for, I guess, maybe 30  
24 minutes to an hour. My father came and picked my children  
25 up. My stepson was there with his friends spending the



1 night. They were brought out of the house with guns drawn to  
2 their back at 11 and 12 years old and I called their mothers  
3 to come pick them up and then I was questioned by Detective  
4 Hodges in my front yard for about 30 to 45 minutes and then  
5 put in handcuffs and sat outside until about 10:00 a.m.

6 Q. Where did you go at 10:00 a.m.?

7 A. At 10:00 a.m. I got in the police car with a  
8 detective, not Hodges but Holland and he transported me to  
9 Lexington County and said I was under arrest for trafficking,  
10 possession with intent and felony possession of a handgun.

11 Q. Are you charged with the same offenses that your  
12 husband Chris is charged with?

13 A. Yes, sir.

14 Q. And the charges which we are trying today?

15 A. Yes, sir.

16 Q. When you got that knock by, I guess, the SWAT team

17 --

18 A. Mm-hmm.

19 Q. -- where was Chris?

20 A. He was sleeping on the couch because I had the kid  
21 in the bed with me.

22 Q. All right. Do you recall where he went when this  
23 happened or do you know?

24 A. I was rushed out very quickly. I saw him lying on  
25 the floor whenever I was exiting our front door.

1 Q. So he was on the couch and in which room was that?

2 A. It was our living room.

3 Q. All right. How many rooms are in your house?

4 A. We had two living rooms and four bedrooms.

5 Q. All right. So you were in a bedroom?

6 A. I was in the master bedroom on the opposite end of  
7 the house and the 11 and 12 year old, his deceased brother  
8 and him were on the other end of the house.

9 Q. Let me ask you about the master bedroom.

10 A. Okay.

11 Q. Do you recall whether or not -- State's exhibit  
12 number 14 is obviously a video of some sort of pants or  
13 shorts.

14 A. Shorts.

15 Q. Do you know whose those are?

16 A. I do.

17 Q. Whose are they?

18 A. They're Chris Wilson's shorts.

19 Q. Do you know where they were on June the 14th of  
20 2013?

21 A. They are in my master bathroom by the closet and the  
22 shower in the bathtub.

23 Q. Let me ask you to look at State's exhibit number 15.  
24 Do you recognize where that is and what that is?

25 A. It could be a dresser in any room of our house. I

1 don't recognize the clock. I don't recognize that bag and I  
2 don't know what the black object is.

3 Q. All right. If that were in your master bedroom  
4 where you were sleeping, would you have recalled that being  
5 in that master bedroom?

6 A. Possibly.

7 Q. On that morning do you recall seeing it there?

8 A. No, sir.

9 Q. Now, this item has been testified -- Well, I'm not  
10 going to tell you what's been testified to. State's exhibit  
11 number 17, do you recall seeing these items in your house on  
12 June the 14th of 2013?

13 A. No, sir.

14 Q. Okay. Do you recall these items, being State's  
15 exhibit number 18, being in your house on June the 14th of  
16 2013?

17 A. No, sir. I can't hardly make out what that is, but  
18 I don't - I don't - I don't recall any of that.

19 Q. How about State's exhibit number 20, do you recall  
20 seeing these items in your house on June the 14th of 2013?

21 A. No, sir.

22 Q. Who does the cooking in your house?

23 A. Everyone.

24 Q. Okay. When you say everyone, back in June of 2013  
25 who would everyone have been?

1           A. Samuel Sims, Christopher Wilson, myself. I don't  
2 believe we cooked at 7:00 a.m. when we were there the day  
3 before but...

4           Q. Referring to State's exhibit number 22, can you look  
5 at this picture and tell me where those items are in your  
6 house and if you can, what those items are?

7           A. It's a bag and a can, a black can. I mean, I don't  
8 know what kind of can.

9           Q. Like this can right here?

10          A. It looks like a cabinet.

11          Q. Okay.

12          A. That was possibly above my stove. All of our  
13 cabinets were white though above the stove so I'm assuming it  
14 was above our stove.

15          Q. At any point in time prior to June the 14th of 2013,  
16 did you observe this bag next to that paint container in a  
17 cabinet in your kitchen?

18          A. No, sir.

19          Q. Now, the items which are reflected in State's  
20 exhibit number 21, have you ever seen those items in your  
21 house?

22          A. No, sir.

23          Q. The item reflected in State's exhibit number 19,  
24 have you seen that in your house?

25          A. No, sir.

1 Q. Looking at State's exhibit number 21 which is kind  
2 of a different picture of what you have already looked at,  
3 can you tell from looking at that picture whether or not that  
4 picture was taken in a cabinet in your kitchen?

5 A. I can tell by the picture being bigger it is in the  
6 kitchen right above the stove. You see the stove right  
7 there? And there's multiple cabinets above the stove so that  
8 is above the stove.

9 Q. Do you recall ever seeing that bag, and I'm going to  
10 point over here --

11 A. Okay.

12 Q. -- in your kitchen?

13 A. No, sir.

14 Q. Or the paint can?

15 A. No, sir.

16 Q. State's exhibit number 31. Can I ask you to look at  
17 that item.

18 A. That is my nine millimeter Hi-Point gun that I  
19 purchased in January of 2010.

20 Q. This is your gun --

21 A. Yes, sir --

22 Q. -- that you bought?

23 A. -- it is. A registered gun I bought in January 2010  
24 from Best Pawn and Deal on Two Notch Road. I can even tell  
25 you my address when I bought it.

1 Q. What was your address when you bought it?

2 A. My address was [REDACTED] Street downtown  
3 Columbia.

4 Q. Is that a reflection of why you bought the gun?

5 A. That is a reflection of why I bought the gun. I was  
6 pregnant with my first child and I lived alone.

7 Q. Referring to what has been marked as State's exhibit  
8 number 30, can you tell me if you have ever seen those items  
9 before?

10 A. No, sir. Not from what I can see. No.

11 Q. Okay. Let me ask you about your ex brother-in-law.

12 A. Okay.

13 Q. What is your ex brother-in-law's name?

14 A. His name is Samuel Derrell Sims, Junior.

15 Q. How long did you live at [REDACTED] Road?

16 A. Uhm, about over two years, almost three years.

17 Q. When did you move in and when did you leave?

18 A. I moved in in 2011. I left six months after the  
19 SWAT team came in my house and everyone in my neighborhood  
20 looked at me like I was a bad person and I wasn't and I felt  
21 the need. I wanted to move.

22 Q. Who lives with you now?

23 A. My husband and my children and my stepson.

24 Q. When did Mr. Sims move in with you and your  
25 husband?

1 A. My son was seven months old so in 2010.

2 Q. All right. Did he move to this location of [REDACTED]  
3 [REDACTED] Road?

4 A. No, sir. We lived on -- I don't remember the  
5 number, but it was Wild Meadows Drive. He moved in with us  
6 when we lived there to help me with the children.

7 Q. All right. And when you moved to [REDACTED]  
8 Road, did he move with you there?

9 A. He did.

10 Q. Did he have a bedroom in that house?

11 A. He did.

12 Q. How did you feel about -- Is he alive today or  
13 dead?

14 A. He had passed away July 4th of 2014.

15 Q. July 4th?

16 A. July the 4th. Yes, sir.

17 Q. Do you know what his cause of death was?

18 A. It was alcohol poisoning .49.

19 Q. .49?

20 A. Yeah. Without a zero in front of it. My five year  
21 old son found him.

22 Q. Where did your five year old son find him?

23 A. We assumed he was sleeping in his bed. My son went  
24 in his room and found him on the floor and we immediately did  
25 CPR and called an ambulance and they said he had been gone

1 for an hour by the time they got there.

2 Q. Were you happy about your brother-in-law living  
3 with you and your husband?

4 A. I was.

5 Q. Did you know that he was dealing drugs out of your  
6 house?

7 A. I did not.

8 Q. Did you see your husband deal drugs out of your  
9 house?

10 A. No, sir.

11 Q. Do you know a Justin Flake?

12 A. No, sir.

13 Q. Have you ever been in your house when your husband  
14 dealt drugs to Justin Flake?

15 A. No, sir.

16 Q. What does your husband do for a living?

17 A. He does landscaping.

18 Q. How long has he done landscaping?

19 A. Since 2011.

20 Q. Okay. When you say he does landscaping, does he  
21 have his own business?

22 A. He does. I funded him to buy everything he had  
23 needed to start his own business.

24 Q. What kind of items does he own to do landscaping?

25 A. We have a truck to pull a trailer which was in our



1 yard when they were at our house. He had bought a brand new,  
2 we bought brand new blowers. We bought weedeaters, three  
3 push mowers, a riding lawnmower that we had to all sell  
4 because of this.

5 Q. Do you know anything about a .22 caliber rifle? Do  
6 you know anything about a rifle?

7 A. No. No, sir.

8 MR. WILLIAMS: Thank you, Brittany, for testifying  
9 today.

10 THE WITNESS: You're welcome.

11 THE COURT: Cross examination by the State.

12 MR. CASKEY: Yes, sir.

13 CROSS EXAMINATION

14 BY MR. CASKEY:

15 Q. Good afternoon, Ms. Jay.

16 A. Good afternoon, Mr.?

17 Q. Caskey.

18 A. Caskey.

19 Q. You lived at [REDACTED] in the spring of  
20 2013, correct?

21 A. Correct.

22 Q. You lived there with the defendant Christopher  
23 Tywhun Wilson?

24 A. Yes, sir.

25 Q. You said you had two kids together?

1 A. Yes, sir.

2 Q. Tyler is five now and --

3 A. Olivia is three.

4 Q. Tyler, was he the child you were referring to a  
5 second ago when you said that when you had moved off of  
6 [REDACTED] Street in 2010 you were pregnant with him?

7 A. He was born in 2010 in [REDACTED] and I purchased the  
8 gun in January.

9 Q. You were living with the Defendant then --

10 A. No, sir.

11 Q. -- when you purchased the gun?

12 A. No, sir.

13 Q. You had a child with the defendant when you  
14 purchased the gun?

15 A. I purchased the gun and lived alone on [REDACTED]  
16 Street.

17 Q. You had --

18 A. I lived alone in an apartment.

19 Q. Ma'am, my question is, did you purchase the gun at  
20 the time you had a child with the defendant?

21 A. I was pregnant with his child.

22 Q. And you kept that gun when you lived at [REDACTED]

23 [REDACTED] --

24 A. Mm-hmm.

25 Q. -- in the bedroom with you, correct?

1 A. I did.

2 Q. You kept that on the dresser?

3 A. I kept it above my entertainment center where my  
4 kids couldn't get to it. Yes.

5 Q. Why did you keep it on top of the entertainment  
6 center?

7 A. Convenience. I mean, where else would I have kept  
8 it? I don't - I don't know where else I would have kept it.

9 Q. Could the defendant have reached that gun if he  
10 wanted to?

11 A. Yes.

12 Q. You testified a second ago that everyone in the  
13 house cooked and that included yourself --

14 A. Yes, sir.

15 Q. -- the defendant and Mr. Sims; is that correct?

16 A. That's correct.

17 Q. As a part of cooking you would frequently use  
18 spices, right?

19 A. Occasionally.

20 Q. You kept those spices in the cabinets in the  
21 kitchen?

22 A. I did.

23 Q. Now, you're charged in this case with trafficking.  
24 You're charged with trafficking crack cocaine, trafficking  
25 cocaine, possession with intent to distribute marijuana and

1 possession of a firearm during a violent crime?

2 A. Correction. I'm charged with trafficking crack  
3 cocaine, possession with intent cocaine, possession with  
4 intent marijuana felony, possession of a handgun during the  
5 commission of a violent crime.

6 Q. And this photo, State's 21, you said that's your  
7 kitchen, correct?

8 A. That is my kitchen.

9 Q. That's your cabinet, correct?

10 A. That is my cabinet.

11 Q. And these are cooking instruments, are they not?

12 A. They are.

13 Q. Spices and what not?

14 A. Some of them are. Yeah.

15 Q. And that bag there is a bag of marijuana, isn't  
16 it?

17 A. I don't know. I can't -- I don't know.

18 Q. Is your testimony you don't know what that is?

19 A. It's a bag of, I'm assuming, marijuana and a black  
20 can.

21 Q. And this is in your kitchen, right?

22 A. Yes, sir.

23 Q. The defendant would stay with you in that master  
24 bedroom when the children weren't there; isn't that right?

25 A. My children are always with me and they sleep in the

1 bed with me right now.

2 Q. Mr. Wilson never stayed in the bed with you?

3 A. Occasionally, yes. He was more comfortable on the  
4 couch.

5 Q. He lived in that house with you at [REDACTED]  
6 [REDACTED]; is that right?

7 A. Mm-hmm. Yes, sir.

8 Q. Now, in order to pay -- Did you own the home at [REDACTED]  
9 outright?

10 A. We were buying the home.

11 Q. Who was we?

12 A. Me and Christopher Wilson were buying that home.

13 Q. So the two of you together were putting funds  
14 together to pay for the home?

15 A. Correct.

16 Q. Okay. Did you both contribute to the electric  
17 bill?

18 A. Yes. I mean, we put our money together so yes.

19 Q. Did you both pay, put money together to buy food for  
20 the home?

21 A. Yes, sir.

22 Q. Would it be accurate to say the defendant's  
23 financial contributions to you and to the home enabled you to  
24 live the life that you did?

25 A. In a trailer? Yeah. Sure.

1 Q. And he continues to provide that support to you now,  
2 doesn't he?

3 A. Uhm, I pay the bills now actually. He gets  
4 landscaping jobs when he can. My salary covers our bills.

5 Q. These are the defendant's pants, shorts?

6 A. Yes, sir.

7 Q. They're in the bedroom at 344, aren't they?

8 A. No, sir. They're not. They're in the bathroom, the  
9 master bathroom.

10 Q. I'm handing you what's been marked as State's  
11 exhibit number 38. Do you recognize that photo?

12 A. Now, yes, sir. I do.

13 Q. What is that?

14 A. That is my master bedroom to the right and that is  
15 my entertainment center. My gun is right there and a pair of  
16 brass knuckles right there and that's the clock that I don't  
17 know whatever happened to it. And --

18 Q. Okay.

19 A. -- that's my jewelry box.

20 Q. I don't want to cut you off.

21 A. I'm done.

22 Q. Is that the way that your bedroom looked on June  
23 14th of 2013?

24 A. I was asleep in my bedroom on June 14th.

25 Q. I'm asking --

1 A. They woke me up.

2 Q. I'm asking, does that picture fairly and accurately  
3 represent the way your bedroom looked?

4 A. Uhm, I suppose. Yes. I mean, yeah.

5 MR. CASKEY: Your Honor, at this time we would move  
6 State's 38 into evidence.

7 MR. WILLIAMS: No objection, Your Honor.

8 THE COURT: All right. Without objection 38 for the  
9 State.

10 BY MR. CASKEY:

11 Q. Your testimony a second ago is that you had no idea  
12 that your husband was selling drugs; is that correct?

13 A. That's correct.

14 Q. But you knew his brother was selling drugs?

15 A. I did not know his brother --

16 Q. Is that --

17 THE COURT: Wait. What we need to do is make sure  
18 the question is asked completely before you answer,  
19 ma'am, and then when you finish answering, then you  
20 start the next question. We can't talk over each other.  
21 Repeat that question.

22 MR. CASKEY: Yes, Your Honor.

23 BY MR. CASKEY:

24 Q. Your testimony a minute ago was that you had no idea  
25 what was going on in the house with regard to the drugs; is

1 that correct?

2 A. That's correct.

3 Q. Your testimony to defense counsel a minute ago was  
4 that you knew that Mr. Sims was selling drugs; isn't that  
5 right?

6 A. I did not know Mr. Sims was selling drugs until I  
7 got out of jail two days after I was arrested on June the  
8 16th when my fiance informed me his brother was selling  
9 drugs. I had suspicions before then and said if anything is  
10 going on illegally, it cannot go on here. I never saw drugs  
11 in my home. I have children there. I'm a mother. I work 50  
12 hours a week and I barely even have time to be home.

13 MR. CASKEY: Objection, Your Honor.

14 THE COURT: She can explain her answer. Proceed.

15 BY THE WITNESS:

16 A. I'm done with the answer. Thank you.

17 BY MR. CASKEY:

18 Q. You love your husband, don't you?

19 A. I do love my husband.

20 Q. You would say anything for him, wouldn't you?

21 A. No. I wouldn't say anything for him.

22 Q. You depend on him for sustenance, providing for your  
23 kids?

24 A. I depend on him, but I don't think - I couldn't do  
25 it alone.



1 Q. You said a minute ago that officers came in your  
2 house about 7:00 in the morning; is that right?

3 A. That's correct.

4 Q. At any point in that morning did you go into  
5 Mr. Sims' room?

6 A. The officers woke me up at 7:00. I was not awake  
7 until they threw a flash bomb in my house which I thought was  
8 gunshots which woke me up.

9 Q. So when defense counsel asked you a second ago about  
10 whether or not you recalled seeing these on June 14th, the  
11 reason for that was that you were still asleep; isn't that  
12 right?

13 A. I didn't see it on June 14th. I was asleep.

14 Q. Have you seen it any other time?

15 A. Never.

16 Q. And likewise State's 17 you said that you don't  
17 recall seeing that at 7:00 in the morning, correct?

18 A. I do not recall seeing that at 7:00 a.m. I do not  
19 ever recall seeing that I thought was my statement.

20 Q. State's 21, the large bag of marijuana, you had  
21 never seen or smelled that any of the times cooking in the  
22 house, did you?

23 A. This was not there when I was cooking in the house.  
24 I had never seen that can or that bag in my house ever which  
25 I informed Detective Hodges of that and asked him if he would

1 kindly fingerprint everything he found and his reply to me  
2 was my fingerprints are on it. I said, well, sir, you can  
3 eliminate yourself and me then.

4 Q. And this picture, State's number 15, do you recall  
5 where that is in the house?

6 A. I do now, yes.

7 Q. Where is that?

8 A. That is the entertainment center in my room in the  
9 master bedroom.

10 Q. Who lives in the master bedroom, ma'am? Who lives  
11 in the master bedroom?

12 A. Me and my husband.

13 Q. And this picture that we just talked about State's  
14 number 38?

15 A. Master bedroom.

16 Q. Let me ask you this: As you're facing that photo,  
17 on the left hand side of that photo is there a clock?

18 A. There is. Yes, sir.

19 Q. Is it the same clock that's in that photo?

20 A. Yes, sir.

21 Q. Is it the same entertainment center?

22 A. Yes.

23 Q. Where that crack cocaine was?

24 A. If that is, in fact, crack cocaine, I suppose, yes.  
25 I have never seen the crack cocaine on my entertainment

1 center..

2 Q. Is that the same entertainment center where your gun  
3 was placed?

4 A. My gun stays in that place. Yes, sir.

5 Q. Same entertainment center where the defendant's ID  
6 was found?

7 A. Yes. I don't know where his ID was found. But yes,  
8 sir.

9 Q. This is your kitchen?

10 A. Yes, sir.

11 Q. This is the defendant's kitchen?

12 A. Yes, sir.

13 Q. This is the defendant's shorts?

14 A. Yes, sir.

15 Q. The defendant was in the house on June 14th, 2013?

16 A. He was sleeping in the house as well as everyone  
17 else in the house was sleeping.

18 Q. Just to be clear, the defendant we are talking  
19 about, do you see him in the courtroom today?

20 A. Yes, sir.

21 Q. Where is he sitting?

22 A. My husband?

23 Q. I'm sorry.

24 A. My husband? Are you referring to my husband?

25 Q. Yes, ma'am.

1           A. Chris Wilson sitting with his attorney right  
2 there.

3           MR. CASKEY: Your Honor, let the record reflect the  
4 witness has pointed to the defendant.

5           THE COURT: The record will so reflect that.

6 BY MR. CASKEY:

7           Q. Let me just ask you one other question. I'm handing  
8 you what's been marked as State's number 9. Do you recognize  
9 the gentleman in that photo?

10          A. Well, if you didn't throw it at me, I might have  
11 been able to see it.

12          Q. My apologies.

13          A. Okay. That is actually the same shorts in the  
14 bathroom. That is my husband on our front porch. No. Is  
15 that our front porch? That is our back porch or was our back  
16 porch.

17          Q. I'm handing you what's been marked as State's number  
18 10. Do you recognize the person in that photo?

19          A. That is my husband Christopher Wilson on our back  
20 porch.

21          Q. Thank you. Just hand me those back.

22          A. (Proffering.)

23          MR. CASKEY: Thank you, Ms. Jay. I have no further  
24 questions for you.

25          THE COURT: Redirect?

1 MR. WILLIAMS: No questions on redirect, Your Honor.

2 THE COURT: Thank you, ma'am. You may step down.  
3 You're free to leave or you're welcome to remain with  
4 us, either way.

5 MR. WILLIAMS: May the Solicitor and I approach,  
6 Your Honor?

7 THE COURT: Certainly.

8 (Side bar off the record.)

9 MR. WILLIAMS: Your Honor, I call the defendant  
10 Chris Wilson to the stand.

11 THE COURT: Come around, sir, and be sworn in.  
12 Thereupon,

13 CHRISTOPHER T. WILSON  
14 after having been first duly sworn, testified as follows,

15 THE CLERK: Please have a seat. After you're  
16 seated, please state your full name for the record.

17 THE WITNESS: Christopher Tywhun Wilson.

18 DIRECT EXAMINATION

19 BY MR. WILLIAMS:

20 Q. Chris, your middle name is what now?

21 A. Tywhun. Tywhun.

22 Q. It's not Tyrone?

23 A. No.

24 Q. What do you go by?

25 A. Chris.

1 Q. Chris. Okay.

2 A. Or either Tron.

3 Q. Or what?

4 A. Tron. Some - some people get it mixed up with  
5 Tywhun or either Tron.

6 Q. People don't call you Ty, do they?

7 A. No.

8 Q. Chris, you recall the events leading up to June the  
9 14th of 2013, do you not?

10 A. Yes, sir.

11 Q. Do you recall when the police came and arrested you,  
12 your brother and your wife on those dates?

13 A. Yes, sir.

14 Q. I want to do a quick look through. State's exhibit  
15 number 21, have you ever seen that black can and that item  
16 that's reported to be marijuana in your kitchen?

17 A. No. The first in this courtroom.

18 Q. So you didn't even see it that day when they came  
19 and took pictures?

20 A. No. They took me down to Lexington County and then  
21 came to the jail house and served me with some warrants  
22 saying they found some drugs so we was already gone to  
23 jail.

24 Q. Referring to State's exhibit number 24, have you  
25 ever seen those drugs in your house before?

1 A. No, sir.

2 Q. And again looking at a close up of State's Exhibit  
3 number 22 which purports to be a black can and some marijuana  
4 in a kitchen cabinet, have you ever seen that before?

5 A. No, sir.

6 Q. How about what's reported to be State's exhibit  
7 number 20 which looks like bullets of some kind and a spoon,  
8 have you ever seen that before?

9 A. I haven't seen that, but I have seen bullets in my  
10 brother's room.

11 Q. Okay. Looking at State's exhibit number 16 which is  
12 the scales that have been testified to prior, have you ever  
13 seen those scales before?

14 A. I haven't seen those.

15 THE COURT: You need to speak up, sir.

16 BY THE WITNESS:

17 A. No. No. I haven't.

18 BY MR. WILLIAMS:

19 Q. Well, you were commenting on the photographs. Let  
20 me do it up close and personal. Have you seen State's  
21 exhibit number 26 before?

22 A. No. No. I haven't.

23 Q. Have you seen State's exhibit number 27 before?

24 A. No. I haven't.

25 Q. And again, I don't know if I showed this to you or

1 not. Have you seen those drug items that are purported to be  
2 drug items in your house?

3 A. No. I haven't.

4 Q. On June the 14th of 2013 were you aware of any drugs  
5 in your house?

6 A. June the 14th?

7 Q. Right.

8 A. No, sir.

9 Q. State's exhibit number 31, this item right here,  
10 have you seen this before?

11 A. Yes, sir.

12 Q. What is it?

13 A. It's a nine millimeter.

14 Q. Who owns it?

15 A. My wife.

16 Q. Where did she normally keep it?

17 A. Well, she would normally keep it we have like an  
18 armoire --

19 Q. Okay.

20 A. -- in our room.

21 Q. Right.

22 A. That's where she normally keep it. But so many  
23 peoples breaking in houses, I guess she was keeping it in  
24 more secure places where she could get to it or something.

25 Q. Let me show you what has been marked as State's



1 exhibit number 18. Have you seen those items before?

2 A. No.

3 Q. Let's talk about your pants, Chris. State's exhibit  
4 number 14, where are your pants located, what room?

5 A. Look like the master bedroom. I mean, in the master  
6 bathroom.

7 Q. Master bathroom?

8 A. Yes.

9 Q. Tell me how you can tell the difference between a  
10 bathroom and a bedroom from this picture?

11 A. Because like when you walk in our master bathroom,  
12 it's like a sliding mirror. You can see like in the right  
13 corner to the top like it's like that's where the sliding  
14 mirror at. That's where we mostly keep dirty clothes at when  
15 we was living there.

16 Q. Are you talking about this item right here?

17 A. Yeah. That would be a sliding mirror, like a closet  
18 with a sliding mirror on it.

19 Q. All right. Would the closet be on this side or on  
20 this side?

21 A. To the high right. No. Go. Go. Yeah. Right  
22 there.

23 Q. That would be the closet side?

24 A. Yeah. Where the mirrors are.

25 Q. So that is actually in your bathroom?

1 A. Yes, sir.

2 Q. And you would keep items behind or dirty clothes,  
3 if you will --

4 A. No. We would keep dirty clothes in front of that  
5 sliding door. But behind that we mostly hung things up. It  
6 was like another closet in the bathroom.

7 Q. Okay. What is that little circular thing right  
8 there?

9 A. It look like a hair tie.

10 Q. Do you wear hair ties?

11 A. No.

12 Q. Chris, these pictures that are marked State's  
13 exhibit number 9, who is that in that picture?

14 A. That is I, Chris Wilson.

15 Q. Those are the same pants that you had on or that are  
16 on the floor in State's exhibit number 14?

17 A. Yeah. Yes, sir.

18 Q. Okay. Let me ask you about Justin Flake. Did you  
19 meet with Justin Flake on March the 22nd of 2013 or did he  
20 come to your house? Let me put it that way.

21 A. Yes. He's been to my house several times.

22 Q. All right.

23 A. Like I have been --

24 Q. Go ahead.

25 A. I have been knowing him for a very long time.

1 Q. How long have you known him?

2 A. Maybe I'd say close to ten years.

3 Q. Ten years?

4 A. Yes, sir.

5 Q. Not just one or two occasions but you have known him  
6 for ten years?

7 A. Yeah. I know him when I was with my first wife. I  
8 probably - I probably known him since he been in high school.  
9 I'm not really sure. I know I know him about roughly going  
10 on ten years.

11 Q. Where did you go to high school?

12 A. I went to lower Richland.

13 Q. Did he go to the same high school that you went  
14 to?

15 A. No. I think he went to Swansea High.

16 Q. But you have been married before?

17 A. Yes, sir.

18 Q. What was your first wife's name? What's your other  
19 wife's name?

20 A. Shatika Wilson.

21 Q. Well, when he came to your house on March the 22nd,  
22 I assume this picture is you there and he was there, right,  
23 from this video? He came to your house?

24 A. Yes, sir.

25 Q. On March 22nd, 2013?

1 A. Yes, sir.

2 Q. Did you know who he was?

3 A. Yeah. I knew who he was.

4 Q. Did he know your name was Chris Wilson?

5 A. Yes, sir. Well, no. I mean, well, I don't know if  
6 he knew my name was Chris Wilson. You know what I'm saying?  
7 But...

8 Q. He knew you?

9 A. Yeah. But he didn't call me Chris.

10 Q. What did he call you?

11 A. He just called me T. That's what confused me about  
12 the Ty part. He always said T.

13 Q. He said T?

14 A. Yeah.

15 Q. Like T, period?

16 A. Yeah. Like travel. T with a T, yeah, because  
17 that's what everybody call me, T.

18 Q. But not Ty?

19 A. No.

20 Q. Not T-y?

21 A. No.

22 Q. Okay. When he came to your house on March 22nd of  
23 2013, we have seen the video. You tell the jury what was  
24 happening on this video. You tell what was happening in real  
25 life.

1           A. Well, he - he had been coming by, I guess, prior to  
2           that like a week maybe before that.

3           Q. Okay.

4           A. Because he was offering to sell my brother pain  
5           pills because, I guess, he was getting pain pills for his  
6           elbow or whatever. So he came by the house that day. He  
7           kept asking me about a dog. You know what I mean? And he  
8           kept asking was my brother there. You know what I'm saying?  
9           I was like no. You know what I'm saying? You want to talk  
10          to him about some dogs you got to call him. He kept saying  
11          something about some dogs. But prior to that I was -- I  
12          didn't really want him at my house because a friend of mine  
13          told me he was stealing and he was on heroin real bad.  
14          That's why I was giving him such a hard time when he come by  
15          there.

16          Q. Well, on March the 22nd he was asking you about  
17          dogs, is that what you're saying?

18          A. Yeah. About buying dogs.

19          Q. And what did you tell him about buying dogs?

20          A. I told him he had to speak to my brother.

21          Q. Because those dogs are not yours?

22          A. I mean, they was -- Well, me and my brother, but he  
23          was - he was the one taking care of them.

24          Q. You weren't in charge of the selling of dogs?

25          A. No.

1 Q. I got you. Did you sell him any cocaine that day?

2 A. I never ever sold him any drugs.

3 Q. Say that one more time.

4 A. I never ever sold him any narcotics, drugs.

5 Q. All right. Well, we saw some events that occurred  
6 on April the 4th and clearly in the video was that your  
7 brother?

8 A. Which video?

9 Q. The second video. The second video.

10 A. Where he had on the blue jacket?

11 Q. Right.

12 A. Yes, sir. It was.

13 Q. Does your brother have that jacket? That's his  
14 jacket, right?

15 A. Yes. It was his jacket.

16 Q. Where were you when the video was showing your  
17 brother talking to him?

18 A. Will you repeat please?

19 Q. Where were you located? Were you in the house?  
20 Outside the house?

21 A. I don't even think I was there that day, was I? I  
22 mean, it was one day I was there when I yelled out the back  
23 window.

24 Q. All right.

25 A. Because, you know, but I don't know if that was the

1 day but...

2 Q. All right. Well, let's assume that on that day  
3 though, April the 4th when your brother is out there dealing  
4 with him, was that you that came to the window and yelled?

5 MR. SPIVEY: Your Honor, I just have to object to  
6 the leading.

7 THE COURT: Try to rephrase, Mr. Williams, please.

8 BY MR. WILLIAMS:

9 Q. You looked at all these videos yesterday, right?

10 A. Yes, sir.

11 Q. Or today, whenever we showed them.

12 A. Yes, sir.

13 Q. Did one of those videos include you yelling at  
14 him?

15 MR. SPIVEY: Your Honor, I would object again to  
16 leading.

17 THE COURT: I don't believe that's leading. I'll  
18 allow it. You may proceed.

19 BY THE WITNESS:

20 A. Yes. I was yelling at the both of them.

21 BY MR. WILLIAMS:

22 Q. You were yelling at the both of them?

23 A. Yeah.

24 Q. Why were you yelling at the both of them?

25 A. Because I just felt something wasn't right. I told

1 my brother that something ain't right about this guy. You  
2 know what I'm saying? I thought my brother was getting  
3 things from him like pills or that sort. You know what I'm  
4 saying? I was like, listen, y'all better get from around my  
5 house with that funny stuff. That's what I said.

6 Q. Those were the words?

7 A. Yeah. Well, I said a curse word, you know. I don't  
8 think the Judge want me to say exactly what I said, but you  
9 can hear it in the camera clearly.

10 Q. Did your brother have a substance abuse problem?

11 A. Well, yeah. He smoked weed and he did pills and  
12 that's why, you know, I was running Justin away because he  
13 was selling pain pills. I thought he was selling my brother  
14 pills or something. You know, my brother was dealing with  
15 him maybe a year. He know him about a year before he even  
16 came to the house that day. Like they been conducting on the  
17 phone and all that.

18 Q. Why was your brother living with you?

19 A. Well, actually me and Brittany was working two jobs.  
20 I needed somebody to watch the kids, plus he was giving my  
21 mom a lot of problems and she had put him out. He was  
22 running around with the wrong crowd, stealing cars and  
23 whatever so that's why I let him move in.

24 Q. Okay. And you had to know that he probably wasn't  
25 the best person to stay with you, didn't you?



1 A. Yeah. But that's my brother, you know? So...

2 Q. Let me ask you about the events on April 26th of  
3 2013. Did you sell any drugs to Justin Flake on April the  
4 26th, 2013?

5 A. I have never sold Justin anything.

6 Q. What about on June the 4th of 2013? Did you sell  
7 any drugs to Justin Flake on June the 4th of 2013?

8 A. No, sir.

9 Q. These items that were placed into evidence, State's  
10 exhibit number 30, have you seen those items before?

11 A. No.

12 Q. Tell me about this surveillance system. Did you  
13 have a burglar alarm system also?

14 A. Yes, sir. ADT.

15 Q. ADT?

16 A. I had one in every house I lived in.

17 Q. Let me show you this picture and tell me if you can  
18 identify where that is. And is it an accurate depiction of a  
19 room in your house?

20 A. That's my living room when you first walk through  
21 the front door. Well, that was my living room.

22 (Whereupon, Defendant's Exhibits #1 through #6  
23 marked for identification.)

24 MR. WILLIAMS: Your Honor, we would move to place  
25 this into evidence as defense exhibit number 1.

1 THE COURT: What says the State?

2 MR. SPIVEY: No objection, Your Honor.

3 THE COURT: Okay. Defendant's 1 into evidence.

4 BY MR. WILLIAMS:

5 Q. Let me ask you to look at defense exhibit number 2  
6 and tell me if you can identify that.

7 A. Looks like my old house. Like you want to know what  
8 room or what?

9 Q. Yes. What room.

10 A. Well, that's the family room. That's the living  
11 room. That's the dining room, and that's down the hall with  
12 leading down to the other three rooms.

13 MR. WILLIAMS: Your Honor, we would move to  
14 introduce that as defendant's exhibit number 2. I think  
15 he said he had no objection to the introduction to all  
16 four of these.

17 MR. SPIVEY: That's correct, Your Honor. They're  
18 from discovery. We don't have any objection.

19 THE COURT: All right. 1, 2, 3, and 4 into evidence  
20 on behalf of the defense.

21 MR. WILLIAMS: Thank you, Your Honor.

22 BY MR. WILLIAMS:

23 Q. Where was your key pad for your burglar alarm  
24 system?

25 A. Uh, I mean, can I show that last picture there?

1 Q. Sure.

2 A. Well, if I can - if I'm not mistaken, it's behind  
3 this wall right here (indicating.)

4 Q. Let me put this right here. Referring to State's  
5 exhibit number 2 - I mean defense exhibit number 2, it's  
6 behind that wall right there?

7 A. The little small wall. You know like where you see  
8 like walking in the dining room --

9 Q. Correct.

10 A. -- where that picture at --

11 Q. Right.

12 A. -- I'm thinking it was on that back wall, if I can  
13 remember.

14 Q. Okay. But no question you had a ADT alarm system  
15 there?

16 A. Yeah. When you walk through the door, you can hear  
17 it. It says door open.

18 Q. Did you have the alarm system because there was drug  
19 dealing going on in the house?

20 A. No, sir.

21 Q. Why did you have the alarm system?

22 A. It's been a lot of break-ins in the neighborhood we  
23 was living in. I mean, like maybe 10, 10, 11 break-ins. I  
24 just had to get me an alarm for safety purposes.

25 MR. WILLIAMS: The next exhibit. Defense exhibit

1           number 5, Your Honor.

2           THE COURT: Is that without objection, too?

3           MR. SPIVEY: Yes, sir, Your Honor.

4           THE COURT: All right. Number 5 into evidence  
5           without objection.

6           BY MR. WILLIAMS:

7           Q. Let me ask you to look at this exhibit and tell me  
8           if you can tell what room that is.

9           A. I guess if they want to -- I call it a den. Maybe  
10          they call it a family room.

11          Q. Do you know what that is right there?

12          A. Yes, sir. They call it a -- I call it a chime.  
13          Maybe it's a motion sensor.

14          Q. It's part of the ADT system in case somebody is  
15          moving around inside the house?

16          A. Yes, sir.

17          Q. Now, I'm just going to kind of skim over the whole  
18          thing. You've seen the drugs that were introduced into  
19          evidence?

20          A. Yes, sir.

21          Q. You have seen pictures that have been introduced  
22          into evidence?

23          A. Yes, sir.

24          Q. You have seen guns which have been introduced into  
25          evidence?

1 A. Yes, sir.

2 Q. What is your testimony in regards to whether or not  
3 you have ever seen any of these drugs before?

4 A. I have never seen any drugs. Well, I might have  
5 seen my brother smoke weed.

6 Q. I'm talking about the items that were placed into  
7 evidence?

8 A. I never seen those.

9 Q. Now, what about the guns. Have you ever seen the  
10 guns before?

11 A. The handgun? Yes.

12 Q. What about the .22 that was supposedly found in your  
13 brother's closet?

14 A. I never seen that because he must have had it hid in  
15 the closet. I'm not sure. I never seen that - that - that -  
16 whether it's a rifle or what. A .22.

17 BY MR. WILLIAMS:

18 Q. And defense exhibit number 6. Can you recognize  
19 that? Tell me if you have ever seen it before.

20 A. No. Because it's covered up and he probably was  
21 hiding it.

22 MR. WILLIAMS: I think we said it was in evidence.

23 Didn't you say it was in evidence, Your Honor?

24 THE COURT: No, I haven't.

25 MR. WILLIAMS: Your Honor, we move to place it into

1 evidence.

2 THE COURT: Any objection by the State?

3 MR. SPIVEY: Your Honor, he can't lay a foundation  
4 for this particular photograph.

5 MR. WILLIAMS: I can do that, Your Honor.

6 BY MR. WILLIAMS:

7 Q. Let me ask you to look at defense exhibit number 32  
8 and tell me if that appears to be the same item that is --  
9 I'm sorry. Not defense defendant. That would be State's  
10 exhibit. -- if that is the same item as what is purported to  
11 be in the pictures taken by the police officer in defense  
12 exhibit number 6?

13 A. I mean, yeah, it looks similar to it, but it was a  
14 gun left there look like this, a paint gun just looking  
15 identical to that.

16 Q. Okay.

17 A. So, I mean, yeah, it looks like the gun. Yes,  
18 sir.

19 MR. WILLIAMS: So based on that, Your Honor, we  
20 would move to place this in as defense exhibit number  
21 6.

22 THE COURT: Okay. What says the State?

23 MR. SPIVEY: Your Honor, I still feel he needs a  
24 foundation, but we won't object. That's fine.

25 THE COURT: Okay. Without objection number 6 for

1 the defense.

2 BY MR. WILLIAMS:

3 Q. Now, you didn't take this picture, did you? Defense  
4 exhibit number 6, you didn't take that picture, did you?

5 A. Did I -- Did I took them?

6 Q. Yeah. You didn't take any of these pictures, did  
7 you?

8 A. No.

9 Q. Law enforcement took these pictures, right?

10 A. Yes, sir.

11 Q. Law enforcement had custody of these pictures,  
12 didn't they?

13 A. Yes, sir.

14 Q. Law enforcement had custody of all these items,  
15 didn't they?

16 A. Yes, sir.

17 Q. You have never seen these items before, have you?

18 A. It's the first time I have seen that gun.

19 Q. I'm going to ask you one last time. Are you guilty  
20 of trafficking crack cocaine?

21 A. No, sir.

22 Q. Are you guilty of trafficking powder cocaine?

23 A. No, sir.

24 Q. Are you guilty of possession with intent to  
25 distribute marijuana?

1 A. No, sir.

2 Q. Are you guilty of possession of a firearm while in  
3 the commission of a violent crime?

4 A. No, sir.

5 Q. Where is your brother now?

6 A. He's dead.

7 MR. WILLIAMS: That's all the questions I have, Your  
8 Honor.

9 THE COURT: We're going to conclude today with Mr.  
10 Wilson's testimony. I don't know how much longer it will be,  
11 but we'll take a ten minute break and then finish up,  
12 okay? Please go back into the jury room. Don't discuss  
13 this case among yourselves.

14 (Whereupon, the jury entered the jury room at 4:40  
15 p.m.)

16 (Short break.)

17 BAILIFF: All rise.

18 THE COURT: Thank you. Please have a seat. Okay.  
19 Mr. Wilson, you want to come back up, please, sir.

20 THE WITNESS: Yes, sir.

21 THE COURT: Mr. Knight, have the jury brought back  
22 in, please.

23 BAILIFF: Yes, sir, Your Honor.

24 (Whereupon, the jury returned to the courtroom at  
25 4:55 p.m.)



1 THE COURT: Let the record reflect that the jury is  
2 now back in the courtroom. Solicitor, cross  
3 examination.

4 MR. SPIVEY: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. SPIVEY:

7 Q. Mr. Wilson, in 2005 were you convicted of failure to  
8 stop for a blue light?

9 A. Yes, sir. I'm not sure of the conviction. I don't  
10 know if it was a conviction, but I was arrested for it. I  
11 was -- I think I might have been on probation for it. I'm  
12 not sure. I don't remember.

13 Q. You don't remember?

14 A. No.

15 Q. Okay. All right. You lived at [REDACTED]  
16 Road?

17 A. Yes, sir.

18 Q. How long did you live there?

19 A. Uhm, maybe two years.

20 Q. Okay. Where did you keep your clothing?

21 A. In my closet. In my drawer.

22 Q. Where were your closet and your drawer?

23 A. Well, when you walk in my master bedroom, I - I --  
24 Was it two closet or was it just one? I had - like if you  
25 seen in one of those pictures, I had like an armoire. That's

1 where I keep my jeans and stuff folded.

2 Q. Well, what I'm trying to get at, it was in the  
3 master bedroom?

4 A. Yes, sir.

5 Q. That's all I'm trying to ask. Just where was the  
6 closest and drawer. It was in the master bedroom. So you  
7 call that your room?

8 A. Yes, sir.

9 Q. You share that room with Ms. Jay, your wife?

10 A. Yes, sir.

11 Q. When did you all get married?

12 A. We got married last summer at the beach.

13 Q. Okay. How many kids do you all share?

14 A. We have two kids.

15 Q. Two kids. How many dependents do you have? How  
16 many kids do you have?

17 A. I got eight kids.

18 Q. Eight kids?

19 A. Yes.

20 Q. At the time how many kids did you have? In 2013 how  
21 many children did you have?

22 A. Eight kids.

23 Q. You had eight?

24 A. Yes. Well, yeah. My daughter was just -- Yeah. My  
25 daughter was only a few months old, I think. Maybe six,

1 eight months.

2 Q. When is your youngest kid's birthday?

3 A. [REDACTED]. I got three of them in that  
4 month, same month. One of them is [REDACTED]. It's hard. I  
5 got eight kids.

6 Q. I understand.

7 A. One of them is [REDACTED]. The other one is in  
8 [REDACTED].

9 Q. And that would have been -- She was born in either  
10 [REDACTED] or [REDACTED] of 2013?

11 A. One of them was. My son and my daughter. I'm not  
12 good with birthdays. I got too many.

13 Q. All right. I understand that. That's a lot to keep  
14 up with.

15 A. I can keep up with the months but not the days. My  
16 wife does that.

17 Q. I hear you. You might want to get you a calendar or  
18 something to write that down. That's important.

19 A. Well, you might be right.

20 Q. All right. So you lived in the master bedroom with  
21 your wife. How many children were living with you?

22 A. Uhm, just my daughter and my son. The youngest two,  
23 but my other kids, they would come over and visit.

24 Q. Okay. I understand. Which room did they stay in,  
25 the two children that live with you?

1           A. They never stay in their room. They like - they -  
2 they like to sleep in the room with us, either with their  
3 mom. They just like that. I don't know why. They just like  
4 to sleep in our room. They don't like to sleep in their own  
5 rooms.

6           Q. All right. Where did you sleep most of the time?

7           A. On the couch.

8           Q. Why would you sleep on the couch?

9           A. I mean, because I like to fall asleep looking at the  
10 TV at night and she don't like the TV on.

11          Q. That was your room, but you didn't really sleep  
12 there?

13          A. No. I always been a couch potato. I always lay on  
14 the couch and go to sleep. I do that to this day.

15          Q. Okay. But your stuff was in that room?

16          A. Yes, sir.

17          Q. So when you got dressed in the morning, where would  
18 you go?

19          A. I would get dressed in my room.

20          Q. Okay. When you came home from somewhere, where  
21 would you get undressed?

22          A. Depends who there. I get undressed anywhere in my  
23 house.

24          Q. Okay. You said a minute ago you kept your dirty  
25 clothes was it in your bathroom?

1           A. My master bathroom. I would probably take my  
2 clothes off and throw them in my master bedroom on the floor.  
3 We kept most of our dirty clothes in the bathroom.

4           Q. Okay. So that was your room?

5           A. Yes, sir.

6           Q. And you went in there everyday?

7           A. Yes, sir.

8           Q. Multiple times per day?

9           A. Yes, sir.

10          Q. Okay. All right. Let's look at some -- We have got  
11 a big old mess up here so just give me a minute. Let me see  
12 if I can get this organized a little bit. Let's start right  
13 here. Can you identify that?

14          A. I mean, it looks like my audio camera.

15          Q. Okay. It's an audio camera?

16          A. I mean a video camera.

17          Q. A video camera. So this records video?

18          A. Yes. I mean, well, that's a camera. I wasn't  
19 recording. I don't think it had a recording device to it.  
20 You had to get a separate thing for the recording.

21          Q. Okay. What brand is that on there? You see that?  
22 Let me see.

23          A. You probably have to bring it closer.

24          Q. Let's see if we can do that. What about that? Can  
25 you see that or do I need to go a bit closer? Let's go

1 closer.

2 A. Looks like it say Bunker Mill.

3 Q. Bunker -- Let me see if I can get it to focus.

4 A. Bunker Mill.

5 Q. There you go. Can you read that?

6 A. Yeah. It look like it says Bunker Mill Security.

7 Q. But that does not say AT&T?

8 A. AT&T or ADT?

9 Q. Either one.

10 A. No.

11 Q. Okay. So nowhere on there does it say ADT?

12 A. No.

13 Q. Okay. Just a minute ago we talked about, you talked  
14 about with the defense attorney having a security system,  
15 right?

16 A. Yes, I did.

17 Q. Okay. You didn't seem real sure about where your  
18 key pad was located.

19 A. I mean, because it's been a while since we moved  
20 from that house.

21 Q. How often would you set the key pad?

22 A. Mostly when we leave.

23 Q. Would you do it every time you left?

24 A. If I remember.

25 Q. If you remember you did every time you left?

1           A. I didn't -- I - I - I -- I don't think I set it  
2 every single time I left.

3           Q. Okay. 90 percent of the time when you left did you  
4 set it?

5           A. Yeah. Yeah. I set it a lot. I mean, I can't count  
6 the times I haven't set it. I really don't have a notion for  
7 how many times I set it.

8           MR. SPIVEY: Can I approach, Your Honor. I'm  
9 looking for the defendant's exhibits, the pictures, the  
10 photographs. There they are. Make sure we are on the  
11 same page.

12 BY MR. SPIVEY:

13           Q. We were talking - we were looking at defense number  
14 2 when we had the discussion about where that alarm pad would  
15 be, right? Do you remember that?

16           A. Yeah.

17           Q. Is that the right picture? That's what you were  
18 talking about, right?

19           A. Yeah.

20           Q. Okay. That picture right here looks like a cross or  
21 something. What is that? A cross. It says "believe" on it,  
22 right?

23           A. Yeah. Like a Jesus prayer type thing.

24           Q. Okay. And on the other side of that wall would have  
25 been where you think the key pad was?

1 A. That - that - that was where the key pad was.

2 Q. Well, a minute ago you said you weren't sure, but  
3 you thought it might have been there.

4 A. I mean, because on the other side of that wall you  
5 had like a furnace type thing. You know, they look about the  
6 same, the key pad for the ADT and like your digital  
7 furnace.

8 Q. A thermostat?

9 A. Yeah. A thermostat.

10 Q. Okay.

11 A. So, I mean, anyway, I didn't never set the alarm by  
12 that. I had a key pad.

13 Q. So you had a key pad. So when you set it, you would  
14 just use the key pad?

15 A. So when I leave, I could just hold it and it would  
16 set it.

17 Q. All right. Now, I'm trying to clear up some stuff  
18 so I just want to --

19 A. Okay.

20 Q. -- just ask some questions.

21 MR. WILLIAMS: Objection to the testimony from the  
22 Solicitor.

23 THE COURT: All right. Just ask the question.

24 MR. SPIVEY: Yes, sir, Your Honor.

25 BY MR. SPIVEY:



1 Q. All right. Now, we talked a minute ago as well  
2 about you called something -- Let me see if I can find that  
3 picture. Here we go. This is defense number 5, okay?  
4 Right. Number 5. All right. I think we can see that. Up  
5 there, what did you call that?

6 A. I basically called it a chime, but it's a motion  
7 detector. I think the chime is like right in between the  
8 door like when you open it, it's like two little things that  
9 go together. Like when you bring them apart, that's when it  
10 signals you got the door open or they go off if it's set.

11 Q. So would this thing make noise?

12 A. Those are the motion sensors. So the key, the key,  
13 the actual box itself, that's what - that's what has a  
14 speaker on it that let's you know door open or whatever or  
15 the beeping noise.

16 Q. I'm just curious about this one. Why would you call  
17 it a chime if it doesn't make any noise?

18 A. That -- I mean, that's what ADT, that's the part  
19 they - they - they always said chimes, and I didn't - I  
20 didn't know the difference between motion sensor and the  
21 chime. Like I know chimes come with motion sensors. That's  
22 what they call them.

23 Q. Okay. I just -- Let's see. Let's look at some more  
24 of this stuff. All right. This is State's 9 and 10. Who  
25 was that, Mr. Wilson?

1 A. That is I.

2 Q. Okay. And who is that?

3 A. That is I.

4 Q. Okay. And that's from March 22nd. All right. You  
5 knew Justin Flake?

6 A. Yes, sir.

7 Q. Okay. What did he call you?

8 A. He just called me T.

9 Q. T?

10 A. Yes.

11 Q. He didn't call you T-y?

12 A. Never.

13 Q. Okay.

14 A. I never heard him call me T-y.

15 Q. Never heard him call you T-y?

16 A. No. He always say T. In my presence - in my  
17 presence he always said T.

18 Q. He never called you T-y?

19 A. Uhm, I can't really remember him calling me T-y.

20 Q. All right. I want to be sure because I don't want  
21 to put any words in your mouth. Did he did or did he not  
22 call you T-y or Ty?

23 A. I -- I might have heard him call me T-y. You know  
24 what I'm saying? But I - I - I always didn't pay it no mind.  
25 You know what I'm saying?

1 Q. Well, a minute ago you said --

2 A. Mostly he say T.

3 Q. Okay.

4 A. Because we been friends for a long time. That's all  
5 that I ever heard him say.

6 Q. You're sort of changing up on me a little bit  
7 because when I first asked you, you said you had never heard  
8 him call you T-y?

9 A. I mean, not in my recollection.

10 Q. Okay. Well, that's what you told us a minute ago.  
11 You have cleared things up now. Occasionally you heard him  
12 call you T-y or Ty?

13 A. Mostly he called me T.

14 Q. Mostly T. Okay. All right. You said that  
15 Mr. Flake knew you ten years?

16 A. Yes, sir.

17 Q. In that ten years he never learned your real name?

18 A. Not by my knowledge.

19 Q. So nobody ever calls you Chris?

20 A. A lot of people call me Chris.

21 Q. But apparently he didn't call you Chris or knew  
22 anybody that did call you Chris?

23 A. The first time I ever heard him call me Chris was in  
24 this courtroom.

25 Q. Okay. So he didn't know your name was Chris?

1 A. Uhm, I'm assuming he didn't.

2 Q. But he knew you ten years?

3 A. He knew me ten years.

4 Q. Okay. Now, earlier you spoke to us -- Let's see.  
5 Before I get there, let's move on to some of these other  
6 items because I am curious. How often would you go in the  
7 kitchen?

8 A. A lot. I lived there.

9 Q. You lived there. Did you cook some?

10 A. Yeah. I cooked.

11 Q. Okay. What kind of food would you cook?

12 A. Well, I mean, I'm not really a big soul food cook,  
13 but I know how to cook some things. Mostly like fried food,  
14 bake food, chicken, steak.

15 Q. So you would do some things using some recipes? You  
16 wouldn't just get like lasagna, Stouffer's lasagna and heat  
17 it up in the oven? You would actually mix some stuff  
18 together and cook?

19 A. Some - sometimes I would.

20 Q. But occasionally you would mix some stuff up and  
21 actually cook it yourself?

22 A. Yeah.

23 Q. You fried some stuff?

24 A. Yeah.

25 Q. What did you use for breading?

1 A. Breadding?

2 Q. Yeah. You know, stuff --

3 A. Like what kind of bread did I eat?

4 Q. Yeah. No. No. Not what kind of bread you ate.

5 When you fried food, would you fry it and like put crunchy  
6 breadding on it? You know how you stick it, before you put it  
7 in the oil, you would actually roll it in some --

8 A. You mean like flour or something?

9 Q. Yeah. Flour. Is that what you used?

10 A. I mean, if I cooked fried chicken, I used flour.

11 Q. Okay. And you would do that how often?

12 A. I mean, maybe twice a week or sometime maybe on the  
13 weekends when my fiancée, I mean, well, my wife now, when she  
14 didn't feel like cooking.

15 Q. Where did you keep the flour, Mr. Wilson?

16 A. Well, we had seasons all in every cabinet. You  
17 know, you could ask your agents that.

18 Q. That's not the question I'm asking. I'm asking  
19 where you kept the flour?

20 A. In the cabinets.

21 Q. Which cabinet?

22 A. In my kitchen.

23 Q. Which cabinet in your kitchen, Mr. Wilson?

24 A. Maybe the ones around the stove.

25 Q. Maybe around the stove?

1 A. Yes, sir.

2 Q. You're not sure?

3 A. I mean, because we had cabinets over by the  
4 refrigerator, too.

5 Q. Okay.

6 A. If they took it. You know what I'm saying?

7 Q. Maybe this will help, Mr. Wilson. Which cabinet is  
8 that?

9 A. That's the cabinet by the stove.

10 Q. Okay. What is that item right there?

11 A. Could be sugar. Could be flour.

12 Q. Could be sugar.

13 A. Could you bring it closer?

14 Q. Yeah. Let's zoom in on it. Let me see if I can  
15 make it focus.

16 A. That's flour.

17 Q. All purpose flour?

18 A. Yes.

19 Q. So the flour was kept in this cabinet?

20 A. Uhm, not all the time. But yeah, it was there. I  
21 see it there now. Yeah.

22 Q. And you would fry chicken twice a week, sometimes  
23 more if you did it on the weekends?

24 A. Yeah. Maybe two, three times a week.

25 Q. So you went in that cabinet two, three times a

1 week?

2 A. Uhm, I went in that cabinet sometimes, yeah. All  
3 the cabinets really.

4 Q. So you went in all the cabinets two or three times a  
5 week?

6 A. I mean, because we keep stuff in all the cabinets  
7 over the stove for cooking.

8 Q. You never saw that black paint can I guess?

9 A. Well, we got a lot of paint, we had a lot of paint  
10 cans, but I never seen that paint can.

11 Q. You never seen that one?

12 A. No.

13 Q. What about that bag of marijuana right there, you  
14 never saw that?

15 A. I didn't see any marijuana either. I mean, I have  
16 seen my brother smoke marijuana but...

17 Q. You have never seen that paint can right there?

18 A. The only time I seen that paint can is in this  
19 courtroom.

20 Q. Okay. Did your brother have any children?

21 A. Uhm, not to my knowledge.

22 Q. Okay. How about opening up that can for us.

23 A. (Witness complies.)

24 Q. Would you reach inside of there, please?

25 A. (Witness complies.)

1 Q. What kind of can is that, Mr. Wilson?

2 A. It's, I guess, a baby food can for milk.

3 Q. Baby food can. Would your brother have had a baby  
4 food can?

5 A. I mean, my daughter, she was on baby food at the  
6 time.

7 Q. So it was your daughter's baby food can. How old  
8 was your daughter?

9 A. She is three now.

10 Q. Okay. So you think your daughter put that baby food  
11 can in that black can?

12 A. I -- My -- No. My daughter -- I mean, I ain't going  
13 to say my daughter put a baby food can in the, I mean, a can  
14 in another can, I mean. You know what I'm saying? Maybe  
15 somebody grabbed it and put it in there. I'm not sure.

16 Q. Okay. So you don't know who put it in there.  
17 Probably wasn't your daughter. But your brother doesn't have  
18 any baby food cans, right?

19 A. They was in my home, but he doesn't have any kids.

20 Q. Okay. All right. Let me show you -- Let me grab  
21 that back from you. Get ourselves organized. Let me show  
22 you State's exhibit 13. All right. We've got to zoom out a  
23 little bit. Sorry. Okay. What is that we are looking at,  
24 Mr. Wilson?

25 A. That's my identification card.



1 Q. Why is that address [REDACTED] Lane?

2 A. Because, uhm, I had a house on [REDACTED] Lane  
3 which was, it's in Beverly Acres off of Wood Trail. That's  
4 when I was living there I had that address on there.

5 Q. When were you living there?

6 A. Probably moved from there like -- Man, I can't  
7 really remember. Like the house got repossessed like in  
8 probably what, could have been like '09, 2010, sometime. I'm  
9 not really sure.

10 Q. So sometime in 2010 you had moved out of there?

11 A. I mean, it could have been that year. I'm not -- I  
12 can't really remember.

13 Q. It was a couple of years prior to 2013, right?

14 A. Yeah. I probably was gone from there like maybe two  
15 years, two, three years before we even moved into Ashwood.

16 Q. So you just didn't update your driver's license?  
17 That's not a driver's license. That's an ID card. You  
18 didn't update it?

19 A. Not that one. If I'm not mistaken that ID right  
20 there is like outdated, like expired. I'm not sure. You  
21 know what I'm saying? It could have been expired at the  
22 time. I didn't use it. I used my driver's license.

23 Q. All right. What is that expiration date on that?

24 A. 9th/28th/2014.

25 Q. Okay. So in 2013 would this have been expired?

1 A. No. Not by looking at it. No.

2 Q. Okay. All right. This is State's number 15, Mr.  
3 Wilson.

4 A. Yes, sir.

5 Q. Do you recognize that alarm clock?

6 A. Uhm, that alarm clock, it has been in my daughter's  
7 room. It has been in my room.

8 Q. Okay. You say your room. What room are you talking  
9 about?

10 A. When I say my daughter's room?

11 Q. No. When you say your room, which room is that?

12 A. The master bedroom.

13 Q. Okay. Where was it in this? Can you tell which  
14 room it is?

15 A. I mean, that looks like my entertainment center.

16 Q. Okay. What's that black wire?

17 A. Uh, could be a piece off - it could be a coil off my  
18 little boy four wheeler. It could be one off my riding  
19 lawnmower. I wasn't sure at the time. I'm still not sure.

20 Q. You mean like a spark plug wire or some type of  
21 ignition wire?

22 A. Like some type of cord like, you know, that goes on  
23 like maybe four wheelers or riding lawnmowers or something  
24 like that.

25 Q. That's part of the ignition system on some sort of

1 engine?

2 A. Yeah. Something to help crank it.

3 Q. Would that have been in your daughter's room?

4 A. No. No.

5 Q. Okay. This is State's exhibit 4. All right.

6 That's State's exhibit, excuse me, 38. Do you recognize  
7 that?

8 A. It looks like my entertainment center and it looks  
9 like you're going into my master bathroom right there beside  
10 it.

11 Q. Right here?

12 A. Yeah.

13 Q. Okay. It's real faint and hard to see, but can you  
14 tell us what that is right there?

15 A. No, sir. Can you bring it in a little closer?

16 Q. Yeah. Let me see if we can do this. Maybe it will  
17 show up. Does that help?

18 A. Yeah. Probably that clock look like a four on it,  
19 four and a five.

20 Q. Okay. Is that the same clock?

21 A. Yeah.

22 Q. Same one?

23 A. Looks like it. Yeah.

24 Q. So State's 15 and State's 38, that's the same  
25 clock?

1 A. Yes, sir.

2 Q. Okay. You got anymore clocks that look like that?

3 A. Not exactly like that, but it's a wind up clock.

4 Q. That clock is a wind up clock?

5 A. I'm thinking it's a wind up clock. Yeah.

6 Q. Okay. Is that your bag of drugs, Mr. Wilson?

7 A. No, sir.

8 Q. How did they get in your bedroom?

9 A. I'm not sure.

10 Q. They just magically appeared there?

11 A. I didn't put them there.

12 Q. All right. Mr. Wilson, I believe we are going to  
13 look at State's 34 and see if we can get this to pull up.

14 (Playing video for the jury.)

15 BY MR. SPIVEY:

16 Q. All right. Mr. Wilson, I want you to pay close  
17 attention. Is that your foot?

18 A. Yes, sir.

19 Q. Why would you be bending down? And if you can look  
20 right -- If I point up here, see that right there?

21 A. I mean, I can see it, but I can't see it that good.  
22 If you bring it in a little bit.

23 Q. Okay. Can you see it better there?

24 A. Yeah.

25 Q. What is that, Mr. Wilson?

1 A. That's my hand.

2 Q. Okay. What's in your hand, Mr. Wilson?

3 A. I don't think nothing's in my hand. It looks like  
4 I'm about to sit down on the porch because I always did that  
5 when I talk to somebody when I come out the back.

6 Q. So you were going to go sit down right there?

7 A. Yes. It looks like I'm about to sit down on the  
8 porch. I didn't have anything in my hand.

9 Q. So it's your testimony that you were leaning down to  
10 sit down?

11 A. Yeah. When I come out my back step, I just, I  
12 always just sit down like right on the second step.

13 Q. When you usually sit down, how long do you sit down  
14 for?

15 A. I mean, it depends what I'm doing. I mean, I have  
16 sat out there for hours playing with my kids, my dogs.

17 Q. Longer than a few seconds, right?

18 A. Yeah. I mean, that was my backyard.

19 (Playing video for the jury.)

20 BY MR. SPIVEY:

21 Q. All right. Mr. Wilson, are you sitting down there?

22 A. Well, looks like I'm standing on the step, I  
23 guess.

24 Q. So you weren't sitting down?

25 A. No. I mean, I can't really tell. Looks like I'm

1 just -- I might have got up or I might have been standing.

2 I'm not sure. I mean, I can't really remember.

3 Q. But that wasn't you putting drugs on the step?

4 A. I didn't put any drugs on the step.

5 Q. Okay. But you didn't sit down. You said a minute  
6 ago you were going to sit down. You sat there for more than  
7 a couple seconds.

8 A. I mean, I might have sat down and I -- I'm not sure.  
9 I might have sat down for a little while, got up. I'm not  
10 sure.

11 Q. Mr. Wilson, I asked you because that has been  
12 exactly four seconds from when we saw you about to sit down,  
13 you hadn't done it yet, you were just leaning down, and four  
14 seconds later you're standing up. So is it your testimony  
15 that in the three seconds that you would have had to sit down  
16 that you sat down and stood back up?

17 A. I mean, I'm not sure if I can, but it looks like me  
18 coming down the step about to sit down or stand. I can't  
19 really remember back that far honestly.

20 Q. Okay. Let me back up just a little bit. Actually,  
21 let me ask you this question, all right? All right. Did  
22 everybody call you Tron?

23 A. Well, a lot of people call me Tron. Some people  
24 call me Tywhun. Some people call me Tron.

25 Q. How many names do you go by?

1           A. Either Tywhun or Tron. A lot of people call me T,  
2 you know? I got a lot of nicknames.

3           Q. Okay. Mr. Flake called you Ty or T-y?

4           A. I - I - mostly I hear is T.

5           Q. Okay. What did he call you?

6           A. Mostly T.

7           Q. Mostly T?

8           A. Yeah.

9           Q. All right. Do you have any tattoos, Mr. Wilson?

10          A. Yes. I do.

11          Q. What are your tattoos?

12          A. I got -- Well, I have got some since then.

13          Q. Okay. I want to know about all your tattoos, Mr.  
14 Wilson. Do you have any on your arms now?

15          A. Yeah. I have one on my forearm.

16               MR. WILLIAMS: Your Honor, I'm gonna object to the  
17 relevance of the tattoos.

18               MR. SPIVEY: Your Honor, may we approach?

19               THE COURT: Yes.

20               (Side bar off the record.)

21 BY MR. SPIVEY:

22           Q. Mr. Wilson, do you have a tattoo that says T-y on  
23 your arm?

24           A. No.

25           Q. You don't have a tattoo that says T-y on your right

1 arm, Mr. Wilson?

2 A. On my right arm?

3 Q. Yes, sir.

4 A. No.

5 Q. What about your left arm?

6 A. No.

7 Q. Do you have any tattoos on your right or left arm?

8 A. Yeah. I have tattoos on both of my arms.

9 MR. SPIVEY: Your Honor, I would ask to see those  
10 tattoos, Your Honor.

11 THE COURT: Okay. Let's do this then. Ladies and  
12 gentlemen of the jury, I think we are pretty close to  
13 finishing up at least from what the lawyers tell me, but  
14 let's take a five minute break, no longer than five  
15 minutes and go back to your jury room and we'll get you  
16 back out. We should be finished up shortly. I just  
17 want to get all the testimony in today.

18 (Whereupon, the jury entered the jury room at 5:25  
19 p.m.)

20 THE COURT: Okay. We're outside the presence of the  
21 jury. Roll up your sleeves.

22 THE WITNESS: Yes, sir.

23 MR. WILLIAMS: He does not have a tattoo that says  
24 T-y, but let's all look and see.

25 THE COURT: Okay.



1 THE COURT: You want me to take off my shirt?

2 MR. SPIVEY: No.

3 THE WITNESS: This, I just got this one with a  
4 family tree when my brother died.

5 MR. SPIVEY: On your rap sheet it says you have a  
6 tattoo that says T-y on it.

7 THE WITNESS: I don't have a tattoo that says T-y.

8 MR. SPIVEY: All right. Let me see. Your Honor,  
9 that's all.

10 THE COURT: That was in camera. Okay. Let's get  
11 the jury back out.

12 (Whereupon, the jury entered the courtroom at 5:30  
13 p.m.)

14 THE COURT: Let the record reflect the jury is back  
15 in. Solicitor, you may proceed.

16 MR. SPIVEY: Thank you, Your Honor. Your Honor, I  
17 withdraw the previous question.

18 THE COURT: Okay.

19 BY MR. SPIVEY:

20 Q. Mr. Wilson, were you employed at the time?

21 A. Yes, sir.

22 Q. Okay. What was your employment?

23 A. I owned my own landscaping company.

24 Q. Okay. Do you normally carry cash on you?

25 A. Yeah. I - I sometimes fall asleep with my money on

1 me.

2 Q. Is that what you did June 14th, 2013?

3 A. I - I would assume I did. Yeah. I do it all the  
4 time really.

5 MR. SPIVEY: All right. I don't have any further  
6 questions, Your Honor.

7 THE COURT: Anything on redirect, Mr. Williams?

8 MR. WILLIAMS: Yes, Your Honor. Just a couple  
9 things.

10 REDIRECT EXAMINATION

11 BY MR. WILLIAMS:

12 Q. If we pull your shirt sleeves up, are we going to  
13 see T-y on either arm?

14 A. No, sir.

15 Q. Are you opposed to doing that for this jury?

16 A. Yes.

17 Q. You are opposed to doing it?

18 A. I mean --

19 Q. Do you mind doing it?

20 A. No.

21 Q. Show the jury what you've got on your arms.

22 A. You want me to stand up?

23 Q. Sure.

24 A. (Witness complies.)

25 Q. Is there a T-y on that arm?

1 A. No, sir.

2 Q. Is that your right arm?

3 A. Yes.

4 Q. Let me see your left arm.

5 A. (Witness complies.)

6 Q. What is that on your left arm?

7 A. Right here?

8 Q. Yes.

9 A. This is a family tree.

10 Q. In honor of who?

11 A. My brother.

12 Q. Thank you. You can put your sleeves down.

13 A. Thank you.

14 Q. Were there any drugs in that house that you knew of  
15 on June the 14th of 2013? Did you know of any drugs in the  
16 house then?

17 A. No, sir.

18 Q. Did you sell any drugs to that confidential  
19 informant?

20 A. No, sir.

21 MR. WILLIAMS: That's all the questions I have for  
22 him, Your Honor.

23 THE COURT: All right. Thank you for your  
24 testimony, sir. You may step down.

25 MR. WILLIAMS: I have one witness with two

1 questions, one additional witness with two questions.

2 That's all. I promise you.

3 THE COURT: All right.

4 MR. WILLIAMS: Your Honor, I recall Officer  
5 Miramontes to the stand.

6 THE COURT: Come around, officer. I'll remind you  
7 you're still under oath from earlier today.

8 DIRECT EXAMINATION

9 BY MR. WILLIAMS:

10 Q. Looking at State's exhibit number 6, can you tell me  
11 who took that photograph?

12 A. I did, sir.

13 Q. And is that a photograph in Mr. Sims' bedroom, the  
14 brother of my client?

15 A. Yes, sir.

16 Q. And is that a photograph of this item which is  
17 here?

18 A. Yes, sir.

19 MR. WILLIAMS: That's all the questions I have, Your  
20 Honor.

21 THE COURT: Okay. Any cross of this witness?

22 MR. SPIVEY: No, sir, Your Honor.

23 THE COURT: Thank you, sir. Step down. Is that the  
24 defense case?

25 MR. WILLIAMS: It is the defense case, Your Honor.

1 THE COURT: Does the State have any rebuttal case?

2 MR. SPIVEY: We may, Your Honor, in the morning. I  
3 need to check.

4 THE COURT: No. You need to tell me now. If you  
5 need a minute to talk with co-counsel.

6 MR. SPIVEY: Yes, sir. Just a moment.

7 THE COURT: Okay.

8 MR. SPIVEY: Your Honor, we are not going to have  
9 any rebuttal witness.

10 THE COURT: Thank you very much. The evidentiary  
11 record in this case is now closed. Ladies and gentlemen  
12 of the jury, what we'll do tomorrow, I'm going to let  
13 you go home in just a minute, I know you're glad of  
14 that, what we'll do tomorrow is the lawyers are going to  
15 make their closing arguments to you and after that is  
16 done, then I will charge you on the law in the case.  
17 After that is done, then I will give you instructions on  
18 when to begin your deliberations to come to a verdict in  
19 this case as to each charge. So for now we'll go ahead  
20 and break for the day. Again I remind you don't talk  
21 with anyone about this case either among yourselves or  
22 with any friends, family members, anyone you come into  
23 contact with. Get another good night's rest and we'll  
24 see you tomorrow an 9:30, okay? Have a good evening.

25 (Whereupon, the jury was released for the evening at

1 5:45 p.m.)

2 THE COURT: Does either side have any particular  
3 request for charge? We have already prepared a draft of  
4 our charge that we'll provide to you once I have had a  
5 chance to review it once again and it may very well  
6 cover whatever you think you want in the charge, but if  
7 there is anything in particular you can think about let  
8 me know now and I can, if it's not in my draft, I can  
9 certainly take a look at it and consider it. From the  
10 State first.

11 MR. SPIVEY: Yes, sir. Specifically, Your Honor,  
12 joint possession which may be a part of your possession  
13 charge sometimes the judges will give it that way. I'm  
14 not sure how you want to do it that way. Just some  
15 charge on joint possession.

16 THE COURT: Okay.

17 MR. SPIVEY: Hand of one hand of all. Aiding and  
18 abetting. Conspiracy. Other than that, Your Honor,  
19 just general law that I think every judge pretty much  
20 requires including the charge that we are here on today,  
21 Your Honor.

22 THE COURT: Okay. Anything in particular,  
23 Mr. Williams?

24 MR. WILLIAMS: Mere presence, Your Honor.

25 THE COURT: I have that in there.

1 MR. WILLIAMS: Your Honor, that would be the only  
2 additional charge. I would like to make a motion since  
3 the evidence has been closed, we would like to make a  
4 motion.

5 THE COURT: Go ahead and let's get that on the  
6 record before we head out today.

7 MR. WILLIAMS: Your Honor, I would move to dismiss  
8 the charges on all the indictments as presented  
9 analogous to the same arguments that were made at the  
10 end of the State's case. This is I think a different  
11 standard since all the evidence is in and that would  
12 incorporate the arguments dealing with the two  
13 trafficking charges. It would also incorporate the lack  
14 of evidence on all four indictments. And additionally,  
15 one additional motion for directed verdict, that has to  
16 go to the gun charge. Your Honor, from the record the  
17 only evidence in the record in regards to a weapon  
18 during a violent crime, the only evidence in the record  
19 is that there was a pistol which was in a bedroom which  
20 was occupied by Ms. Jay where my client was not in the  
21 bedroom. That's the only evidence of a gun in close  
22 proximity to drugs other than the .22 caliber rifle  
23 which would have been found in the closet of the  
24 brother. So we would move for dismissal of the weapons  
25 charge on the basis there is no evidence for which this

1 jury could return a verdict of guilty in regards to the  
2 weapons charge of having possession while in the  
3 commission of a violent crime.

4 THE COURT: Okay.

5 MR. SPIVEY: Your Honor, the informant Mr. Flake  
6 testified that he saw the defendant with the gun.  
7 Excuse me. He saw the gun beside the drugs where the  
8 defendant retrieved the drugs and knew him to have a  
9 gun. So there is other evidence that the defendant had  
10 a gun in this case. He testified it was a handgun of  
11 some variety. In addition, there is a handgun found in  
12 the defendant's bedroom. We would argue that it was  
13 within the reach of him at all times. It's sitting out  
14 on a piece of furniture. I couldn't exactly figure out  
15 exactly what piece of furniture it was whether a  
16 dresser, an armoire or an entertainment system,  
17 something like that but it's in the defendant's bedroom.  
18 He had access to it. It's sitting right on the same  
19 piece of furniture that the crack cocaine is found.  
20 They're within a couple feet of each other. Also there  
21 is information the informant presented to the Court that  
22 he knew the defendant had a gun.

23 MR. WILLIAMS: Your Honor, what the informant was  
24 testifying to has absolutely nothing to do with the  
25 weapon in this indictment because the weapon indictment



1 where it talks about possession of a weapon while in the  
2 commission of a violent crime is referencing obviously  
3 it's got to be crack. I assume it's crack. Crack or  
4 powder cocaine. Now, the only evidence as to the weapon  
5 when the search was conducted was that it was in the  
6 master bedroom on top of a armoire. Not an armoire. A  
7 shelf. The only testimony with regards to where my  
8 client was is that he was on a couch in a different  
9 room. So there is no evidence from which this jury  
10 could return - particularly since she testified that the  
11 weapon was hers.

12 THE COURT: Well, I mean, doesn't your line of  
13 thinking could be used as to the drugs? Just because  
14 it's in a different room that the defendant is in does  
15 not necessarily mean that he does not have constructive  
16 possession. So aren't we kind of dealing with the same  
17 thing whether it's guns, the drugs, whatever? I don't  
18 really have a big issue, probably the State doesn't  
19 either, as far as this rifle that was hidden in some  
20 closet. I don't think that's in contention, is it?

21 MR. SPIVEY: No, sir, Your Honor.

22 THE COURT: But again, if you have control and it's  
23 their house, they're buying the house, they live in that  
24 house, they have control over it which creates the  
25 inference of knowledge, so the same argument can be

1 applied as to the gun too, correct?

2 MR. WILLIAMS: I understand what the Court is  
3 saying, Your Honor.

4 THE COURT: Right. Right. I'm going to go ahead  
5 and -- Anything else you need on the record?

6 MR. WILLIAMS: No, sir. No, sir.

7 THE COURT: All right. I'm going to go ahead and  
8 deny your motion. We'll limit the gun offense to the  
9 nine millimeter not the .22 rifle.

10 MR. SPIVEY: Yes, sir, Your Honor.

11 MR. WILLIAMS: Your Honor, in that being the  
12 situation we would move that the evidence that the rifle  
13 not go back to the jury.

14 THE COURT: Right. That's my -- The State doesn't  
15 have any problem with that, do you?

16 MR. SPIVEY: No, sir, Your Honor.

17 THE COURT: Okay. All right. We just need to  
18 remember, Mr. court reporter, that that rifle stays out  
19 here with us, okay? All right. Well, as soon as we  
20 take a look at the draft charge and get it to you, let's  
21 try to get together about 9:00 in the morning and go  
22 over the charges. Hopefully we'll get you a copy of it,  
23 e-mail it to you, make sure that Davis has your e-mail  
24 addresses and we'll try to get you an e-mail before  
25 then. Okay. Anything further before we adjourn for the

1 day?

2 MR. SPIVEY: No, sir, Your Honor.

3 MR. WILLIAMS: Nothing from the defendant, Your  
4 Honor.

5 THE COURT: Thank you very much. Appreciate y'all's  
6 hard work. See you in the morning.

7 (Whereupon, court was recessed for the evening at  
8 5:50 p.m.)

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1 March 18th, 2015

2 BAILIFF: All rise.

3 THE COURT: Thank you. Please be seated.

4 Gentlemen, you have had an opportunity to review the  
5 proposed charge. It's my understanding that the only  
6 thing we're going to delete is that one sentence  
7 concerning actual knowledge being strong evidence as  
8 appearing on page 14 into 15 and also on page 16; is  
9 that correct from the State?

10 MR. SPIVEY: Yes, sir, Your Honor.

11 THE COURT: And from the defense?

12 MR. WILLIAMS: It is, Your Honor.

13 THE COURT: And in addition to the proposed verdict  
14 form it's satisfactory to both sides so long as from the  
15 State's viewpoint that I provide the explanation as to  
16 1A and B the trafficking crack and then the lesser  
17 included and I'll do that explanation at the conclusion  
18 of my charge.

19 Now, understanding this, if during my charge you  
20 pick up on something else that you haven't mentioned,  
21 I'm not going to hold your feet to the fire because I  
22 will ask you after the charge if there are any  
23 exceptions but for purposes of right now there are no  
24 other objections or exceptions to the Court's charge; is  
25 that correct?

1 MR. SPIVEY: No, sir, Your Honor.

2 MR. WILLIAMS: No, Your Honor.

3 THE COURT: Thank you very much. Off the record.

4 (Short break.)

5 BAILIFF: All rise.

6 THE COURT: Have a seat.

7 MR. SPIVEY: Your Honor, the case I was referencing  
8 about the actual knowledge that's State versus Cheeks,  
9 Your Honor, out of Spartanburg.

10 THE COURT: State versus Cheeks. Would you by any  
11 chance have a cite for that?

12 MR. SPIVEY: If I may pull up my -- I'm breaking the  
13 rules here, Your Honor.

14 THE COURT: I'll take a look at that in just a  
15 second. I appreciate that.

16 MR. SPIVEY: It was filed January 16th, 2013. I can  
17 give you the appellate case number. I do not have --

18 THE COURT: That's fine. Don't worry about it. I  
19 can find it. I can find it.

20 MR. SPIVEY: Okay, Your Honor.

21 THE COURT: Okay. Anything else before we bring the  
22 jury out?

23 MR. WILLIAMS: Nothing from the defendant, Your  
24 Honor.

25 MR. SPIVEY: No, sir, Your Honor.

1 THE COURT: State will open on the law or close in  
2 full?

3 MR. SPIVEY: I'll probably close in full, Your  
4 Honor.

5 THE COURT: All right. Mr. Knight, bring the jury  
6 in, sir.

7 BAILIFF: Yes, sir, Your Honor.

8 (Whereupon, the jury entered the courtroom at 10:30  
9 a.m.)

10 THE COURT: Let the record reflect the jury is back  
11 in. Good morning, ladies and gentlemen. Let me explain  
12 to you the reason why we kept you back in the jury room  
13 for about an hour now. What I typically do I allow the  
14 attorneys to review the Court's proposed final charge on  
15 the law to make sure that they are in agreement, if they  
16 have got any particular request or objections so that's  
17 what we have been working on for the last hour. We  
18 haven't been sitting back in the office drinking coffee  
19 and not doing anything. We have been working hard since  
20 about 9:00 we started working on that. So that's what  
21 we have been doing. So we are now at the stage where  
22 the lawyers will make their closing arguments to you and  
23 the Court will give you the final charge on the law. So  
24 if you will give both lawyers your very close attention  
25 during their closing arguments. Mr. Williams.

1 MR. WILLIAMS: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. WILLIAMS: Mr. Solicitor. Ladies and gentlemen  
4 of the jury, I do want to thank you for your attention  
5 over the last two days and ask that you to bear with me  
6 for a little bit longer. Some of you may be suffering  
7 from the pollen and stuff. I got up this morning about  
8 4:00 and I was burning up, but I think it's the  
9 temperature of the house. I don't think I'm contagious  
10 or anything.

11 You know, we have had a good time, I guess. I don't  
12 know what you expect when you come to a trial. It's a  
13 time in which, obviously I know the two Solicitors, the  
14 other side and there have been times when you, I don't  
15 know if you thought we were cutting up or joking or  
16 whatever, but it's serious business and I didn't want  
17 you to get the wrong impression about that because today  
18 is when you make decisions about the future of my  
19 client. He's seated right over there. I know you have  
20 watched him. We have a tendency sometimes to watch all  
21 the action and maybe not consider everything we need to  
22 consider.

23 But Chris, I call him Chris. We always called him  
24 Chris. A lot of people call him Chris. He's married.  
25 Got some children. We all learned he has eight

1 children. I don't know if he needs a calendar to keep  
2 up with the birth dates of his children or not. I only  
3 have three and sometimes I have trouble with at least my  
4 daughters, but all that stuff right there is not  
5 important when we talk about what we are here to do  
6 today.

7 We have actually 12 jurors or 13 with the alternate.  
8 The reason we have that alternate is in case one of  
9 y'all fades and can't make it, we have a back up plan.  
10 A thirteenth someone to step in and help us. But this  
11 jury system is based on a jury, a prosecutor on this  
12 side, a defendant and a defense assisting the defendant  
13 and the Judge and there are times when obviously the  
14 prosecutor and the defense counsel object to something.  
15 You have seen it a lot. Y'all have worn your legs out  
16 going in and out of the courtroom. I hope you don't  
17 hold any hard feelings against, I think I have objected  
18 the most, I hope you don't hold any hard feelings  
19 against me. But what we are doing is if we make an  
20 objection, it's because we are representing our client  
21 don't think that that particular evidence should come in  
22 or something that's not corroborative.

23 But you know who makes the final call is the Judge.  
24 That's his role. He's the umpire. He's the guy who  
25 makes all the decisions in regards to what evidence



1 comes in. He has no interest. He has no point of view  
2 in regards to guilt or innocence. It's not his job.  
3 That's your job. I don't know if judges get mad when I  
4 tell jurors they have the most important job. I hope  
5 they don't get mad, but it's very hard to make decisions  
6 in that regard. But essentially what you do is you  
7 determine credibility and believability of the witnesses  
8 as they testify or you look at the evidence and you use  
9 that common sense that all 12 or 13 of you have and you  
10 make a determination as to, well, I believe, that. I  
11 question that. Maybe I'm not sure about that. You do  
12 that based on a lot of things. It's you're ordinary  
13 sense that when you judge things.

14 If somebody can't remember something, maybe they are  
15 not remembering everything quite as well. If somebody  
16 is hesitant about answering a question, maybe he doesn't  
17 remember everything as well, but you make a  
18 determination in regards to what the facts are, and once  
19 you have those facts in your mind, then you have to  
20 apply those facts to the law.

21 When I say apply the facts to the law, my client has  
22 been charged with four criminal offenses. One charge is  
23 trafficking in crack cocaine. Another charge is  
24 trafficking in powder cocaine. Another charge is  
25 possession with intent to distribute marijuana. Another

1 charge is possession of a weapon while in the commission  
2 of a violent crime.

3 Now, that particular charge is kind of strange, I  
4 think, probably to the regular person because it doesn't  
5 mean that there was a bank robbery going on. It means  
6 that there are certain crimes which are designated as  
7 violent crimes simply by the nature of the crime and  
8 that would be the trafficking in the crack cocaine or  
9 the trafficking in cocaine. Those are designated as  
10 violent crimes whether or not there was violence  
11 involved at all. So I thought I would kind of bring  
12 that out to you a little up front.

13 What I'm really gonna ask you to do is that you pay  
14 attention to what the instructions are from the Judge  
15 in regards to those designations because at the end of  
16 the case he's gonna throw two curve balls at you. Some  
17 that you probably are not thinking are coming at you and  
18 those are lesser included crimes. And one of the lesser  
19 included crimes that you are going to make a decision  
20 on, if you don't find that there is sufficient evidence  
21 to prove my client guilty of trafficking in crack  
22 cocaine, there is a lesser included based on the amount  
23 of the weight that you determine my client was  
24 trafficking in, if you determine he was guilty of  
25 trafficking in crack cocaine at all.

1           It's a little complicated but, of course, I take the  
2           position he's not guilty of anything, but there is a  
3           lesser included depending upon the amount of weight that  
4           you may or may not believe that he's guilty of  
5           trafficking and that really has to do with as you  
6           learned yesterday, you heard testimony about there was  
7           drugs that was found in various locations of the house.  
8           So as your job as fact finders you can make that  
9           determination as to what you believe.

10           Now you see why your job is really hard. You may  
11           make a determination, one of the lesser included is  
12           going to be possession of over an ounce of marijuana and  
13           the reason for that is possession with intent to  
14           distribute marijuana actually focuses on what the person  
15           is trying to do. What the intent is. Whether it is to  
16           distribute the marijuana or not. But because of the  
17           weight if it's over, you could make that determination  
18           that that was just possession of over an ounce. That's  
19           really the hard part but I'll leave that up to the Judge  
20           to explain all that to you.

21           One of the most important things that you have to  
22           consider is how you make your decisions. I know that  
23           sounds like a bunch of gobbledygook, doesn't it?  
24           There's something in criminal law known as beyond a  
25           reasonable doubt. I know you hear about it on TV. I

1 know you think it's just a phrase, but it starts with  
2 the proposition that when you come into court and you  
3 are charged with a violation of the law, you're entitled  
4 to every inference of innocence of not being guilty that  
5 you can have.

6 A defendant never has to take the stand. He doesn't  
7 have to come in and say anything. He doesn't have to  
8 put up any evidence whatsoever. The burden is always on  
9 the State to prove the person guilty beyond a reasonable  
10 doubt. That phrase beyond a reasonable doubt has been  
11 talked about a lot. It means that you are firmly  
12 convinced of the guilt of the person charged. Firmly  
13 convinced. You don't weigh it. I don't know if you  
14 have been on a civil jury where you simply weigh the  
15 evidence. You think about the scales of justice. You  
16 say, well, one side is more tilted than the other side  
17 so we have to find for that side. That's really a civil  
18 determination. You could find that the driver is more  
19 at fault than the defendant so you would find in that  
20 way. But it's not the same way.

21 If you have got those same scales of justice and if  
22 they're even and if one tilts ever so slightly, if you  
23 drop a little coin and it tilts ever so slightly and  
24 that represents, that represents a question in your mind  
25 or a doubt, a reasonable doubt in your mind, then you

1 have got to find for the defendant.

2 Now, the reason I keep saying firmly convinced is  
3 because it will be explained to you again and again.  
4 There is no good way to explain that to you except to  
5 say if you have a question in your mind, something that  
6 just doesn't make sense to you or something that you  
7 question, then you're supposed to find the person not  
8 guilty.

9 In regards to some of the instructions you are going  
10 to receive, and I don't mean to lessen the importance of  
11 it, you will get an instruction dealing with expert  
12 witnesses. Sometimes the testimony of expert witnesses  
13 means lying. Meaning, sometimes if you have a unique  
14 situation which requires someone who is by his  
15 education, by his work level is entitled to make  
16 decisions that his testimony may or may not be very  
17 important based on circumstances, in this particular  
18 case you will note that we had an expert but that expert  
19 was a chemist and all she testified to was that these  
20 items that she analyzed were the drugs that they were  
21 reported to be. That's all. Had nothing to do with  
22 whose drugs they were, where the drugs were found,  
23 anything of that nature. But the reason they are called  
24 expert witnesses is because not everybody can do that.

25 You and I probably couldn't. We could look at

1 something and say I think it's that, but from the level  
2 of making a decision of what the drugs are, we can't do  
3 that. So that's why they are called expert witness.  
4 You can believe or not believe what an expert witness  
5 says because all witnesses are treated equal depending  
6 on your view of what they have said.

7 Now, that basically kind of covers what the law is  
8 in regards to the case because I think most jurors, I  
9 don't know if it's true or not, I think most jurors make  
10 decisions based on a factual analysis of the case. But  
11 I have to remind you that your determination of the  
12 facts is not sufficient. Your understanding of the law,  
13 your understanding of what beyond a reasonable doubt is  
14 are factors that have to be considered when you make  
15 decisions.

16 The most important thing that I can tell you about  
17 this case, I don't mean for you to take this the wrong  
18 way, not you individually. It hit me yesterday  
19 afternoon when my client was asked by the State to show  
20 his arms to see whether or not he had Ty on his arms or  
21 not. We had a little break and then I came back out and  
22 he withdrew his question. And then I said, well, show  
23 us your arms because one of the questions that was being  
24 asked of my client was whether or not he had Ty on his  
25 arms or not. And the reason why it struck me as being

1 something interesting about this case, not because he  
2 did or did not have Ty on his arm, not really important  
3 to me whether or not he did or didn't. I thought  
4 nothing up my sleeve. Because a lot of times defense  
5 lawyers are, they are accused of muddying the water.  
6 They are accused of sticking a stick in a puddle of  
7 water and you can see it clear but when the defense  
8 lawyer gets through, he stirred it up so that you can't  
9 see the bottom. We hear it all the time. We get a bad  
10 rap. And I thought, well, he's a magician. He's just  
11 trying to pull a rabbit out of his hat. What I thought  
12 about was that's kind of what's been done to my client  
13 over the last two days is you see a little something  
14 over here and then we show you a little something over  
15 here and then we show you a little something over here  
16 and it really doesn't matter. Really doesn't matter.

17 Do you remember all the discussions that we had  
18 about whether or not there was an ADT or a surveillance  
19 system in the house or not. You would have thought that  
20 was a big thing. You would have thought, oh, my, gosh.  
21 Because the insinuation is that he didn't have one. But  
22 he had the surveillance system. Of course, everybody  
23 has a surveillance system because they're drug dealers.

24 Of course, I was arguing, oh, he had an ADT system.  
25 To put your mind at ease, defense exhibit number 1, you

1       will have. I meant to tell you this. When you go back  
2       in your jury room, you will have all of these exhibits,  
3       the photographs, the drugs, the reports. You get to  
4       take them all back with you so if you don't get a chance  
5       to see it real good today, you will get to see it  
6       better.

7       This right here is a key pad and that little blue  
8       circle says ADT on it. You will be able to see it  
9       better when you have it back in the jury room. I don't  
10      know why we went through all of that. Why is that  
11      important? The reason that -- I feel like - I feel like  
12      Mohammed Ali sometimes. If you are old enough to  
13      remember Mohammed Ali, it's like rope-a-dope. You just  
14      take punches and you try to come back to those punches.  
15      I was showing you the fact that he had an ADT machine to  
16      simply argue back about the surveillance system. It  
17      doesn't mean anything. Some people have monitors. You  
18      go to my office you will see a monitor there on the back  
19      of the property. It doesn't mean anything. You are  
20      given a little of this and then you're shown a little of  
21      that.

22      That's what the four videos were all about.  
23      Remember all the videos and all the to do about, well,  
24      you see him sitting down here. You see him, he's got  
25      something in his hand. Whether or not he's leaning up



1       there and you can see through his hand or not. I think  
2       the dates were March the 22nd, April the 4th, April  
3       26th, June the 4th. Those videos. Remember on one you  
4       had the brother who was on April the 4th when he was out  
5       there. That's just salad dressing. Just a bunch of  
6       stuff thrown around there. Why do I say that? Because  
7       did you see the first piece of evidence introduced to  
8       indicate that drugs were found on the informant after  
9       those events?

10       I'll move on. Part of the things I argued had to  
11       deal with whether or not you could see him being  
12       searched, not searched. That's even not important. It  
13       just wasn't introduced into evidence or wasn't shown.  
14       It was something to indicate, oh, he must be dealing  
15       drugs because of these videos. Those videos prove  
16       absolutely nothing. They're pretty. They're  
17       interesting.

18       And I have got to consider that when I was - I made  
19       up a list of things because when you get to my age your  
20       memory kind of goes particularly if you have got a cold  
21       or something like that. Now, I like to consider it,  
22       these are points I like to consider a question that  
23       should be beyond a reasonable doubt and questions of  
24       doubt that you should have and I start off with no drug  
25       analysis. Nothing to show the search before or after.

1       No arrest made after these things happened. No money is  
2       recovered. You know, all this money was documented.  
3       Was supposed to have serial numbers and stuff like that  
4       so that you could prove that something actually  
5       happened. They didn't make any arrest. They didn't  
6       seize that matched up. They didn't have -- No one  
7       introduced any drug analysis from these things.

8               What you did pick up on was allegedly my client on  
9       April the 4th sticking his head out the window  
10      supposedly saying there better not be any funny shit  
11      going on. And I use that word. Don't be offended by  
12      that. Because he's concerned about his brother.

13             Now, his brother is not on trial today. You  
14      probably picked up the fact that his brother had a drug  
15      problem, alcohol problem. I think you heard he died in  
16      July with an alcohol level of .4 something. Sad. Sad.  
17      And you're saying why would you, if you have got  
18      children in your house, would you let somebody like that  
19      live with you? Well, you know, blood is thicker than  
20      water. It doesn't mean that you agree with it. It  
21      doesn't mean that you're a co-conspirator. It doesn't  
22      mean that you're an aider or abettor. It doesn't mean  
23      that you join in with them. Because one of the charges  
24      that you will have from the Judge when he starts talking  
25      about whether or not people combined to commit a

1 criminal offense is going to be mere presence. And the  
2 Judge will instruct you that simply because you are at a  
3 location where drugs are found, it does not mean that  
4 you are guilty. We are all at a location where drugs  
5 are found. It does not mean that we are guilty of  
6 anything. Mere presence at a scene does not mean that  
7 you are guilty of violation of the law.

8 One of the second questions that I had when I was  
9 looking at this had to do with why did we put up anybody  
10 who went into the house first? I mean, it's easy enough  
11 to do. We had the SWAT team that went in there first.  
12 Because if what we are trying to do is convict my client  
13 based on where he was and where the drugs were located,  
14 it would be nice to have any of the officers, any of the  
15 officers who came in there and seized the defendant from  
16 that location and what was found in that location. The  
17 only evidence that we have as to where my client was was  
18 that he was on the couch and that came from his wife.  
19 She testified he was on the couch. He was sleeping on  
20 the couch. There was no drugs. I use the word no.  
21 There was no drugs found next to my client. No drugs.

22 One of the other remarkable items which would have  
23 seemed to have been important, if you are trying to  
24 insinuate that my client owned, possessed, touched, had  
25 dealings with any drugs, do you remember the officer

1        said that they came in with gloves on? Why do you come  
2        in with gloves on? Well, you come in with gloves on so  
3        that you don't contaminant a scene or you don't get  
4        drugs in your system either way because at the end of  
5        this case I believe that the drugs will go back to you  
6        and there will be these little handy dandy little  
7        gloves. If you want to touch them, you can touch them  
8        but you have to touch them through these gloves because  
9        it's a safety deal. But the other part is is that if  
10       you touch things, you put fingerprints on them.

11       Now, I have absolutely no idea why someone doesn't  
12       take a fingerprint off of a can where most of the drugs  
13       were found in the can. I keep thinking that if you did  
14       that, if what you are trying to do is prove that my  
15       client is guilty, then you would do that.

16       One of the other things that was sought with the  
17       search warrant was cell phones. You remember both the  
18       cell phones were found in the brother's room. At least  
19       the ones that were introduced. They weren't even  
20       introduced. Remember they seized the cell phones? The  
21       reason they seized the cell phones is because supposedly  
22       there were phone calls to set up these drug deals. They  
23       seized the cell phones so that they could get a search  
24       warrant to go through the cell phones to see who they  
25       called. Why do you not have the cell phones to prove

1       that my client was involved in some sort of drug  
2       transaction? I mean, that's simple stuff. You can look  
3       at my cell phone and you can see who I called. You can  
4       look through your own cell phone and see who you called.  
5       Why didn't they do that?

6               That's actually my fourth. I don't know if you're  
7       keeping up with it. I started with I was just going to  
8       do my hands because I didn't want to get to my toes, but  
9       that's number four.

10              Number five was that Chris was never next to the  
11       gun. It was in the bedroom but he wasn't in there.  
12       It's his wife's. See, that's what's interesting. It's  
13       his wife's gun. It's his wife's gun. He's in there  
14       sleeping on the couch. He's not next to any gun. He's  
15       not next to any drugs. That's one hand of reasonable  
16       doubt.

17              We start on the second hand and one of the most  
18       important things on the second hand, why are we not  
19       trying Chris along with his wife? Why is she not being  
20       tried? She was charged. Why wouldn't you try them both  
21       at the same time? I'll bet they don't have a good  
22       answer for that one. But she's not. You heard her  
23       testimony. She said that she knew of no drugs in that  
24       house. She talked about where Chris slept. She  
25       admitted that the gun was hers. If those drugs that

1        were next to that gun were at that location, she is just  
2        as guilty if not more guilty than my client who is not  
3        even in that room. His britches were. Well, actually  
4        his britches depending on whether or not you believe it  
5        was the bathroom or bedroom.

6                Number seven I consider to be the red herrings. We  
7        have already talked about the videos with no drug  
8        analysis. We talked about surveillance system which  
9        doesn't really mean anything. We talked about the --  
10       No, we didn't talk about it. The calendar. The  
11       infamous calendar. The drug information from 2010.  
12       It's got lots of information in here. It's got \$69.00.  
13       And I made him read those figures out on purpose. Sure  
14       didn't sound like drug analysis, did it? You're welcome  
15       to look through it. It was seized and placed into  
16       evidence like it's some big deal. You can look at the  
17       scribble scrabble.

18               Before you can consider this against my client,  
19       number 1, it has to be relative to this drug charge.  
20       Number 2, you have to make a determination that my  
21       client was writing on it. You know, the only  
22       information that we had about any type of drugs that  
23       came in and any keeping up with drugs, I don't know if  
24       you remember the picture that came in of Mr. Sims'  
25       bedside table and it showed a picture of some drugs on

1       it, State's exhibit number 18, this was a photograph of  
2       what was found in Mr. Sims' bedroom. You see underneath  
3       this cocaine, alleged cocaine because I didn't test it.  
4       That's why we've got the expert. It's got Sandy. It's  
5       got Spanky. It's got Harry. It's got these even  
6       numbers. Notice the even numbers? I don't think drug  
7       dealers sell things that have \$69.38 and stuff like  
8       that, but that's what you see. Did anyone compare that  
9       handwriting in this exhibit to whatever was found in the  
10      calendar if you think it's important?

11             The camouflaged shorts. That's a red herring, too.  
12      You show the picture of the camouflaged shorts. The  
13      only reason why you do that, the only reason why you  
14      show the camouflaged shorts is to show, because they're  
15      dirty clothes, I mean, they're sitting in there next to  
16      the bathroom, is to say, well, those are yours. I mean,  
17      you wore those on one of these videos which has no drug  
18      analysis. It's like piling on.

19             The other question, I think we are up to number 8,  
20      why did the police show two lineups of Ty Pender to the  
21      confidential informant? Remember the officer said that  
22      my client actually met him out there when he was  
23      surveilling it and he talked about burglaries that had  
24      gone on in the neighborhood? They met Chris. They knew  
25      where he lived. They knew what his name was. Chris.

1 But they talked about how much traffic went through  
2 there. What does that mean? How much traffic went  
3 through there? Are you insinuating that there was a  
4 bunch of traffic going through there. A bunch of people  
5 selling drugs going through there. That's another red  
6 herring. Well, did you stop the people? Did you ask  
7 them what they were doing? How many people went to the  
8 house? Did you get tag numbers down? It's guilt by  
9 association, isn't it? You're piling on things that  
10 mean nothing.

11 You know, one of the things you talk about, the  
12 Judge will tell you, he will talk about two types of  
13 evidence. He'll talk about direct evidence and he'll  
14 talk about circumstantial evidence. Direct evidence is  
15 evidence that you can see and designate what it means by  
16 just looking at it. Circumstantial is evidence which  
17 kind of connects to something to make sense out of how  
18 it's related.

19 I have already touched on -- I already -- I don't  
20 know if I thought it was doubly important but I gave  
21 number 9 the going in wearing gloves because I thought  
22 that was important because no fingerprint analysis was  
23 done.

24 I guess I saved the best for last. Because I'm not  
25 going to take you through the rooms. You know that



1       there were three rooms. Room 10 is the brother's room.  
2       Room 2 is the kitchen. Room 4 is the bedroom. Now,  
3       none of these rooms is the room that my client was in.  
4       And then there's different locations where the drugs are  
5       found. I don't consider that.

6             You know what I consider to be the one of the most  
7       important reasonable doubt issues? It's somebody who  
8       says that he is willing to go to any length to get off  
9       his charges. Well, you saw the confidential informant.  
10      You heard him talk. I don't know when was the last time  
11      he took drugs. You heard him basically acknowledge that  
12      he has still been using drugs. I guess you can either  
13      believe or disbelieve what he said. That's something  
14      that you have to make your decision on as to whether or  
15      not he's telling the truth or not telling the truth.

16            I'm going to sit down only because, I mean, I could  
17      talk a long time but y'all have seen a lot. Sometimes  
18      no good deed goes unpunished and that sometimes is  
19      taking care of your brother. But your decision that you  
20      make here today is one of the most important decisions  
21      for my client that you probably will make in your  
22      lifetime. It may not be as important as to whether or  
23      not you're going to get married or not married, whether  
24      or not you're going to take this job or not take this  
25      job, but I want you to base that decision on facts that

1       prove something because that's all we have in this  
2       system is the protection of you 12 jurors to make people  
3       do that before you find somebody guilty.

4       I thank you for your attention. I have nothing up  
5       my sleeve. Not even Ty is up my sleeve. Thank you.

6       THE COURT: Thank you, Mr. Williams.

7       MR. WILLIAMS: Thank you, Your Honor.

8       THE COURT: Solicitor Spivey, are you ready?

9       MR. SPIVEY: Yes, sir, Your Honor.

10       Business partnership. That's what we told you this  
11       case was about. A legal term is conspiracy or the hand  
12       of one is the hand of all. I want to address just  
13       briefly some of the things that Mr. Williams talked to  
14       you about and we agree on a lot of things he said.  
15       Disagree on some of the things he said, so I just want  
16       to just briefly state. I'm not going to go back over  
17       everything he talked about, but I want to hit some high  
18       points of what I thought in response to that.

19       We talk about reasonable doubt. He makes it sort of  
20       sounds like at first that it's just if you have some  
21       doubt about anything, then you can't find the defendant  
22       guilty. Well, that is just not the case. That's not  
23       what reasonable doubt means. It means, in fact, the  
24       doubt had to be a reasonable one. The Judge is going to  
25       charge you on this and one of the things he is going to

1 say is there are very few things in this world that we  
2 know to an absolute certainty. We know that the sky is  
3 blue and the sun is hot, but when it comes to knowing  
4 somebody's intent, we can't get inside of their mind.  
5 We can't go inside of the defendant's mind and know what  
6 he's thinking at any time.

7 So how do we know what is going on? We do it  
8 through testimony. We do it through the evidence. We  
9 look at all of the facts and make that determination.

10 In criminal cases reasonable doubt does not mean  
11 that we have to prove or disprove every possible doubt.  
12 That's not what it means. So I want to make sure we are  
13 clear on that.

14 The defense has told you that we spent a lot of time  
15 and suggested really that we wasted a lot of time  
16 talking about things that don't matter. The red  
17 herrings and things that really don't prove or disprove  
18 anything. But one of the things you're charged with  
19 determining in this case is who is telling the truth and  
20 who isn't. Do the circumstances add up? Does all this  
21 make sense?

22 We put a lot of evidence in. There's a lot of  
23 pictures. There was a lot of testimony. But we had to  
24 put all of that in because if we didn't, then you  
25 wouldn't be able to see that, hey, all the ducks are in

1 a row. All of this evidence when taken together as a  
2 whole points to the defendant selling drugs. It points  
3 to the defendant being in possession of drugs. And it  
4 points to the defendant acting in concert with his  
5 brother and Ms. Jay in conspiring to traffic drugs.  
6 That's what the evidence as a whole looks at.

7 One of the things that is extremely important in  
8 every case is the credibility of the witnesses. That's  
9 one of the things that you all have to determine because  
10 a lot of the testimony that you heard is just that.  
11 It's oral testimony. Well, you have to decide what you  
12 believe and what you don't and there is conflicting  
13 stories on what happened and who knew what and who  
14 called who what and what that person might or might not  
15 have been wearing. There's conflicting testimony on  
16 that. So you have got to decide which testimony you  
17 believe.

18 So when he says videos aren't important, well,  
19 that's just not true. They are important. Because you  
20 know why? Because there was a guy who testified. His  
21 name was Justin Flake. He was working off charges. He  
22 admits that. But he had the courage to get up there and  
23 sit on that stand and say that man over there sold me  
24 drugs. Him. Christopher Tywhun Wilson sold me drugs.  
25 He did it out of a black paint can. He had a handgun

1 right by the drugs. And guess what? We found a handgun  
2 of a similar description. A black nine millimeter  
3 High-Point handgun.

4 So why do we put this in? Why do we care that we  
5 put that in when it's not found on the defendant's  
6 person? Because you know what, we do have testimony  
7 from the informant. And the informant is not involved  
8 in the search warrant. He doesn't know what they found  
9 or didn't find. I never showed the informant that gun.  
10 He never saw it. He was not allowed to come into this  
11 courtroom to hear any of the evidence. But you know  
12 what? He says, yes, there was a black handgun. Is he  
13 making that up? No. There's the black handgun. The  
14 defendant had possession of that handgun.

15 Corroboration. The informant says -- let's just go  
16 to the first video and talk about that, that he calls  
17 him Ty. Well, you can hear in these videos, all of  
18 them, he calls the guy Ty or T-y. That's what he says.  
19 The defendant answers to it. We spent a lot of time  
20 yesterday talking about who called who what and really  
21 it's only important because of credibility. But that  
22 doesn't mean that it's not important. Yes. We spent  
23 time on it. But you know what? The credibility of  
24 these witnesses is paramount to whether or not you find  
25 the facts as to who is being credible. Who was being

1 honest when they were on the stand. Do the videos  
2 corroborate what that informant tells you? He told you  
3 that during the transaction he put the drugs down on the  
4 step. Well, you know what we saw? The defendant  
5 putting drugs down on the step. We paused it on that  
6 moment.

7 The defense attorney suggested, well, possibly that  
8 could be the railing peeking through maybe his fingers.  
9 But if you cup your hand like this (indicating) which is  
10 how it was cupped, you can't see through fingers unless  
11 you're missing one. The last time I noticed the  
12 defendant's got all his fingers. When your hand is  
13 clenched like this (indicating), you cannot see through  
14 to a railing. So that just doesn't make any sense. But  
15 on top of that the defendant took the stand. I asked  
16 him, what is in your hand? He says nothing at all. I  
17 was just going to brace myself to sit down because I sit  
18 on those steps for hours. I was putting my hand down to  
19 sit down.

20 I said okay. Let's watch the rest of the video.  
21 Just a couple seconds later. Did you actually sit down?  
22 No. He didn't. He lied. He was just making up some  
23 convenient story. Because you know what? He knew those  
24 were drugs in his hands. He knew those were the drugs  
25 he put down on the ground to sell to that informant.

1           The defense attorney talked a little bit about  
2           where were the drugs -- Or excuse me. There was no  
3           testimony that drugs were ever given from the informant  
4           to police, okay? That's just a flat out  
5           mischaracterization of what was testified to. I think  
6           what he meant was that the drugs weren't on the video.  
7           He didn't show the drugs after the video. And you know  
8           what? The informant said, no, I didn't. The video  
9           showed no drugs after the transaction. That's not in  
10          dispute. I think that's what he meant. But what the  
11          officer testified to and what the informant testified to  
12          is that when he got back, he was searched before and  
13          after and he gave the drugs to the police. That's what  
14          he told us. That's what that officer right there  
15          Investigator Hodges told us was that these drugs were  
16          retrieved from him. They searched him before. Why  
17          search him before? To make sure they don't have some  
18          drugs hidden on them. Because if you were trying to set  
19          somebody up, you could just go over there and say, hey,  
20          give me a cigarette. Give me a soda. Go over there and  
21          drink a soda, hang out for a minute and say, oh, I got  
22          to go run an errand real quick. Walk out, pull the  
23          drugs out of your secret stash of your pocket, hand them  
24          to the police and say, hey, I bought drugs from him. So  
25          we have safe guards. That's why we search. That's why

1 we wear videos.

2 The defense attorney said there was no arrest made  
3 for the defendant. That's just not true. The defendant  
4 was arrested. If you arrested the defendant -- Let me  
5 just put it this way: If they were to do the purchases  
6 of, from the defendant and then immediately go and  
7 arrest him, how many drugs do you think you would find  
8 in his house a couple days later? None. Because he  
9 would sanitize it. So what do they do? They work the  
10 case. They do an investigation. It's not a one day  
11 distribution and then you just quit. It's called being  
12 -- They're doing their due diligence. They are not just  
13 quitting after one deal. They did four of them. They  
14 got the defendant selling drugs. They got the  
15 defendant's brother selling drugs on his behalf. They  
16 set up the search warrant. They go in and they search.  
17 And you know what? They found the stash that he had  
18 been dealing out of. It's logical. It makes sense.

19 Why do we bring up the fact that there are  
20 distributions at all? We are not just piling on. We  
21 are talking about intent. What does intent mean? How  
22 do we prove what that defendant is thinking at any  
23 moment? I'll tell you how we prove it. We prove that  
24 he was acting in conspiracy with his brother by showing  
25 you that video where, guess what, the informant went to



1 go buy drugs from the defendant, but the defendant was  
2 unavailable at first. So he buys from the brother and  
3 you hear the brother talking. Y'all ar gonna have those  
4 videos. You can go watch them.

5 The brother talks about the fact that he's got some  
6 boy or he's got some girl or he doesn't have this, he  
7 doesn't have that. He's not talking about himself.  
8 He's talking about his brother. He's talking about that  
9 defendant over there. What his drugs were and how he  
10 was going to sell his brother's drugs for him because  
11 the defendant wasn't available. Then after the fact  
12 he's leaving, the defendant, he throws up the window and  
13 says, again, please don't be offended, we're not dealing  
14 with any funny shit here. You better not do any funny  
15 shit. Well, that's not, hey, leave my brother alone.  
16 That's don't you turn me into the police. You better  
17 not be a snitch. That's what that statement is.

18 We discussed why we didn't put Ms. Jay up. Why  
19 isn't she on trial? The defense attorney said she is  
20 just as guilty as his client if not more guilty because  
21 that was her bedroom that the drugs were found in.  
22 Well, you know what? It's the defendant's bedroom, too.  
23 And why didn't we put her up? Because the defendant is  
24 more culpable. He's the one we have video of selling  
25 the drugs during the transaction. That guy. You didn't

1       see Ms. Jay selling drugs. You saw him selling drugs.  
2       So why isn't she on trial right now? Why are her  
3       charges still pending at the moment? Because he's the  
4       most culpable. That's why.

5             Last point I'll make about what the defense attorney  
6       said. He said why are we talking about camo shorts? He  
7       admits it's him in that video. He admits those are his  
8       camo shorts. Oh, we're just tacking on. We're just  
9       doing this or that. Because you know what? What's  
10      important about those shorts is where they were found.  
11      They might not have been on the defendant when he was  
12      arrested, when they went in and did the search warrant.  
13      They might not have been directly beside the defendant.  
14      But you know what? He possessed those shorts and they  
15      were in his bedroom. Why is that important? Think  
16      about it. The shorts are his. He possessed them. But  
17      they are not in his actual possession. That's a great  
18      analogy for what it means to be in constructive  
19      possession.

20            Constructive possession essentially means that you  
21      have dominion or control over an item. Now, that's just  
22      a big old fancy way of saying you could possess it, you  
23      could have actual possession of it if you want, but it's  
24      not necessarily on your body. If you have got a shed in  
25      your backyard and you have got a hammer in your shed,

1 well, you own the hammer. You possess the hammer. It  
2 doesn't have to be in your hand to possess something.

3 There's a difference between constructive  
4 possession and mere presence. I agree with the defense  
5 attorney on that. None of us, except for the defendant  
6 perhaps, are in constructive possession of any of this  
7 stuff. We are merely present. But you know what? This  
8 ain't our courtroom. I don't live here. This isn't my  
9 house. This isn't my kitchen where I cook fried chicken  
10 twice a week, sometimes three. It's not ours. It's the  
11 defendant's.

12 So constructive possession and mere presence are  
13 different. They are very different. You need to make  
14 sure you understand that. You need to make sure you  
15 understand why we put all that evidence in there.

16 Two of the crimes he's charged with are trafficking  
17 in cocaine and trafficking in crack cocaine. The crack  
18 cocaine charge because of how much the drugs weighed is  
19 indicted for more than 28 grams but less than a hundred  
20 grams. So there are different levels so to speak.  
21 There's a less than 10 grams - or excuse me. A more  
22 than 10 grams, but less than 28 grams and then there's  
23 28 grams but less than a hundred grams. So there are  
24 bands so to speak. The crack cocaine falls into the  
25 higher band because it weighed more than 28 grams, okay?

1           Part of the trafficking statute says that if you  
2           aid, abet, provide financial assistance or conspire with  
3           someone who possesses or is selling or is cultivating,  
4           if you aid, abet, provide financial assistance to. He  
5           knew his brother was selling drugs. He knew his brother  
6           had a drug problem. Guess who's living in his house for  
7           free? Guess who's being provided financial assistance?  
8           Ms. Jay and Mr. Wilson, the defendant, would have you  
9           believe that, well, they just didn't know what was going  
10          on. The defendant could have been selling drugs and,  
11          you know, they just didn't know he was selling them.  
12          That's just not believable. They're out in plain view.  
13          The kitchen scales are on the counter. There's a  
14          razorblade on the kitchen counter. That's not a normal  
15          house. That's a little bit out of the ordinary. You  
16          think you saw some digital scales on the kitchen  
17          counter. Again, what is that? It should at least raise  
18          a red flag in your mind what's going on.

19          Box cutters. Razor blades. Why are those in the  
20          kitchen? That's not just a paint can. That's a paint  
21          can with a label stripped off. Why are you storing a  
22          paint can in the kitchen next to the flour and some  
23          other spices and stuff? This is not normal behavior.  
24          This is not an ordinary house. This is a drug den where  
25          drugs are stored and sold on a daily basis by the

1           defendant and his brother.

2           Does the defendant have any kids? Yes. He's got a  
3           bunch of kids. Does the defendant's brother have any  
4           kids? No. You know, it's a Gerber baby can, but it's  
5           not irrelevant. We can't just ignore the fact that the  
6           drugs are stored in a baby food can. Are we supposed to  
7           just pretend like it doesn't exist? That by itself  
8           doesn't mean much. I think we can all agree on that. I  
9           think the defense attorney would say it doesn't mean  
10          anything. It doesn't mean much. But you know what?  
11          When you start adding all these facts up, guess who it  
12          points to? The defendant.

13          I want to talk just briefly and I know we have taxed  
14          you this week and some of this stuff has been boring. I  
15          was bored going through it so I know you were. I want  
16          to talk just briefly about what was found where. We put  
17          the law enforcement witnesses up primarily to talk about  
18          what was found and where. But it got confusing. It was  
19          real choppy with objections and interruptions and all  
20          that kind of stuff and it was hard to follow so I put  
21          together a chart to help us and what was found where,  
22          okay? This is just the drugs. The other evidence you  
23          will see will be, you will be able to tell because they  
24          got on the bags what was found where. They used room  
25          numbers and you're not sure which room is which and all

1           that stuff so I want to be sure we all understand.

2           Room 2 is the kitchen. What is found in the kitchen  
3 drug wise? And all of this is found in the black paint  
4 can or the big bag of marijuana that's 87 grams of  
5 marijuana, that was sitting right by the black paint  
6 can. The scales and stuff, they were out on the  
7 counter. The calendar, I believe, was out on the  
8 counter. The drugs were found in that paint can and  
9 beside it in that cabinet on top of the stove. 15  
10 alprazolam. A bag with 5.1 grams of cocaine. A bag  
11 with 7 grams of cocaine. A bag with 4 grams of cocaine.  
12 A bag with almost 7 grams of cocaine. More alprazolam  
13 and some marijuana.

14           So total it up. Because all that, I'm not good at  
15 math, I can't just add that stuff up in my head. I had  
16 to actually get a calculator out and put all those  
17 numbers in and this is what we get. In the kitchen 5.14  
18 grams of crack cocaine. There are 87.87 grams of  
19 marijuana and 18.09 grams of cocaine. So we add up all  
20 of our figures and that's what's found in the kitchen,  
21 okay? So we have got more than 10 grams of cocaine  
22 right there. Remember he's charged with trafficking in  
23 cocaine more than 10 grams. There's your cocaine right  
24 there. That hits the weight. In the kitchen where he's  
25 got dominion and control, he's the one cooking fried

1 chicken in there, that bucket is found right by the  
2 flour which he says he uses to cook the fried chicken.

3 It's his house. He's buying it. It's not like  
4 this is just I'm just visiting a friend. This is his  
5 house, okay? All right. There's some crack cocaine in  
6 there as well. That will be added to the other totals  
7 in just a second. I want to make sure we go. All  
8 right. The deceased's bedroom, the brother. What was  
9 found in there? These are your item numbers from the  
10 drug analysis which is entered into evidence. This is  
11 room 10, 6.07 grams of crack cocaine. 5.2 grams of  
12 crack cocaine. 1.6 grams of crack cocaine, and a gram  
13 of marijuana. A little, small bag of marijuana. I'll  
14 point the difference between that in just a minute  
15 because there's a pretty big difference between one and  
16 88 grams.

17 All toll 12.9 grams of crack cocaine that's found in  
18 the brother's room and one gram of marijuana. Mr.  
19 Wilson's bedroom where his shorts were found, if you  
20 want to believe him, he doesn't sleep there, but that  
21 seems convenient that you just don't sleep in your own  
22 bedroom. You just find the couch more comfortable.  
23 It's possible. I'm not saying it's not possible, but I  
24 don't think that's very likely unless he's just in the  
25 dog house all the time because he makes his wife mad.

1 She might be mad at him because he's selling drugs out  
2 of the house so he exposes his children to drug sales.  
3 I imagine if I sold drugs out of my house, my wife would  
4 be pretty upset with me.

5 Bedroom 4, Wilson's bedroom, sitting right out in  
6 the open right by the alarm clock that at first nobody  
7 can remember that alarm clock. Ms. Jay, I don't really  
8 remember that alarm clock. I don't know where it is.  
9 It could be on any piece of furniture in my house. Then  
10 we show her the picture. It's her alarm clock in her  
11 bedroom. It is the alarm clock. It's sitting right by  
12 the door to go to her bathroom. It just doesn't make  
13 any sense that you would live in a house and not know  
14 where your alarm clock was. It's on the piece of  
15 furniture right by the 11.7 grams of crack cocaine.  
16 There's nothing hiding it. There's the picture. They  
17 didn't move anything before they took the picture.  
18 That's just how they found it, right out in the open  
19 right within two feet of the gun.

20 So is this gun connected to the crack cocaine?  
21 Well, the informant says it is. The physical evidence  
22 says it is. Neither of those are on the defendant's  
23 person when it's found. That's not what the law  
24 requires. It just requires that he have the dominion or  
25 control or the ability to exercise dominion or control



1 over the items. They're his.

2 The totals. There's what's found in each room.  
3 29.74 grams of crack. 18.09 grams of cocaine. 87.87  
4 grams of marijuana. How do we get 28 to a hundred?  
5 Because he's acting with his brother to sell drugs and  
6 the two of them have 29.74 grams of crack cocaine. The  
7 two of them or three of them, if you count Ms. Jay, have  
8 18.09 grams of cocaine and the two of them have the  
9 marijuana. You can't just say it's one or the other.  
10 Because you know what? He's self-employed as he tells  
11 you. He's self employed. What does he do? He sells  
12 drugs.

13 I found it interesting that they tell you that, they  
14 want you to believe that he's got a landscaping  
15 business. They didn't introduce any records of his  
16 landscaping business. We don't have any pictures of  
17 equipment. She bought him some equipment so he could do  
18 some landscaping, okay? Now, back in 2013, Ms. Jay says  
19 he's paying the bills or he's at least helping pay the  
20 bills. That he provided assistance. They were paying  
21 the bills. She says they live in a trailer, but you can  
22 look at the pictures. It's clean. It's nice. There's  
23 nothing wrong with it. No holes in the walls. No bugs.  
24 They've got a pretty nice house.

25 So she says he's helping pay the bills. What does

1       that have to do with anything? Well, now guess who pays  
2       the bills? Ms. Jay. Why does Ms. Jay pay the bills now  
3       but she didn't have to pay the bills then? What's  
4       changed between 2013 and now? Well, the defendant is  
5       charged with drug crimes. He got caught. Do you think  
6       he's going to keep selling drugs to help pay those  
7       bills? He got busted. He can't pay the bills now. He  
8       doesn't have any money.

9       The hand of one is the hand of all. One of the most  
10      important concepts of this trial. The Judge is going to  
11      charge you on that. When he says the words hand of one,  
12      the rest of the charge isn't important, when he says the  
13      hand of one hand of all, make sure you pay close  
14      attention because it is important. It can be a tricky  
15      concept. It may not make sense to you just on the first  
16      glance but in result it's pretty easy, okay?

17      What does the hand of one hand of all mean? A great  
18      example and I think this is the example the Judge is  
19      gonna use. Two people get together, okay? They get  
20      together and they say I'm going to go rob a store clerk  
21      and I don't have a gun. My co-defendant has a gun. We  
22      drive over there together. We got masks. We get in  
23      there. My co-defendant pulls out that gun, boom, shoots  
24      the store clerk because he gets a little jittery. Kills  
25      him dead. Who's guilty of killing that store clerk?

1 Well, the obvious answer is the man with the gun, right?  
2 He's the one who had the gun. He's the one who pulled  
3 the trigger. Boom. Shot him dead. So that's the  
4 obvious answer. But our law says no. They are both  
5 guilty. Why? Because the hand of one is the hand of  
6 all.

7 A person who joins with another to commit an  
8 unlawful act is criminally responsible for everything  
9 done by the other person while they are in that  
10 agreement. Everything my co-defendant does I'm guilty  
11 of. Everything Mr. Wilson did, Ms. Jay is guilty of and  
12 Mr. Sims would have been guilty of.

13 On the other hand, everything that Ms. Jay did he's  
14 guilty of. They're living there together. They're  
15 husband and wife. They're a team. A partnership. He  
16 let's his brother move in. His brother sells drugs on  
17 his behalf. Just because the brother sells, it doesn't  
18 mean that he's not guilty of it. They are acting  
19 together. This is a conspiracy. This is about a case  
20 of a man who was self-employed. He's a self-employed  
21 drug dealer.

22 Ladies and gentlemen, I ask that you carefully  
23 deliberate. This is very important. But I ask that at  
24 the end of your deliberations that you find the  
25 defendant guilty of all counts. Thank you for your

1 time.

2 THE COURT: Thank you, Solicitor. Madam Forelady,  
3 ladies and gentlemen of the jury, I think we need to  
4 take a very short break before we go into the Court's  
5 charge. You have been hearing argument for over an hour  
6 now so let's take about a ten minute break and I again  
7 remind you don't begin any deliberations or any  
8 discussions concerning this case. We'll get you back  
9 out shortly.

10 (Whereupon, the jury entered the jury room at 11:35  
11 a.m.)

12 (Short break.)

13 BAILIFF: All rise.

14 THE COURT: Have a seat. Mr. Knight, bring the jury  
15 in.

16 BAILIFF: Yes, sir, Your Honor.

17 (Whereupon, the jury entered the courtroom at 11:55  
18 a.m.)

19 THE COURT: Let the record reflect the jury is back  
20 in. Madam Forelady, ladies and gentlemen of the jury, I  
21 will now charge you the law applicable to this case.  
22 You must consider the charge as a whole and not focus on  
23 some portion to the exclusion of other portions.

24 The indictments charge the defendant with four  
25 criminal offenses. One, trafficking in crack cocaine

1 between 28 and 100 grams. Secondly, trafficking in  
2 cocaine, referred to as powder cocaine, between 10 and  
3 28 grams. Thirdly, possession with intent to distribute  
4 marijuana. And fourthly, possession of a firearm during  
5 the commission of a violent crime.

6 I remind you that the fact that the defendant was  
7 arrested, charged and indicted in this case is not  
8 evidence in this case and cannot be considered by you as  
9 evidence of guilt in this case. Nor does it create any  
10 presumption of inference of guilt. The indictments are  
11 simply the formal written instruments which contain the  
12 charges made against the defendant. They are the formal  
13 documents by which this case is brought into this court.

14 The indictments in this case allege several  
15 different offenses against the defendant. The charges  
16 are indictment 2014-GS-32-155, trafficking in crack  
17 cocaine between 28 and 100 grams. The second  
18 indictment, 2014-GS-32-156, trafficking in cocaine  
19 between 10 and 28 grams. Thirdly, indictment  
20 2014-GS-32-157, possession with intent to distribute  
21 marijuana. And the fourth indictment, 2014-GS-32-158,  
22 possession of a firearm during the commission of a  
23 violent crime.

24 Each indictment charges a separate and distinct  
25 offense. You must decide each indictment separately on

1       the evidence and the law applicable to it uninfluenced  
2       by your decision as to any other indictments. The  
3       defendant may be convicted or acquitted on any or all of  
4       the offenses charged. You will be asked to write a  
5       separate verdict of guilty or not guilty for each  
6       indictment. I'll explain that at the conclusion of my  
7       charge how that is done.

8               The defendant has pled not guilty to these  
9       indictments and that plea puts the burden on the State  
10      to prove the defendant guilty. A person charged with  
11      committing a criminal offense in South Carolina is never  
12      required to prove themselves innocent. I charge you  
13      that it is an important rule of the law that a defendant  
14      in a criminal trial no matter what the seriousness of  
15      the charge may be will always be presumed to be innocent  
16      of the crime for which the indictment was issued unless  
17      guilt has been proven by evidence satisfying you of that  
18      guilt beyond a reasonable doubt.

19             This presumption of innocence does not end when you  
20      begin your deliberations but it accompanies the  
21      defendant throughout this entire trial until you reach a  
22      verdict of guilt based on the evidence satisfying you of  
23      that guilt beyond a reasonable doubt. This presumption  
24      of innocence is like a robe of righteousness placed  
25      about the shoulders of the defendant which remains with

1 the defendant until it has been stripped from the  
2 defendant by evidence satisfying you of the defendant's  
3 guilt beyond a reasonable doubt.

4 Now, this presumption of innocence is not mere legal  
5 theory. It's not just a legal phrase that we use. It  
6 is a substantial right to which every defendant is  
7 entitled unless you the jury are satisfied from the  
8 evidence of the defendant's guilt beyond a reasonable  
9 doubt. The State has this burden of proving the  
10 defendant guilty beyond a reasonable doubt as to each of  
11 the four charges.

12 Now, some of you may have in the past served as  
13 jurors in civil cases where you were told that it is  
14 only necessary to prove that a fact is more likely true  
15 than not true such as by the greater weight or the  
16 preponderance of the evidence. However, in criminal  
17 cases the State's proof must be more powerful than that.  
18 It must be beyond a reasonable doubt. Proof beyond a  
19 reasonable doubt is proof that leaves you firmly  
20 convinced of the defendant's guilt.

21 Now, there are very few things in this world that we  
22 know with absolute certainty and in criminal cases the  
23 law does not require proof that overcomes every possible  
24 doubt. If, based on your consideration of the evidence,  
25 you are firmly convinced that the defendant is guilty of

1 the crimes charged, you must find the defendant guilty.

2 However, if on the other hand you think there is a  
3 real possibility that the defendant is not guilty as to  
4 each of the crimes charged, you must give the defendant  
5 the benefit of the doubt and find him not guilty.

6 Now, I remind you once again that during this trial  
7 you and I have had certain duties to perform. As the  
8 trial Judge it's been my responsibility to preside over  
9 this trial and I have also had the duty to rule on the  
10 admissibility of the evidence offered during this trial.  
11 You are to consider only the competent evidence before  
12 you. If there was any testimony ordered stricken from  
13 the record in this case during this trial, you must  
14 disregard that testimony. You are to consider only the  
15 testimony which has been presented from the witness  
16 stand and in exhibits which have been made a part of the  
17 record in this case and any stipulations of counsel if  
18 there were any.

19 I also have the additional duty of charging you the  
20 law applicable to this case which I'm doing now. As the  
21 presiding Judge I am the sole Judge of the law of this  
22 case. As I told you at the outset, it is your duty as  
23 jurors to accept and apply the law as I now state it to  
24 you. If you already have any idea as to what the law is  
25 or what the law ought to be and it does not agree with



1        what I now tell you what the law is, you must abandon  
2        your idea because you are sworn to accept the law and  
3        apply the law exactly as I state it to you.

4            In every case tried in this court before a jury the  
5        jury, as I told you at the outset also, becomes the sole  
6        and exclusive judge of the facts in a case. A trial  
7        judge cannot intimate, state, comment on or make any  
8        statement to a trial jury about the facts in a case.  
9        Since you the jury are the sole judge of the facts in  
10       this case you are not to infer from what I have said  
11       during the progress of this trial in ruling upon the  
12       admissibility of evidence or otherwise or anything that  
13       I now say during the course of this instruction to you  
14       that I have any opinion about the facts in this case. I  
15       do not have an opinion about the facts in this case.  
16       The law does not allow me to have an opinion about the  
17       facts in this case. This is a matter solely for you the  
18       jury to determine. As jurors it is your duty to  
19       determine the effect, value, weight and truth of the  
20       evidence presented during this trial.

21            Now, I think one of the lawyers, maybe both lawyers  
22        have stated this to you, that there are two types of  
23        evidence which are generally presented during the trial,  
24        direct evidence and circumstantial evidence.

25            Direct evidence directly proves the existence of a

1 fact and does not require deduction. Circumstantial  
2 evidence is proof of a chain of facts and circumstances  
3 indicating the existence of a fact. Crimes may be  
4 proven by circumstantial evidence. The law makes no  
5 distinction between the weight or value to be given to  
6 either direct or circumstantial evidence. However, to  
7 the extent that the State relies on circumstantial  
8 evidence all of the circumstances must be consistent  
9 with each other and when taken together point  
10 conclusively to the guilt of the accused beyond a  
11 reasonable doubt. If these circumstances merely portray  
12 the defendant's behavior as suspicious, the proof has  
13 failed.

14 The State again has the burden of proving the  
15 defendant guilty beyond a reasonable doubt. This burden  
16 rests with the State regardless of whether the State  
17 relies on direct evidence, circumstantial evidence or  
18 some combination of the two.

19 Necessarily you must determine the credibility of  
20 witnesses who have testified in this case. Credibility  
21 simply means believability. It becomes your duty as  
22 jurors to analyze and to evaluate the evidence and  
23 determine which evidence convinces you of its truth. In  
24 determining the believability of witnesses who have  
25 testified in this case you may believe one witness over

1 several witnesses or several witnesses over one witness.  
2 You may believe a part of the testimony of a witness and  
3 reject the remaining part of the testimony of that same  
4 witness. You may believe the testimony of a witness in  
5 its entirety or reject the testimony of a witness in its  
6 entirety. You may consider whether any witness has  
7 exhibited to you any interest, bias, prejudice or other  
8 motive in this case. You may also consider the  
9 appearance and manner of a witness while on the witness  
10 stand.

11 Now, as I explained to you during this trial the  
12 rules of evidence ordinarily do not permit witnesses to  
13 testify to opinions or conclusions. An exception to  
14 this rule exists for a witness we call expert witnesses.  
15 A witness who by education and experience has become an  
16 expert in some art, science, profession or calling may  
17 state an opinion as to relevant and material matter in  
18 which the witness claims to be an expert. They may also  
19 state the reasons for that opinion. You should consider  
20 any expert opinion received in evidence in this case and  
21 like any other evidence give it the weight you think it  
22 deserves. If you decide that the opinion of an expert  
23 witness is not based on sufficient education and  
24 experience or if you conclude that the reasons given in  
25 support of the opinion are not sound or that the opinion

1 is outweighed by other evidence, you may disregard the  
2 opinion entirely. An expert witness' testimony is to be  
3 given no greater weight than that of other witnesses  
4 simply because the witness is an expert. Further, you  
5 are not required to accept an expert's opinion even  
6 though it is not contradicted.

7 A person who has a past criminal record is competent  
8 to testify during a trial. A past record does not  
9 affect the ability of that witness to testify. The past  
10 record may only be considered by you, if at all, in  
11 determining the witness' believability. Remember, you  
12 are the sole judges of the facts in this case and of the  
13 believability of any and all of the witnesses.

14 Madam Forelady, ladies and gentlemen of the jury,  
15 you heard evidence that the defendant had a previous  
16 conviction of a crime other than the ones for which he  
17 is now on trial for. This evidence may be considered by  
18 you if you conclude that it is true only in deciding  
19 whether the defendant's testimony is believable and for  
20 no other purpose. You must not consider the defendant's  
21 prior record as any evidence of the defendant's guilt of  
22 the charges we are trying this week.

23 Now, an issue in this case is the identification of  
24 the defendant as the person who committed the crimes  
25 charged. The State has the burden of proving identity

1       beyond a reasonable doubt. You must be satisfied beyond  
2       a reasonable doubt of the accuracy of the identification  
3       of the defendant before you may convict the defendant.  
4       Identification testimony is an expression of belief or  
5       impression by a witness. You must determine the  
6       accuracy of the identification of the defendant. You  
7       must consider the believability of each identification  
8       witness in the same way as any other witness. You may  
9       consider whether the witness had an adequate opportunity  
10      to observe the offender at the time of the offense.  
11      This will be affected by things like how long or short a  
12      time was available, how far or close the witness was,  
13      the lighting conditions, whether the witness had the  
14      chance to see or know the person in the past.

15             Once again I instruct you the burden of proof on the  
16      State extends to every element of the crimes charged in  
17      this and specifically includes the burden of proving  
18      beyond a reasonable doubt of the identity of the  
19      defendant as the person who committed the crime. If  
20      after examining the testimony you have a reasonable  
21      doubt as to the accuracy of the identification, you must  
22      find the defendant not guilty.

23             In order to establish criminal liability criminal  
24      intent is required. For example, the mental state  
25      required to be proven by the State for a particular

1 crime might be purpose, intent, knowledge, recklessness  
2 or criminal negligence.

3 Criminal intent must be proven by the State beyond a  
4 reasonable doubt. Criminal intent is always a matter  
5 that must be determined by the jury from the  
6 circumstances surrounding the situation.

7 Now, there is no way to prove intent to a  
8 mathematical certainty. There's no way medical science  
9 can dissect a person's brain and determine what the  
10 person had in mind so the law says that criminal intent  
11 may be inferred from the circumstances shown to have  
12 existed. This is how you make a determination of  
13 whether or not the element requiring intent was present.  
14 It is not necessary to establish intent by direct and  
15 positive evidence but intent may be established by  
16 inference the same way as any other fact, by taking into  
17 consideration the acts of the parties and all of the  
18 facts and circumstances of the case.

19 Criminal intent is a mental state. A conscience  
20 wrong doing. It is up to you to determine what the  
21 defendant intended to do based on the circumstances  
22 shown to have existed. Criminal intent can arise from  
23 action or a failure to act. It may arise from  
24 negligence, recklessness or an indifference to duty or  
25 to consequences that is considered by the law to be the

1       equivalent of criminal intent.

2       Mere presence at the scene is not sufficient to  
3       prove someone guilty of a crime. A defendant present  
4       where a crime is being committed or mere association  
5       with a person who commits a crime does not make a  
6       defendant an accomplice or an aider and abettor of the  
7       person committing the crime. The burden is on the State  
8       to prove every element of the crime charged. If you  
9       find after reviewing all of the evidence that the State  
10      has proven that the defendant was only present at the  
11      scene of the crime and that they have not proved beyond  
12      a reasonable doubt any other participation in the crime,  
13      then you must find the defendant not guilty. The law is  
14      that proof of at the scene of the crime is not  
15      sufficient to find someone guilty.

16      Now, as I previously told you, the defendant is  
17      charged with several offenses. I'm going to go through  
18      each one of these offenses. First, the defendant is  
19      charged with trafficking in powder cocaine and crack  
20      cocaine. The State must prove beyond a reasonable doubt  
21      that the defendant knowingly sold, manufactured,  
22      cultivated, delivered, purchased, brought into this  
23      state, provided financial assistance or otherwise aided,  
24      abetted, attempted or conspired to sell, manufacture,  
25      cultivate, deliver, purchase or bring into this state

1       and was knowingly in actual or constructive possession  
2       and knowingly attempted to become in actual or  
3       constructive possession of the powder cocaine and the  
4       crack cocaine.

5       Now, related to the powder cocaine, the State must  
6       prove beyond a reasonable doubt that the amount of the  
7       powder cocaine or any mixture containing cocaine was 10  
8       grams or more but less than 28 grams.

9       Now, related to the crack cocaine the State must  
10      prove beyond a reasonable doubt that the amount of crack  
11      cocaine was 28 grams or more but less than 100 grams.  
12      With respect further to the crack cocaine charge, if you  
13      determine that the State has not proven trafficking in  
14      crack cocaine between the 28 and 100 grams beyond a  
15      reasonable doubt, you then can consider whether the  
16      State has proven beyond a reasonable doubt that the  
17      defendant is guilty of trafficking in crack cocaine  
18      between 10 and 28 grams. The State must prove that  
19      amount of crack cocaine was 10 grams or more but less  
20      than 28 grams.

21      With respect to possession, to prove possession the  
22      State must prove beyond a reasonable doubt that the  
23      defendant had both the power and the intent to control  
24      the disposition or use of the powder cocaine and/or the  
25      crack cocaine.



1           Possession may be either actual possession or  
2           constructive possession. Actual possession means that  
3           the powder cocaine and/or the crack cocaine was in  
4           actual physical custody of the defendant. Constructive  
5           possession, however, means that the defendant had the  
6           dominion and control or the right to exercise dominion  
7           or control over either the powder cocaine and/or the  
8           crack cocaine itself or the property on which the powder  
9           cocaine and/or the crack cocaine was found. Mere  
10          presence at the scene where the drugs were found is not  
11          enough to prove possession.

12          The defendant's knowledge and possession may be  
13          inferred when a substance is found on the property under  
14          the defendant's control. However, this inference is  
15          simply an evidentiary fact to be taken into  
16          consideration by you along with the other evidence in  
17          the case and to be given the weight you decide it should  
18          have.

19          Furthermore, two or more persons may have joint  
20          possession of a drug. A person who is present at the  
21          scene of a crime and intentionally or through a common  
22          plan aided, abetted or assisted in the commission of  
23          that crime through some overt act is guilty as an  
24          accomplice. To be liable as an accomplice the defendant  
25          must have knowledge of the principal's criminal conduct.

1        Mere presence at the scene, as I stated earlier, of the  
2        crime is not sufficient to establish guilt as an  
3        accomplice. Intentionally means willfully intending the  
4        result which actually occurs, not accidentally, not  
5        involuntarily.

6        Now, the third offense that the defendant is charged  
7        with is possession with intent to distribute marijuana.  
8        The defendant is charged with possession with intent to  
9        distribute marijuana and the State must prove beyond a  
10       reasonable doubt that the defendant possessed marijuana  
11       with the intent to distribute it. To prove possession  
12       the State must prove beyond a reasonable doubt that the  
13       defendant had both the power and the intent to control  
14       the disposition or use of the marijuana. Possession  
15       may be either actual or constructive. Again, actual  
16       possession means that the marijuana was in the actual  
17       physical custody of the defendant.

18       Constructive possession means that the defendant  
19       had dominion and control or the right to exercise  
20       dominion or control over either the marijuana itself or  
21       the property on which the marijuana was found. And  
22       again, mere presence at the scene where the drugs were  
23       found is not enough to prove possession. The  
24       defendant's knowledge and possession may be inferred  
25       when a substance is found on the property under the

1 defendant's control. However, this inference is simply  
2 an evidentiary fact to be taken into consideration by  
3 you along with the other evidence in the case and to be  
4 given the weight you decide it should have.

5 Once again, two or more persons may have joint  
6 possession of a drug. The State must also prove beyond  
7 a reasonable doubt that the defendant intended to  
8 distribute the marijuana. Distribute means to deliver  
9 other than by administering or dispensing a drug.

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

22 Possession of more than 28 grams or one ounce of  
23 marijuana creates an inference that the defendant  
24 possessed the marijuana with intent to distribute it.  
25 This inference does not relieve the State from proving

1       beyond a reasonable doubt that the defendant had the  
2       intent to distribute. It is simply an evidentiary fact  
3       to be taken into consideration by you along with the  
4       other evidence in this case and to be given the weight  
5       you decide it should have.

6       Now, with respect to the possession of marijuana  
7       with intent to distribute, if you find that the State  
8       has failed to prove beyond a reasonable doubt that the  
9       defendant is guilty of possession with intent to  
10      distribute the marijuana, you may consider whether the  
11      State has proven beyond a reasonable doubt that the  
12      defendant is guilty of possession of marijuana more than  
13      one ounce. Possession of marijuana more than one ounce  
14      does not require an intent to distribute the marijuana.

15      The State must prove beyond a reasonable doubt that  
16      the defendant knowingly or intentionally possessed more  
17      than one ounce of marijuana. Knowingly means with  
18      knowledge consciously, not accidentally. Again,  
19      intentionally means willfully intending the result which  
20      actually occurs, not accidentally or involuntarily.  
21      Intent may be shown by acts and conduct of the defendant  
22      and other circumstances from which you may naturally and  
23      reasonably infer intent.

24      Lastly the defendant is charged with possession of a  
25      weapon during the commission of or attempt to commit a

1 violent crime. The State must prove beyond a reasonable  
2 doubt that the defendant was in possession of a firearm  
3 during the commission of a violent crime. A firearm  
4 means any machine gun, automatic rifle, revolver, pistol  
5 or any weapon which is designed to or may be readily  
6 converted to expel a projectile. In this case the State  
7 has alleged a nine millimeter pistol. In order to find  
8 the defendant guilty of possession of a weapon during  
9 the commission of a violent crime you must first find  
10 the defendant guilty of either committing a violent  
11 crime or attempting to commit a violent crime.  
12 Trafficking in cocaine and trafficking in crack cocaine  
13 are considered violent crimes. The State must prove  
14 beyond a reasonable doubt that the weapon further  
15 advanced or helped in the commission of the crime.

16 If a crime is committed by two or more people who  
17 are acting together in committing a crime the act of one  
18 is the act of all. A person who joins with another to  
19 commit an unlawful act is criminally responsible for  
20 everything done by the other person which happens as a  
21 probable or natural consequence of the acts done in  
22 carrying out the common plan and purpose. For example,  
23 two people can be guilty of killing another person when  
24 only one of the two had a gun, there was only one bullet  
25 and only one of the two fired the shot that caused the

1 death. If two or more people are together acting  
2 together assisting each other in committing the offense,  
3 the act of one is the act of all or as it is sometimes  
4 said, the hand of one is the hand of all.

5 The prior knowledge that a crime is going to be  
6 committed without more is not sufficient to make a  
7 person guilty of that crime. Mere knowledge that  
8 another person is going to commit a crime even if the  
9 defendant is present when the crime is committed is not  
10 sufficient to convict the defendant as a principal.  
11 Guilt as a principal is shown by actual or constructive  
12 presence at the scene as a result of a prior  
13 arrangement. Therefore, finding of a prior arranged  
14 plan or common scheme is necessary for a finding of  
15 guilt as a principal. The State must prove beyond a  
16 reasonable doubt by competent evidence the theory of  
17 hand of one is the hand of all.

18 A principal in a crime is one who either actually  
19 commits the crime or is present aiding, abetting or  
20 assisting in committing the crime. When a person  
21 doesn't act in the presence of and with the assistance  
22 of another the act is done by both. Where two or more  
23 acting with a common plan or intent are present at the  
24 commission of a crime it does not matter who actually  
25 commits the crime. All are guilty. The hand of one is

1 the hand of all. Presence at the commission of a crime  
2 means to be sufficiently near to aid and abet and assist  
3 in the commission of the crime. However, mere presence  
4 at the scene of the crime is not sufficient to convict  
5 one as a principal on the theory of aiding and abetting.

6 Intent is also a necessary element, for there must  
7 have been a common design or intent to commit the crime  
8 and the crime must have been committed pursuant thereto  
9 with the person aiding and abetting by some overt act.  
10 Intent means intending the result which actually occurs,  
11 not accidentally or involuntarily. Intent may be shown by  
12 acts and conduct of the defendant and other  
13 circumstances from which you may naturally and  
14 reasonably infer intent. The State must prove these  
15 elements beyond a reasonable doubt.

16 Madam forelady, ladies and gentlemen of the jury,  
17 your verdict as to each charge must be unanimous among  
18 the 12 of you. I'm going to come down to the front.  
19 I'm going to go over this verdict form and hopefully  
20 this will provide some more clarity on how you need to  
21 respond after you have deliberated this case. It is a  
22 three page verdict form and it just has the identifying  
23 information of the case. State of South Carolina versus  
24 Mr. Wilson and has the four indictment numbers. I'm  
25 kind of primarily showing this to you, Madam Forelady,

1 but all of you will be involved in this.

2 As to the indictment related to trafficking in crack  
3 cocaine between 28 and 100 grams, if the State has met  
4 its burden of proof proving beyond a reasonable doubt  
5 that the defendant is guilty of this charge, you would  
6 mark guilty. Otherwise you would mark not guilty. If  
7 you determine that the defendant is not guilty related  
8 to the crack cocaine charge between the 28 and 100  
9 grams, then you have the right to consider whether he is  
10 guilty of trafficking in crack cocaine between the 10  
11 and 28 grams amount and you determine whether not guilty  
12 or guilty. The order that not guilty and guilty appear  
13 on this verdict form is of no significance. One has to  
14 appear before the other so it's just done at random.

15 So this 1A and B is related to the trafficking of  
16 crack cocaine, okay?

17 Number 2, as to the indictment related to  
18 trafficking in cocaine between 10 and 28 grams, then you  
19 make a determination whether or not the defendant is not  
20 guilty or guilty, okay?

21 And then number 3 relates to the possession with  
22 intent to distribute. You determine whether the  
23 defendant is not guilty or guilty. If you determine  
24 that he is not guilty of that charge, you have the right  
25 to consider the lesser included offense of possession



1 without any intent to distribute, possession of the  
2 marijuana over one ounce and you make a determination of  
3 not guilty or guilty of that, okay?

4 Then the fourth, if you determine that the defendant  
5 is guilty of trafficking in cocaine and/or crack cocaine  
6 which are considered violent offenses, then you would  
7 make a determination whether he is guilty of possessing  
8 the firearm, the nine millimeter pistol in the  
9 commission of those violent crimes and you would check  
10 either not guilty or guilty.

11 So let me kind of go back over this very briefly.  
12 You would sign it, put today's date, okay? 1A and B, if  
13 you determine not guilty as to the 28 to 100 grams crack  
14 cocaine, then you have the right to consider not guilty  
15 or guilty as to the 10 to 28 grams, okay? On the  
16 cocaine, the powder cocaine there is no lesser included.  
17 You make a determination of guilty or not guilty.  
18 Three, if you determine that he is not guilty of  
19 possession with intent to distribute, then you have the  
20 right to consider possession of more than one ounce, not  
21 guilty or guilty. Then number 4, if you find that he is  
22 guilty of either or both of the trafficking charges,  
23 then you have the consideration to make of whether or  
24 not he is not guilty or guilty as to the gun charge,  
25 okay?

1           Now, what you will need to do is you will need to go  
2           back, all 13 of you to the jury room. Do not begin your  
3           deliberations yet because I need to talk with the  
4           lawyers to make sure that my final charge on the law and  
5           my explanation of the verdict form was correct and if  
6           they have any additions or corrections to make. And two  
7           things will happen. Either one, we'll bring you back  
8           out for additional charges or the bailiff will bring to  
9           you the verdict form and all of the exhibits in the  
10          case. If that is done, then the alternate would need to  
11          leave and come back out for further instructions. Then  
12          you will begin your deliberations at that time. So your  
13          cue is is when the verdict form and the exhibits are  
14          brought to you and that's your cue to begin your  
15          deliberations, okay? But don't start yet, okay?

16          Now, I'll go ahead and tell you we are providing  
17          lunch to you so that will be coming shortly, but go back  
18          to your jury room. Don't begin your discussions yet.  
19          Let me check with the lawyers to make sure that we are  
20          okay with the final charge, okay? So go back to the  
21          jury room.

22                 (Whereupon, the jury entered the jury room at 12:30  
23                 p.m.)

24                 THE COURT: Does the State have any objections or  
25                 exceptions to the Court's final charge?

1 MR. SPIVEY: No, sir, Your Honor.

2 THE COURT: How about the defense?

3 MR. WILLIAMS: None by the defendant, Your Honor.

4 THE COURT: Thank you very much. All right. We are  
5 going off the record. I want the lawyers to get  
6 together to make sure that all of the exhibits are in  
7 place.

8 (Whereupon, the jury began deliberations at 12:38  
9 p.m.)

10 (Jury question.)

11 THE COURT: Are you ready with the video?

12 MR. SPIVEY: Yes, sir, Your Honor.

13 THE COURT: Bob, bring the jury in please.

14 (Whereupon, the jury returned to the courtroom at  
15 1:55 p.m.)

16 THE COURT: Let the record reflect that the jury is  
17 back in. I hope everybody enjoyed their lunch. Madam  
18 Forelady, I understand that the jury wants to view the  
19 video again; is that correct?

20 MADAM FORELADY: Yes, sir, Your Honor.

21 THE COURT: Okay. We are prepared to show those  
22 videos to you again. Solicitor, if you will handle the  
23 mechanics of that please.

24 MR. SPIVEY: Thank you, Your Honor.

25 (Whereupon, the videos were played for the jury.)

1           THE COURT: Let me interrupt. Madam Forelady, what  
2 I had thought that you wanted was to see what exactly  
3 was shown to you during the course of the trial. Do you  
4 want to see that same amount on the videos or something  
5 less than that?

6           MADAM FORELADY: We didn't feel like we needed to  
7 watch from the walking to the home and away. We just  
8 from the time when he gets to the home.

9           THE COURT: All right. Solicitor, can you handle  
10 that for us?

11          MR. SPIVEY: Yes, sir, Your Honor.

12          THE COURT: Okay. All right. Give the Solicitor  
13 just a moment and we'll get that for you.

14          (Whereupon, the videos were played for the jury.)

15          THE COURT: Okay. Ladies and gentlemen, if you will  
16 go back to your jury room and continue with your  
17 deliberations. Thank you.

18          (Whereupon, the jury entered the jury room to  
19 continue their deliberations at 2:27 p.m.)

20          (Jury question at 4:20 p.m.)

21          THE COURT: Okay. We are back on the record and the  
22 last note that the jury has submitted indicates, it says  
23 the jury can't come to a consensus signed by the  
24 forelady. I have decided that an Allen Charge would be  
25 appropriate. Any objections to the Court charging an

1 Allen Charge from the State?

2 MR. SPIVEY: No, sir Your Honor.

3 THE COURT: Defense?

4 MR. WILLIAMS: Your Honor, regretfully I would  
5 object to the charge of an Allen Charge but I know  
6 you're going to charge it anyway. I have never been  
7 very successful with Allen Charges. I think sometimes  
8 it encourages them to reach verdicts maybe where --

9 THE COURT: Right. The problem is is that sometimes  
10 you limit yourself in the ability to give an Allen  
11 Charge. If you bring them out and you just talk with  
12 them and tell them to go back and really don't give an  
13 Allen Charge and they come back a second time, sometimes  
14 you're prevented from giving an Allen Charge so I'm  
15 going to go ahead and do it.

16 MR. WILLIAMS: Your Honor, do you use the one out of  
17 Judge Anderson's book?

18 THE COURT: I don't, but I'll be glad to show you  
19 guys what I will charge.

20 MR. WILLIAMS: It doesn't matter, Your Honor, in  
21 terms of showing us. I was just curious if that's the  
22 one you use.

23 THE COURT: I don't know if this actually was taken  
24 out of his charge book or not to be honest with you.  
25 Give me just a second to take a look at something. Mr.

1 Knight, would you bring the jury in please.

2 BAILIFF: Yes, sir, Your Honor.

3 (Whereupon, the jury returned to the courtroom at  
4 4:25 p.m.)

5 THE COURT: Let the record reflect that the jury is  
6 back in. Madam Forelady, I have got a note that you  
7 submitted indicating that the jury can't come to a  
8 consensus; is that correct?

9 MADAM FORELADY: Yes, Your Honor.

10 THE COURT: Madam Forelady, ladies and gentlemen of  
11 the jury, as I instructed you earlier, the verdict of  
12 the jury must be unanimous as you are aware of. When a  
13 matter is in dispute, it isn't always easy for even two  
14 people to agree. So when 12 people must agree, I  
15 realize that it becomes that more difficult. In most  
16 cases absolute certainty can't be reached or expected,  
17 however, you do have a duty to make every reasonable  
18 effort to reach a unanimous verdict. In doing this you  
19 should consult with one another, express your own views,  
20 listen to the opinions of your fellow jurors, tell each  
21 other how you feel and why you feel that way, discuss  
22 your differences with open minds. Although the verdict  
23 of the jury must be unanimous, every one of you has the  
24 right to your own opinion. The verdict you agree to  
25 must be your own verdict. The result of your own

1 convictions and you should not give up your firmly held  
2 beliefs merely to be in agreement with your fellow  
3 jurors.

4 I don't know how the division is and I don't want to  
5 know at this point in time but the majority should  
6 consider the minorities' position and the minorities  
7 should consider the majorities' opinion, meaning that  
8 the side with the most votes, if it's not evenly  
9 divided, would be considered the majority and the side  
10 with the fewer votes would be considered the minority  
11 position, but each should consider the other's position  
12 in this matter. You should carefully consider and  
13 respect the opinions of each other and re-evaluate your  
14 position for reasonableness, correctness and  
15 impartiality. You must lay aside all outside matters  
16 and re-examine the questions before you based upon the  
17 law and the evidence in this case.

18 I'll tell you if you do not agree on a verdict in  
19 this case, then I will be in a position to declare a  
20 mistrial. In that case it does not mean anybody wins.  
21 It just means that at some future time either I or  
22 another judge will try this case with some other jury  
23 sitting where you now sit. The same participants will  
24 come and the same lawyers will ask basically the same  
25 questions and get basically the same answers and we'll

1 go through this whole process again. You were selected  
2 in the same manner and from the same source as any  
3 future jury will be, and there is no reason for me to  
4 suppose that the case will ever be submitted to 12 more  
5 intelligent, impartial, conscientious and competent  
6 jurors than you. Or that more or clearer evidence will  
7 be produced on one side or the other.

8 Therefore, Madam Forelady, and ladies and gentlemen  
9 of the jury, I'm going to respectfully request that you  
10 return to the jury room to continue with your  
11 deliberations. Thank you very much.

12 (Whereupon, the jury entered the jury room to  
13 continued their deliberations at 4:30 p.m.)

14 THE COURT: Any objection to the Allen Charge from  
15 the State?

16 MR. SPIVEY: No, sir, Your Honor.

17 THE COURT: From the defense?

18 MR. WILLIAMS: Only as previously noted, Your Honor.

19 THE COURT: Okay. Thank you very much.

20 MR. WILLIAMS: Thank you.

21 (Short break.)

22 BAILIFF: All rise.

23 THE COURT: Thank you. Please have a seat. Okay,  
24 gentlemen, I understand from Mr. Knight that the jury  
25 has indicated that they have reached a verdict. Are we



1 ready to bring the jury out and receive the verdict?

2 MR. WILLIAMS: Yes, Your Honor.

3 MR. SPIVEY: Yes, Your Honor.

4 THE COURT: Okay. Let's go.

5 (Whereupon, the jury entered the courtroom at 5:55  
6 p.m.)

7 THE COURT: Let the record reflect the jury is back  
8 in. Madam Forelady, I have been informed that the jury  
9 has reached a verdict; is that correct?

10 MADAM FORELADY: Yes, we have, Your Honor.

11 THE COURT: Was that verdict on each charge  
12 unanimous?

13 MADAM FORELADY: Yes, sir.

14 THE COURT: Okay. If you would hand the verdict  
15 form to the bailiff. If you will hand it to me first  
16 please.

17 BAILIFF: All right.

18 THE COURT: Thank you. Okay. Madam Clerk, will you  
19 publish the verdict please.

20 THE CLERK: State of South Carolina versus  
21 Christopher Tywhun Wilson.

22 THE COURT: Have Mr. Wilson stand please,  
23 Mr. Williams.

24 THE CLERK: As to indictment number 2014-GS-32-00155  
25 which charges the defendant with trafficking in crack

1 cocaine between 28 and 100 grams we the jury find the  
2 defendant on the lesser included offense of trafficking  
3 crack cocaine guilty. As to indictment 2014-GS-32-00156  
4 which charges the defendant with trafficking in cocaine  
5 between 10 and 28 grams, we the jury find the defendant  
6 guilty. As to indictment 2014-GS-32-00157 which charges  
7 the defendant with possession with intent to distribute  
8 marijuana, we the jury find the defendant on the lesser  
9 included offense of possession of marijuana more than  
10 one ounce guilty. As to indictment 2014-GS-32-00158  
11 which charges the defendant with possession of a firearm  
12 during the commission of a violent crime we the jury  
13 find the defendant not guilty.

14 Madam Forelady, ladies and gentlemen of the jury, if  
15 this is your verdict please indicate by raising your  
16 right hand. All hands raised.

17 THE COURT: Thank you, Madam Clerk. Mr. Williams,  
18 would you like individual polling of the jury?

19 MR. WILLIAMS: I would, Your Honor.

20 THE COURT: Okay. Mr. Wilson, have a seat. Madam  
21 Clerk, would you handle the individual polling of each  
22 member of the jury.

23 THE CLERK: Do you want it by name or by juror  
24 number?

25 THE COURT: By name.

1 THE CLERK: Okay. When I call your name, I'm going  
2 to ask you a question. Please indicate by raising your  
3 hand. Janet Stamey, if this is your verdict and still  
4 your verdict, please indicate so by raising your right  
5 hand.

6 JANET STAMEY: (Raises right hand.)

7 THE CLERK: Laura Bodie, if this is your verdict and  
8 is still your verdict, please indicate by raising your  
9 right hand.

10 LAURA BODIE: (Raises right hand.)

11 THE CLERK: Lynn Sealey, if this is your verdict and  
12 is still your verdict, please indicate so by raising  
13 your right hand.

14 LYNN SEALEY: (Raises right hand.)

15 THE CLERK: Rebecca Mcauley, if this is your verdict  
16 and still your verdict, please raise your right hand.

17 REBECCA MCAULEY: (Raises right hand.)

18 THE CLERK: Terry Lee Kennedy, if this is your  
19 verdict and still your verdict, please raise your right  
20 hand.

21 TERRY LEE KENNEDY: (Raises right hand.)

22 THE CLERK: Jessica Crouch, if this is your verdict  
23 and still your verdict, please raise your right hand.

24 JESSICA CROUCH: (Raises right hand.)

25 THE CLERK: David Fulwood, if this is your verdict

1 and still your verdict, please raise your right hand.

2 DAVID FULWOOD: (Raises right hand.)

3 THE CLERK: Wade Stowe, if this is your verdict and  
4 still your verdict, please raise your right hand.

5 WADE STOWE: (Raises right hand.)

6 THE CLERK: June Ballentine, if this is your verdict  
7 and still your verdict, please raise your right hand.

8 JUNE BALLENTINE: (Raises right hand.)

9 THE CLERK: Toddre Fulmer, if this is your verdict  
10 and still your verdict, please raise your right hand.

11 TODDRE FULMER: (Raises right hand.)

12 THE CLERK: Tamoria Praylow, if this is your verdict  
13 and still your verdict, please raise your right hand.

14 TAMORIA PRAYLOW: (Raises right hand.)

15 THE CLERK: Daryll Sharpe, if this is your verdict  
16 and still your verdict, please raise your right hand.

17 DARYLL SHARPE: (Raises right hand.)

18 THE CLERK: All jurors polled.

19 THE COURT: Thank you, Madam Clerk. Madam Forelady,  
20 ladies and gentlemen of the jury, let me offer my  
21 sincere appreciation for your jury service. You worked  
22 extremely hard. You were there about five and a half  
23 hours including coming out and watching the video and  
24 coming back out for the additional charge. But you  
25 worked very hard and you did what you were supposed to

1 do. It does not matter to me whatsoever what verdict  
2 you reach. What does matter to me is that you performed  
3 your jury service conscientiously and diligently and  
4 that's what you did.

5 In addition, of course, I try to keep a pretty good  
6 eye on my juries and you were all very attentive  
7 throughout this trial and that's what you're supposed to  
8 do as well. So I appreciate your jury service very  
9 much.

10 You are now free to discuss this matter with anyone  
11 you would like to. Let me explain to you that if  
12 someone, and I'm not suggesting this is going to happen,  
13 it probably will not, but if someone wants to talk to  
14 you about this case and you don't want to talk with them  
15 and they insist, please, you need to notify the Court  
16 immediately because we want to take care of our jurors.  
17 But you are free to talk with anyone about this case if  
18 you like.

19 Also your services are not needed for the remainder  
20 of the week. We have one other trial going on. Judge  
21 Kelly is presiding over that trial and so the remaining  
22 jury panel including you folks are no longer needed  
23 because we have no other trial scheduled for this week.  
24 I hope that, and I know that this case has been a  
25 difficult case for you simply because of the time that

1       you spent on it, but I hope that this has been somewhat  
2       educational for you and a learning experience regardless  
3       of the fact that it was difficult for you to have. But  
4       again, appreciate you very much and you are free to  
5       leave and the best of luck to you and hopefully maybe  
6       one day down the road you will have a chance to serve on  
7       a jury again. Be sure to leave your juror buttons with  
8       us. Those are not souvenirs for you to take home.

9       (Whereupon, the jury was released from further jury  
10      service at 6:10 p.m.)

11      THE COURT: Mr. Williams, I understand you have some  
12      post trial matters to take up with the Court.

13      MR. WILLIAMS: I do, Your Honor. I would renew all  
14      prior motions that I previously made in the State's  
15      case, the defense case as well as any other motions  
16      dealing with the Allen Charge. I would move also to set  
17      aside the jury's verdict, grant the defendant a new  
18      trial on the basis that the evidence taken as a whole  
19      was insufficient as a matter of law for this jury to  
20      have returned a verdict of guilt on the charges that it  
21      did find him guilty of.

22      THE COURT: Okay. Thank you very much.

23      MR. WILLIAMS: Thank you, Your Honor.

24      THE COURT: The motions that you have made,  
25      Mr. Williams, are respectfully denied.

1 MR. WILLIAMS: All right, sir. Your Honor, I have  
2 the sentencing sheet. I can go ahead. I don't know if  
3 the Court wants the defendant to sign sentencing sheets  
4 after he's found guilty by a jury or not. It makes no  
5 difference.

6 THE COURT: Typically they are not. At least my  
7 experience has been that they are not signed after a  
8 trial.

9 MR. WILLIAMS: Yes, sir.

10 THE COURT: So, I mean, I would not require it  
11 unless some sort of internal procedure with the  
12 Solicitor's Office or something, otherwise there would  
13 be no need to.

14 MR. WILLIAMS: I will give it to the clerk in the  
15 morning as I understand you're going to actually do  
16 sentencing in the morning.

17 THE COURT: Right. We're gonna defer sentencing.  
18 If Mr. Wilson will be taken into custody please at this  
19 time and we'll try to deal with this matter first thing  
20 when we start in the morning.

21 MR. WILLIAMS: Is your all your court going to begin  
22 at 10:00 in the morning to include any pleas and what  
23 have you?

24 THE COURT: Right. Everything will start at 10:00.  
25 We'll try to get this one done first.

1 MR. SPIVEY: Yes, sir, Your Honor. We will be here.

2 THE COURT: Okay. Very good. Everybody have a good  
3 evening and we'll see you in the morning.

4 (Whereupon, Court's Exhibits #2 through #4 marked  
5 for identification.)

6 (Whereupon, court was recessed for the evening at  
7 6:15 p.m.)

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CHRISTOPHER T. WILSON, SENTENCING

499

1 March 19th 2015

2 BAILIFF: All rise.

3 THE COURT: Thank you very much. Have a seat.

4 THE CLERK: Indictment 2014-GS-32-00155, The State  
5 versus Christopher Tywhun Wilson indicted for trafficking  
6 in crack cocaine between 28 and 100 grams. He is  
7 pleading as charged. Indictment 2014-GS-32-00156, The  
8 State versus Christopher Tywhun Wilson indicted for  
9 trafficking in cocaine between 10 and 28 grams. Pleading  
10 as charged.

11 THE COURT: This will not be a plea, Madam Clerk,  
12 since this was the trial from yesterday.

13 THE CLERK: Oh, I'm sorry. Indictment  
14 2014-GS-32-00157, The State versus Christopher Tywhun  
15 Wilson indicted for possession with intent to distribute  
16 marijuana. The verdict was possession of more than one  
17 ounce of marijuana second. Raise your right hand please.  
18 Thereupon,

19 CHRISTOPHER TYWHUN WILSON  
20 after having been first duly sworn, testified as follows,

21 THE COURT: Okay. Mr. Solicitor, I'll allow you the  
22 opportunity first to address anything to the Court  
23 related to sentencing and then, Mr. Williams, I'll give  
24 you the same opportunity after the Solicitor.

25 MR. SPIVEY: Yes, sir, Your Honor. Your Honor, I

1        rely factually. You have heard all the facts we had as a  
2        result of the trial. The distributions that lead up to  
3        the search warrant, Your Honor. He was also charged  
4        with, even though we didn't go to trial on those  
5        particular charges, there were indictments handed down on  
6        those charges. Your Honor, his record is '95 possession  
7        of a stolen vehicle. 1997 driving under suspension.  
8        2003 simple possession of marijuana. 2003 criminal  
9        domestic violence. 2004 he had what was initially a  
10       trafficking charge pled down to a possession of  
11       controlled substance in Richland County, Your Honor.  
12       That's the basis for this being a second offense. In  
13       2005 failure to stop for a blue light. 2008 simple  
14       possession of marijuana.

15                THE COURT: What year was that simple possession?

16                MR. SPIVEY: It was 2008, Your Honor.

17                THE COURT: All right. Anything further from the  
18       State related to sentencing?

19                MR. SPIVEY: No, sir, Your Honor.

20                THE COURT: Okay. Mr. Williams, I'll be glad to  
21       hear from you and anyone on behalf of the defendant as  
22       well as the defendant himself if he wants to address the  
23       Court.

24                MR. WILLIAMS: Thank you, Your Honor. You are  
25       uniquely able to know the facts behind the case as well