

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

TOBY EUGENE MOORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001360

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,) TRANSCRIPT OF RECORD
5 -vs-) 2011-GS-42-2965;2966;2967;2968;
6 Toby Moore,) 2969(A)
7 Defendant.) 2012-GS-42-0064;0065;0066
8) March 21 - 23, 2012
9) Spartanburg, South Carolina

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12

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15 Attorney for the State

16 TANYA JONES, ESQUIRE
17 Attorney for the Defendant
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22 Circuit Court Reporter
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1 (Proceedings March 21, 2012)

2 THE COURT: Are we ready for the jury?

3 MR. BULSA: We thought Judge Couch was drawing first,
4 but, yes, sir.

5 THE COURT: Well, that was at 9:00 o'clock. It's 30
6 minutes. The jury has been waiting. There's no point in
7 waiting any more the way I see it.

8 MR. BULSA: Yes, sir. We've got the indictments.

9 THE COURT: All right. Bring the jury around.
10 where is the defendant?

11 MS. JONES: Your Honor, he is currently getting
12 dressed out. I mean, we thought Judge Couch was going to
13 pick first.

14 THE COURT: Well, I did too, quite frankly, but he's
15 not, so.

16 MS. JONES: I need to get the jury information from my
17 colleague.

18 THE COURT: Are y'all ever going to be prepared on
19 time?

20 MS. JONES: Your Honor, our client's clothes do not
21 fit. We are going based on what they have told us.
22 They're not fitting right now.

23 THE COURT: Well, whatever he's got, he better wear
24 them. We've had plenty of time to get clothes over here.
25 Today is Wednesday.

Jury qualification

1 MS. JONES: I understand. But they normally don't try
2 them on.

3 (Pause.)

4 (The following takes place in the presence of the jury
5 venire.)

6 THE COURT: Ms. Jones, would you like to get Mr. Moore
7 and have him brought in?

8 MS. JONES: Your Honor, may we approach?

9 (Bench conference held off the record.)

10 THE COURT: Are we ready to proceed now?

11 MR. BULSA: Yes, sir.

12 MS. JONES: Yes, sir, Your Honor.

13 THE COURT: Good morning, ladies and gentlemen of the
14 jury panel.

15 I apologize for the delay in having you brought in,
16 but there've been some issues that have been beyond my
17 control. But hopefully all of those are under control now
18 so we will not waste any more of your time, any more than
19 is absolutely necessary.

20 The next case that we have that requires some of your
21 participation is the case of Toby Eugene Moore. Mr. Moore
22 has been accused by the prosecutor with having committed
23 several separate and distinct offenses, although they are
24 alleged to have arisen out of one particular event or a
25 course of events which the states alleges occurred back on

Jury qualification

1 January 6th of 2011.

2 By way of these several indictments Mr. Moore has been
3 charged in one indictment with the crime of attempted
4 murder. And the state alleges that on January the 6th of
5 2011 he did with malice aforethought attempt to kill one
6 Mark Hillers who was a Spartanburg city police officer by
7 discharging a firearm at him.

8 It is also alleged in a separate indictment that he
9 also committed the crime of attempted murder in that he did
10 with malice aforethought attempt to kill one Shane Morrow
11 who is also a Spartanburg city police officer by
12 discharging a firearm at him.

13 It is also alleged in a separate indictment that on
14 January the 6th of 2011 Mr. Moore did commit the crime of
15 attempted murder in that he did with malice aforethought
16 attempt to kill one Jeff Cooper who was also a Spartanburg
17 city police officer by discharging a firearm at him.

18 And in a separate indictment he is charged with on
19 January the 6th of 2011, with the crime of attempted murder
20 in that he did with malice aforethought attempt to kill one
21 Jason Harris.

22 Is Mr. Harris also employed with the Spartanburg city
23 police department?

24 MR. BULSA: Yes, sir.

25 THE COURT: Jason Harris who is an officer with the

Jury qualification

1 Spartanburg city police -- officer by striking him with a
2 projectile from a firearm with the intent to kill Officer
3 Harris.

4 He is also charged in a separate indictment with the
5 crimes of trafficking in cocaine and possession of a
6 firearm or a knife during the commission or the attempt to
7 commit a violent crime.

8 The state alleges on January the 6th of 2011 that Mr.
9 Moore did knowingly sell, manufacture, cultivate, deliver,
10 purchase or bring into the state, or that he did provide
11 financial assistance or did otherwise aid, abet, attempt or
12 conspire to sell, manufacture, cultivate, deliver, purchase
13 or bring into this state, or that he did knowingly have in
14 his actual or constructive possession more than 28 grams of
15 cocaine.

16 They also allege that at the time he committed the
17 crime of trafficking in cocaine that he also possessed or
18 visibly displayed what appeared to be a firearm or a knife
19 during the commission or attempted commission of that crime
20 of trafficking.

21 He's also charged in three additional indictments with
22 the crimes of possession with intent to distribute. One
23 alleges that he did possess with intent to distribute
24 marijuana; another alleges that he did possess with intent
25 to distribute methamphetamine; another alleges that he did

Jury qualification

1 possess or attempt to distribute or possess with intent to
2 distribute a quantity of crack cocaine and that that
3 possession occurred within a half mile of a public
4 playground or park.

5 Now, as to those allegations and as to each of those
6 charges the defendant has entered a plea of not guilty. A
7 plea of not guilty, as you are aware, places upon the state
8 the burden of proving the allegations that they have set
9 forth in each of those indictments, the burden of proving
10 each of the essential elements that constitute those crimes
11 that they have alleged against the defendant; and therefore
12 the burden is upon the state to establish the defendant's
13 guilt to the satisfaction of 12 jurors beyond a reasonable
14 doubt before any verdict of guilty could be returned as to
15 any of the separate indictments.

16 Before we begin with that jury selection, as you know,
17 I'm going to be introducing some people to you in order to
18 find out if you are connected with or know anyone who is
19 involved in the trial of the case.

20 I'll also inquire of you as to other matters to
21 determine whether or not there's any reason why any one of
22 you jurors should not be selected to participate in the
23 trial of this particular case.

24 And so as these questions are asked should you need to
25 respond to them, I'll simply ask that you please stand, and

Jury qualification

1 I'll address those matters with you individually in the
2 event that should become necessary.

3 Now, first of all, as I have told you, the defendant
4 in the case -- that is the person who is accused of having
5 committed these various offenses -- is Toby Eugene Moore.

6 Mr. Moore, if you will, please stand and face the jury
7 panel so that they may see who you are.

8 (Whereupon, the defendant stood.)

9 THE COURT: Thank you. Be seated.

10 Mr. Moore is represented by Tanya Jones who is seated
11 with him at the defense table. She is an assistant public
12 defender employed in the Seventh Judicial Circuit Public
13 Defender's Office.

14 Presenting the case on behalf of the state is the
15 deputy solicitor, Derrick Bulsa, employed in the
16 Seventh Judicial Circuit Solicitor's Office.

17 Potential witnesses include the following. I'll
18 recite those persons who are employed, all with the
19 Spartanburg Department of Public Safety.

20 And those include Josh Bagwell, Mylnor Beach, James
21 Bogan, Jeff Cooper, Brandy Edwards, Ed Guthro, Jason
22 Harris, Doug Harwell, Jeremy Hensley, Mark Hillers, Jeff
23 Kirby, Chris Layton, Brendall Mathis, Shane Morrow, Adrian
24 Patton, Keith Soules, Tim Stacy, James Sutton, Jason Tapp,
25 Jennifer Watson and Courtney Westfall.

Jury qualification

1 We also have Darrell Betsill who is employed by the
2 state law enforcement division, Michelle Eichenmiller is
3 also employed with the state law enforcement division, Jeff
4 Kindley with the state law enforcement division, and
5 Melissa Wallace with the state law enforcement division.

6 We also have as a potential witness Amanda Gentry, and
7 Brian Thurston, a physician, Spartanburg Regional Medical
8 Center.

9 Any other potential witnesses on behalf of the state?

10 MR. BULSA: No, Your Honor.

11 THE COURT: The defendant?

12 MS. JONES: No, Your Honor.

13 THE COURT: Does any member of the jury panel know
14 anybody who has been introduced or whose name has been
15 recited as a potential witness in this case? If so, please
16 stand. All right.

17 JUROR NO. 131: Rhonda Price, No. 131. I went to high
18 school with Jason Harris and Amanda Gentry. I did know
19 them in school.

20 THE COURT: Okay. All right. And would either of
21 those connections have any bearing upon your decision in
22 this case?

23 JUROR NO. 131: No, sir.

24 THE COURT: Thank you. Be seated.

25 Yes, sir.

Jury qualification

1 JUROR NO. 118: My name is Tony Morgan, Juror No. 118.
2 I was recently laid off by the city of Spartanburg. I
3 don't know them by name but probably would recognize them
4 by their face.

5 THE COURT: Okay. And would any of those connections
6 have any bearing upon your decision in the case if you were
7 selected?

8 JUROR NO. 118: No, sir.

9 THE COURT: Thank you. Be seated.
10 Yes, ma'am.

11 JUROR NO. 142: Juror No. 142, Christina Roberson. I
12 went to school with Spartanburg County -- Josh Brag.

13 THE COURT: Josh Brag?

14 JUROR NO. 142: Uh-huh.

15 THE COURT: I have a Josh Bagwell.

16 JUROR NO. 142: Bagwell. I'm sorry.

17 THE COURT: Josh Bagwell. You went to school with
18 him?

19 JUROR NO. 142: Yeah.

20 THE COURT: Would that have any bearing upon your
21 decision in the case?

22 JUROR NO. 142: No, sir.

23 THE COURT: Thank you. Be seated.

24 Yes, ma'am.

25 JUROR NO. 146: Paula Seay, No. 146.

Jury qualification

1 THE COURT: Okay.

2 JUROR NO. 146: I go to church with Mr. Bulsa, and I
3 know Mr. Bogan -- is it James Bogan that you said?

4 THE COURT: James Bogan with the Department of Public
5 Safety.

6 JUROR NO. 146: Yes, sir.

7 THE COURT: Yes, ma'am. Would either of those
8 connections have any bearing so far as your decision is
9 concerned?

10 JUROR NO. 146: No, sir.

11 THE COURT: Thank you. Be seated.

12 Yes, sir.

13 JUROR NO. 37: I know Mr. Derrick Bulsa. I gave a
14 deposition over the phone regarding an old D.U.I. case to
15 which I was a witness.

16 THE COURT: Okay. And your number was what, sir?

17 JUROR NO. 37: Thirty-seven.

18 THE COURT: Would that have any bearing upon your
19 decision in this case?

20 JUROR NO. 37: No, sir.

21 THE COURT: Thank you. You may be seated.

22 Anyone else need to respond to the question of having
23 some connection with the persons involved in the case? If
24 so, please stand.

25 (No response.)

Jury qualification

1 THE COURT: Let me ask this while I am asking you
2 that.

3 I also need to know if any member of the jury panel
4 has any connection with any employee with the Seventh
5 Judicial Circuit Solicitor's Office, the Seventh Judicial
6 Circuit Public Defender's Office or the Department of
7 Public Safety. If so, please stand.

8 JUROR NO. 122: 122, Kirk Neely. My uncle is Master
9 in Equity Judge. I'm not sure if this applies to your
10 question or not.

11 THE COURT: Okay. Would it have any bearing on your
12 decision?

13 JUROR NO. 122: No, sir.

14 THE COURT: Yes, ma'am.

15 JUROR NO. 131: I work for Turnipseed and Brannon Law
16 Firm, and I do speak with the solicitor's officer on a
17 daily basis. I'm No. 131.

18 THE COURT: Would it have any bearings upon your
19 decision?

20 JUROR NO. 122: No, sir.

21 THE COURT: Thank you. Be seated.

22 Where is this event alleged to have occurred?

23 MR. BULSA: [REDACTED] Owens Street. It's on the south side
24 of Spartanburg.

25 THE COURT: [REDACTED] what?

Jury qualification

1 MR. BULSA: [REDACTED] Owens Street.

2 THE COURT: O-W-E-N-S?

3 MR. BULSA: Yes, sir.

4 THE COURT: Which is off what -- South Church?

5 MR. BULSA: Yes, sir. Close to Caulder Avenue near
6 the Mary H. Wright School.

7 THE COURT: All right. The solicitor indicates that
8 this event or these events are alleged to have occurred on
9 Owens Street which is off Caulder Avenue near the Mary H.
10 Wright school. And as I've told you, it is alleged to have
11 occurred back on January the 6th of 2011.

12 Does any member of the jury panel believe that you
13 have heard, seen or read something about the circumstances
14 that might relate to this case? Have you been exposed to
15 any information about the case from any person or any other
16 source? If so, please stand.

17 (No response.)

18 THE COURT: Is there anything about the nature of the
19 case, that is what the allegations are that have been
20 made -- is there anything about nature of the case itself
21 that would prevent any juror from being able to be fair and
22 impartial to both sides if you were called upon to serve in
23 the case? If so, please stand.

24 (No response.)

25 THE COURT: Has any member of this jury panel or any

Jury qualification

1 member of your immediate family -- I'll define an immediate
2 family member as a parent, a spouse, a child or a
3 sibling -- a parent, a spouse, a child or a sibling -- have
4 you or any members of your immediate family as I just
5 defined it ever been the victim of any type of violent
6 criminal offense or ever been accused of having committed
7 any type of violent criminal offense?

8 And included in that category would be the crimes of
9 murder, attempted murder, armed robbery, burglary, criminal
10 sexual conduct, assault and battery with intent to kill,
11 aggravated assault and battery, criminal domestic violence
12 of a high and aggravated nature or any other similar type
13 of an offense.

14 Have you or a family member ever been the victim of
15 such, as well as have you or that family member ever been
16 accused of having committed such? If so, please stand.

17 All right.

18 JUROR NO. 83: No. 83, Bralton Hyatt. My daughter was
19 a victim.

20 THE COURT: Okay. And would that have any bearing
21 upon your decision in this case?

22 JUROR NO. 83: No, sir.

23 THE COURT: Thank you. Be seated.

24 Anyone else need to respond to the question?

25 (No response.)

Jury qualification

1 THE COURT: Is any member of the jury panel related by
2 blood or marriage to any type of law enforcement officer --
3 civilian or military? Any type of law enforcement officer.
4 If so, please stand.

5 JUROR NO. 140: I'm Juror No. 140, Kathy Ridgeway. My
6 husband's cousin is a lieutenant with the Greenville
7 Sheriff's Department.

8 THE COURT: Okay. Thank you, ma'am. Be seated.
9 Yes, sir.

10 JUROR NO. 138: I'm John Renner, Juror 138. My
11 brother-in-law is a Spartanburg County sheriff's officer.

12 THE COURT: Okay. Thank you. Be seated.
13 Eighty-three.

14 JUROR NO. 83: Juror 83, Brandon Hyatt. My cousin's a
15 police officer in Duncan.

16 THE COURT: Thank you.
17 Yes, ma'am.

18 JUROR NO. 25: Kathy Bryant, No. 25. My brother is a
19 detention officer.

20 THE COURT: All right. Thank you, ma'am. You may be
21 seated.

22 Any member of the jury panel contribute to the Mothers
23 Against Drunk Drivers, Citizens Against Violent Crime,
24 South Carolina Law Enforcement Officers Association, the
25 troopers' association, the honorary sheriffs' association

Jury qualification

1 or the fraternal order of police or any other similar
2 organization? If so, please stand.

3 All right. Juror 140.

4 JUROR NO. 140: We contribute to the troopers' and the
5 sheriffs' association.

6 THE COURT: Thank you. Be seated.

7 122.

8 JUROR NO. 122: 122, Kirk Neely. We contribute to the
9 sheriffs' association.

10 THE COURT: Thank you. Be seated.

11 JUROR NO. 24: Juror 24, Melissa Bray. Contributor.

12 THE COURT: Thank you. Be seated.

13 In this case, as you have heard, the allegations in
14 addition to those made that involve the crimes of attempted
15 murder, there are also allegations made regarding the
16 commission of the crime of trafficking in cocaine and
17 possession with intent to distribute other drugs and also
18 possession with intent to distribute within one-half mile
19 of a public playground or park.

20 Does any member of the jury panel have such an opinion
21 about the use or abuse of drugs, whether legal or illegal,
22 that it would impair your ability to be fair and impartial
23 in this particular case where there are those allegations
24 that have been made regarding the trafficking and/or
25 possession with intent to distribute drugs?

Jury qualification

1 In other words, do you have such an opinion for or
2 against the use and abuse of drugs that it would impair
3 your ability to be fair to one side or the other? If so,
4 please stand.

5 (No response.)

6 THE COURT: Does any member of the jury panel know of
7 any reason whatsoever why you believe you could not be fair
8 and impartial as a juror in this case if you were selected
9 to serve? If so, please stand.

10 (No response.)

11 THE COURT: Any other questions requested by the
12 state?

13 MR. BULSA: No, Your Honor.

14 THE COURT: The defendant?

15 MS. JONES: No, sir.

16 THE COURT: All right. Draw us a jury, please, ma'am.

17 THE CLERK: Juror No. 160, Amy Theye.

18 What says the state?

19 MR. BULSA: Please present the juror.

20 THE CLERK: What says the defense?

21 MS. JONES: Please present this juror.

22 THE CLERK: Juror No. 104, Elmer Mallory.

23 What says the state?

24 MR. BULSA: Please present the juror.

25 THE CLERK: What says the defense?

Jury qualification

1 MS. JONES: Please present this juror.
2 THE CLERK: Juror No. 97, Christopher Lawson.
3 What says the state?
4 MR. BULSA: Please excuse the juror in this case.
5 THE CLERK: Juror No. 85, Richard Jewell.
6 What says the state?
7 MR. BULSA: Please excuse the juror in this case.
8 THE CLERK: Juror No. 96, Teresa Lankford.
9 What says the state?
10 MR. BULSA: Please present the juror.
11 THE CLERK: What says the defense?
12 MS. JONES: Please excuse this juror.
13 THE CLERK: Juror No. 63, Nelly Gibson.
14 What says the state?
15 MR. BULSA: Please present this juror.
16 THE CLERK: What says the defense?
17 MS. JONES: Please excuse this juror.
18 THE CLERK: Juror No. 14, Kelly Birchfield.
19 What says the state?
20 MR. BULSA: Please present the juror.
21 THE CLERK: What says the defense?
22 MS. JONES: Please present this juror.
23 THE CLERK: Juror No. 114, Thomas Middleton.
24 What says the state?
25 MR. BULSA: Please present the juror.

Jury qualification

1 THE CLERK: What says the defense?
2 MS. JONES: Let this juror be sworn.
3 THE CLERK: Juror No. 72, Nathan Harper.
4 What says the state?
5 MR. BULSA: Please present the juror.
6 THE CLERK: What says the defense?
7 MS. JONES: Let this juror be sworn.
8 THE CLERK: Juror No. 79, Kelsey Howell.
9 What says the state?
10 MR. BULSA: Please present the juror.
11 THE CLERK: What says the defense?
12 MS. JONES: Please excuse this juror.
13 THE CLERK: Juror No. 122, Kirk Neely.
14 What says the state?
15 MR. BULSA: Please present the juror.
16 THE CLERK: What says the defense?
17 MS. JONES: Please excuse this juror.
18 THE CLERK: Juror No. 180, Lonnie Wyatt.
19 What says the state?
20 MR. BULSA: Please present the juror.
21 THE CLERK: What says the defense?
22 MS. JONES: Let this juror be sworn.
23 THE CLERK: Juror No. 28, Patricia Caldwell.
24 What says the state?
25 MR. BULSA: Please present the juror.

Jury qualification

1 THE CLERK: What says the defense?
2 MS. JONES: Let this juror be sworn.
3 THE CLERK: Juror No. 35, Matthew Copeland.
4 What says the state?
5 MR. BULSA: Please present the juror.
6 THE CLERK: What says the defense?
7 MS. JONES: Let this juror be sworn.
8 THE CLERK: Juror No. 147, Lauren Semande.
9 What says the state?
10 MR. BULSA: Please present the juror.
11 THE CLERK: What says the defense?
12 MS. JONES: Let this juror be sworn.
13 THE CLERK: Juror No. 172, Megan Walden.
14 What says the state?
15 MR. BULSA: Please present the juror.
16 THE CLERK: What says the defense?
17 MS. JONES: Let this juror be sworn.
18 THE CLERK: Juror No. 144, Randy Samuel.
19 What says the state?
20 MR. BULSA: Please present the juror.
21 THE CLERK: What says the defense?
22 MS. JONES: Let this juror be sworn.
23 THE CLERK: Juror No. 142, Christina Roberson.
24 What says the state?
25 MR. BULSA: Please present the juror.

Jury qualification

1 THE CLERK: What says the defense?
2 MS. JONES: Please excuse this juror.
3 THE CLERK: Juror No. 23, Carol Bradof.
4 What says the state?
5 MR. BULSA: Please present the juror.
6 THE CLERK: What says the defense?
7 MS. JONES: Let this juror be sworn.
8 THE CLERK: Your Honor, this is for the alternate.
9 Juror No. 130, Woody Pfeffer.
10 What says the state?
11 MR. BULSA: Please present the juror.
12 THE CLERK: What says the defense?
13 MS. JONES: Please excuse this juror.
14 THE CLERK: Juror No. 170, Susan Voil.
15 What says the state?
16 MR. BULSA: Please present the juror.
17 THE CLERK: What says the defense?
18 MS. JONES: Let this juror be sworn.
19 THE CLERK: Your Honor, the jury has been selected.
20 (Whereupon, a jury was impaneled.)
21 THE COURT: Okay. Those of you who have been
22 selected, I'll ask you to please go with a bailiff to a
23 jury room, and I'll bring you back in just a few minutes to
24 begin with the trial.
25 (The following takes place outside the presence of the

1 jury.)

2 THE COURT: Are there any matters to be addressed
3 regarding jury selection by the state?

4 MR. BULSA: No, sir.

5 THE COURT: The defendant?

6 MS. JONES: No, sir.

7 THE COURT: Ladies and gentlemen, I'm making a
8 determination if they're going to select a jury across the
9 hall so that you can go directly over there instead of
10 going back and forth.

11 I should know that in just a few minutes, so please
12 bear with me.

13 (Pause.)

14 THE COURT: All right. You can go straight across the
15 hall. They should be in a position to pick a jury over
16 there now. Thank you for your participation.

17 (Whereupon, the remaining members of the jury venire
18 were excused.)

19 THE COURT: Any matters to address prior to the jury
20 being sworn?

21 MS. JONES: Your Honor, we have -- we're going to be
22 challenging the search warrant, as well as we would renew
23 our motion for a continuance based upon him retaining a new
24 attorney. We want that on the record as well.

25 THE COURT: Well, how long have you been representing

1 Mr. Moore?

2 MS. JONES: Your Honor, I have been representing Mr.
3 Moore -- I know he initially refused our services.

4 THE COURT: I mean about how long.

5 MS. JONES: One second, Your Honor.

6 (Pause.)

7 MS. JONES: It looks like we did actually interview
8 him on January 25th of 2011. I will say though that
9 Mr. Mobley did handle the preliminary hearing. I was not
10 involved with that.

11 As you know, Mr. Mobley indicated on Monday that he
12 had been retained by the family to go forward with this
13 case, Your Honor. Your Honor denied him going forward
14 unless he was going to be able to move forward this week as
15 the trial judge.

16 I will make a note for the record that there was
17 another case on the docket today or this week, No. 32
18 through 35. His name is Joseph Thomas. He was charged
19 with trafficking crack cocaine and possession of a weapon
20 during a violent crime, as well as possession with intent
21 to distribute times two.

22 He was initially represented by Mr. Shealy. He was
23 arrested February of 2011 as well, Your Honor.

24 The morning of trial-docket call Doug Brannon
25 indicated that he had been retained, that he had actually

1 filed his notice that morning, which was Monday morning,
2 Your Honor. And Your Honor allowed him not only to be
3 involved in the case but continue it because he is a state
4 legislator. That case I think was, as I've indicated
5 before, only one down.

6 I went to try and find the paperwork on that to submit
7 as a -- as part of the record, Your Honor. I still can't
8 find the notice of appearance in the clerk's office.

9 And I also will note that there was no order prepared
10 for substitution of counsel, which was requested and
11 required, and which Your Honor refused to sign off on.

12 So there is a distinguishing -- I think that Mr. -- my
13 client, as well as Mr. Thomas, are being treated
14 differently. I'm not really sure why, Your Honor.

15 And I will say prior to that I represented a Stephanie
16 Martin the week of February 20th -- 27th of 2012. Josh
17 Schultz indicated that day he was going to take over that
18 case. That was granted on that particular case. And he
19 did not file a notice of appearance until February 28th of
20 2012. And he is yet to file an order of substitution of
21 counsel, Your Honor. Therefore we would indicate that that
22 is disparate treatment.

23 Again, we would renew our request that Mr. Mobley be
24 allowed to take over the case. He has been paid. And
25 certainly if he's able to retain an attorney and can afford

1 one, I'm not sure he necessarily qualifies for the public
2 defender's services any longer. We represent people who
3 are indigent. And if he can hire a private lawyer, which
4 Mr. Mobley came up and indicated he had been retained,
5 filed the appropriate paperwork and said he would be more
6 than willing to take over the case, so we would also allege
7 that he no longer qualifies for our services.

8 THE COURT: You're saying you made a determination
9 that he does not qualify for the services of the public
10 defender?

11 MS. JONES: I'm saying that because he is able and was
12 able to retain a private lawyer.

13 THE COURT: Did he retain a private lawyer or did
14 someone else, perhaps his family members, retain a private
15 lawyer?

16 MS. JONES: I'm assuming his family members at his --
17 at his request.

18 THE COURT: Okay. Well, I think the question of
19 indigency applies to the client, not to his family. Do you
20 know if your client is no longer qualifying for the
21 services of the public defender?

22 MS. JONES: I didn't have him fill out a new
23 affidavit, Your Honor.

24 THE COURT: So then there's nothing changed then so
25 far as his qualifications for your services are concerned.

1 MS. JONES: I believe that because he has retained a
2 private counsel, somebody who has indicated that the
3 retainer has been paid and showed up on Monday to indicate
4 he was willing to take over the case, suggests to me that
5 he no longer qualifies for our services.

6 THE COURT: Okay. Well, the suggestion is not what
7 I'm asking.

8 Did your client pay the retainer fee for Mr. Mobley?

9 MS. JONES: I didn't ask Mr. Mobley who, in fact, paid
10 the retainer fee.

11 THE COURT: Oh, you then don't know whether he
12 qualifies for the public defender or not. You don't know
13 if he paid the retainer or not. Is that true? Because you
14 were representing to me that he has retained another
15 lawyer. I'm asking you if he retained a lawyer, and you
16 say you don't know, so I'm not sure why you made the
17 representation.

18 MS. JONES: He -- Your Honor, you're well aware that
19 he is currently incarcerated.

20 THE COURT: Yes.

21 MS. JONES: Our clients who are incarcerated often
22 retain private lawyers.

23 THE COURT: Well, that's what I'm asking you,
24 Ms. Jones.

25 You said he had, and so I asked you did he or did some

1 member of his family do that.

2 MS. JONES: I'm assuming that some --

3 THE COURT: I'm not asking you to -- I'm not asking
4 for the assumption. I could assume that Warren Buffett
5 paid it, but probably he didn't. So what I'm asking you is
6 your knowledge of the facts. Do you know or not?

7 MS. JONES: I believe that Mr. Mobley indicated his
8 family had paid a retainer.

9 THE COURT: Okay. All right. Well, I assume they had
10 the money to retain somebody long before, but they haven't,
11 and you have qualified him for representation by the public
12 defender's office. Have you not?

13 MS. JONES: When he was initially -- applied for our
14 services, that is correct.

15 THE COURT: Okay. All right. Well, then you are his
16 lawyer, and you have been.

17 And as I told you at the beginning of this week when
18 Mr. Mobley came on Monday to indicate his -- his desire to
19 assume the representation -- that Mr. Moore's case was high
20 up on the trial docket and that if it came up for trial
21 that you would be his lawyer, because Mr. Mobley said that
22 he was not prepared to try Mr. Moore's case, he would not
23 be prepared until some future term of court and he wasn't
24 even certain when he might be ready.

25 So you have been representing Mr. Moore for -- since

1 January of 2011. And I assume that you are prepared to
2 represent him in this case. In other words, you've done
3 preparation to handle this case at this trial.

4 MS. JONES: I have, Your Honor.

5 THE COURT: Okay. Well, if some other lawyer came in
6 it required that this case be put off, and I'm not sure
7 when he'd be ready to do that -- Mr. Mobley. And so that
8 would prevent us from being able to go forward. And this
9 case has been on the trial docket for at least 30 days.
10 And it was noticed on Monday as a trial by you. And so
11 that's why we're here, to have the trial.

12 Okay. So I understand your motion for a continuance
13 based upon Mr. Mobley maybe wanting to get into the case.
14 But Mr. Mobley's not prepared to go forward this week and
15 you are. And this case is the next case for trial.

16 So motion for a continuance is denied.

17 Any other matters we need to address?

18 MS. JONES: We are going to be challenging the search
19 warrant.

20 THE COURT: Okay. Mr. Bulsa.

21 You're challenging the search warrant on its face as
22 being invalid?

23 MS. JONES: We are challenging that it lacks probable
24 cause.

25 THE COURT: On its face? I don't have a copy of it.

1 MR. BULSA: I do.

2 It might also be noted that Mr. Shealy is ill and he
3 was not present yesterday, nor is he present today to be
4 able to handle any cases that has on this docket. At least
5 that's what the public defender's office has notified me
6 about, that Mr. Shealy is unavailable. Is that -- are you
7 aware of that, Ms. Jones?

8 MS. JONES: I am, but Your Honor already continued
9 that case Monday. And Doug Brannon took over, and it was
10 continued because he is a state legislator. And today that
11 order of continuance and substitution of counsel has not
12 been filed with the Court.

13 THE COURT: And I'm required to continue the matter if
14 a legislator is representing someone. The law requires
15 that. That's not in my discretion.

16 MS. JONES: I understand that, but our argument is
17 that's disparate treatment to allow Doug Brannon to enter a
18 case when that case is only one below us and not let
19 Mr. Mobley represent my client when we were just one above
20 it.

21 THE COURT: Okay.

22 MS. JONES: One was continued and one was not.

23 THE COURT: Okay. You're saying that Mr. Moore is
24 being treated unfairly and prejudicially because I'm
25 allowing you to represent him?

1 MS. JONES: I'm saying that Mr. Joseph Thomas who was
2 a case below us was allowed not only to get a new private
3 lawyer but also have that case continued because Mr.
4 Brannon is in legislative session.

5 THE COURT: Okay. And Mr. -- and Mr. Thomas' case has
6 not been reached yet. Is that a fair statement?

7 MS. JONES: That is a fair statement.

8 THE COURT: Okay.

9 MS. JONES: But it potentially could.

10 THE COURT: Well, anything can potentially happen.

11 MS. JONES: It's already been taken off. It's not
12 even on the docket any more.

13 THE COURT: Well, anything -- it's on the docket.
14 Anything could be potentially true. But, you know, if that
15 case yesterday had not had to be mistried I'd still be
16 involved in that and Mr. Moore's case wouldn't be up. But
17 that's the way things happen.

18 And so as I said to you and Mr. Mobley on Monday, if
19 we don't reach Mr. Moore's case then -- then likely Mr.
20 Mobley will be able to come into the case if it's scheduled
21 for some future term. But that's not the circumstances
22 we're in right now.

23 So since you're prepared and Mr. Moore is here, we'll
24 go forward.

25 Okay. The search warrant.

1 (Search warrant marked State's Exhibit 1 for
2 Identification.)

3 THE COURT: Ms. Jones, you're contesting the validity
4 of the search warrant on its face. Where do you believe
5 the search warrant is lacking in probable cause?

6 MS. JONES: Your Honor, just based on the dealings
7 with the city.

8 There are times when the affiant isn't actually the
9 person who has been speaking to the confidential reliable
10 informant. Sometimes it's provided by hearsay. And that
11 officer then goes to the magistrate court to get that
12 search warrant.

13 So we would like to put the affiant on the stand to
14 ensure he is the one who actually talked with the C.I.,
15 that C.I. was in his opinion reliable, had seen marijuana
16 and knows it by sight and various packaging and the like.

17 THE COURT: Well, he did swear to that fact in the
18 search warrant. You believe that to be untruthful?

19 MS. JONES: Based upon prior experience and talking
20 with other lawyers in the office that has been an issue in
21 past cases with these types of search warrants.

22 THE COURT: All right. Mr. Bulsa, would you like to
23 call Mr. Kirby?

24

25

Jeff Kirby (In-camera)
Cross-examination by Ms. Jones

1 Q He's been involved with the department for five years.
2 How long yourself?

3 A Probably for a good three or three and a half years.

4 Q Okay. And did the information you present to the
5 magistrate to obtain a search warrant for [REDACTED] Owen -- Owens
6 Street, did that come from that informant?

7 A Yes, sir, it did.

8 Q And I believe you swore to that fact in the search
9 warrant.

10 A Yes, I did.

11 Q So you relayed to the magistrate actual information
12 you obtained from your informant about Mr. Moore's drug
13 activities.

14 A That is correct.

15 Q Thank you.

16 MR. BULSA: That's all I have at this time.

17 CROSS-EXAMINATION

18 BY MS. JONES

19 Q You indicated -- were you the confidential, reliable
20 informant's point man, so to speak?

21 A Yes, ma'am.

22 Q Okay. Did this C.I. work for anybody else other than
23 you?

24 A He has in the past, yes.

25 Q Okay. But in December -- in January -- well, December

Jeff Kirby (In-camera)
Cross-examination by Ms. Jones

1 of 2010 and January of 2011 who was his main contact?

2 A That would be me.

3 Q Okay. And at that point on -- I think it was
4 actually -- was the confidential informant's code name
5 Toopee or Topee?

6 A That would be Loopee.

7 Q Loopee. Okay. And you know Loopee.

8 A Yes, ma'am.

9 Q And is Loopee the person who supplied the information
10 that you got this search warrant for?

11 A That's correct.

12 Q Okay. And so it looks like on January 3rd of 2011 he
13 indicated he'd been over at Toby Moore's house and saw some
14 marijuana.

15 A Yes, ma'am. I believe that is the day. That's
16 correct.

17 Q And has Mr. Loopee made controlled buys for marijuana
18 in the past for you?

19 A Yes, he has.

20 Q Specifically you?

21 A Yes, for me specifically.

22 Q Okay. So he would then obviously know the scent and
23 smell and what it looks like.

24 A Yes, ma'am.

25 Q Okay. And then based on that information who went to

Jeff Kirby (In-camera)
Cross-examination by Ms. Jones

1 the magistrate's office to get a search warrant?

2 A I did.

3 Q Okay. And did you actually prepare that affidavit?

4 A Yes, I did.

5 Q Okay. And at some point you indicated too that

6 Mr. Toby has a gun in his possession.

7 A Yes, ma'am, I did.

8 Q And knows that there could be one in the residence as
9 well.

10 A Not -- not necessarily specifically in the residence
11 but on the person of Mr. Moore.

12 Q Okay. And that's the reason why you requested a
13 no-knock?

14 A That's correct.

15 Q Who provided that information to you?

16 A The same informant.

17 Q Loopee?

18 A Yes, ma'am.

19 Q Okay. And you presented that to Judge Wall, is that
20 correct?

21 A Yes, ma'am.

22 Q Did you provide any oral testimony, or was it just
23 based on the affidavit?

24 A Just based on the affidavit.

25 MS. JONES: Nothing further.

Jeff Kirby (In-camera)
Redirect examination by Mr. Bulsa

1 MR. BULSA: If I may.

2 REDIRECT EXAMINATION

3 BY MR. BULSA

4 Q Just for the record to make sure we're talking about
5 the same search warrant that the Court has reviewed
6 previously, it's been marked State's Exhibit No. 1 for this
7 hearing.

8 A Yes, sir.

9 Q Is that a copy of the search warrant you took to get
10 signed?

11 A Yes, it is.

12 Q And it was signed on January the 5th.

13 A That's correct.

14 Q And actual execution was on January the 6th.

15 A That is correct.

16 MR. BULSA: That's all I have. Nothing further.

17 THE COURT: You may step down.

18 MR. BULSA: Your Honor, that would be the state's
19 showing in this matter.

20 THE COURT: Okay. Ms. Jones, does the defense wish to
21 present any testimony or other evidence --

22 MS. JONES: No, sir.

23 THE COURT: -- on the issue of the validity of the
24 oath that Mr. Kirby took that he swore to and provided
25 information to the magistrate as to?

Jeff Kirby (In-camera)
Redirect examination by Mr. Bulsa

1 MS. JONES: No, sir.

2 THE COURT: Okay. All right. I'll be glad to hear
3 any argument if you have that it's invalid.

4 MS. JONES: We believe it's valid.

5 THE COURT: Okay. Probable cause is obviously
6 established and the search warrant is valid.

7 All right. Anything else before the jury is brought
8 in?

9 MR. BULSA: Your Honor, my evidence is in my office.
10 Could I have a couple of minutes to bring it down? I can
11 get started if you want to. I have a couple of witnesses
12 with photos. I can do that. That's fine. I can wait
13 until the break.

14 THE COURT: All right. Bring the jury in.

15 Ask Ms. Bradof to take the foreperson's seat.

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: All right. Ladies and gentlemen, we are
19 ready to begin with the trial of the case for which you
20 have been selected.

21 And, Ms. Bradof, I'm going to ask you to serve as the
22 foreperson of this jury. And as the foreperson you'll have
23 three specific duties that none of the other jurors will
24 have.

25 No. 1, you'll be asked to serve as the spokesperson

Jeff Kirby (In-camera)
Redirect examination by Mr. Bulsa

1 for the jury. And so if something needs to be brought to
2 my attention -- you or a fellow juror has some difficulty
3 or question -- if you'll let me know directly or through
4 the bailiff, I'll respond to those issues or answer those
5 questions.

6 Secondly, you'll be called upon to preside over jury
7 deliberations when the time comes for those deliberations.
8 That of course will not be until the end of the trial after
9 all of the evidence has been received and I've instructed
10 the jury on the law that's applicable.

11 But when the time does come for jury deliberations you
12 will preside over that process in the jury room simply to
13 ensure that those deliberations are carried out in some
14 orderly fashion.

15 And, thirdly, you'll be asked to actually write the
16 decisions of the jury. And you'll do that on verdict forms
17 that I'll provide you at the trial's conclusion on which
18 you will indicate the jury's unanimous decision as it
19 relates to each of the separate charges.

20 Now, the foreperson has those specific duties that
21 I've just indicated. That does not however mean that she
22 is any more important than of you other jurors, and that's
23 because any decision that a jury makes must be unanimous.
24 All of you must be in agreement.

25 Someone simply has to be delegated those

Jury sworn

1 responsibilities that I have just indicated, and I have
2 delegated those to Ms. Bradof in appointing her as the
3 foreperson. But each of you jurors are equally important
4 so far as the ultimate decisions in this case are
5 concerned, because, as I have stated, the verdicts have to
6 be unanimous. All of you must be in agreement.

7 Ms. Voll, you've been selected as an alternate juror.
8 And as you are aware, the alternate's function is to take
9 the place of one of the original 12 if during the trial one
10 of these 12 cannot continue to serve for some reason.

11 So it is important that you pay just as careful
12 attention as we ask of all of the jurors in the case,
13 because it does occur from time to time for one reason or
14 another one of these may be unable to continue. In that
15 event you become the 12th.

16 You may swear the panel.

17 (Whereupon, the jury was duly sworn.)

18 THE COURT: Ladies and gentlemen, as you know, you
19 have been selected for the purpose of deciding the verdicts
20 in the case of the State vs. Toby Eugene Moore.

21 As you know, he's been accused by the state of having
22 committed several distinct criminal offenses, although they
23 are alleged to have arisen out of one particular event or
24 course of events which the state alleges occurred back on
25 January the 6th of 2011.

1 But there are four separate and distinct charges for
2 which you will be rendering four separate and -- excuse me.
3 There are eight separate and distinct charges for which you
4 will be rendering eight separate and distinct verdicts.
5 And the verdicts may be the same, or they may be different.
6 That of course will depend upon your determination of fact
7 as it relates to that particular charge and then your
8 application of the law to those facts as you determine them
9 to be.

10 But as you are aware, the defendant, Mr. Moore, has
11 been accused by the prosecutor of having committed the
12 crime of attempted murder in four separate indictments.

13 He's also accused of having committed the crimes of
14 trafficking in cocaine, of possession with intent to
15 distribute marijuana, of possession with intent to
16 distribute methamphetamine or cocaine base -- sometimes
17 referred to as crack cocaine -- and he's also charged with
18 distribution of crack cocaine within a half-mile of a
19 public school or park.

20 And I misspoke. There are actually nine charges.
21 There's one additional charge of possession of a firearm
22 during the commission of a violent crime. The violent
23 crime is alleged to have been the trafficking in cocaine.
24 So in that indictment for trafficking in cocaine or crack
25 cocaine there are two separate criminal offenses set

1 forth -- the trafficking, as well as the possession of a
2 firearm during the commission of that trafficking charge.

3 Now, as to all of the allegations and as to each of
4 the charges the defendant has entered a plea of not guilty.
5 And, as I told you prior to your selection, that plea of
6 not guilty places upon the state the burden of proving the
7 allegations that they have made against the defendant, the
8 burden of proving each of the essential elements that
9 constitute the crimes that have been alleged against the
10 defendant; and therefore the burden is upon the state to
11 establish the defendant's guilt to the satisfaction of each
12 of you jurors beyond a reasonable doubt before any verdict
13 of guilty could be returned as to any of the separate
14 indictments.

15 The way the trial will proceed is that in a moment the
16 lawyers are going to address you in what are called opening
17 statements.

18 There are two occasions when lawyers are permitted to
19 address the jury. And that is at the beginning of the
20 trial before any evidence has been introduced and then
21 again at the conclusion of the trial after all of the
22 evidence has been received.

23 Keep in mind however that, as I have just indicated,
24 the evidence upon which you will base your decision comes
25 in between the opening and the closing statements of the

1 lawyers; and therefore the lawyers' statements are not to
2 be considered by you as any evidence upon which you will
3 base your decision.

4 And that's because the lawyers aren't witnesses to
5 anything. They don't know anything about this case of
6 their own personal knowledge or experience as witnesses
7 will be testifying to.

8 The lawyers won't take the witness stand. They won't
9 be placed under oath. They won't be subjected to direct
10 and cross-examination in order to test their credibility
11 and the reliability of the information like witnesses will
12 be. And so what the lawyers tell you is not to be
13 considered by you as evidence.

14 You should listen to what the lawyers have to say
15 because their statements do serve a purpose.

16 The opening statements serve to provide you with a
17 basic understanding as to what this case is about so that
18 you'll have some context in which to place the evidence
19 that we will be receiving shortly thereafter.

20 The closing statements afford the lawyers an
21 opportunity to discuss with you the evidence that you have
22 seen and heard during the trial. And through that
23 discussion each will have an opportunity to persuade you or
24 to convince you that the evidence does or does not support
25 a particular decision. And, as I say, the evidence upon

1 which you will base your decision actually comes in between
2 those statements.

3 The state has the burden of proof, so they will go
4 forward first in their presentation of evidence. Once they
5 have concluded a defendant has the same opportunity to
6 testify and present evidence, but a defendant is under no
7 obligation to testify or to present evidence.

8 And that's because the burden is not upon a person
9 accused of a crime to prove that they are not guilty or to
10 prove that they are innocent, because in some cases that
11 might not be possible.

12 The burden is upon the state because they brought the
13 accusation to prove a defendant's guilt beyond a reasonable
14 doubt, so the state has a burden. They have an obligation
15 to present evidence.

16 The defendant has no burden and therefore does not
17 have testify or present evidence. And if that occurs
18 that's not a fact or circumstance that a jury may consider
19 in any way in your deliberations or in your determination
20 as to whether or not his guilt has been proven beyond a
21 reasonable doubt.

22 After all of the evidence has been received and after
23 you hear the final summations of the lawyers I will then
24 instruct you fully on the law as it relates to the criminal
25 law generally and as it relates to these particular crimes

1 specifically, after which you'll be asked to go back and
2 begin with your deliberations.

3 Through that process you'll examine all the evidence.
4 Through the exercise of good judgment and common sense
5 you'll determine the facts. Upon deciding those the facts
6 you'll apply the law that I will provide you. And you 12
7 jurors will determine whether or not the defendant [sic]
8 has proven the defendant's guilt beyond a reasonable doubt.

9 If the state has proven his guilt beyond a reasonable
10 doubt as to a particular charge, then your verdict would be
11 guilty as to that charge. If the state has failed to prove
12 the defendant's guilt beyond a reasonable doubt as to a
13 particular charge, then your verdict would be not guilty as
14 to that particular charge.

15 So all that we're going to ask for you to do is to pay
16 careful attention throughout the course of the trial. Give
17 every witness the same degree of attention as they testify
18 so that you'll be in a position to properly evaluate the
19 believability and credibility of that testimony when you go
20 back into the jury room to begin with your deliberations.

21 And of course it is important that you keep an open
22 mind throughout the course of the trial. That simply means
23 that you are not to begin making up your minds or
24 formulating your opinions as to the ultimate decisions
25 until all of the evidence has been received, until I've

Opening statements

1 provided you the legal instruction and until you've been
2 asked to begin with your deliberations in the case.

3 That's the process that is designed for you 12 jurors
4 to arrive at a fair and just decision in this case.

5 So I do want to thank you in advance for your
6 participation, as well as for your careful attention. I
7 would ask that you please give the lawyers your attention
8 now as they give you their opening statements.

9 MR. BULSA: Thank you, Your Honor.

10 Good morning, ladies and gentlemen. I also thank you
11 for your time and attention to this case. This is a very
12 serious case. You heard the charges, and I can imagine
13 what's being pictured in your minds.

14 Please listen to the witnesses as they testify. This
15 is a serious and violent case. This was a case involving
16 drugs and guns.

17 The police were trying to get the drugs off the
18 street. They had information this man had drugs in the
19 house. They got a search warrant for that residence. They
20 brought in some tactical officers to secure that property
21 in order for the search warrant to be executed.

22 The defendant however chose to resist the entry into
23 this house. As the police were coming through the door he
24 pulled a weapon and fired multiple times at the officers
25 coming in.

Opening statements

1 One officer actually got struck. Fortunately, did not
2 die. However it was not so fortunate for the other persons
3 in the house, because the officers returned fire and saw
4 another man in the residence also armed with a weapon, and
5 that man didn't make it, so at the hands of this defendant
6 a man was killed inside his own house.

7 Officers were there. They had legal grounds to search
8 that residence. They cleared out everything about the
9 shooting. They came in and executed that search warrant
10 looking for drugs, and drugs they found. They found a
11 multitude of drugs. They found cocaine; they found crack
12 cocaine; they found marijuana; they found a variety of
13 pills.

14 I submit to you that after you hear the evidence in
15 this case and the judge charges you with the law in this
16 case you should find the defendant guilty of all charges.
17 Thank you.

18 THE COURT: Ms. Jones.

19 MS. JONES: Thank you.

20 Ladies and gentlemen, my name is Tanya Jones. And, as
21 you heard, I represent Mr. Toby Moore in this matter.

22 You're going to hear in the early morning of
23 January 2011 police officers came to the house of Mr. Moore
24 armed with a search warrant. That search warrant was a
25 no-knock search warrant. That means they don't knock on

Opening statements

1 the door, (demonstration by counsel), police, search
2 warrant. No knock means you simply ram the door and come
3 on in with guns.

4 You're going to hear testimony that they used
5 distraction devices prior to breaching that door,
6 distraction devices that caused big bangs and lights and to
7 try and distract the occupants inside.

8 You're also going to hear testimony that Mr. Moore had
9 been a victim of a home invasion earlier and that the
10 officers knew it.

11 Ladies and gentlemen, this is not a case of Mr. Moore
12 being cold and calculated. This is about somebody breaking
13 into a home with all kinds of noises and windows breaking
14 and scratching on the glass and just chaos, pure chaos.

15 Ladies and gentlemen, you're going to hear testimony
16 that there were two people in the front room, both of whom
17 were shot, one shot multiple times, multiple, not by Mr.
18 Moore but by the police officers. And that man died.

19 Ladies and gentlemen, I request that you listen to all
20 of the evidence and all of the witnesses and not make up
21 your minds simply because police officers are involved and
22 they're serving a search warrant. There's going to be a
23 lot of intricacies. There's going to be a lot of little
24 details that I hope that you pay attention to, because,
25 like I said, this is not a case about attempted murder.

Doug Harwell
Direct examination by Mr. Bulsa

1 There was no malice. This was somebody who was terrified
2 and scared when somebody was breaching a door.

3 I think at the end of the day, ladies and gentlemen,
4 you're not going to convict my client of all of those
5 things that the state wants you to convict him of.

6 Again, keep an open mind, and remember what the judge
7 has indicated. My client has no burden in this case. It's
8 up to the state, the government, to prove their case beyond
9 a reasonable doubt. They're the ones who have to prove all
10 of the elements. And if they fail at their burden it's
11 your obligation to come back with not guilty. Thank you.

12 MR. BULSA: The state calls Doug Harwell.

13 DOUG HARWELL, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BULSA

16 Q Would you introduce yourself to the jury, please?

17 A Yes. My name is Doug Harwell.

18 Q Who are you employed with?

19 A I'm employed with the Spartanburg Public Safety
20 Department.

21 Q In what capacity?

22 A I am the lieutenant over the narcotics, vice and
23 organized crime unit.

24 Q How long have you been the lieutenant over that unit?

25 A I've been the lieutenant over the unit for about three

Doug Harwell
Direct examination by Mr. Bulsa

1 years. I was the supervisor over the unit since August of
2 2000.

3 Q So you've been involved with that for almost 12 years.

4 A Yes, sir.

5 Q How long have you been a police officer?

6 A Twenty-two and a half years.

7 Q How long with the city of Spartanburg?

8 A Twenty-two and a half years.

9 Q Okay. Now, did your -- did your -- we'll call it
10 department -- your division -- did y'all have information
11 to obtain a search warrant on a residence at [REDACTED] -- excuse
12 me -- [REDACTED] Owens Street?

13 A We did.

14 Q And is that a duplex?

15 A It is.

16 Q And the specific information was for [REDACTED] Owens
17 Street?

18 A Yes, sir.

19 Q And to your understanding who resided at that
20 location?

21 A Toby Moore.

22 Q And is that the defendant?

23 A Yes.

24 Q All right. Now, in order to effect that search
25 warrant did you seek assistance from other officers?

Doug Harwell
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 Q Tell us how that came about.

3 A By policy with the Spartanburg Public Safety
4 Department we recognize drug search warrants as being
5 high-risk search warrants to begin with. And by policy our
6 tactical unit executes drug search warrants inside the city
7 limits.

8 Q And what is a tactical team?

9 A Tactical team is a -- it's a specialized team. It's
10 trained in high-risk events hostage neg -- or hostage
11 situations and executing search warrants.

12 Q So it's their job to go in first and secure the area?

13 A It is.

14 Q Okay. Now, in your almost 12 years as a narcotics
15 officer how many search warrants would you say you have
16 participated in?

17 A I -- I couldn't begin to give you an accurate number
18 on the number of search warrants I participated in. We
19 average probably at least one a week.

20 Q Okay. So --

21 A Sometimes more.

22 Q Safe to say hundreds? would it be safe to say
23 hundreds of search warrants?

24 A Yes, sir.

25 Q And in your experience do you often find firearms when

Doug Harwell
Direct examination by Mr. Bulsa

1 executing those search warrants?

2 A We do.

3 Q Okay. And in this case in particular you had
4 information that a firearm might be present.

5 A Yes, sir.

6 Q And a -- this search warrant was a little bit
7 different than most search warrants, wasn't it?

8 A It is.

9 Q In fact, it's called a no-knock search warrant.

10 A Yes, sir, a no-knock search warrant.

11 Q Please explain what that is to the jury.

12 A A no-knock search warrant is a search warrant where
13 you -- when you appear in front of the magistrate seeking
14 the warrant you ask for a consideration of no knock on the
15 door.

16 Do that for a number of reasons. We chose to go with
17 the no-knock warrant because we had information that there
18 was a firearm associated with Mr. Moore. And that's
19 what -- when Investigator Kirby's affiant on the search
20 warrant he appeared in front of the magistrate, and that
21 was in the search warrant requesting a no-knock and the
22 reason why, and it was issued.

23 Q Okay. And what are you hoping to gain by executing a
24 search warrant at this --

25 A It's a safety issue.

Doug Harwell
Direct examination by Mr. Bulsa

1 Q Okay. How are normal search warrants executed?

2 A Normal search warrants are you knock on the door and
3 you give the occupant time to come to the door. A lot of
4 times we lose evidence in that process. But that's the
5 nature of search warrants. And I've -- we participate in
6 knock-and-announce warrants as well as the no-knock
7 warrant. Not all of our warrants are no-knock search
8 warrants.

9 Q But is it common when guns are believed to be present?

10 A When -- yes. When we believe there's guns and we have
11 reason to believe there's guns involved we ask for the
12 no-knock search warrant to -- to allow the officers the
13 ability to get inside a residence to secure the occupants
14 safely.

15 Q Is there some fear that a person in the home might go
16 for the weapon?

17 A Yes, sir.

18 Q Okay. So you didn't actually participate in the
19 actual initial entry into the residence, did you?

20 A No, no. Our special --

21 Q Who was in charge of that process?

22 A That would have been Sergeant Hillers.

23 Q Okay. So his men would have went in and your men
24 would have come in behind.

25 A Once the residence is secured, then the narcotics team

Doug Harwell
Direct examination by Mr. Bulsa

1 comes into the residence, and we search the residence for
2 the contraband listed in the warrant.

3 Q And is your -- what are you and your men doing while
4 the tactical team is securing the residence?

5 A We're on the perimeter of the residence. We don't go
6 inside the residence until the tactical commander will give
7 us a clear to come in. And we're on the perimeter outside.

8 Q Okay. So you're -- are you actually -- how close
9 would you be to that house?

10 A We're -- in this particular case we were relatively
11 close. We had officers at the back of the residence, and
12 there was officers in the front of the residence as well.

13 Q Okay. So do you have visual sight of the entry into
14 the residence?

15 A Yes, yes, sir.

16 Q So you're within sight and sound of what's taking
17 place.

18 A Oh, yes, sir.

19 Q Now, let's talk specifically about [REDACTED] Owens Street.
20 Where is that located?

21 A That is in the city limits of Spartanburg. It's on
22 the south side near Duncan Park.

23 Q Is it close to Mary H. Wright?

24 A It is.

25 Q And you actually get to it by going down Caulder

Doug Harwell
Direct examination by Mr. Bulsa

1 Avenue, and it's one of the --

2 A Yes, sir.

3 Q -- streets off that area?

4 A Yes, sir.

5 (Map marked State's Exhibit No. 2 for Identification;
6 map marked State's Exhibit No. 3 for Identification;
7 photograph marked State's Exhibit No. 4 for Identification.)

8 Q Let me show you what's been marked for identification
9 as State's 2 and 3. State's 2 is a map diagram. Does that
10 show the area in question?

11 A Yes, sir. This is accurate.

12 Q It shows where Owens Street is in relation.

13 A Yes, sir.

14 Q And is that in the city limits of Spartanburg?

15 A It is.

16 Q And State's 3, is that an aerial photo depicting the
17 same location?

18 A Yes, it is.

19 Q Okay. Now, one of the charges we've brought involves
20 a location of this residence near a public park. Which
21 parks are within a half-mile of this residence? Just tell
22 us if you know.

23 A Duncan Park is .4 miles away from the location, and
24 there's a -- another park that is within the -- the
25 distance. It's -- I think it's the Mary H. Wright Greenway

Doug Harwell
Direct examination by Mr. Bulsa

1 Park. It's on Hudson Barksdale Boulevard at Caulder
2 Avenue.

3 Q This is making noise. Make sure we keep our voice up.

4 A I'm sorry. Okay.

5 Q I'm going to let you show those on the photographs in
6 a minute.

7 MR. BULSA: While that's warming up, Your Honor, the
8 state would move State's 2 and 3 into evidence.

9 MS. JONES: No objection, Your Honor.

10 THE COURT: They're admitted.

11 (Map marked State's Exhibit No. 2; map marked State's
12 Exhibit No. 3.)

13 Q I want to show you State's Exhibit 4 for
14 Identification. Is that the picture of the actual front of
15 the residence?

16 A It is.

17 Q Okay. And what side of that does that appear to be?

18 A It'd be the left side.

19 Q Okay.

20 A Left side.

21 Q Depicted by the door being open?

22 A Yes, sir.

23 MR. BULSA: Your Honor, the state would move State's 4
24 into evidence.

25 MS. JONES: No objection, Your Honor.

Doug Harwell
Direct examination by Mr. Bulsa

1 THE COURT: It's admitted.

2 (Photograph marked State's Exhibit No. 4.)

3 THE COURT: Take that rope down so the jury can move
4 down.

5 (Pause.)

6 Q I want to show you State's 2, first the map view.

7 A Yes, sir.

8 Q Push that red button if you would. And watch the
9 microphone.

10 A Yes, sir.

11 Q Identify the location in question.

12 A That is approximately where [REDACTED] Owens Street is.

13 Q It's marked by an A on the map.

14 A Yes. This is Duncan Park.

15 Q Okay. And where is the other park you mentioned?

16 A It's right -- right here is Carver Junior High School.
17 So it's right along in here, right there. You've got a
18 distance from here to this park, and you've got a distance
19 from here to Duncan Park.

20 Q Focus that.

21 Okay. State's Exhibit 3 is actually an aerial
22 photograph, the same. And point out those three locations
23 again.

24 A This is [REDACTED] Owens Street.

25 Q So that's the residential area.

Doug Harwell
Direct examination by Mr. Bulsa

- 1 A Yes. This is the park at Hudson Barksdale Boulevard
2 and Caulder Avenue.
- 3 Q Looks to be within walking distance?
- 4 A Yes.
- 5 Q And Duncan Park is --
- 6 A This is Duncan Park here.
- 7 Q Okay.
- 8 A Well, that's all of Duncan Park. This is -- to give
9 you a point of reference, that's the stadium, and this is
10 the actual park area.
- 11 Q Okay. Now, show the jury the actual residence,
12 State's Exhibit No. 4.
- 13 A Yes, sir.
- 14 Q All right.
- 15 A It's [REDACTED] Owens Street. This is apartment [REDACTED] on the
16 left.
- 17 Q Was apartment A occupied?
- 18 A I believe it was. I -- I never spoke to any of the --
19 the residents at apartment A.
- 20 Q So the focus was all on [REDACTED].
- 21 A All on [REDACTED].
- 22 Q Right side.
- 23 A Yes, sir.
- 24 Q All right. Now, if you would, tell the jury what you
25 recall happening when the tactical team attempted to gain

Doug Harwell
Direct examination by Mr. Bulsa

1 entry.

2 A Yeah. We -- we pulled -- we followed the tactical
3 van. We have a -- a specialized vehicle that the tactical
4 team uses when they respond. The team typically is eight
5 to ten to 12 members of the agency.

6 When the -- the van pulled up there was a -- a member
7 of the team that went to the left side of the residence,
8 and part of the team went to the front door for the breach.

9 A distraction device was deployed on the left side of
10 the residence. It's a -- they call it a flashbang. It's a
11 very loud explosion type thing. It's -- it emits light.

12 When the flashbang was deployed I was standing near
13 the front of the tactical van in front of the residence on
14 the roadway.

15 And this is not a fair picture there but that's --
16 that tree right there was almost to the roadway. So we
17 were fairly close to the residence.

18 When the explosion went off the tactical team started
19 screaming police, search warrant, police, search warrant.
20 And they continued saying police, search warrant, as they
21 entered the residence.

22 I heard like one, two or maybe three shots, and then I
23 heard a multitude of shots ring out. And then we were told
24 that there was an officer hit. And they brought Officer
25 Harris out of the -- the house onto the -- into the yard.

Doug Harwell
Direct examination by Mr. Bulsa

1 One of our tactical team has E.M.S. personnel embedded
2 with the tactical team. They're reserve officers. They do
3 reserve. I mean, they're actually reserve officers, not
4 just to supplement the tactical team. They -- they train
5 with the tactical team. They are proficient with firearms.

6 One of the reserve officers or one of the tactical
7 members we had was an E.M.S. person. And he immediately
8 began checking Officer Harris.

9 And then we found that the other gentleman and the
10 female had been shot. And he began administering to them
11 as well while we were waiting on the ambulance to arrive.

12 Q So you're telling us one of the actual tactical
13 members began first aid on sergeant -- Officer Harris?

14 A Yes, sir, Officer Harris, yes, sir, and the -- the
15 gentleman that passed and the female.

16 Q Okay. All right. So how many people were actually
17 inside the residence to your knowledge?

18 A Three.

19 Q And two of those three were struck --

20 A Yes, sir.

21 Q -- by fire.

22 A Yes, sir.

23 Q As well as Officer Harris.

24 A Yes, sir.

25 Q Okay. Now, did you stop at that point the execution

Doug Harwell
Direct examination by Mr. Bulsa

1 of the search warrant --

2 A Yes.

3 Q -- to gain control of that scene?

4 A Yes. Once Mr. Moore was taken into custody and the --
5 Mr. Rogers I think was the -- the young man that passed
6 away -- and the female.

7 Once they were taken into custody and transported to
8 Spartanburg Regional we notified SLED of an
9 officer-involved shooting. And we held the residence,
10 nobody in or out. SLED arrived, and they took over the
11 actual processing of the scene relative to the
12 officer-involved shooting.

13 Q And what did your men do in the meantime?

14 A It -- very chaotic. We had to get the tactical team
15 to city hall to begin the process of the debrief. The guys
16 on my team had to participate in -- in that as well.

17 I -- at that point I become the return officer on the
18 warrant. We had to have somebody that was going to be able
19 to stay with the residence while SLED completed their
20 investigation and then handed the residence over to us to
21 begin the drug investigation. So -- so I -- I assumed that
22 role and stayed with the residence.

23 Q You actually stayed with the residence while everybody
24 was being debriefed.

25 A Yes, sir.

Doug Harwell
Direct examination by Mr. Bulsa

- 1 Q Was that a way of saying the residence was secured?
- 2 A Yes, sir.
- 3 Q And no one could go in and out --
- 4 A Yes, sir.
- 5 Q -- during that process other than the technicians who
- 6 were processing the scene.
- 7 A Yes, sir, yes, sir.
- 8 Q And did you eventually gain the opportunity yourself
- 9 and your narcotics officers to go in and actually search --
- 10 A Yes, sir.
- 11 Q -- the residence for drugs?
- 12 A Yes.
- 13 Q Okay. And you said -- you referenced that you did the
- 14 return on the search warrant.
- 15 A I did.
- 16 Q What do you mean by the return on the search warrant?
- 17 A The affiant in a search warrant appears in front of
- 18 the magistrate and requests a warrant. The magistrate
- 19 either agrees that probable cause exists for the warrant
- 20 and issues the warrant or it's declined.
- 21 The return officer is the person that is tasked with
- 22 actually collecting all of the evidence and putting --
- 23 making a written notation what was taken out of the
- 24 residence and leaving a copy of the warrant along with the
- 25 inventory with the residence. And I -- I assumed that

Doug Harwell
Direct examination by Mr. Bulsa

1 role.

2 Q okay. So you basically collected and listed the
3 items.

4 A Yes, sir.

5 Q And secured those items to put into evidence.

6 A Yes, sir.

7 Q And they were put into evidence for later testing?

8 A Yes, sir.

9 Q And during this process did you take photographs of
10 where the items would have been --

11 A Yes, sir.

12 Q -- located in the residence?

13 A Yes. Once I -- I received the residence at -- I want
14 to say it was like 2:00 o'clock in the afternoon when I
15 actually received the residence.

16 Q Okay. Now, how many officers took place in the
17 actual --

18 A Excuse me. It was 3:00 o'clock when I was able to
19 enter the residence.

20 Q 3:00 o'clock in the afternoon.

21 A Yes.

22 Q And what time did the tactical team try to gain entry?

23 A It was before 8:00 o'clock. It was at 7:47 in the
24 morning.

25 Q Okay. So just a little past 7:45. Was it light

Doug Harwell
Direct examination by Mr. Bulsa

1 outside?

2 A Yes, sir.

3 Q And was this picture taken -- I believe it was taken
4 that day. Was it a clear day?

5 A Yes, sir.

6 Q And it was in the wintertime. So at 3:00 o'clock when
7 you gained access to it how many officers participated in
8 the search?

9 A It was myself. Investigator Kirby had arrived back at
10 the scene. Investigator Stacy, Tim Stacy, and Brandy
11 Edwards and Josh Bagwell with my team.

12 Q So five of them.

13 A Yes, sir.

14 Q And were any drugs found?

15 A Yes, sir.

16 Q In what part of the residence were those drugs found?

17 A There was drugs found in the center room; there was
18 drugs found in the front room.

19 Q Center room --

20 A The house is --

21 Q Describe the house for us.

22 A The -- you enter the door. And this is a living room.
23 It's a -- I don't know. May be a 10-by-12 size room. You
24 go through a -- a door closer to the center part of the
25 house, and you enter a center room. There was a couch in

Doug Harwell
Direct examination by Mr. Bulsa

1 that room.

2 There was a bathroom to the right rear of that room,
3 and then the kitchen was to the left here. So it was
4 basically a 4-room house or apartment.

5 Q You're calling the front room the one that the door
6 enters into?

7 A Yes, sir.

8 Q And then the immediate room behind that would be the
9 center room.

10 A Center room.

11 Q And the far room -- is that a kitchen area?

12 A Yes, sir, the far left.

13 Q Okay. And then there is a small bathroom.

14 A Yes, sir.

15 Q And if you're standing in that doorway looking
16 straight ahead, what do you actually see?

17 A If you're standing in the doorway and looking straight
18 ahead you see the doorway leading into the center room and
19 you see the doorway to the bathroom.

20 (Photograph marked State's Exhibit No. 5 for
21 Identification.)

22 Q Show you what's been marked State's Exhibit 5 for
23 Identification. Is that a view you would have standing at
24 the front door?

25 A Yes, sir.

Doug Harwell
Direct examination by Mr. Bulsa

1 Q And that's an accurate depiction of how you saw the
2 house?

3 A Yes, sir.

4 MR. BULSA: Your Honor, the state would offer State's
5 5 into evidence.

6 MS. JONES: No objection.

7 THE COURT: It's admitted.

8 (Photograph marked State's Exhibit No. 5.)

9 Q So there's actually -- looks like they had a couch in
10 front of an old fireplace.

11 A Yes, sir.

12 Q And then -- you got the pointer with you?

13 A I do. This is the doorway leading to the center room.
14 And you can't really see for the door, but the door was
15 open further in. You could see into the bathroom area.

16 (Photograph marked State's Exhibit No. 6 for
17 Identification; photograph marked State's Exhibit No. 7 for
18 Identification.)

19 Q Show you what's been marked State's 6 and 7 for
20 Identification. Do you recognize those photographs?

21 A Yes.

22 Q Do they show a progressing into the room --

23 A It does.

24 Q -- and into the house?

25 MR. BULSA: Your Honor, the state would offer six and

Doug Harwell
Direct examination by Mr. Bulsa

1 seven into evidence.

2 MS. JONES: No objection.

3 THE COURT: They're admitted.

4 (Photograph marked State's Exhibit No. 6; photograph
5 marked State's Exhibit No. 7.)

6 Q Is this, State's 6, is this a photograph where you
7 would see if you stepped into the doorway?

8 A Yes. This is a bathtub right there.

9 Q State's 7, is this a further progression into the
10 house?

11 A Yes. This would be standing in the doorway from the
12 first room into the center room. This is the kitchen area.

13 And this, again, is the bathroom. This was an old style --
14 what do they call them -- claw foot bathtub.

15 Q All right.

16 (Photograph marked State's Exhibit No. 8 for
17 Identification; photograph marked State's Exhibit No. 9 for
18 Identification; photograph marked State's Exhibit No. 10 for
19 Identification.)

20 Q Let me show you State's 8, 9 and 10 for
21 Identification. Do you recognize those pictures?

22 A Yes.

23 Q Are those an accurate depiction of that center room?

24 A It is, yes.

25 Q Where were the majority of the drugs found in this

Doug Harwell
Direct examination by Mr. Bulsa

1 residence?

2 A The majority of the drugs was in the center room.

3 MR. BULSA: Your Honor, the state would offer, eight,
4 nine and ten into evidence.

5 MS. JONES: No objection.

6 THE COURT: They are admitted.

7 (Photograph marked State's Exhibit No. 8; photograph
8 marked State's Exhibit No. 9; photograph marked State's
9 Exhibit No. 10.)

10 Q To give the jury a better perspective, we've got --
11 State's 7 shows the view from the doorway of the first room
12 into the second room. State's 8, does that show sort of
13 a -- sort of turn around the room?

14 A Yes. If you -- if you were to imagine yourself
15 walking from the first room into the second room, if you
16 turn to your left this would be what you would see looking
17 to the left.

18 Q And then State's 8 -- excuse me -- State's 9 is
19 turning a little bit further.

20 A Yes.

21 Q See the sidewalk.

22 A If you recall, two pictures before there was a couch
23 on the right-hand side of the wall. If you're standing in
24 front of that couch and look to your left this is what you
25 see.

Doug Harwell
Direct examination by Mr. Bulsa

1 Q And that would be this couch area you're talking
2 about?

3 A Yes. If you were to stand in front of that couch and
4 look to your left.

5 Q And so there's a matching couch on the opposite wall.

6 A Yes.

7 Q And State's 10. Swing us around all the way back.

8 A Yeah. That would be standing in front of the couch
9 looking back toward the -- the mantle, the fireplace. And
10 this is the outside door.

11 Q The way this house is built it almost looks like the
12 front door lines up with that second-room door.

13 A Yes, sir.

14 Q And then almost goes in straight to the bathroom.

15 A Yes, sir.

16 Q Okay. Now where in this center room were most of the
17 drugs found?

18 A There were -- if you'll notice, this is a
19 refrigerator, like a college-dorm-type refrigerator.

20 There was a bag of marijuana that was found in this
21 refrigerator. It weighed approximately 459 grams.

22 These boxes contain crack cocaine, powder cocaine,
23 pills.

24 There is a police scanner, I believe, right here
25 suspended on the mantle.

Doug Harwell
Direct examination by Mr. Bulsa

1 And I think you can see there's a -- like a pill
2 bottle here. It was numerous different type of pills that
3 was in the house.

4 Q Okay.

5 (Photographs marked State's Exhibits Nos. 11 through 22
6 for Identification.)

7 Q You wanted to comment about --

8 A Yes, sir. I wanted to correct myself. These boxes
9 were not the Swisher Sweet boxes that contained the powder
10 cocaine and the crack cocaine.

11 Q And where were those boxes?

12 A Those were on a coffee table in the center of the
13 room.

14 Q Okay. Speaking of the coffee table, would you look at
15 State's Exhibit 11?

16 A Yes.

17 Q That's the coffee table --

18 A Yes.

19 Q -- you mentioned?

20 A Yes.

21 MR. BULSA: The state would offer State's 11 into
22 evidence.

23 MS. JONES: No objection.

24 THE COURT: It's admitted.

25 (Photograph marked State's Exhibit No. 11.)

Doug Harwell
Direct examination by Mr. Bulsa

1 Q while we're reviewing the photographs, please look at
2 State's 12 through 15 and see if those depict the area and
3 items found.

4 A Actually, I was -- I was right the first time. Yes,
5 this is the -- this is the top of the television set.

6 Q Just review the pictures and we'll --

7 A Yes, sir. I'm sorry, yes.

8 Q All of those are accurate?

9 A Yes.

10 Q And that's the reason to take pictures, is to help you
11 document?

12 A Yes.

13 Q Okay.

14 A There was quite a bit of evidence come out of this
15 house.

16 MR. BULSA: The state would offer 12 through 15 into
17 evidence.

18 MS. JONES: No objection.

19 THE COURT: They're admitted.

20 (Photographs marked State's Exhibits Nos. 12 through
21 15.)

22 Q Let's talk about -- do you see the coffee table in the
23 bottom portion of that?

24 A This is the coffee table.

25 Q State's 11. That's the actual coffee table itself.

Doug Harwell
Direct examination by Mr. Bulsa

1 A Yes.

2 Q Now, State's 12. What does this show us?

3 A Yes. This is the top of the television. You can see
4 the television here.

5 THE COURT: Please use the microphone.

6 THE WITNESS: Oh, I'm sorry, Your Honor.

7 A I said yes. You can -- you can see the top of the
8 television here. This is a picture on the television, and
9 these are the Swisher Sweet boxes.

10 Q Okay. State's 13.

11 A This is the open box. This is cocaine base, crack
12 cocaine. That would be crack.

13 Q Okay. State's 14. Hard to see that one.

14 A It's hard to see that one. That's better. That's
15 green plant material. And I think there's some crack in
16 there as well.

17 Q Okay. State's 15.

18 A This is the drawer of the coffee table. The drawer
19 opened up. There is the green coffee-table legs.

20 THE COURT: Excuse me just a minute.

21 THE WITNESS: I'm sorry, Your Honor.

22 THE COURT: You've got your back to the court
23 reporter, and she can't hear very well --

24 THE WITNESS: Oh, I'm sorry.

25 THE COURT: -- because you're not using the microphone

Doug Harwell
Direct examination by Mr. Bulsa

1 either. So be mindful of her presence.

2 THE WITNESS: I apologize.

3 BY MR. BULSA

4 Q Make sure you speak loud.

5 A Okay. When you pulled open this drawer, this is money
6 that was in the drawer, and this is marijuana.

7 Q Okay. All of this was in the center room?

8 A Yes, in the center room.

9 Q And did you collect all of those items?

10 A I did.

11 Q Now, if you would, review State's 16 through 22 for
12 Identification.

13 A Yes, sir.

14 Q Are these accurate pictures of other items you saw in
15 the house?

16 A Yes, sir.

17 MR. BULSA: Your Honor, the state would offer State's
18 16 through 22 into evidence.

19 MS. JONES: No objection.

20 THE COURT: They're admitted.

21 (Photographs marked State's Exhibits Nos. 16 through
22 22.)

23 Q State's 16 is actually very similar to State's 15.
24 It's a different view of it.

25 A Yes.

Doug Harwell
Direct examination by Mr. Bulsa

- 1 Q Maybe a better showing of what's in that drawer.
2 A That's marijuana.
3 Q And what does State's 17 show?
4 A That is marijuana from a shelf in the center room.
5 Q Okay. State's 18.
6 A That's the top of the television or, yeah, the top of
7 the television.
8 Q And just a different view?
9 A Yeah.
10 Q Okay. State's 19.
11 A That is the marijuana from the dorm-size refrigerator
12 that was in the -- the center room.
13 Q That's the refrigerator you showed --
14 A Yes, sir.
15 Q -- to the jury in another picture?
16 A Yes, sir.
17 Q State's 20.
18 A Those were pills from one of the boxes.
19 Q Okay. State's 21.
20 A Pills from the top of the television set.
21 Q What is inositol powder?
22 A Inositol powder is -- it can be used as a cutting
23 agent for cocaine to make crack cocaine.
24 Q Okay. And State's 22.
25 A Those were a set of digital scales, and that is the

Doug Harwell
Direct examination by Mr. Bulsa

1 top of a -- it's a cooler. It's a blue cooler that was
2 setting in the room. That's the top of the blue cooler.

3 Q And those digital scales were found in that room.

4 A Yes, sir.

5 Q And what is the purpose of the digital scales?

6 A To weigh drugs.

7 Q Okay. And did you find any other drug packaging or
8 any other drug paraphernalia type items?

9 A The baggies. There was baggies that contained all of
10 the -- the items.

11 Q Okay. And what do you mean baggies -- sandwich bags?

12 A Sandwich baggies.

13 Q Okay.

14 A There was a -- like I say, I mentioned the police
15 scanner. We find that quite often in drug search warrants
16 where there's police scanners to listen to police
17 frequencies.

18 Q Did you document everything you collected?

19 A Yes, sir.

20 Q And you properly secured it?

21 A Yes, sir.

22 Q And what would you have done with the items?

23 A Once they're collected they're placed into evidence
24 bags, and they're deposited at the public safety department
25 evidence.

Doug Harwell
Direct examination by Mr. Bulsa

1 Q And would you describe the evidence bags that you use?

2 A For the cocaine and crack cocaine we use BEST
3 envelopes. That's best evidence collection. It's an
4 acronym for the method they use.

5 It's a -- a tamperproof envelope. Once you put the --
6 the items in the envelope you pull a -- a tape off of it
7 and seal it. And if it's tampered with, it will show it's
8 been tampered with. And it's given to our evidence
9 custodian. And he will give it to the Spartanburg County
10 sheriff's Office Lab for analysis.

11 Q So the purpose is to preserve the integrity of the
12 substance.

13 A Yes, sir.

14 Q So you as officers would just collect it and secure it
15 and seal it.

16 A Yes, sir.

17 Q And it will be transported to the sheriff's office for
18 analysis.

19 A Yes, sir.

20 Q Now, the marijuana itself, is it analyzed at the
21 sheriff's office?

22 A No, sir. And the marijuana is analyzed at the city.
23 Our evidence technicians are certified to determine whether
24 it's marijuana or it's not and give it an accurate weight.

25 Q So the marijuana would stay at the city and be

Doug Harwell
Direct examination by Mr. Bulsa

- 1 analyzed.
- 2 A Yes, sir.
- 3 Q And the powder substance and the pills would be taken
4 to the sheriff's office.
- 5 A Yes, sir.
- 6 Q okay. would you have signed all of those packages?
- 7 A Yes, sir.
- 8 Q So the packages would have your signature on them.
- 9 A Yes, sir.
- 10 Q Okay. So when the chemist testifies she can identify
11 the bags from your signature?
- 12 A Yes, sir.
- 13 Q And the case number?
- 14 A Yes, sir.
- 15 Q Okay. Did you yourself have any dealings with Mr.
16 Moore at the scene?
- 17 A No.
- 18 Q Did you see him taken from the house?
- 19 A I seen him, yes, sir. I seen him come from the house,
20 and that's how I recognize him in court today.
- 21 Q Okay. So you know he was in the house and walked out
22 of the house after the shooting.
- 23 A Yes, sir.
- 24 Q Okay. So he was clearly present in the house prior to
25 the search warrant.

Doug Harwell
Cross-examination by Ms. Jones

1 A Yes, sir.

2 Q All right. Please answer any questions Ms. Jones may
3 have of you.

4 THE COURT: Ms. Jones.

5 MS. JONES: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. JONES

8 Q Lieutenant Harwell, you indicated you were in charge
9 of this operation.

10 A I was the supervisor of the narcotics unit, yes.

11 Q Okay. Who was the supervisor of the tactical unit?

12 A Sergeant Hillers.

13 Q I'm sorry?

14 A Sergeant Hillers.

15 Q Sergeant Hillers?

16 A Yes.

17 Q Was there anybody who was in charge of both you and
18 the tactical unit?

19 A The current one, the director of public safety.

20 Q Okay. Was he present?

21 A No.

22 Q Okay. And it's your testimony that the tactical unit
23 was going to go in first, correct?

24 A Yes, ma'am.

25 Q Okay. And they deployed a distraction device,

Doug Harwell
Cross-examination by Ms. Jones

- 1 correct?
- 2 A Yes, ma'am.
- 3 Q And you indicated that's a loud noise and lights.
- 4 A Very loud -- very loud and very bright.
- 5 Q Okay. Do you recall -- do you know where they put
- 6 that distraction unit into the house?
- 7 A No, ma'am.
- 8 Q Okay. You didn't see any of that?
- 9 A It was a window, but I'm not exactly sure what window.
- 10 Q Okay.
- 11 A I heard it. I know it was there.
- 12 Q Okay. And how long would you say that this
- 13 distraction device operates?
- 14 A It's milliseconds. It's a bang.
- 15 Q So it was just one bang or two bangs?
- 16 A Yes. One bang.
- 17 Q Okay. And how -- would you describe it as a loud bang
- 18 or a soft bang?
- 19 A A loud bang.
- 20 Q It's a really loud bang.
- 21 A Yes.
- 22 Q And then lights?
- 23 A It's just the regular light that would come with the
- 24 explosions.
- 25 Q Okay. Are we talking sort of like fireworks?

Doug Harwell
Cross-examination by Ms. Jones

1 A No, ma'am. It's a bang. It goes bang, and then
2 there's a light that goes with it.

3 Q I understand. I'm trying to get a feel of what these
4 lights look like. Are they kind of a -- you know, a
5 firework goes off?

6 A It's a bright light.

7 Q A bright light. And how long does that bright light
8 last, do you know?

9 A Milliseconds.

10 Q Just milliseconds.

11 A Yes. It's a distraction device.

12 Q Okay. And also the front door is going to be breached
13 by a battering ram, correct?

14 A I think that's what they breached the front door with,
15 yes.

16 Q Okay. And that's a big metal thing?

17 A Yes.

18 Q Okay. And they pound on the door to open it, correct?

19 A Yes.

20 Q And that can be kind of loud too, right?

21 A Yes.

22 Q Okay. Is it your testimony or do you know whether or
23 not the distraction unit went off first and then they
24 attempted to breach the door?

25 A My recollection was the distraction unit went off

Doug Harwell
Cross-examination by Ms. Jones

1 first. And I heard, police, search warrant.

2 Q Okay.

3 A So I'm assuming that's -- I did not see the --
4 exactly, you know, which one went, you know, how long it
5 was before the bang until the -- the breach.

6 Q Okay. Fair enough. But all of this was going on,
7 correct?

8 A Yes.

9 Q Okay. What time of day was this?

10 A I testified it was 7:47 I believe in the morning.

11 Q 7:47.

12 A Approximately. I'm not sure of the exact time.
13 That's what I recall.

14 Q Do you recall if the sun was out, or was it just
15 coming up?

16 A Almost 8:00 o'clock in the morning, yes, ma'am.

17 Q Were there any lights on when you entered the house?

18 A I didn't enter the house until almost 4:00 o'clock.

19 Q Okay. So you stayed out of the house until about
20 4:00 o'clock.

21 A Yes.

22 Q And it's your testimony that once all of the subjects
23 were cleared out the house was initially processed by SLED?

24 A Yes. SLED -- SLED processed the scene.

25 Q Okay. What specifically was SLED processing the scene

Doug Harwell
Cross-examination by Ms. Jones

1 for?

2 A The weapons relative to the officer-involved shooting.

3 Q Okay. Were they there to investigate any of the drugs
4 or anything like that?

5 A No, ma'am. I'm sorry?

6 Q Okay. So they didn't take control of any of the drugs
7 or seize any of the drugs or anything like that.

8 A No, ma'am.

9 Q Okay. Just the weapons.

10 A Just the weapons. And I think they -- they -- they
11 worked the officer-involved-shooting side of it which --

12 Q Okay. To your knowledge did they take the weapons
13 that were located inside the house?

14 A They did.

15 Q Okay. So you didn't do that.

16 A No, ma'am.

17 Q How many folks were with you on your narcotics team to
18 execute the search warrant?

19 A There was five of the narcotics team.

20 Q Okay.

21 A And there was --

22 Q Who specifically was on that narcotics team?

23 A It was myself, Investigator Kirby.

24 Q Okay.

25 A Investigator Tim Stacy, Investigator Brandy Edwards,

Doug Harwell
Cross-examination by Ms. Jones

1 Investigator Josh Bagwell.

2 Q Okay. And the rest of the folks were on the tactical
3 team?

4 A Yes. The neighborhood improvement team. We refer to
5 it as an acronym. It's the violent crime task force,
6 neighborhood improvement team. They supplemented. And I
7 think there was three -- three of those folks.

8 Q But you're not in charge of that, right?

9 A Well, at that particular time, yeah, I was.

10 Q Okay. Now, you testified you saw the officer being
11 pulled out of the house.

12 A Yes, ma'am.

13 Q Okay. How soon after you heard all of the gunshots
14 and then silence was the officer pulled out?

15 A Seconds.

16 Q Seconds. Okay. And what about the other subject who
17 was in the house -- Mr. Rogers?

18 A As soon as Officer Harris was taken to the front yard,
19 notified the ambulances to come. And Mr. Rogers was pulled
20 out of the front room onto the porch at that point.

21 Q How long of a delay would you say there was if you
22 could?

23 A Seconds.

24 Q Okay. So that was within seconds. So he's pulled
25 out --

Doug Harwell
Cross-examination by Ms. Jones

- 1 A It seemed like hours, but it was relatively fast.
- 2 Q Okay. And you think that was probably seconds.
- 3 A Yeah.
- 4 Q Okay. And at some point was the Amanda Gentry brought
5 out?
- 6 A Yes.
- 7 Q Okay. Do you recall how soon?
- 8 A I don't.
- 9 Q Okay. Well, let me ask you this. Who -- who was
10 pulled out first? Was Amanda Gentry pulled out, or
11 Mr. Rogers?
- 12 A I want to say it was Mr. Rogers that was pulled out
13 first.
- 14 Q Okay. And did -- who started working on Mr. Rogers?
- 15 A Our E.M.S. technician who is embedded with the
16 tactical team.
- 17 Q And who would that have been?
- 18 A I think it was Officer Bogan.
- 19 Q Okay. And Mr. Rogers had been shot, correct?
- 20 A Yes.
- 21 Q And he had been shot multiple times, correct?
- 22 A I don't know how many times he was shot.
- 23 Q Okay. You didn't go up and look at him specifically?
- 24 A No, ma'am.
- 25 Q Okay. And were you the one who was taking photos of

Doug Harwell
Cross-examination by Ms. Jones

1 the scene?

2 A I took photos when I went in at 4:00 o'clock to start
3 the drug recovery.

4 Q Okay. But initially when you folks are on the scene,
5 who was in charge of taking photos at approximately 8:00,
6 8:30 in the morning?

7 A That would have been SLED.

8 Q Okay. How soon after all of the -- you know, you
9 called in it to SLED to say, hey, we've got an officer --
10 officer-shooting situation, you need to come investigate --
11 how long after that phone call was placed did SLED arrive
12 on the scene?

13 A It was within the hour.

14 Q An hour?

15 A Yeah, within the hour.

16 Q Did anybody think to take photos of Mr. Rogers, his
17 injuries at the scene?

18 A Not that I'm aware of.

19 Q Okay. What about the officer who was down? Anybody
20 take photos of him at the scene?

21 A Not that I'm aware of.

22 Q Okay. And Ms. Gentry?

23 A Not that I'm aware of. I was kind of concerned about
24 getting medical help instead of photographing, ma'am.

25 Q How long would you say that it took you before you

Doug Harwell
Cross-examination by Ms. Jones

1 processed the scene?

2 A For me? I -- probably an hour or more.

3 Q An hour or more?

4 A Yeah. I would -- I would assume.

5 Q Okay.

6 A I closed the warrant at 4:49. So right at an hour.

7 Q And is it your main job to seize evidence?

8 A Drug evidence, yes, ma'am.

9 Q Okay. And do you do anything else besides seize the
10 drug evidence?

11 A I'm not sure what you're --

12 Q All right. Do you take fingerprints? Do you dust for
13 fingerprints on anything?

14 A No, ma'am.

15 Q Okay. Who would do that?

16 A If there was any fingerprint dusting it was probably
17 by SLED. I didn't dust for any fingerprints on anything.

18 Q Okay. And was anybody called out to do any type of
19 fingerprints or anything like that?

20 A No, ma'am.

21 Q Okay. And you're the one who is taking all of these
22 photos?

23 A I took a majority of the photos, yeah.

24 Q Was anybody else taking any photos?

25 A Not that I'm aware. I took a picture of Mr. Moore as

Doug Harwell
Cross-examination by Ms. Jones

1 he was brought out but...

2 Q Okay. Fair enough. You indicated that there was a
3 police scanner in the house. Do you know whether or not it
4 was on?

5 A No, ma'am.

6 Q Do you know whether or not the power was cut to the
7 house prior to making entry or turned off in any way?

8 A No, ma'am. Well, the television was on, so I'm
9 assuming the power was on.

10 Q And y'all didn't shut off the television, because we
11 can see it in the pictures on.

12 A I did not, no.

13 Q Okay. Was anybody else assisting you in recovery of
14 the items located in the house?

15 A No, no, ma'am. I recovered it. There was -- my team
16 was searching. When they'd find something they would
17 notify me, and I'd recover it.

18 Q Okay. So there were several other people searching
19 the house.

20 A Yes.

21 Q Okay. So it would be fair to say that not only you
22 but Kirby, Stacy, Edwards and Bagwell were all looking for
23 narcotics essentially --

24 A Yes.

25 Q -- or any other pills or drugs or anything you could

Doug Harwell
Redirect examination by Mr. Bulsa

1 find.

2 A Yes.

3 Q Right?

4 A Yes.

5 Q And when you found those items you would submit them
6 to be analyzed, correct?

7 A Yes.

8 Q And for a proper weight.

9 A Yes.

10 MS. JONES: No further questions, Your Honor.

11 MR. BULSA: I have a further question.

12 REDIRECT EXAMINATION

13 BY MR. BULSA

14 Q I'd direct your attention to your search warrant at
15 the time.

16 A Yes, sir.

17 Q What is the general process of how you actually take
18 possession of the drugs? You obviously didn't find
19 everything.

20 A No. The -- the process is the team goes in and begins
21 to search. When they find something that is contraband or
22 any evidence -- evidentiary value -- the return officer,
23 which in this case was me, would be called to take
24 possession of it, and photograph it and take possession of
25 it.

Doug Harwell
Redirect examination by Mr. Bulsa

- 1 Q Your voice is going down.
- 2 A I'm sorry.
- 3 Q Thank you.
- 4 A I'm sorry. I said when we -- once we go into a
- 5 residence the team searches. The return officer will come
- 6 when one of the team members finds an item of evidence or
- 7 drugs. They call the return officer. The return officer
- 8 will come and collect the evidence and process it.
- 9 Q And this is a fairly confined area.
- 10 A Yes.
- 11 Q Were you actually in the room, in the center room?
- 12 A I was --
- 13 Q Were you positioned in the center room collecting
- 14 these items?
- 15 A Yes, yes, sir. I'm sorry.
- 16 Q So you didn't really have to come from outside inside
- 17 every time somebody found something.
- 18 A No.
- 19 Q Pretty much it was in sight, your sight as soon as
- 20 somebody found it, opened the drawer, opened a box.
- 21 A Yes.
- 22 Q It became clear that there was a powder substance and
- 23 marijuana substance and pills.
- 24 A Yes, sir.
- 25 Q Okay. So the actual search didn't take that long.

Doug Harwell
Redirect examination by Mr. Bulsa

1 A No.

2 Q I think you said about an hour.

3 A Yeah, but --

4 Q And there was a lengthy process involving the
5 shooting.

6 A Yes, sir.

7 Q But when your team actually got in there the drugs
8 were pretty much centered in that center room.

9 A Yes, sir.

10 Q Is that correct? Okay. Now, you listed on your
11 search-warrant return a couple of long barrel guns.
12 Describe those and where they were found.

13 A There was -- if you can remember the photograph where
14 we're going from the front room to the center room, on the
15 right-hand side where the couch was, one of the long guns
16 was setting in that corner. And there was one next to
17 the -- the kitchen area.

18 Q What type of guns were they?

19 A They were long barrel guns. I -- I want to say one
20 was a shotgun. Maybe both of them were shotguns.

21 Q Okay. Now, Ms. Jones asked you about SLED -- and, by
22 the way, what is SLED?

23 A State law enforcement division.

24 Q Okay. The state law enforcement division taking the
25 guns. Was she referencing the actual pistols that were

Doug Harwell
Redirect examination by Mr. Bulsa

1 used?

2 A Yes.

3 Q okay. I believe --

4 A I recovered the long guns.

5 Q The long guns were there and recovered by your team.

6 A Right.

7 Q okay. And they were in close proximity to these
8 drugs.

9 A Yes, sir.

10 Q Do you know if they were functional?

11 A I'm sorry?

12 Q Did they appear to be functional?

13 A They appeared to be functional.

14 Q Did you find any rounds?

15 A Found a good bit of ammunition.

16 Q What kind of ammunition?

17 A Center room shelf, there was miscellaneous bullets,
18 12-gauge shells, .38 bullets, a 9mm bullet, eight .45
19 bullets and eight .32 bullets.

20 Q okay. And clearly the shotgun shells would have fit
21 the long barrel shotgun.

22 A Yes, sir.

23 Q And did you also find a -- what you described as a
24 long knife?

25 A Yes.

Doug Harwell
Redirect examination by Mr. Bulsa

- 1 Q And how long was that knife?
- 2 A It was a long knife.
- 3 Q Okay.
- 4 A It was on the shelf in the closet of the center room.
- 5 And the closet would be behind where the small refrigerator
- 6 was setting at.
- 7 Q So if we saw the window it would to be the left of the
- 8 window.
- 9 A To the left of the window beside the fireplace.
- 10 Q Okay. So you found the drugs, majority of the drugs,
- 11 in the center room, two long guns in the center room, the
- 12 knife in the closet of the center room. Okay. Now, the
- 13 pistol has already been taken by the time you got there.
- 14 A Yes, sir.
- 15 Q So you have no knowledge of where those were found.
- 16 A No, sir. I do not.
- 17 Q So SLED's involve -- their concern is the shooting.
- 18 A Yes, sir.
- 19 Q Your concern is the drugs.
- 20 A Yes, sir. And I could add there was a bulletproof
- 21 vest that was also recovered from the residence. It was on
- 22 a couch.
- 23 Q Was that in the center room?
- 24 A Yes, sir, all in the center room.
- 25 Q Now, Ms. Jones asked you about whether any photographs

Doug Harwell
Redirect examination by Mr. Bulsa

1 were taken of the wounds.

2 A Yes, sir.

3 Q You didn't take any.

4 A No, sir.

5 Q Do you know if anybody else took any?

6 A I -- I don't know if anybody else took any.

7 Q In addition to SLED being called was E.M.S. called?

8 A E.M.S. was called. And our -- we had a lot of our
9 officers respond when it come over the radio as an officer
10 shot. And our evidence technicians also responded.

11 Q Okay. And do you recall how many ambulances?

12 A There was at least three ambulances, and I think there
13 was at least one E.M.S. supervisor on the scene as well.

14 Q Okay. And everybody's concern was obviously on the
15 officer, but it was also concern for the other two
16 individuals that had been shot.

17 A Yes, sir.

18 Q So all three people were receiving medical attention.

19 A Yes, sir.

20 Q And transported in ambulances?

21 A Yes, sir.

22 Q So that was the main concern --

23 A Yes, sir.

24 Q -- was to save their lives.

25 A Yes, sir.

Doug Harwell
Redirect examination by Mr. Bulsa

1 Q Now, Ms. Jones asked you about fingerprints. Did you
2 ask for any of the items that you collected to be
3 fingerprinted?

4 A No, sir.

5 Q Why not?

6 A I think we use fingerprints to -- to identify somebody
7 we don't know. Mr. Moore was in the house. There was no
8 reason to fingerprint.

9 Q Okay. And you also referenced one of Ms. Jones'
10 questions about photographs. You commented about taking a
11 photograph of Mr. Moore --

12 A Yes, sir.

13 Q -- as he come out of the house.

14 A Yes, sir.

15 (Photograph marked State's Exhibit No. 23 for
16 Identification.)

17 Q Show you what's been marked State's Exhibit 23 for
18 identification.

19 A Yes, sir.

20 Q Would that be the picture you took of Mr. Moore --

21 A Yes, sir.

22 Q -- coming out of the house?

23 A Yes, sir.

24 Q Is he in handcuffs?

25 A Yes, sir.

Doug Harwell
Redirect examination by Mr. Bulsa

1 Q And he's being taken out by two officers?

2 A Yes, sir.

3 Q Does this photo show how the officers were dressed at
4 the --

5 A That's the reason for the photograph.

6 Q Okay.

7 MR. BULSA: Your Honor, the state would offer 23 into
8 evidence.

9 MS. JONES: Your Honor, we would object to that photo.

10 THE COURT: Let me see it.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: Overrule the objection.

14 (Photograph marked State's Exhibit No. 23.)

15 Q As this is warming up would you, if you would,
16 describe for the jury how the tactical unit usually dresses
17 when they enter a house, when they're involved in an
18 operation?

19 A Our tactical team wear heavy duty, bullet proof vests
20 as opposed to the vests that the officers typically wear.
21 They wear the -- I guess they offer more protection.
22 They're very thick.

23 They typically carry the long rifles. Several of them
24 carry -- just enter with pistols, but they have the long
25 rifles.

Doug Harwell
Recross-examination by Ms. Jones

1 They wear Kevlar helmets. And they have police
2 identification. They've got police wrote on their front
3 and on their back.

4 Q And State's 23, picture you took of Mr. Moore being
5 taken into custody.

6 A Yes, sir.

7 Q Okay. And those two officers, were they involved in
8 the -- a tactical entry into the house?

9 A Yes. This is Sergeant Hillers. And I really can't
10 see his face to tell you who he is.

11 Q okay. That would depict how they were --

12 A Yes.

13 Q would have been seen by somebody.

14 A Yes. The Kevlar helmets and the heavy duty vests.

15 Q Okay. All right. Thank you. That's all I have.

16 MS. JONES: Just very briefly, Your Honor.

17 RECROSS-EXAMINATION

18 BY MS. JONES

19 Q You indicated that a lot of the items were found in
20 the center room, is that correct?

21 A Yes.

22 Q Was any items found on Mr. Rogers?

23 A There were some pills that a SLED agent recovered and
24 give to me.

25 Q Okay. Was there also some currency?

Mark Hillers
Direct examination by Mr. Bulsa

1 A Yes.

2 Q Okay. And to your knowledge was any items recovered
3 from Mr. Moore when he was taken into custody?

4 A Not to my knowledge.

5 Q Thank you.

6 THE COURT: You may step down.

7 MR. BULSA: The state calls Mark Hillers.

8 MARK HILLERS, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BULSA

11 Q Please introduce yourself to the jury.

12 A My name is Mark Hillers, a sergeant at the Spartanburg
13 Public Safety Department.

14 Q How long have you been with public safety?

15 A Nine years and two months.

16 Q And are you involved with the tactical unit?

17 A That's correct. I'm a team leader for the
18 department's tactical team.

19 Q And describe what that's called.

20 A The team leader?

21 Q No. The -- what's the tactical team name?

22 A It's called the tactical neutralization team.

23 Q T.N.T.?

24 A Correct.

25 Q Okay. And how long have you been associated with that

Mark Hillers
Direct examination by Mr. Bulsa

1 group?

2 A Approximately seven years.

3 Q And do you often assist in the execution of search
4 warrants?

5 A Very frequently.

6 Q And your role is to basically secure the residence, is
7 that right?

8 A That's correct.

9 Q On this occasion were you asked to help secure the
10 residence at [REDACTED] Owens Street in Spartanburg?

11 A I was.

12 Q Do you recall what time your team arrived at that
13 location?

14 A Approximately 7:46.

15 Q How many team members would you have had with you?

16 A On that particular day I believe it was nine including
17 myself.

18 Q Why so many people?

19 A Because it becomes a safety -- it's a no-knock search
20 warrant, so it becomes an even heightened safety high-risk
21 warrant. So we bring as many as we possibly can.

22 Q So the no-knock sort of triggers your thought that
23 weapons may be inside?

24 A Absolutely.

25 Q Okay. And these nine individuals that you would have

Mark Hillers
Direct examination by Mr. Bulsa

1 brought to the scene -- well, nine including yourself --
2 where would you have positioned them in relation to that
3 house?

4 A Prior to leaving city hall a tactical briefing is
5 completed. We give assignments and clear, concise
6 directions for each officer.

7 On this particular operation when we arrived we had a
8 team of two individuals, officers, operators on the SWAT
9 team that went to the left side of the residence.

10 The rest of the remaining team, the entry team, went
11 to the front porch at the door to the left side of the
12 duplex at [REDACTED] Owens Street.

13 Q Okay. Showing you State's Exhibit 4. That's the
14 front -- view of the front?

15 A That's correct. That's [REDACTED] Owens Street.

16 Q All right.

17 (Photographs marked State's Exhibits Nos. 24, 25 and 26
18 for Identification.)

19 Q Sergeant Hillers, if you will look at state's pictures
20 24, 25 and 26 and see if you recognize what those depict.

21 A I do.

22 Q And are those accurate photos of the house on that
23 day?

24 A It is.

25 MR. BULSA: Your Honor, the state would offer State's

Mark Hillers
Direct examination by Mr. Bulsa

1 26 -- excuse me -- 24, 25 and 26 into evidence.

2 MS. JONES: No objection.

3 THE COURT: They're admitted.

4 (Photographs marked State's Exhibits Nos. 24, 25 and
5 26.)

6 Q All right. Now, you said you had two on the left side
7 of the house, right?

8 A Correct.

9 Q State's 24 shows the left side of the house, is that
10 right?

11 A That is the left side of the house.

12 Q Okay. And what were those two men to do?

13 A If you look at the second window from the front
14 there's a --

15 Q Here is a --

16 A Okay. Thank you.

17 This second window from the front, their team, the
18 2-man team, their whole position was for distraction for us
19 while we went into the front door.

20 This 2-man element was to use a -- what we call a
21 flashbang pole. You'll see a picture of that shortly. And
22 what it does is it holds a flashbang. It's put into the
23 window to raise -- import this window, is what we call it.
24 Basically, to get eyes inside the house before our team
25 goes in. That's a safety precaution -- very safe. And

Mark Hillers
Direct examination by Mr. Bulsa

1 that's what that team, that team of two, were doing. While
2 they did that they were screaming police, search warrant.

3 Q Here is State's 25, a more close-up picture. Is the
4 window actually -- I guess the window's actually broken
5 out, is that right?

6 A The window is broken but there's -- I don't know what
7 type of material -- some kind of cloth, blanket, sheeting
8 material that was real thick. They were unable to actually
9 get eyes inside the residence before we were to come in.

10 Q You say get eyes inside of it. What do you mean?

11 A To see, physically see, inside the residence before we
12 can come in, to provide us cover as we come in the house.

13 Q So there were -- one of their goals was to actually
14 kind of look inside and let you know what they saw.

15 A Correct. Before we went -- go in through the front
16 door.

17 Q And this didn't allow them to do that.

18 A Absolutely not.

19 Q Okay. But they still were able to force a distraction
20 device inside?

21 A I wasn't there when they deployed it. I was on the
22 front.

23 Q Well, we'll ask them.

24 A Correct.

25 Q Let me show you State's 26. What does this show?

Mark Hillers
Direct examination by Mr. Bulsa

1 A That is the tool that he used. It's called a
2 flashbang pole.

3 The actual item, the -- it's called an N.F.D.D. or
4 noise flash diversionary device. It goes into -- if you
5 look right here it goes into the end -- I don't think the
6 end is being shown -- but it goes into one of the ends.
7 This is the handle.

8 The other side will have a string that pulls the pin,
9 so to speak, and then before it detonates. That's --
10 that's to keep it out of your hands and put it in a
11 location. The specific location in this specific instance
12 was the window.

13 Q Okay. So you're trying to visually look inside the
14 residence and you're deploying this noise device. What's
15 the purpose of the noise device?

16 A The noise device provides a distraction.

17 Q What are you trying to distract?

18 A The distraction is to bring the attention off the
19 front of the door to keep us safe. The destruction
20 technique -- what it's designed to do is to give us between
21 three and seven seconds of overload of the brain and
22 sensories that gives the freeze effect. The freeze effect
23 allows us to get in and securely. If they have a weapon
24 beside them, near them, in most cases it gives us that --
25 just enough time to get in there and secure them where

Mark Hillers
Direct examination by Mr. Bulsa

1 nobody is injured.

2 Q So in your training you should be able to get through
3 a door and in to secure the residence within seconds?

4 A Correct.

5 Q Okay. All right. Well, while these two men were
6 positioned on the side of the house to do that, where were
7 your other men?

8 A As we approached we stopped at this corner of the
9 house in the roadway, which is not depicted, but using your
10 imagination we're right here. We stop. We make an
11 approach.

12 The 2-officer element that's doing the port with the
13 flashbang is going over here the left side of the house.
14 We're coming through this location coming up to the steps.

15 At this point as the team leader on this operation,
16 which basically is the conductor -- direct people and
17 planning -- I staged right here on the right side of this
18 doorframe.

19 The rest of the team -- if you see all of this clutter
20 right here that was part of -- that was a hard thing to get
21 around with the remaining six members. They were all
22 stacked. Remember when I say stacked, they're lined up.
23 They're in a line getting ready to go into the house right
24 here the best that they can.

25 The doorway is considered a fatal funnel. It's a very

Mark Hillers
Direct examination by Mr. Bulsa

1 dangerous -- this is where we're going to encounter most of
2 our resistance or any kind of resistance whatsoever. So
3 everybody picks a side of the doorframe. It's not a
4 hundred percent safe, but it is safer.

5 At this particular -- like I said, see, this is a
6 mailbox right here. This is where -- this is where I came
7 to. And the remainder of the entry team was along this way
8 the best they could, because it was really cluttered.

9 Q How many men did you intend to go inside the
10 residence?

11 A Six total including myself.

12 Q Okay. All right. So what happened when you went to
13 the door?

14 A As we went to the door -- what's not depicted here is
15 a screen door. Okay. This is where some of the problems
16 came up.

17 As we -- as we were lined up ready to go into this
18 door the screen door had some kind of shoelace or some kind
19 of a rope, a tie, that tied the screen door down.

20 When our -- one of our operators who is responsible
21 for opening a screen door attempted to open it he just
22 pulled, and the string held it, kept the frame from
23 opening.

24 At that point, that's when I heard the police, search
25 warrant, coming from the side of the house, from Bogan, or

Mark Hillers
Direct examination by Mr. Bulsa

1 Officer Bogan, who is also an E.M.S. medic, as well as
2 Soules, Officer Keith Soules, who you'll hear later. They
3 were standing at the side.

4 I heard the detonation of the noise flash, the
5 diversionary device, go off from the outside, and heard
6 police, search warrant, several times.

7 You could not get into the house rapidly. When I say
8 rapidly, normally we're in in less than a second. This
9 probably took between two or three seconds at that point.
10 Do you want me to continue to go --

11 Q Wait a minute -- wait a minute. Let's digest what you
12 told us.

13 A Okay.

14 Q So the distraction device has gone off. Begins that
15 few-second countdown which basically doesn't happen like
16 it's supposed to. You're not in like you're supposed to go
17 in, not as planned to go in.

18 A And remember the window. For the full effect, to get
19 the effect of it, it would have to be in the window. And
20 as you can clearly see in that video, I mean in the
21 picture, there's a difference with the drapes. And
22 whatever material it was, it obviously did not get in
23 there.

24 Q Okay. All right. So you're already at a
25 disadvantage.

Mark Hillers
Direct examination by Mr. Bulsa

1 A Absolutely.

2 Q Okay. Now, how was entry actually gained?

3 A After that he was unable to get the screen removed, so
4 our ram guy who carries the battering rams, a metal
5 object -- I don't know if we've any pictures of that -- but
6 he just went ahead and struck through the screen to hit the
7 door to try to unlatch that tying mechanism, shoelace or
8 5-11 cord or whatever it was. I don't remember. I just
9 remember it being tied.

10 I think it took two strikes on the door. And this
11 whole time they're screaming police, search warrant, and we
12 are at this time, because there's the element of surprise,
13 is now gone. There's no -- there's no surprise element
14 because we're standing there screaming police, search
15 warrant.

16 As he strikes it -- I believe it was two -- it may
17 have been three times -- but it was two or three times --
18 the door opens.

19 At that point our ram guy which is -- I believe it was
20 officer Mathis -- he has to get out of the way. And as you
21 can see with all of this clutter -- and we're trying to
22 avoid the front of this door. Okay. So you can imagine
23 what we're going through right here.

24 Well, he tries to get out of the way. And at that
25 point our -- our guys that are supposed to go in the door

Mark Hillers
Direct examination by Mr. Bulsa

1 basically go ahead and move. And our first officer that
2 goes in the door is Officer Jason Harris. Okay.

3 Q And you're still to the side?

4 A I'm here at the -- at the right side right here where
5 the mailbox is, about where my head is. It's right here.

6 Q Were you -- were you going to actually enter the room
7 yourself?

8 A As a team leader we're normally fourth, fifth one in
9 so we can kind of direct, move, you know, if we need
10 additional operators on this side or that side. That's
11 what my job is. So I wouldn't go in first. Jason Harris
12 was assigned. He went in first.

13 Q Okay. Do you recall the order of your men that went
14 into the house?

15 A I remember the first one. I remember, you know, about
16 the four, but I wouldn't be a hundred percent.

17 Q Which of the men followed Mr. Rick [sic] Harris?

18 A Officer Harris goes in. Because of this clutter the
19 next guy slipped up, which I believe was Officer Morrow. I
20 think he said it was a trampoline -- some kind of furniture
21 or trampoline, small trampoline, here. Could not get
22 around it.

23 So Officer Harris ended up going in. And there was a
24 slight delay before the second officer, which ended up
25 being me, went in. He went in and took several steps.

Mark Hillers
Direct examination by Mr. Bulsa

1 As you walk into this house it was pitch black. It's
2 bright outside. All of these windows are covered up. I
3 know you -- you looked at the pictures, and it looks like
4 it's all lit up. That's not an accurate depiction of what
5 it was when we went in.

6 As we go in you can see portions of the front room. I
7 know you heard a lot about the middle room. You couldn't
8 see. You couldn't see nothing in that room. It was
9 completely pitch black.

10 The only light coming into this residence is from our
11 back, from this front door right here. That's the only
12 light that we can see. And it's back-lighting us, almost
13 like putting us on a stage at that point. And as you
14 recall on the pictures, there's so much clutter.

15 Officer Harris takes a few steps in, and we're still
16 screaming police, search warrant. It's been going on for
17 several seconds outside -- police, search warrant.

18 As he takes -- and I would say it would probably be --
19 it wasn't instant. He crosses the threshold, and it's
20 probably -- I don't know. He took about three -- he's past
21 the table where the couches are. He's not quite yet in the
22 second room, the middle room. But he's about midway, is
23 the best way I can explain it to you. So he's not right
24 coming across the threshold, and he's not quite at the
25 middle room. So he's in the middle.

Mark Hillers
Direct examination by Mr. Bulsa

1 The other guys are trying to get around all of that
2 clat -- you know, all of the clutter to get in. At that
3 point shots began to ring out.

4 Q Did you say you were the second man in?

5 A After the shoots came out and I realized that they
6 were fumbling trying to get around the clutter, absolutely.

7 Q So how many men would have been in the doorway at the
8 time the shots were being fired?

9 A On a normal situation we wouldn't have had those
10 issues. We would have been at least three. We would have
11 had -- and in that room at least three, more likely four,
12 depending on what we encounter when we go in how clat --
13 cluttered it is and how fast we can move through the
14 doorway, because, like I said, we want to get through that
15 door as quick as possible, but, you know, with the clutter
16 that caused and presented an issue.

17 Q Officer, we have four indictments listing four
18 separate officers and victims, yourself being one of them.
19 Why is that?

20 A As Officer Harris gets shot he screams and tells us
21 he's shot and goes straight face down midways in the first
22 room.

23 Once that happens the shots continue. I move from
24 this position right here to get into the doorway to provide
25 this officer with coverage, because these officers are held

Mark Hillers
Direct examination by Mr. Bulsa

1 up because of the clutter.

2 As soon as I came around the side I felt people to my
3 side. I don't know which officers it was, but I knew there
4 was somebody with me.

5 I came around -- as I came around the -- from here to
6 there I could feel wood from the front of the house where
7 my head is right here. I don't know if they've got a
8 picture. There was a bullet hole. That's where my head
9 was.

10 I moved into -- to cover the officer. And I go around
11 Officer Harris. As I come in I'm looking directly
12 straight, which is from the front room through the middle
13 room.

14 All I can see is the doorway. I can't -- I can see
15 the doorway. I can't really see anything inside there. I
16 can see flashes from a muzzle. I've shot nightfire for
17 nine years. I know what flashes look like from a muzzle,
18 from a gun being fired in the dark. It's required yearly
19 for all officers. I saw that at that time.

20 At that point I began to fire, return fire, through
21 the second room straight ahead. So it's -- it's almost an
22 absolute straight shot from the front door through the
23 middle room into the bathroom which --

24 Q Let me put a picture --

25 A Okay.

Mark Hillers
Direct examination by Mr. Bulsa

1 Q -- to help the jury understand what you're testifying
2 to. State's 5 is a picture of the front door. State's 6
3 is actually stepping inside the front door.

4 A If you notice this, this distance is roughly a foot.
5 The front door will not open -- it'll open just to a
6 certain degree, won't open all the way because of the wall.
7 This is the next apartment over.

8 Okay. This is what you're looking at. This is where
9 I'm seeing the -- the flashes and hearing the pop, pop,
10 pop, pop coming from in this direction.

11 I could see the flashes coming, and that's where I
12 directed my fire towards, was this area.

13 Q This happened to be the bathroom area.

14 A And I didn't know that at the time because I could not
15 see that. All I could see was flashes coming from right in
16 this area, different locations.

17 Q Okay. So how many men were in what I'm going to call
18 the line of fire --

19 A Okay.

20 Q -- coming from inside the house?

21 A Officer Harris is -- is down right here. His head's
22 face down. He's screaming for help. He's saying shot.

23 I'm over the top of him. We have an Officer Cooper
24 and a Officer Morrow and I believe an off -- Sergeant
25 Patton was right there beside me to my left.

Mark Hillers
Direct examination by Mr. Bulsa

1 So I basically pushed the door in as far as possible.
2 That's how I know it won't open all the way, because it
3 wouldn't go inside. It was like, you know, that's the end
4 of it, it's not going to go, there's either something
5 behind it.

6 Q And so we have Harris who has been wounded.

7 A Harris is wound.

8 Q And yourself --

9 A Myself.

10 Q -- Cooper and Morrow, at least those.

11 A Four.

12 Q Y'all four coming in while the shots are being fired
13 at you.

14 A That's correct.

15 Q And every one of you are in the line of fire, is that
16 correct?

17 A Correct. And you can -- there was -- it was very
18 obvious. You could feel. I remember -- I remember knowing
19 I'm getting ready to take a round. And knowing that, you
20 know, Officer Harris was down, I didn't have -- you know --
21 excuse me.

22 I remember being in there and I remember the bullets.
23 I could feel the wind and know that Officer Harris was
24 down. And the fire -- the shots wasn't stopping. So we
25 weren't able to get to him immediately. I was there, but I

Mark Hillers
Direct examination by Mr. Bulsa

1 wasn't able to grab him quick.

2 Q So how did y'all suppress the fire?

3 A After I fired -- and I believe it was about four
4 rounds -- into this area where the muzzle flashed the --
5 the firing stopped.

6 At that point the team doing their training
7 immediately went in front, came in front. There was --
8 there was an event that happened on this side.

9 Q Let me ask you to pause right there.

10 A Okay.

11 (Photograph marked State's Exhibit No. 27 for
12 Identification.)

13 Q Let me show you what's been marked State's 27. Does
14 that show the front room of this residence?

15 A It does, that's correct.

16 Q And to the right we can see the doorway leading into
17 the second room.

18 A That's correct. And a lot of clutter to the left
19 where it kept -- pretty much keeps you in that fatal
20 funnel.

21 Q Okay.

22 MR. BULSA: Your Honor, the state would offer 27 into
23 evidence.

24 MS. JONES: No -- no objection, Your Honor.

25 THE COURT: It's admitted.

Mark Hillers
Direct examination by Mr. Bulsa

1 (Photograph marked State's Exhibit No. 27.)

2 Q It appears that this photo was taken standing somewhat
3 in the doorway as well, the front doorway, and sort of to
4 the left to show the rest of that in the front room, is
5 that right?

6 A Correct. That's correct.

7 Q You were fixing to describe that something happened in
8 this front room.

9 A There was a William Rogers and a [sic] Amanda Gentry,
10 female, sitting on this couch, which I noticed afterwards.

11 I -- you know, I had tunnel vision, and my vision was
12 dead set straight ahead. That's what my teammates are for,
13 to get my 360 or all the way around to make sure
14 everything's going. And I was focused primarily right
15 here. But there was two individuals sitting right here on
16 the couch.

17 This is some kind of a dog cage. And as you come
18 in -- not to go too much into tactics -- but obviously one
19 goes left and one tries to go right to try to cover the
20 whole room. It was nearly impossible because of all of the
21 clutter in this situation here.

22 Officer Jeff Cooper and Officer Shane Morrow were
23 responsible for this area being -- knowing that I was
24 involved and we were getting shot at.

25 So that's when they -- they were in this -- in this

Mark Hillers
Direct examination by Mr. Bulsa

1 room and almost like they were sharing the doorway with me.
2 I could feel their arms, but I didn't turn obviously to
3 look to see who it was. Later on we talked, but that's --
4 that's what we have.

5 After the shots stopped being fired, at that point
6 those two same officers came in front of Officer Harris.
7 That way myself and an Officer Brian Shaw were able to get
8 Harris outside of the residence the same way we came in.

9 Like I said, he was about midways in, so they had to
10 go. They were pretty much right here by the couch at that
11 point knowing that the shots were fired from this direction
12 as well -- knowing -- and the reason they were knowing is
13 they could see where I was shooting at. And I can't
14 testify to what they saw. But they went ahead, and they
15 would wind up right here and got the front.

16 At that point immediately myself and Officer Shaw
17 grabbed Harris. We run him out of the house. At that
18 point he wasn't making much noise, so we were really,
19 really afraid of the outcome.

20 So we ran outside. And that tree that was in the
21 first picture at the front of the house, that's where we
22 brought him to and laid him down and did our assessment and
23 realized that he had a gunshot wound to his hip area. I
24 believe it was on the left side.

25 And at that point Officer Bogan who is our tactical

Mark Hillers
Direct examination by Mr. Bulsa

1 medic who is on the SWAT team with us began to give medical
2 assistance to him.

3 Q I want to put State's 27 back up. Officer, while your
4 attention was directed towards the bathroom area were you
5 aware of shots being fired in this front room?

6 A At the time I was not -- at the time I was not. My
7 concern was straight ahead. And that's what took all of my
8 attention.

9 Q Do you remember hearing shots?

10 A I remember -- I remember -- at the time it's real, you
11 know, a lot of stress on that situation. So I remember
12 something happening here but it was -- it was -- it was
13 almost like such a real small pop, pop, pop, not real loud
14 like you would normally hear, because auditory exclusion I
15 was having.

16 Q Okay. So your focus is on the main threat that you
17 saw and heard and felt.

18 A Where I show the shots being fired.

19 Q Okay. So what's going on beside you, you're not
20 attuned to that as all.

21 A I was not attuned to that very well.

22 Q Okay. All right. And did you yourself have any
23 dealings with either the man or the lady on the couch?

24 A I did. At that point once I brought Harris out the
25 residence was pretty much clean. It was grab him with

Mark Hillers
Direct examination by Mr. Bulsa

1 officer Shaw, run out, see where he was hit and see how bad
2 it was.

3 We knew he was in a lot of pain. Well, they began to
4 do their assessment. I probably stayed out there two or
5 three or four seconds, and then I took off and I went back
6 inside.

7 Q why would you do that?

8 A I still have a team in there. We had -- you know, I
9 had to make sure that nobody else was hit, nobody else was
10 hurt and make sure that, you know -- I didn't know if the
11 whole house had been cleared at that time, because it had
12 only been a couple of seconds. And I knew.

13 So I ran back inside at that point. I was fairly
14 confident that 90 percent of the house had been cleared by
15 officers or by our tactical officers because I could see
16 them.

17 In this front room I provided cover while I believe it
18 was William Rogers to be handcuffed so he could -- you
19 know, that's for safety instead of -- you know, we'll have
20 one person to cover, the other one handcuff. And at that
21 point I provided the cover, which standing there and
22 keeping eyes on him while the other officer can do
23 handcuffing.

24 Once that happened I went to the next room to where I
25 had -- where I had knew I had fired rounds and I knew I was

Mark Hillers
Direct examination by Mr. Bulsa

1 getting rounds shot at me from.

2 At that point I saw Toby Moore who's sitting right
3 there. He was face down in the bathroom.

4 Do you want to pull that picture up?

5 (Pause.)

6 A He was face --

7 Q Let me get one closer.

8 A Okay.

9 Q State's No. 7, I believe, showing you.

10 A That's correct. When I came -- when I got to this
11 room there was two officers. One of them was Officer
12 Mathis. I don't remember who the other one was. They had
13 him.

14 They had called him out, and he was laying face down
15 sticking partially out of this bathroom area. And I knew
16 this was where I had -- this is where I was shooting, in
17 this direction right here.

18 At that point I provided cover while they were
19 handcuffing him. As they were handcuffing him I asked him
20 if he had been shot, did we have any -- because we had
21 ambulances on the way.

22 Just to step back a little bit, E.M.S. headquarters is
23 on Union Street very, very close from here. I mean, if
24 you're familiar with Duncan Park, that's how close it is to
25 Duncan Park. The E.M.S. headquarters is right there just

Mark Hillers
Direct examination by Mr. Bulsa

1 up the road. So they were there very, very fast, not to
2 mention we already had a tactical medic there on the scene
3 instantly.

4 At that point I checked to make sure that he was not
5 shot. We realized he was not shot. As I asked him that --
6 I'll distinctly remember it forever -- he turned, looked at
7 me dead in my eye and grinned ear to ear as he was being
8 handcuffed.

9 Q Officer, let me show you State's 23. I believe you're
10 in this picture.

11 A That's me right here, and I believe this is Officer
12 Hensley who was responsible for the screen door.

13 Q Mr. Moore is dressed there. Was he dressed like that
14 in the house?

15 A I believe so.

16 Q He didn't have to put on any clothing?

17 A I didn't put on any clothes on him. That's -- that's
18 what I believe he was wearing whenever.

19 Q This would have been him being taken out of the house?

20 A That's correct.

21 Q And he's basically in the yard there.

22 A Yeah. That's -- looks like the front yard.

23 Q All right. Answer any questions the -- Ms. Jones may
24 have of you.

25

Mark Hillers
Cross-examination by Ms. Jones

1 CROSS-EXAMINATION

2 BY MS. JONES

3 Q officer Hillers, you're still pretty emotional about
4 this incident, aren't you?

5 A I am.

6 Q Okay. And, in fact, serving a search warrant can be
7 kind of an adrenaline-pumping situation, correct?

8 A That's correct.

9 Q Okay. You get on your gear. But it's not regular
10 police gear, correct?

11 A That's correct.

12 Q Okay. So you're getting on your gear. You're getting
13 your gun and you're getting your badge and getting into a
14 big truck, and you're going to go serve a search warrant,
15 correct?

16 A That's correct.

17 Q Okay. And when you initially got there you noted
18 there was a lot of clutter, correct?

19 A Correct, on that picture made up on the front porch
20 and inside.

21 Q And that was very frustrating, correct?

22 A I don't know if it was frustrating. It was -- it
23 caused more danger for us.

24 Q Okay. You weren't frustrated by the fact that you
25 couldn't line up correctly, you couldn't get into the door,

Mark Hillers
Cross-examination by Ms. Jones

1 the distraction wasn't working properly? That didn't get a
2 little frustrating to you?

3 A I wouldn't say frustrating -- concerning.

4 Q Concerning. At this point in time was your adrenaline
5 pumping?

6 A Probably.

7 Q Okay. You indicated two people went to the left side,
8 correct?

9 A Yes.

10 Q Who were those people?

11 A I believe it was James Bogan and Officer Keith Soules.

12 Q Okay. And you heard the flashbang bang.

13 A I did.

14 Q Okay. How long did that flashbang bang last?

15 A Millisecond.

16 Q Milliseconds. Okay. How often in search warrants
17 typically do you use a flashbang?

18 A Most no-knock warrants where we know that we have a
19 good -- good information that children or danger such as a
20 kerosene heater or different things aren't present at the
21 time, that's when they're used.

22 Q Okay. I think you've indicated they're to try and
23 have a freeze effect, correct?

24 A Have a --

25 Q Freeze effect. That was your words that -- you have

Mark Hillers
Cross-examination by Ms. Jones

1 three to seven seconds to get in, to have a quote, unquote,
2 a freeze effect on the individuals inside.

3 A Everyone is different, but it distracts them for three
4 to seven seconds, is what it's designed to do.

5 Q So they're not going to be able to think or process
6 information to reach for the gun, to get up and run, to get
7 up and go, correct? You just kind of want them frozen.

8 A Ideally, yes.

9 Q And it's loud and it's got lights and kind of scary,
10 correct?

11 A Yes.

12 Q Especially if you're woken up.

13 A Yes.

14 Q And you indicated it was dark inside, correct?

15 A It was.

16 Q Okay. So you're trying to get into the house. And
17 then you realize, uh-oh, screen door won't give, right?

18 A That's correct.

19 Q That's a problem. And is it your testimony today as
20 you're trying to deal with this problem you can deal with
21 the problem and still scream search warrant, police?

22 A It's coming from the left side of the house, as I
23 said, because there -- the plan was to go simultaneously or
24 just shout right before. Theirs went first, and we weren't
25 inside.

Mark Hillers
Cross-examination by Ms. Jones

1 Q I'm asking whether your team while they're trying to
2 deal with this problem is still able to think and still
3 yell out search warrant, police.

4 A Absolutely. That's -- that's what we're trying to do.
5 We want them to know we're there -- we want them to
6 know we're there.

7 Q How many times do you think you yelled that out?

8 A Repeatedly. That's -- our practice is repeatedly
9 throughout the whole house as we're going through the
10 house. Each room constantly, police, search warrant,
11 police, search warrant, police, search warrant.

12 Q And were the -- when the shots were fired were you
13 still screaming it out?

14 A At that point I don't recall if I was screaming it at
15 that exact second.

16 Q Okay. And when the battering ram starts to hit the
17 door, that can be kind of a loud noise as well, correct?

18 A I mean, I don't think it would be that loud. It's
19 a -- it's a bang, but nowhere near like the -- the
20 equipment.

21 Q And it can be concerting to occupants inside the
22 house, would you think, someone banging on your door acting
23 like they're going to try to break it down?

24 A Could be.

25 Q Okay. And we've already heard a bang to freeze them,

Mark Hillers
Cross-examination by Ms. Jones

- 1 lots of noise.
- 2 A And police, search warrant.
- 3 Q And now somebody's banging on the door, correct?
- 4 A Correct.
- 5 Q And that could potentially set somebody into a panic,
- 6 correct?
- 7 A I can't speak for what it does for -- for people on
- 8 the inside.
- 9 Q You also indicated that it was pitch black in there.
- 10 A Just past the front room, correct.
- 11 Q Okay. Everything was really dark. And it probably
- 12 took a while for your eyes to adjust.
- 13 A That's correct.
- 14 Q Okay. And you're all dressed in dark blue, it looks
- 15 like, correct?
- 16 A With white police lettering all around us, correct.
- 17 Q Okay. But pretty much in blue with the dark helmets.
- 18 A Correct.
- 19 Q So you might blend in, correct?
- 20 A The police on the front, on the sides, well, not, no.
- 21 They're white.
- 22 Q But the dark blue would, correct?
- 23 A The dark blue -- correct. The dark blue is not saying
- 24 police on it.
- 25 Q Now, you indicated that the door was rammed a couple

Mark Hillers
Cross-examination by Ms. Jones

- 1 of times and it finally opened.
- 2 A Correct.
- 3 Q And Harris is the first one in.
- 4 A Correct.
- 5 Q Okay. Now, these doors are pretty narrow, correct?
- 6 A It's a normal size door. It just didn't open all
- 7 fully.
- 8 Q Okay. So only one person could get in at a time?
- 9 A At that point he was free from the clutter on --
- 10 Q Clutter?
- 11 A Clutter. He was from that. And the person that was
- 12 behind him, it took him a second or so to get.
- 13 Q Okay. And who was behind him?
- 14 A At that point I think it was Officer Morrow.
- 15 Q Okay. So it's Harris and Morrow who entered.
- 16 A I was the second one to go in after the gunshots.
- 17 Morrow and Cooper were the next ones in. I don't know what
- 18 their order was, but they were the next ones in, and then
- 19 Patton -- Adrian Patton.
- 20 Q Patton?
- 21 A So I was second.
- 22 Q Okay. So you were second.
- 23 A That's correct.
- 24 Q Okay. And you took a few steps in, correct?
- 25 A I took about a half step to two steps in, enough to

Mark Hillers
Cross-examination by Ms. Jones

1 where I was within a few feet of his legs.

2 Q Okay. And how long would you say after that door was
3 breached that you heard gunshots?

4 A It wasn't immediately. It was -- and time is very
5 deceiving on this -- so it was probably -- probably a
6 reality was maybe a second or two. It's reality. It seems
7 like an eternity when you're -- when you're doing it but --

8 Q Okay. And so that was a pretty scary experience for
9 you.

10 A When the shots rang out?

11 Q Yes.

12 A Yes, it was.

13 Q Probably raised your adrenaline level, your stress
14 level.

15 A At that point training kicks in.

16 Q Okay. And you could see the shots being fired from
17 farther in the house, correct?

18 A Correct.

19 Q Weren't being fired from the front end of the room.

20 A Say that again.

21 Q The front. When you first entered there was the front
22 part of the room.

23 A Correct.

24 Q The front part of the house rather.

25 A Okay.

Mark Hillers
Cross-examination by Ms. Jones

1 Q And then they have the -- they call it the center
2 area, correct?

3 A Correct.

4 Q Okay. So did you see any shots being fired other than
5 the officers -- being fired from that front room?

6 A From the front room?

7 Q Yes.

8 A No, not from the front room.

9 Q And, in fact, the two people in that front room were
10 Amanda Gentry and William Rogers, correct?

11 A I believe so.

12 Q Okay. Where were they when you initially came into
13 the house?

14 A They were on the couch in the front room.

15 Q Okay. How were they on the couch? Were they laying
16 on the couch? Were they sitting up? Do you remember?

17 A I don't remember. I don't remember that, what
18 position they were sitting in. I just know they were on
19 the couch.

20 Q And did you look?

21 A At that point when I was, you know, gun battle, no, I
22 did not.

23 Q Okay. You were just focused on the back.

24 A Once the shots rang out I was focused where the danger
25 was coming from.

Mark Hillers
Cross-examination by Ms. Jones

- 1 Q Okay. And did you continue to go towards the back of
2 the house?
- 3 A I did not immediately. Once the gunfire ceased,
4 stopped --
- 5 Q Okay.
- 6 A -- at that point -- as I testified before, two
7 officers -- and I believe it was Officer Copper and Officer
8 Morrow -- got in front of Harris. At that point we were
9 able to extract him from the house and get medical
10 attention to him.
- 11 Q Okay. How long after the initial shot was fired did
12 the shooting cease?
- 13 A It couldn't have been more than a few seconds.
- 14 Q Okay. So it was a few seconds of shooting, correct?
- 15 A That's correct.
- 16 Q Okay. And at some point it ceased.
- 17 A That's correct.
- 18 Q Who went back to the back of the house to secure the
19 individual who you believed was firing?
- 20 A The two officers that went back there were the -- were
21 officer Cooper --
- 22 Q Okay.
- 23 A -- and Officer Morrow.
- 24 Q Okay.
- 25 A Those were the same that walked -- got in front of

Mark Hillers
Cross-examination by Ms. Jones

1 officer Harris.

2 Q And they were able to find him in the bathroom area,
3 correct?

4 A I don't know how they did it. I wasn't in the house
5 when they -- when they did that. So I can't testify to
6 that. I don't know.

7 Q Okay. But there wasn't anybody who fled out the back
8 or tried to break out the window or anything like that,
9 correct?

10 A Say that -- fled out the window or break out a window?

11 Q Yeah. Just went out the window, tried to escape
12 through a window or anything like that.

13 A No. The whole house was -- there was officers around
14 the house. So I don't believe so.

15 Q Okay. And I believe you wrote a -- a report, correct?

16 A Wrote a supplemental.

17 Q Okay. And as officers you're trained to do that,
18 correct?

19 A That's correct.

20 Q Okay. Because we want to put down important
21 information, valuable information, because oftentimes it
22 takes a while for these things get to trial, correct?

23 A That's correct.

24 Q Okay. So you always want to put those important
25 details, details that you're always going to want to

Mark Hillers
Cross-examination by Ms. Jones

- 1 remember for trial, correct?
- 2 A You try to.
- 3 Q Okay.
- 4 A You try to do the best you can.
- 5 Q And you testified today that Mr. Moore was allegedly
- 6 grinning ear to ear when you arrested him, correct?
- 7 A I didn't arrest him. While I was covering him and he
- 8 was being handcuffed and asking him if he had any injuries,
- 9 gunshot wounds, that's when he looked me dead in my eye
- 10 from standing right over him and grinned, yes.
- 11 Q And grinned ear to ear you said, correct?
- 12 A Yes.
- 13 Q That's not in your report, is it?
- 14 A No, it's not.
- 15 Q That's a pretty important thing, isn't it? That's
- 16 almost an admission, huh, I shot at ya, nener, nener,
- 17 nener. And you agree that's not an admission?
- 18 A I don't believe that's an admission.
- 19 Q You didn't write it in your report, correct?
- 20 A It's not in my report, that's correct.
- 21 Q Fair to say made it up today.
- 22 A Absolutely not.
- 23 Q In fact, Mr. Moore didn't say anything, correct?
- 24 A He didn't say a word. He just --
- 25 Q In fact, that gun was found near him, correct?

Mark Hillers
Cross-examination by Ms. Jones

1 A Right where his feet were in the bathroom.

2 Q You also testified that your police training kicked
3 in, correct?

4 A That's correct.

5 Q You're trained to deal with these situations, correct?

6 A Correct.

7 Q Okay. But you testified today that you weren't able
8 to hear any of the gunshots behind you, correct? You
9 didn't hear any of those officers shoot.

10 A I said that it was very muffled. That's what I said.
11 It was a lot lower sounding pops, not like a normal because
12 of auditory exclusion. That's what I said.

13 Q But these officers are in the front room with you,
14 correct?

15 A That's correct.

16 Q And were you aware that Mr. Williams was shot 15
17 times?

18 A I'm still not aware of that.

19 Q And you didn't hear one of those shots, not one.

20 A I heard gunfire. I heard and saw gunfire. I didn't
21 turn and look. I was focused on where Toby Moore was at at
22 that time and where those gunshots were at.

23 Q But you testified on direct you could not remember
24 hearing shots.

25 A I testified that I didn't know what happened at that

Mark Hillers
Cross-examination by Ms. Jones

1 situation on the left with what they did. I was paying
2 attention straightforward, is what I said.

3 Q Do you think you couldn't hear or understand what was
4 happening behind you because it was kind of stressful,
5 adrenaline was pumping?

6 A It's -- it's something we're trained and taught that's
7 going to happen. It's called tunnel vision and auditory
8 exclusion. And I'm -- and that's what happened.

9 Q Tunnel vision. So when something goes wrong you can
10 get tunnel vision and you lose your hearing? Is that what
11 you saw just said?

12 A Well, it's muffled -- it's muffled.

13 Q It's muffled. You can't quite understand what's going
14 on.

15 A No. You can understand what's going on. It's just
16 not like you if you're at the range and you didn't have
17 earmuffs on.

18 For instance, I didn't have any ringing in my ears.
19 If I would have shot and been around all of those shots on
20 a firing range and auditory exclusion wouldn't have
21 happened, my ears would have been ringing for weeks. I
22 didn't have any of that issue.

23 Q Okay. So your testimony today is that you might have
24 been experiencing something called auditory exclusion where
25 things just kind of get muffled around you and you're not

Mark Hillers
Cross-examination by Ms. Jones

1 quite sure what's going on?

2 A I'm not a medical doctor. I'm just trying to explain
3 where I'm coming from, what I was -- what I was --

4 Q I understand. But is that your testimony today, that
5 you just -- everything was a little bit muffled and you
6 just couldn't quite understand what was happening behind
7 you?

8 A When I began to fire I was focused completely and
9 utterly on that in front me at that point until the
10 shooting stopped --

11 Q Okay.

12 A -- is what I am saying.

13 Q Okay. You indicated that you pulled out the
14 officer -- Officer Harris.

15 A I said two officers -- and Officer Shaw.

16 Q Okay.

17 A Correct. And I assisted him going down the porch with
18 him, that's correct.

19 Q Okay. And then you waited a few seconds and went back
20 in.

21 A I made sure he wasn't hit in the neck or head, and
22 looked to be in pain, and that's all. It was just a few
23 seconds, and I went back in. I got him out real brief and
24 looked at him. Officer Bogan came and began his medical
25 stuff, and I ran back in.

Mark Hillers
Cross-examination by Ms. Jones

1 Q Okay. Who pulled out Mr. Rogers?

2 A I don't recall who pulled him out. I did have some
3 interaction with him when -- when E.M.S. got there to treat
4 him.

5 Q Okay.

6 A I unhandcuffed him and cuffed him in the front so he
7 could be treated.

8 Q Now, did anybody pull Ms. Gentry out of the house?

9 A I don't recall. I don't recall who did that.

10 Q Okay. I'm -- so I'm trying to get a real good picture
11 of this. You indicated that the officer went down in front
12 of you. You're continuing to shoot. And at some point the
13 firing ceases.

14 A I'm returning firing from fire being at me.

15 Q Uh-huh.

16 A That's correct. And I fired I don't know how many
17 rounds -- three or four rounds -- at that time. And once
18 there was a -- all of that finished it -- there was a brief
19 silence.

20 Q Okay.

21 A There was a brief silence at which point the two
22 officers who were in the house while the shooting was --
23 was occurring who were there, they got in front of Officer
24 Harris at that point and began to go further into the
25 house. And that's when we pulled him out.

Mark Hillers
Cross-examination by Ms. Jones

1 Q Okay. So after the gunfire ceases is when they
2 actually advanced towards the bathroom area or what was
3 later determined to be the bathroom area, correct?

4 A That's correct.

5 Q And after the gunfire ceased there was no more
6 gunfire, correct?

7 A That's correct.

8 Q Okay. Because they're going back. There wasn't any
9 bam, bam, bam.

10 A No. When I came back in there was no more. There was
11 no more gunfire.

12 Q And when you finally came back in and went to the back
13 to assist Mr. Moore was already in handcuffs, correct?

14 A No. He was not.

15 Q Okay. When was he placed in handcuffs?

16 A He was placed in handcuffs. As I came back in, as I
17 testified, he was face down with his hands out to his
18 sides.

19 Q Okay.

20 A Okay. The officer that was covering him --

21 Q You say he was on his stomach?

22 A He was face down, correct.

23 Q Okay.

24 A Okay. As I came up I told them I'll take cover, which
25 means I'll watch him while you handcuff him.

Mark Hillers
Cross-examination by Ms. Jones

1 Q Okay.

2 A And that's at the point when they began to do that and
3 put his handcuffs -- and I don't remember who handcuffed
4 him -- I remember covering him. At that point is when I
5 asked if he had any medical issues such as gunshot wounds
6 or anything else.

7 Q Right. And he wouldn't say anything, correct?

8 A No. As I testified, he turned and looked at me dead
9 in my eyes and grinned. At that point I knew he wasn't
10 shot.

11 Q Nobody actually checked him physically over?

12 A When they handcuffed him they rolled him over and we
13 checked, because he wouldn't say anything. He was just
14 smiling at us.

15 Q Okay. But, again, none of that made it into the
16 report, this smugness.

17 A It's not an opinionated report. It's a fact --
18 factual report. And, you know, we put in the brief facts.
19 These -- this was written the day of an extremely stressful
20 event.

21 You will remember things from these events that aren't
22 going to be down on paper. You could write probably 40
23 pages of every little detail on these reports.

24 Q And that's why they're called incident reports
25 initially, correct? You get down the initial information,

Mark Hillers
Cross-examination by Ms. Jones

1 right? And then you have something called supplemental
2 reports, correct, that you actually and in addition --
3 maybe you're investigating more, maybe you're remembering
4 other things. So investigations can be ongoing, correct?

5 A They can be, correct.

6 Q Okay. And nothing was stopping you from submitting
7 some other paperwork, a supplemental report, saying, oh,
8 you know what, I remember Mr. Moore grinning at me smugly,
9 he-got-us type of situation. Never made it into the
10 report, never made it into the supplemental report. Only
11 first time we're hearing about it is today when you're on
12 the stand chocking up, correct?

13 A After I was sworn in on this Bible sitting here in
14 front of me, correct.

15 Q Now, the -- the black gun that was located near Mr.
16 Moore, did you pick that up?

17 A I did not.

18 Q Did anybody pick that up?

19 A Eventually somebody picked it up, but I wasn't there
20 at that point.

21 Q Okay. Is it fair to say that normally you try to
22 leave evidence as it is so that it can be photographed, put
23 placards in front of it, take photos so we know exactly
24 where it was in relation to the incident?

25 A Depends.

Mark Hillers
Cross-examination by Ms. Jones

1 Q Okay. What does it depend upon?

2 A It depends -- I would not leave, you know, a weapon by
3 somebody's hand. It depends on where the weapon was. If
4 it was somewhere where we felt confident that we could
5 leave it where it's placed, obviously that's the best case
6 scenario. It's not going to be always the case in this
7 situation. I wouldn't leave a gun next to somebody who
8 just shot at me if it was right next to his hand. I don't
9 know what -- I know that I watched him be secured and moved
10 away from a weapon.

11 Q Okay.

12 A I don't know who picked up the weapon.

13 Q That's fair enough. But the gun was located in the
14 bathroom area, correct, sort of near Mr. Moore? But it was
15 left so that it could be photographed and looked at.

16 A As far as I can remember, it was. I didn't pick up
17 the gun.

18 Q Okay.

19 A That's all I can testify to. I didn't pick it up.

20 Q And that can be good police procedure, correct?

21 A That's correct.

22 Q The last thing you want is people, several officers,
23 touching a piece of evidence and moving it around, correct?

24 A It depends. Safety is always paramount. It's the
25 first priority.

Mark Hillers
Redirect examination by Mr. Bulsa

1 Q But moving items and having several officers touch it
2 and move and move it and move it can affect the integrity
3 of an investigation, correct?

4 A It shows in there. It's a chain of custody.

5 Q Sir, that wasn't my --

6 A I don't understand what you're asking me, what you're
7 saying though.

8 Q Moving something if it's found on the floor and then
9 moving it to all different locations and having various
10 officers touch it can affect the integrity of that piece of
11 evidence, correct? Now you've got different fingerprints
12 on it. If it's not in its proper location they can accuse
13 you of moving it and lying about it and different things
14 like that, correct?

15 A That's correct. But, like I said, safety. If that
16 was to have happened -- and I don't, you know -- if it was
17 to happen it's a safety.

18 MS. JONES: I have nothing further, Your Honor.

19 MR. BULSA: Briefly in reply.

20 REDIRECT EXAMINATION

21 BY MR. BULSA

22 Q Officer, you used the phrase voluntary exclusion a few
23 times. What do you understand that to be?

24 A I understand it to be a stressful situation for your
25 body's internal protections to close off. It's basically,

Mark Hillers
Redirect examination by Mr. Bulsa

1 you know, the same fact that when you have a high-stress
2 situation that the blood will flow from the outside of your
3 fingers down to the center.

4 It just -- it's a -- it's a control mechanism. The
5 reason I know that is we had to go to psych -- we had to
6 see a psychiatrist afterwards. That's protocol. And they
7 speak about these different things and try to familiarize
8 you with them.

9 Q So while you're -- your senses might have been more
10 focused to what was directly in front of you and you might
11 have been blocking out what was to the side of you.

12 A That's correct. Put hundred percent focus on the
13 immediate danger.

14 Q Okay. All right. And you were confident that your
15 other men were doing their job.

16 A That's correct. That comes through training.

17 Q Okay. And as far as training, is it part of your
18 training and protocol to announce why you're there and who
19 you are?

20 A Absolutely. On a no-knock or a knock-and-announce
21 warrant we always announce ourself during the execution of
22 it. Every time we go in we announce, every single time.
23 That is procedure.

24 Q Doing it in a loud voice?

25 A Police, search warrant, police, search warrant,

Mark Hillers
Redirect examination by Mr. Bulsa

1 police, search warrant as we clear.

2 Q You testified that when you went into the house you
3 saw Mr. Moore face down near the bathroom and there was a
4 pistol in the bathroom.

5 A He was partially in the bathroom right up to the waist
6 area.

7 Q Okay. And y'all would have left that alone for the
8 other officers to come in and process the scene?

9 A That's correct. When we execute the warrant, when we
10 secure the house to make it safe for them to come in, we'll
11 take note of it. And, you know, we may move a person from
12 that and then notify one of the narcotics officers of its
13 presence so they can go ahead and handle it quickly.

14 This was an officer-involved shooting so that, you
15 know, I don't remember what happened. I remember seeing
16 it, but I don't remember what happened.

17 Q So that would have been for SLED to come in and deal
18 with.

19 A That's correct.

20 Q All right. From the positioning of the two people in
21 the front room and the location of Mr. Moore near the
22 bathroom, where did it -- where did it appear that he had
23 to have been in the residence at the time you entered?

24 A Directly in -- not in the middle room but in that
25 room, the bathroom, where the claw tub was located.

Mark Hillers
Redirect examination by Mr. Bulsa

1 Q And were there any other persons in the residence?

2 A Nobody else was inside the residence. The two in the
3 front room didn't leave the front room until they were
4 brought out for medical attention.

5 Q Okay. So from your -- from your team's positioning
6 would you have been able to see if somebody had gotten up
7 from the front room and ran to the back?

8 A Absolutely.

9 Q Okay. And did that happen?

10 A It did not.

11 Q So therefore there were only two other rooms that that
12 person could have been in. And the back room was the
13 kitchen, was it not?

14 A It had the middle room, a kitchen which you can't see
15 from the front door. And the only -- you can see part of
16 the middle room and the bathroom, is the only thing you
17 could see from the front area.

18 Q Did you have men securing the back of the house?

19 A There was, I believe, three. I think it was
20 Investigator Tim Stacy, Officer Chris Layton and maybe Eric
21 Gallman, Officer Eric Gallman. I know there was at least
22 three back there.

23 Q So you had some on the side, some on the back and some
24 in the front?

25 A That's correct.

Mark Hillers
Redirect examination by Mr. Bulsa

1 Q Did anybody exit the back of the house?

2 A No.

3 Q Okay. Nobody bailed out a window.

4 A No.

5 Q Were you aware if there were any firearms found in the
6 front room?

7 A I was told. I believe it was Adrian Patton that he
8 reco --

9 MS. JONES: I am going to object to that as hearsay.

10 THE COURT: Sustained.

11 MR. BULSA: That's fine.

12 Q You didn't see any yourself.

13 A It was pointed out to me.

14 Q Okay. All right. Well, we'll have other officers
15 testify.

16 A Okay.

17 Q Okay. So we know your focus was on Mr. Moore.

18 Ms. Jones grilled you pretty good about the incident
19 and supplemental reports. Just so the jury understands it,
20 what is an actual incident report?

21 A An incident report is the actual -- it's basically the
22 front page of the report. You'll have a case agent or the
23 lead officer who will do the initial report. Everyone who
24 else assists will do what's called a supplemental report,
25 which is a supplement to the original.

Mark Hillers
Redirect examination by Mr. Bulsa

1 Okay. So that's -- you know, you have 15 people.

2 Everybody writes what they saw, what they heard, and, you
3 know, to the best that they can. You're not going to get
4 every single detail in. It's not a perfect world.

5 Q Okay. And those supplemental reports for other
6 officers are generally done basically at the same time the
7 incident report is being done, is that right?

8 A That's correct.

9 Q Okay. And that would have been when you wrote yours.

10 A I believe that was written that day, correct.

11 Q Okay.

12 A It was, correct.

13 Q Okay. Did Mr. Moore have any injuries to him?

14 A I did not see any injuries to Mr. Moore.

15 Q Okay. Thank you.

16 MR. BULSA: That's all I have.

17 THE COURT: You may step down.

18 Ladies and gentlemen, we're going to break for lunch.

19 Let me caution you before you go that at no times are
20 you permitted to talk about the case with your fellow
21 jurors or with anybody else.

22 You can only discuss the case when you're involved in
23 jury deliberations, and that won't be until the end of the
24 trial after all of the evidence has been presented and
25 you've been instructed to begin deliberations.

1 So no discussions about the case during your lunch
2 recess or any other time until you're instructed to begin
3 deliberations.

4 Also, you can never conduct any research or do your
5 own investigation into any issue that might arise during
6 the trial. You have to base your decision upon what you
7 see and hear during the course of the trial. You can't
8 supplement that knowledge by conducting outside research or
9 investigation.

10 So with that in mind, have a good lunch. Please
11 report to your jury room at 2:30, at 2:30 this afternoon.
12 Have a good lunch.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: Court is in recess until 2:30.

16 (Whereupon, a recess was taken.)

17 THE COURT: Are we ready for the jury?

18 MR. BULSA: Yes, sir.

19 MS. JONES: Yes, sir.

20 THE COURT: Bring them in.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: All right. Mr. Bulsa.

24 MR. BULSA: The state calls Beth Stuart.

25

Mary Elizabeth Stuart
Direct examination by Mr. Bulsa

1 MARY ELIZABETH STUART, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q Please introduce yourself to the jury.

5 A I'm Mary Elizabeth Stuart.

6 Q And who are you employed with?

7 A Spartanburg County Sheriff's Office.

8 Q In what capacity?

9 A A forensic chemist.

10 Q How long have you been with the sheriff's office?

11 A Nine years.

12 Q Please give us the benefit of your education.

13 A Sure. I have a bachelor's of science in chemistry and
14 a bachelor's of science in biochemistry, both from the
15 College of Charleston.

16 THE COURT REPORTER: I can't hear her.

17 THE COURT: Excuse me. You're going to have to --
18 don't turn your back to the court reporter, please. And
19 you'll have to get closer to that microphone because it's
20 apparently not picking you up very well.

21 THE WITNESS: Yes, sir.

22 Q Start over.

23 THE COURT: And sometimes you just need to speak a
24 little bit louder and it'll pick up. If the voice is not
25 loud enough it doesn't pick it up.

Mary Elizabeth Stuart
Direct examination by Mr. Bulsa

1 THE WITNESS: Sure.

2 A I have a bachelor's of science in chemistry and a
3 bachelor's of science in biochemistry, both from the
4 College of Charleston. And I have a master's degree in
5 chemistry from the University of South Carolina.

6 Q And what are your primary duties at the sheriff's
7 office?

8 A Do drug analysis, fire debris analysis, poison
9 analysis and meth labs.

10 Q Have you been qualified as an expert in the area of
11 narcotics identification?

12 A I have 29 times.

13 Q Okay. Most of those being in Spartanburg County?

14 A Yes.

15 MR. BULSA: Your Honor, I offer Officer Stuart as an
16 expert in the area of narcotics and drug analysis.

17 MS. JONES: I have no objection, Your Honor.

18 THE COURT: She is so qualified.

19 Q You actually work with Spartanburg County, but do you
20 also test drugs from the City of Spartanburg Public Safety
21 Department?

22 A Yes, sir, I do.

23 Q So the agencies in Spartanburg County bring drugs to
24 you for analysis?

25 A All agencies, all city agencies, the county agencies

Mary Elizabeth Stuart
Direct examination by Mr. Bulsa

1 and even federal agencies. If it occurs in Spartanburg
2 County it comes into our lab.

3 Q Okay. And how are they actually submitted?

4 A Their evidence technician or officer, he brings them
5 over to the lab in what's called a BEST bag.

6 Q And describe what that BEST bag is.

7 A A BEST bag is basically a tamper-evident bag. BEST
8 stands for best evidence sample testing. Because we do
9 take drugs in from all over the county, we needed a uniform
10 way for everyone to bring their drugs into us.

11 It's sealed at the top and down the sides. It has
12 lines so if someone were to try to tear it the lines would
13 be distorted or they'd have to cut it open in order to get
14 into it.

15 Q And when these bags are brought to your office how are
16 they secured?

17 A They're sealed in the BEST bag, and then they're
18 entered in. And then our office -- there's actually only
19 three keys that can get into our office -- me, the other
20 chemist and the sheriff. And then we also have a vault
21 where we store evidence until we test it.

22 Q Okay. And before you actually open the bag do you
23 analyze it to determine if it's been tampered with?

24 A Yes. Actually when the evidence officer from the city
25 is there -- if the evidence is not sealed properly we won't

Mary Elizabeth Stuart
Direct examination by Mr. Bulsa

1 even accept it. It gets sent back with him. But then also
2 right before I test the item I look and make sure it's
3 sealed. And on the item I put my initials, the date and
4 the letters OK. That indicates to me that it was sealed
5 before I ever opened it.

6 Q Okay. Are the bags usually identified, readily
7 identified, as to which agency they come from?

8 A Yes. Usually on the outside of the BEST bag will be
9 the officer's name. And they may put S.D.P.S. or S.C.O.
10 depending on which agency they come from.

11 (Drugs marked State's Exhibit No. 28 for
12 Identification; photograph marked State's Exhibit No. 29 for
13 Identification.)

14 Q Officer, let me show you what's been marked State's
15 Exhibit 28 for Identification. That is actually something
16 sealed inside of a clear bag. Can you explain what that
17 is?

18 A Yes. The bag inside is the BEST bag. And when I test
19 it I have to cut it open and remove all the evidence. So
20 when I'm finished with the testing I actually put
21 everything back inside what you see, this plastic
22 heat-sealed bag. And I heat seal it with my initials, and
23 then evidence is inside.

24 Q Okay. And the bag itself, the BEST bag itself, can
25 you identify when you would have received that?

Mary Elizabeth Stuart
Direct examination by Mr. Bulsa

1 A What the dates that are indicated on the bag, are the
2 dates I tested it. In order to receive it I have to look
3 back at the chain.

4 Q But let me ask it this way. Does the BEST bag show
5 when it would have been sealed by the collecting officer?

6 A Yes. On the outside of the BEST bag is an area where
7 the officer prints his name and signs his name and puts the
8 date he seals it. And here he's indicated January the
9 6th of 2011.

10 Q And that would have been which officer?

11 A Doug Harwell.

12 Q Okay. And that's a city officer?

13 A Yes, sir.

14 MR. BULSA: Your Honor, the state would offer State's
15 28 into evidence.

16 MS. JONES: No objection.

17 THE COURT: It's admitted.

18 (Drugs marked State's Exhibit No. 28.)

19 Q Okay. Let me ask you also to look at State's
20 Exhibit 29 for Identification. Do you recognize what that
21 is?

22 A I haven't ever seen it before, but it looks like bags
23 laid out of off-white rock and white powder substance.

24 Q And they have numbers on them.

25 A They do. They're labeled 16, 17, 15, 14, 13,

Mary Elizabeth Stuart
Direct examination by Mr. Bulsa

1 different corresponding numbers.

2 Q Does that -- do those numbers appear to reference the
3 bags that would have been contained in that BEST bag?

4 A Yes. In my report I've noted that there was white
5 powder substance in zip-lock labeled 11. White powder
6 substance in zip-lock labeled 12, 14, 15 and so on -- 16
7 and 17.

8 Q Okay. To keep from having to open this bag, does that
9 appear to be an accurate photograph of the bags that
10 were -- would have been contained in the BEST bag, State's
11 28?

12 A Yes, sir, as far as I can tell.

13 Q Okay.

14 MR. BULSA: Your Honor, the state would offer 29 into
15 evidence.

16 MS. JONES: No objection.

17 THE COURT: It's admitted.

18 (Photograph marked State's Exhibit No. 29.)

19 Q Now, what analysis did you perform on these
20 substances?

21 A There are two different types of substances in the
22 bag, a white-powder substance and off-white rock substance.
23 But I would do a presumptive and a confirmatory test.

24 The presumptive test on the substances when any powder
25 comes into the lab is a color-change test. Basically, we

Mary Elizabeth Stuart
Direct examination by Mr. Bulsa

1 have a set of chemicals we can drop onto the powder. And
2 depending on what family it's in, it changes to a specific
3 color that we recognize. That gives us an indication of
4 where to go from there with our analysis.

5 After that the item either go to a solubility test,
6 and then both would be put on instrumentation in order to
7 test it.

8 Q What are you actually testing it for?

9 A Right off the bat because it's just a powder substance
10 we look at a broad range of all drugs. After the
11 instrumentation is then when we can determine what the item
12 is.

13 Q And what are those various items?

14 A There was some cocaine found and there was some
15 cocaine base or commonly called crack found.

16 Q Okay. Those are two separate and distinct substances?

17 A Yes.

18 Q So cocaine base is actually -- how does that compare
19 to cocaine? How do you determine that?

20 A Cocaine is what we call the salt form of cocaine base
21 crack. They actually make the crack from the cocaine by
22 adding baking soda to it, and in chemical terms basifying
23 it. They make it from a salt form into a smokable form,
24 which is the crack.

25 Q Okay. And you found both substances in those

Mary Elizabeth Stuart
Direct examination by Mr. Bulsa

1 packages?

2 A Yes.

3 Q Okay. And can you identify the amount of each
4 substance you found?

5 A Yes. Item one was a white powder substance found to
6 be cocaine at 6.18 grams.

7 Item two was a white powdery rock substance found to
8 be cocaine at a weight of 27.94 grams.

9 Item three was a white powder substance in a zip-lock
10 labeled 11 that was found to be cocaine in the amount of
11 0.56 grams.

12 Items four was an off-white rock substance in a
13 zip-lock labeled No. 12 which was found to be cocaine base,
14 commonly called crack, at a weight of 0.24 grams.

15 Item five is a white powder substance in a zip-lock
16 labeled No. 13 on which I performed no analysis.

17 Item six was an off-white rock substance in a zip-lock
18 labeled 14 found to be cocaine base, commonly called crack,
19 at a weight of 0.17 grams.

20 Item seven was a white powdery rock substance in a
21 zip-lock labeled 15 found to be cocaine at 2.27 grams.

22 Item eight was an off-white rock substance in a
23 zip-lock labeled No. 16 found to be cocaine base, commonly
24 called crack, at a weight of 4.42 grams.

25 And item nine was an off-white rock substance in a

Mary Elizabeth Stuart
Direct examination by Mr. Bulsa

1 zip-lock labeled No. 17 found to be cocaine based crack at
2 a weight of 2.34 grams.

3 The total weight of the cocaine found was 36.95 grams
4 and the total weight of the crack found was 7.17 grams.

5 Q What was that again? Give me those two numbers.

6 A Sure. The total weight of the cocaine found was 36.95
7 grams and the total weight of the crack or cocaine base
8 found was 7.17 grams.

9 Q And in your experience of analyzing drugs are you
10 familiar with how these drugs were sold and what -- what --
11 I guess what amounts to be sold to be smoked or snorted?

12 A Oh, in packaging?

13 Q Yes, ma'am.

14 A It's small amounts. Usually in corner baggies when
15 they're sold for just a simple smoke.

16 Q And how much do those usually weigh?

17 A Usually like \$20 rocks, and they're around 0.08 grams
18 for crack.

19 Q 0.08 grams.

20 A Yes, sir.

21 Q That is significantly less than 7.17.

22 A Yes, sir.

23 Q And how much was the cocaine?

24 A It's really about the same. Sometimes you might see a
25 little more like 0.2 or 0.1, depending on how much powder

Mary Elizabeth Stuart
Direct examination by Mr. Bulsa

1 they put in. But still it's about a \$20 buying hit at
2 about 0.1 or 0.2 grams, is what we see.

3 Q Okay. Did you analyze any other substances in this
4 case?

5 A I did. There were other BEST bags that were submitted
6 on this case.

7 Q Okay. And did they contain pills?

8 A Yes, they did.

9 Q And what kind of pills did you --

10 MS. JONES: Your Honor, I am going to object as to
11 relevancy.

12 He hasn't been charged with any type of pills. He's
13 only charged with the cocaine and cocaine base and the
14 possession of a weapon during a violent crime, and
15 obviously four counts of attempted murder.

16 THE COURT: Well, let me see y'all just a minute.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: Overrule the objection.

20 BY MR. BULSA

21 Q If you would, tell us what other types or what types
22 of pills, substances, you found in those other BEST bags.

23 A Sure. There are actually several different types. In
24 one of the BEST bags there were many tablets of multiple
25 colors that had different imprints on them.

Mary Elizabeth Stuart
Direct examination by Mr. Bulsa

1 From my experience when I first looked at it, it's
2 common to -- for that to be what -- the common name is
3 Ecstasy or three-four methylene dioxy methamphetamine.

4 And I actually did find -- for y'all's benefit we'll
5 call it M.D.M.A. -- in those tablets, a total weight from
6 that case of all the M.D.M.A. was 10.83 grams.

7 Q Is that a controlled substance?

8 A It is.

9 Q What else did you find?

10 A In the other BEST bag that was submitted I found
11 several different prescription items, some antibiotics and
12 some muscle relaxants that were prescriptions. But I also
13 found hydrocodone and acetaminophen, morphine,
14 propoxyphene. And those are all controlled substances that
15 are pain relievers -- narcotics.

16 And then I also found Alprazolam and Diazepam. Let's
17 see. Several of those -- Alprazolam, Diazepam, clonazepam.
18 And those are all Xanax type items for anxiety. And they
19 are controlled substances also.

20 Q All right. So, and after you tested all of those you
21 sealed them in your own packaging. And they would have
22 been returned back to the city police department?

23 A Yes. The next time they come to drop off a load of
24 cases they pick up the ones that are already tested and
25 sealed and take them back.

Mary Elizabeth Stuart
Cross-examination by Ms. Jones

1 Q All right. Thank you, Officer. Answer any questions
2 Ms. Jones may have.

3 CROSS-EXAMINATION

4 BY MS. JONES

5 Q Ms. Stuart, in regard to the powder cocaine that was
6 found and you indicated it was 36.95 grams, that wasn't all
7 in one bag, correct?

8 A No. As I read the different items, that was a total
9 weight on all of those.

10 Q Okay. And the same thing with the cocaine base that
11 you found. That was not all in one bag.

12 A No. It was several different items.

13 Q Okay. And as well as the pills. They weren't all
14 just in one big bag that you had to sort of separate out.
15 They were actually in individual bags.

16 A With the pills it was actually different. Some of
17 them were all in some bags together. There were only a few
18 separated out into little bags.

19 Q Okay. But you didn't just get one big bag, so to
20 speak.

21 A No, ma'am, no.

22 Q Okay. Fair enough.

23 MS. JONES: No further questions.

24 MR. BULSA: Nothing further.

25 THE COURT: You may step down.

James Bogan
Direct examination by Mr. Bulsa

1 MR. BULSA: Your Honor, we ask that she be excused.

2 THE COURT: She may be.

3 (Whereupon, the witness was excused.)

4 THE COURT: The state calls James Bogan.

5 JAMES BOGAN having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BULSA

8 Q Officer, please introduce yourself to the jury.

9 A James Bogan.

10 Q Who are you employed with?

11 A The Spartanburg City Police Department.

12 Q In what capacity?

13 A Patrol officer.

14 Q Are you also assigned to the tactical unit?

15 A Yes, sir. I'm also an officer with the SWAT team and
16 a paramedic with the tactical team.

17 Q What kind of paramedic training do you have?

18 A I've been a paramedic, been a basic E.M.T., since
19 1994. I went to paramedic school in 1995. A.C.L.S.
20 certified, PAL certified, P.H.T.L.S. certified. Those are
21 advance cardiac life support, pediatric life support,
22 pre-hospital trauma life support, tactical combat casualty
23 care paramedic certified, C.P.R. certified, was instructor
24 in most all of those for several years also other than the
25 T.C.C.

James Bogan
Direct examination by Mr. Bulsa

1 Q So you would be quite an asset to the T.N.T. team.

2 A Yes, sir.

3 Q Did you participate in an operation at [REDACTED] Owens
4 Street on January the 16th?

5 A January the 16th, yes, sir.

6 Q What was your duty to be?

7 A My duties -- I'm always assigned as a paramedic with
8 the team. I carry medical gear. Also, function as an
9 operator as well.

10 I was assigned as the side of the house -- the --
11 just -- hold on. I'm a little nervous. Apologize. My
12 report. Assigned as the port -- a member of the port team
13 where we port a window so we can see in and deploy a
14 distraction device.

15 Q So who was with you?

16 A Officer Keith Soules.

17 Q Okay. And you went to the side of the house. How did
18 you choose which window?

19 A We usually -- usually go off of entail where we try to
20 find out where someone is located in the house. And
21 sometimes it's judgment.

22 My team leader had told me to pick the window that
23 I -- we -- we believed was the bedroom window. Judging by
24 past experience the far window at the end of the house was
25 a small window, which usually indicates a bathroom or

James Bogan
Direct examination by Mr. Bulsa

1 kitchen.

2 And we knew that we didn't need the distraction in the
3 living room. So there was only three windows on the side.
4 So I chose to take the second window down, the one in the
5 middle, which typically for the size of house we are at
6 would be a bedroom window.

7 Q Okay. And do you remember what you ran into when you
8 got to that window?

9 A When we got to the window, step off to the side of it,
10 the distraction devices was on what we call a bang pole.
11 It's -- the distractionary device is attached on the end
12 where it can't come off, and there's a cable that runs down
13 the pole on the inside the little tube so it doesn't get
14 snagged. And there's a little pull handle to activate that
15 distraction device.

16 Inserted the distraction device up into the window.
17 It goes up towards the ceiling. You kind of do that to get
18 it away from anybody if they're sitting down or laying
19 down.

20 Q Let me ask you this. How do you get it through the
21 glass?

22 A You shove it.

23 Q Break the glass?

24 A Yes, sir. You have to break the glass. And if
25 there's blinds or curtains or anything you try to push it

James Bogan
Direct examination by Mr. Bulsa

1 through it.

2 It doesn't always move the curtains because, you know,
3 cloth moves. But you break. It goes through the window.
4 You shove it. And you have to use some strength behind it
5 to get it in.

6 Q And what's the purpose of that device?

7 A The purpose that device is -- it's a distraction
8 device three to six seconds roughly -- some people a little
9 longer, some people a little bit less -- to just distract
10 you and focus your attention away from something else.

11 Q So it's to pull somebody inside -- their attention
12 towards that noise instead of something --

13 A Yes, sir.

14 Q Okay. All right. And do you recall this -- this date
15 in particular, whether they were having any trouble getting
16 it through the blinds?

17 A I had a significant amount of trouble. When I got it
18 through the window -- we do it the same every time. Shove
19 it through the window. The officer that -- you have a
20 cover officer, because you're not -- you don't have a
21 weapon. You're just holding that pole. And the cover
22 officer pulls the charging handle on the back of it.

23 He pulls that and he covers you from the window. And
24 when you shove it through you start yelling police, search
25 warrant. And it deploys. And you use the pole to rake out

James Bogan
Direct examination by Mr. Bulsa

1 the glass hopefully so you can see more inside.

2 Owens Street -- the curtain and the blinds hanging
3 down, it was some heavyish -- heavy kind of material
4 curtains. And I couldn't get the curtain out of the way to
5 actually see into the house that day.

6 Q Okay. When you -- are you pulling the device as
7 you're shoving it through?

8 A You push it in. You push it in and make a rake
9 motion. And what you're doing is you're using the pole to
10 rake out all of the glass, the glass panes and the little
11 pieces of woods that are in a lot of houses, and to rake --
12 basically to get the whole window, hook the curtain and try
13 to pull it out all down and out so you can actually see in
14 like basically as if you pulled your blinds up and you can
15 see in. That's your goal, that you're wanting to pull it
16 out and down.

17 Q Okay. And that's so you can alert the other officers
18 what you might see?

19 A Yes, sir.

20 Q And you weren't able to do that in this case.

21 A No, sir.

22 Q Sounds like what you're doing happens pretty quick.

23 A Extremely.

24 Q And you commented that you announced something as you
25 do it. What is that?

James Bogan
Direct examination by Mr. Bulsa

1 A We announce police search, warrant. The -- the second
2 that the bang pole goes through the glass you, you know,
3 start announcing who you are multiple times very loud.

4 Q Okay. And as you did that on this date, what did you
5 hear?

6 A Gunshots.

7 Q And were you still inside the house when you heard
8 those gunshots?

9 A Yes, sir.

10 Q So after you deployed the device, you pulled back out,
11 I guess?

12 A That I didn't. When the gunshots started there was
13 some screaming from inside the house.

14 One of my teammates yelled officer down. One of the
15 other teammates started yelling my name. Excuse me. So I
16 just dropped it where it was at, went around the house
17 to -- because if they're yelling my name it means one of
18 our guys were hit.

19 Q And what did you see as you came around?

20 A I came around the house, went up on the front porch.
21 And as I entered the house the guys were -- the first part
22 of the stack was already into the house. There was still
23 some guys right at the door.

24 Officer Harris was laying face down. I started
25 assessing him there with my eyes as I approached him,

James Bogan
Direct examination by Mr. Bulsa

1 because you can look at people and see whether they're hurt
2 or whether they're not.

3 So I was looking for basically where he was shot. I
4 didn't see any blood on his legs or his back or anything.
5 So I was like, boy, when I roll him over he's going to be
6 shot in the face.

7 So I reached to grab him. Officer Brian Shaw grabbed
8 him right before I did and spun around and went out the
9 door with him. And I spun around and went out the door
10 with him to follow them outside, because you just gotta get
11 an officer out of that situation.

12 Officer Shaw took him down the steps. We hung a left
13 in the front yard. He dropped him in the front yard. And
14 I started assessing Officer Harris then.

15 Q And how was he?

16 A He had a bullet wound right here in the right hip. At
17 first when I saw him he was talking, and he was messing
18 with his gear. And I kept telling him, you know,
19 adrenaline is going.

20 A lot of times when people get hurt they don't really
21 know how bad they're hurt. And he kept moving around. And
22 I kept telling him you've got to lay still, I've got to
23 treat you.

24 And he exposed where he was telling me that he was
25 hurting at. And he had a -- in his right hip he had a

James Bogan
Direct examination by Mr. Bulsa

1 perfectly round hole which let me know that the bullet had
2 went in. So I started checking the rest of him trying to
3 find where it came out, and I couldn't find an exit wound.

4 Q And did you go with him to the hospital?

5 A No, I did not.

6 Q So he left in the ambulance and you stayed?

7 A He did. E.M.S. was quickly called by I don't know
8 who. But they were coming.

9 I remember seeing Kirby in the front yard, one of the
10 narcotics officers. And I told him, I said, "You're going
11 to need more than one ambulance, we've got more than one
12 person hurt."

13 So when the first ambulance got there I was still
14 trying to find what all Officer Harris -- where he could
15 have been injured, because you've got all of that gear on.
16 The gear's got to come off.

17 A lot of times people are -- are shot multiple times
18 and only think of one thing as far as where the most pain
19 is at. That's usually what your body focuses on.

20 And so I was checking the rest of him. And within a
21 matter of -- I don't know -- it seemed like seconds. I
22 know it had to be minutes, but I can't give you an exact
23 timeframe. Ambulance showed up. Paramedic Cole --
24 Colegrove -- she came off the ambulance. I know her quite
25 well.

James Bogan
Cross-examination by Ms. Jones

1 I passed Officer Harris off to her and turned and went
2 in the house, assessed the gentleman that was on the front
3 porch that had been injured. Stepped into the house,
4 assessed the female that was on the couch that had been
5 injured and went down the hall to check on the subject that
6 was laying face down in the floor and had been secured.

7 And as I got down the hall one of the officers in the
8 hall said, "Bogan, he's not hurt. He doesn't have a
9 scratch on him."

10 So I turned around and come back out the hall. The
11 lady on the couch -- her wound was super -- what as a
12 paramedic you call superficial. It's going to hurt, but
13 it's not life threatening in any way.

14 By that time when I got back out to the front porch
15 the second ambulance was there with Paramedic Holt. And
16 they were in the process of loading the gentleman that was
17 on the front porch up.

18 I rode to the hospital with that suspect and helped
19 treat him on the way to the hospital.

20 Q Thank you, Officer. Answer any questions Ms. Jones
21 may have.

22 CROSS-EXAMINATION

23 BY MS. JONES

24 Q You indicated that you are normally a patrol officer,
25 is that correct?

James Bogan
Cross-examination by Ms. Jones

- 1 A I am now, yes, ma'am.
- 2 Q Okay. So you weren't at the time of this incident?
- 3 A At the time of the incident I was a full-time
- 4 paramedic and an officer with the tactical team as a
- 5 reserve officer.
- 6 Q Okay. And you testified that it was you and Officer
- 7 Soules who went around to do the flashbang, correct?
- 8 A Yes, ma'am.
- 9 Q And did you actually break the window with your
- 10 flashbang?
- 11 A With the bang pole.
- 12 Q Okay. And so once you got it through and the glass
- 13 broke, you had some difficulty trying to get that curtain
- 14 down, correct?
- 15 A Yes, ma'am.
- 16 Q So that didn't go according to plan, correct?
- 17 A No, ma'am.
- 18 Q Okay. Was that a little bit frustrating?
- 19 A You just flow with it. You don't expect everything to
- 20 go perfect every time. You make adjustments.
- 21 Q Okay, okay. And these things are when you go in to
- 22 serve a search warrant and you've got nine or so people
- 23 there, it's a lot of energy. Fair to say?
- 24 A Yes, ma'am.
- 25 Q A lot of adrenaline flowing and going and kind of

James Bogan
Cross-examination by Ms. Jones

- 1 pumped up to do this thing?
- 2 A A little bit of nervousness.
- 3 Q Okay. You indicated that you couldn't get the
- 4 curtain. You didn't just pull the pole out?
- 5 A The best I can recall I just dropped it --
- 6 Q Okay.
- 7 A -- where it was at, because I didn't need it any more.
- 8 It was now no longer a part of what I needed to do.
- 9 Q Okay. So when you're trying to get that curtain out
- 10 to get a visual did you hear anything going on in the front
- 11 regarding the ramming of the door? Did you hear that?
- 12 A When I broke the window and was yelling police, search
- 13 warrant, from the front of the house I could hear police,
- 14 search warrant, and gunshots coming from inside the house
- 15 and someone yelling my name.
- 16 Q Okay. My question though is did you hear the actual
- 17 banging of the door to try and get it open.
- 18 A No, ma'am.
- 19 Q Okay. And you indicated you heard screaming. Did you
- 20 hear more than one voice screaming?
- 21 A I don't recall. All I heard was screaming.
- 22 Q Okay. You couldn't differentiate if it was one voice,
- 23 two voices, three voices?
- 24 A I couldn't tell you.
- 25 Q Okay. Were there other noises going on, any other

James Bogan
Cross-examination by Ms. Jones

1 kind of chatter or talk that you can recall?

2 A I can recall gunfire, police, search warrant, and my
3 name being yelled, and officer down.

4 Q Okay. And after you heard officer down, what
5 specifically did you do?

6 A Rounded the corner of the house -- ra -- went down the
7 side of the house, around the corner and up the steps into
8 the house.

9 Q Okay. And is it fair to say that your emotions and
10 your adrenaline were pumping at that moment in time?

11 A Yes, ma'am.

12 Q And you're still emotional today about it.

13 A I am.

14 Q Okay. So you're probably fairly emotional at the time
15 hearing that an officer was down and you didn't know quite
16 what had happened or how serious the injuries were when you
17 initially entered.

18 A No, ma'am.

19 Q Okay. When you got into the house where was Officer
20 Harris?

21 A Approximately 4 to 5 feet. His feet were
22 approximately 4 to 5 feet, maybe a little more, maybe a
23 little less, from the door laying face down and right
24 inside the door.

25 Q And I think it was your testimony you didn't see him

James Bogan
Cross-examination by Ms. Jones

1 moving at all.

2 A No, ma'am.

3 Q Okay. Did you -- sir, was it -- what was the lighting
4 condition at that point?

5 A Don't recall.

6 Q Okay.

7 A The only thing -- the only thing I could see once I
8 rounded the corner and went into the house was Officer
9 Harris on the ground.

10 Q Okay. Do you recall any of the -- the other two
11 subjects in the house, the female and the male who had been
12 shot?

13 A Not until I went back in.

14 Q Okay. Do you recall where specifically they were when
15 you went back in?

16 A When I went back in there was -- I don't know what all
17 was right here -- an entertainment center, cabinet,
18 something, table and a couch back here.

19 She was still sitting on the couch when I went back
20 in. He had been brought out to the front porch.

21 Q Okay. So he was being attended to on the front porch.

22 A Yes, ma'am.

23 Q Did you see how seriously injured Mr. Williams was?

24 A Initially?

25 Q Yes.

James Bogan
Cross-examination by Ms. Jones

- 1 A No, ma'am. I was treating Officer Harris.
- 2 Q Okay. When you went to -- you indicated you rode with
- 3 him to the -- in the ambulance.
- 4 A In the ambulance to the hospital, yes, ma'am.
- 5 Q With Mr. Rogers?
- 6 A I believe that was -- is that his name?
- 7 Q William Rogers. I'm kind of skipping around back and
- 8 forth. Is that the couch that you saw Mr. Gentry or
- 9 Ms. Gentry on?
- 10 A I couldn't tell you.
- 11 Q Okay. Does that look like a couch that is when you
- 12 walk into the front door, that that's immediately the couch
- 13 that you see?
- 14 A I would believe so. But to be honest with you, I
- 15 don't recall what color that couch was.
- 16 Q Okay. Does that -- forgetting about the color for a
- 17 minute, does that look about where the couch was that you
- 18 saw at least one of the two suspects?
- 19 A Yes, ma'am.
- 20 Q Okay. And just for clarification, and that's the
- 21 couch right as you enter the -- the house, correct? I
- 22 think there was a coffee table back where that dog cage is.
- 23 A I would believe so.
- 24 Q When you were riding to the hospital with Mr. Williams
- 25 did you recognize that he was severely injured?

James Bogan
Cross-examination by Ms. Jones

- 1 A Yes, ma'am.
- 2 Q Okay. Fair to say he had 15 shots in him?
- 3 A I didn't count.
- 4 Q Okay. Were you aware that he had been shot in the
- 5 abdomen?
- 6 A Yes, ma'am.
- 7 Q Okay. And were you aware that he had been shot three
- 8 times in the buttocks? Did you see that at all?
- 9 A No, ma'am. He was -- by the time I started treating
- 10 him he was already on the backboard flat on his back.
- 11 Q Okay. And did you see the injuries? It looks like
- 12 two injuries to his back thigh and two injuries to his
- 13 front thigh.
- 14 A I saw some injuries to the front thigh, not -- I
- 15 didn't see anything on the back. He was laying flat on a
- 16 backboard.
- 17 Q Okay. But what about the two gunshot wounds to the
- 18 calf?
- 19 A I was at his head. I didn't --
- 20 Q Okay.
- 21 A I'm not familiar with that far down.
- 22 Q Were the other two injuries to his -- looks like the
- 23 left side, posterior thigh. You didn't see any --
- 24 A It was -- if it was on the back, I didn't see those.
- 25 Q Were the emergency crew attending to any of those

James Bogan
Cross-examination by Ms. Jones

1 wounds?

2 A Yes, ma'am. They had already done that when they put
3 him on the board to load him up.

4 Q Okay. In fact, I think his pants had been cut off,
5 correct?

6 A Yes, ma'am.

7 Q Do you know whether or not his shirt had been cut off
8 at that point?

9 A I don't recall.

10 Q Okay. Fair to say with all of those wounds he was
11 kind of bleeding a lot, correct?

12 A Yes, ma'am.

13 Q Kind of a mess on the front porch?

14 A Yes, ma'am.

15 Q And also in front of the couch where he was, correct?
16 There was a lot of blood.

17 A I don't recall any blood in the living room. Just to
18 be honest with you, I wasn't looking for it.

19 Q Is it fair say that your memory is a little bit
20 clouded because of the stress you were under that day?

21 A I was focused on what I was doing, yes, ma'am.

22 Q Okay. So a lot of these details are a little bit
23 fuzzy, a lot of the I-don't-recall, I'm-not-sure.

24 A The details -- the details I have are not fuzzy.

25 Q Okay. But you don't remember a lot of the other

James Bogan
Cross-examination by Ms. Jones

1 things going on other than you doing the ramming of the
2 distraction, hearing officer down, going to his aid,
3 pulling him out and then riding basically with one of the
4 suspects to the hospital.

5 A I -- the details that I have and the memories I have
6 are of me focusing and doing my job. And I'm trying to
7 figure out what -- ask me that again, please.

8 Q I'm getting lot of I-don't-knows, I-don't-remembers.
9 I'm just asking whether or not --

10 A You're asking me things that I don't know, so.

11 Q Okay. You don't recall necessarily a lot of the blood
12 on the floor that could have happened with 15 bullet wounds
13 to somebody? You don't recall seeing that.

14 A I -- there wasn't anybody on the floor when I -- when
15 I got there. I didn't --

16 Q You didn't focus on the floor.

17 A Right.

18 Q Okay. And where specifically was Ms. Gentry -- on the
19 couch, on the floor? Do you recall?

20 A I recall she was sitting over on the couch kind of.

21 Q Laying over. Okay. Did you go back and see Mr. Moore
22 at all?

23 A I got almost all the way to the end of the hall close
24 to where he was at. The officer that was there said he's
25 not injured. And so I went back to a gentleman that was on

James Bogan
Cross-examination by Ms. Jones

1 the front porch that was very injured.

2 Q Okay. Did you hear -- how many shots do you think you
3 heard all together?

4 A Several.

5 Q Five, ten, fifteen, twenty?

6 A I can't give you a number.

7 Q Okay. You have no idea?

8 A I don't know.

9 Q And were they all the same sound, or were they
10 different sounds like different types of guns firing?

11 A Two different sounds is what I recall hearing.

12 Q You heard two separate and distinct sounds?

13 A Yes, ma'am.

14 Q Okay. And how long do you think when you heard the
15 first initial shot until the shooting ended that was quiet
16 or relatively quiet from the gunshot?

17 A At the time it seemed like forever. A minute or two.

18 A minute at the most.

19 Q At the most one minute.

20 A Yeah.

21 Q And there were nine tactical agents there?

22 A I believe so.

23 Q Okay. And then four other officers there to serve the
24 search warrant.

25 A I don't know how many officers were there with

James Bogan
Cross-examination by Ms. Jones

- 1 narcotics.
- 2 Q There were a lot of people there.
- 3 A Yes, ma'am.
- 4 Q Is it fair to say once the gunshots started to be
5 fired it was a little bit chaotic?
- 6 A Yes, ma'am.
- 7 Q Nobody knowing really what was going on, yelling,
8 screaming, things like that?
- 9 A I -- I can't testify what other people knew or didn't
10 know.
- 11 Q No.
- 12 A Oh.
- 13 Q I am asking you whether or not to you it was kind of
14 chaotic, shots being fired, you didn't know necessarily who
15 was firing?
- 16 A I knew we were getting shot at and I knew one of my
17 officers were down and I had to go get him.
- 18 Q But the scene itself, the 13 people trying to cram --
19 cram into this little house -- it's got to be a little
20 chaotic, fair to say?
- 21 A I don't believe it's chaotic.
- 22 Q Was it orderly and precision like?
- 23 A It was a little hectic, I guess.
- 24 Q Fair to say that this whole plan didn't go the way it
25 was supposed to go.

James Bogan
Redirect examination by Mr. Bulsa

1 A No, ma'am.

2 Q Okay. And normally when you go in to serve search
3 warrants these types of issues don't arise.

4 A Not with -- this was my first one.

5 Q This was your first search warrant?

6 A No, ma'am. My first one that this happened, the
7 shooting.

8 Q Okay. So this is kind of your first one where things
9 just didn't go the way they were supposed to go.

10 A No, ma'am. There's been things that didn't go the way
11 they were supposed to go every time, but we never have been
12 shot.

13 Q Okay. Well, let me rephrase. First time somebody on
14 your team got injured?

15 A Yes, ma'am.

16 Q Okay. And what about one of the suspects or occupants
17 of the house? Is this your first experience where somebody
18 actually got shot?

19 A In a tactical situation, yes, ma'am.

20 MS. JONES: Nothing further.

21 REDIRECT EXAMINATION

22 BY MR. BULSA

23 Q Officer, you had a plan, didn't you, when you went to
24 the house?

25 A Yes, sir.

James Bogan
Redirect examination by Mr. Bulsa

- 1 Q Okay. You were given your assignment.
- 2 A Yes, sir.
- 3 Q And the other officers had their assignment.
- 4 A Yes, sir.
- 5 Q And part of the plan wasn't that you were going to get
- 6 shot at, was it?
- 7 A No, sir.
- 8 Q But you had been trained, and you knew how to react if
- 9 that did happen.
- 10 A Yes, sir.
- 11 Q Sounds like you did your job when you heard that.
- 12 A Yes, sir.
- 13 Q It certainly frightened you.
- 14 A Of course.
- 15 Q But you kept your cool and reacted and assisted your
- 16 fellow officer.
- 17 A Yes, sir.
- 18 Q And then went and checked on everybody else. Okay.
- 19 So sounded like while the shots weren't planned after --
- 20 after it happened you especially reacted appropriately.
- 21 A Yes, sir.
- 22 Q And, in fact, in doing your job you breached the
- 23 window, just deployed the distraction device.
- 24 A Yes, sir.
- 25 Q And also yelled police search, warrant.

James Bogan
Redirect examination by Mr. Bulsa

1 A Yes, sir.

2 Q And what's the purpose of doing that?

3 A Well, you yell police, search warrant, so the suspects
4 in the house know that you're the police and you're not
5 someone else just coming in their house.

6 Q Okay.

7 A It's to announce that you are the police.

8 Q Okay. Distracted them to your location. And then
9 you're notifying them what's going on.

10 A Yes, sir.

11 Q And just so the jury has a good picture of how Officer
12 Harris was positioned, you said his feet were to the door.
13 Was his head towards that doorway?

14 A His -- his feet were toward the door, towards the
15 outside of the house, and his head was pointed straight
16 down the hall --

17 Q Okay. So it's like --

18 A -- towards the back of the house.

19 Q He fell straight forward.

20 A He fell forward, yes, sir.

21 Q Okay. Thank you.

22 MR. BULSA: That's all I have.

23 MS. JONES: No recross.

24 THE COURT: You may step down.

25 MR. BULSA: The state calls Officer Keith Soules.

Keith Soules
Direct examination by Mr. Bulsa

- 1 KEITH SOULES, having been
2 first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. BULSA
4 Q Officer, please spoke up and introduce yourself to the
5 jury.
6 A My name is Keith Soules.
7 Q And who are you employed about?
8 A Spartanburg Public Safety Department.
9 Q And what are your duties?
10 A My primary job is patrol, but I'm also assigned to the
11 tactical team.
12 Q How long have you been a police officer?
13 A Four years.
14 Q Back when this happened you were right at three years?
15 A Yes, sir.
16 Q How long have you been part of the tactical team?
17 A Roughly two years.
18 Q Through today?
19 A There was a short period of time on medical leave, but
20 cumulative time two years.
21 Q okay. So you were within your first year. Okay.
22 When you -- you had a medical leave, you got injured and
23 came back to work, right?
24 A Yes.
25 Q How long were you out of police work?

Keith Soules
Direct examination by Mr. Bulsa

1 A Six months.

2 Q Okay. In fact, I believe you walk with a prosthesis,
3 don't you?

4 A Yes, I do.

5 Q Read about you in the newspaper. Okay. Now, what was
6 your duty at this location in particular?

7 A Myself and Officer Bogan were assigned to breach or
8 port the window and deploy the distraction device.

9 Q Okay. And he just testified about what his role --
10 what was your role to assist him?

11 A My job was to cover him and actually deploy the
12 device. The -- the pole itself is -- is rather large. And
13 it's difficult for one person to breach the window and pull
14 it just because of the length of it.

15 Q It requires two hands to hold it?

16 A Two hands to hold it and one to pull it.

17 Q He holds it and shoves it through and you pull it.

18 A Yes, sir.

19 Q Okay. And is that what you did?

20 A Yes. As soon as he went to go breach the window and
21 started yelling police, search warrant, the pole went
22 through the window. I pulled the string on it. We
23 continued yelling police, search warrant, while this is
24 going on.

25 The distraction device, the flashbang, it went off.

Keith Soules
Direct examination by Mr. Bulsa

1 There's a little bit of issues with the curtains. They're
2 a little -- it wasn't standard curtains. That looked as
3 though it might have been like a blanket or something of
4 that nature.

5 Q So you couldn't actually gain visual --

6 A Correct.

7 Q -- sight in the window.

8 A Correct.

9 Q Okay. So what do you remember happening as y'all were
10 deploying that device?

11 A We were announcing ourselves while we was going
12 through the window.

13 I could hear the people on the front side of the
14 house. They were again yelling police, search warrant.
15 They were trying to get inside of it.

16 Shortly after the flashbang went off -- that usually
17 makes a pretty loud noise. Shortly after that I heard a
18 series of small popping noises.

19 Officer Bogan and I -- we kind of looked at each
20 other, and we knew what was going on. I heard a scream.
21 Somebody else is yelling. I don't know exactly what they
22 was yelling for. I believe it was for Officer Bogan. We
23 both ran inside the house and tried to help out.

24 Q While you were on the side of the house did you see
25 anybody else or hear him?

Keith Soules
Direct examination by Mr. Bulsa

1 A From where I was standing I was facing the front yard.
2 We had some of the narcotics guys on the back corner of the
3 house. I -- Bogan was right next to me. And on down past
4 the front corner of the house there was a tree, and Officer
5 Shaw was at the tree.

6 Q So you basically had the house surrounded.

7 A Yes.

8 Q And this was a duplex. So you were focusing on that
9 one side, right?

10 A Yes, sir, that's correct.

11 Q So nobody bailed out the window or anything.

12 A No, sir.

13 Q Were you able to render or give any assistance to
14 Officer Bogan?

15 A Once Bogan and I got into the house he went over to
16 where Officer Harris, the injured officer, was. And Shaw
17 was already inside there. And one of the them drug Harris
18 out of the house.

19 I went over to the suspect that was shot, and I
20 grabbed him. I was going to get him out of the house.
21 That way if for some reason any further shooting occurred
22 he was out of the situation.

23 When I grabbed him -- I can't remember if he was
24 laying face down or on his back. I just remember grabbing
25 him and pulling him.

Keith Soules
Direct examination by Mr. Bulsa

1 And as I pulled him away there was a silver pistol
2 underneath him. And it was -- had blood on the pistol.
3 And there was a large amount of blood on the floor.

4 We went ahead and got him out of the house, got him on
5 the front porch to where it was a little more secure than
6 what -- where he was. And we began trying to treat him
7 until E.M.S. showed up.

8 Q Okay. So by the time you got into the house they
9 actually -- the other officers had it secured.

10 A Yes.

11 Q And you tried to aid Mr. Rogers -- I believe is his
12 name.

13 A Yes, sir.

14 Q Did you do anything with the pistol that you found
15 underneath?

16 A We left it where it was. There was -- there was other
17 officers in the house that way to keep eyes on it.

18 Q You didn't touch it. You pulled him out.

19 A Yes.

20 Q Did you go back into the house at all?

21 A I don't believe so.

22 Q Thank you, Officer. Answer any questions Ms. Jones
23 may have.

24

25

Keith Soules
Cross-examination by Ms. Jones

1 CROSS-EXAMINATION

2 BY MS. JONES

3 Q You indicated that the gun was covered in blood.

4 A Yes.

5 Q Okay. And you didn't touch that gun.

6 A No.

7 Q And you indicated that it was near Mr. Rogers,
8 correct?

9 A He was laying on top of it.

10 Q Okay. And, in fact, Mr. Rogers had an abdominal
11 injury, correct? He had been shot in the stomach.

12 A I believe so, yes.

13 Q Okay. Did you see that injury?

14 A He had several injuries. I couldn't tell you exactly
15 where all of them were.

16 Q Okay. Bleeding pretty profusely from the front,
17 correct?

18 A Yes.

19 (Photograph marked Defendant's Exhibit No. 1 for
20 Identification.)

21 Q I'm handing you something labeled Defendant's
22 Exhibit 1. Do you recognize that gun?

23 A That looks similar to the one that he was on.

24 Q Okay. Is that the silver gun that you saw with
25 Mr. Williams?

Keith Soules
Cross-examination by Ms. Jones

1 A I -- I believe so. It looks similar to the one that
2 he -- he was laying on.

3 MS. JONES: Your Honor, I'd like to enter this as
4 Defendant's Exhibit 1.

5 MR. BULSA: I have no objection.

6 THE COURT: It's admitted.

7 (Photograph marked Defendant's Exhibit No. 1.)

8 Q There's no blood on there, is there?

9 MR. BULSA: Objection, Your Honor. I'm not sure that
10 picture clarifies that.

11 THE COURT: Well, he can look at it. He will know if
12 he sees any or not.

13 A It doesn't like it from here.

14 Q Doesn't appear to you to have a drop of blood, does
15 it?

16 A It's hard to tell. There's a lot of dark areas on it.

17 Q I'm going to hand you that exhibit. And look closely
18 at it without it being up there. Do you see any type of
19 red substance on that gun?

20 A No. It could have very well been cleaned or dried.

21 Q Would that be proper police procedure to take a gun
22 that is all covered in blood and clean it up removing
23 evidence? Is that proper procedure?

24 A It's not removing evidence.

25 Q Taking a gun that has blood all over it -- perhaps

Keith Soules
Cross-examination by Ms. Jones

1 Mr. Williams' blood -- the gun that you say that the
2 officer -- that Mr. Williams pointed at the officer is one
3 of the reasons why he got shot --

4 MR. BULSA: Objection, Your Honor. This officer
5 didn't testify about Mr. Rogers.

6 THE COURT: Sustained.

7 Q Let me rephrase.

8 If you recovered a gun that's bloody at the scene is it
9 proper police procedure to take some Clorox or something and
10 wipe it clean, or is it better just to put it in an evidence
11 container, an envelope?

12 A I didn't recover the gun. I couldn't tell you that.

13 Q That wasn't my question. My question is is it proper
14 police procedure to take a piece of evidence that has
15 potentially blood on it and clean it up.

16 A Okay.

17 Q It's a yes-or-no question.

18 A The only thing I can say on that is I didn't recover
19 the gun. I saw it laying under him. When we pulled him
20 away the gun was laying there. What happened after that,
21 I -- I can't testify to that.

22 Q Okay. And, again, sir, that wasn't my question. My
23 question is is it proper procedure to tamper with evidence.

24 MR. BULSA: Objection, Your Honor. She's being
25 argumentative and --

Jason Harris
Direct examination by Mr. Bulsa

1 THE COURT: Okay. Don't be argumentative. Rephrase
2 your question.

3 Q Is it proper procedure if a gun has blood on it for an
4 officer to remove all of that blood at a crime scene? Is
5 that something you've been trained to do?

6 A The weapon has to be secured somehow, and however
7 means that was deemed there, like I said, I can't testify
8 to that. That was something that's afterwards. All I did
9 was I saw it laying there and I pulled the gun out.

10 Q So you're saying that at some point in time that at
11 some circumstances it's appropriate for an officer to take
12 a gun and remove all the blood or evidence on it and then
13 secure it in evidence?

14 A Ma'am, I can't even tell you if that picture was taken
15 there. It's the picture of a gun. It doesn't have a
16 description of where it is.

17 MS. JONES: Nothing further.

18 MR. BULSA: Nothing further, Your Honor.

19 THE COURT: You may step down.

20 MR. BULSA: The state calls Jason Harris.

21 JASON HARRIS, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. BULSA

24 Q Officer, please introduce yourself to the jury.

25 A Senior Patrol Officer Jason Harris.

Jason Harris
Direct examination by Mr. Bulsa

1 Q And you are with the Spartanburg Public Safety
2 Department?

3 A Yes, sir.

4 Q For how long?

5 A I've been with the department eight years. It'll be
6 nine years this July.

7 Q And have you done all of your policing with
8 Spartanburg city?

9 A No, sir. I -- I was employed by the Spartanburg
10 Department of Corrections for two years -- excuse me --
11 three years as a sergeant before I got employed by the City
12 of Spartanburg.

13 Q And what are your primary duties?

14 A My primary duties is mainly patrol. I'm assigned to
15 the subsidized housing unit. I handle all -- I'm a liaison
16 between the subsidized housing properties and the City of
17 Spartanburg.

18 Q Are you also a member of the tactical unit?

19 A Yes, sir. I've been on the tactical unit now for five
20 years and eight months and assistant team leader for one of
21 the teams.

22 Q And you participated in this entry into [REDACTED] Owens
23 Street?

24 A Yes, sir, I did.

25 Q What was your duties to be that day?

Jason Harris
Direct examination by Mr. Bulsa

1 A On this operation I was assigned to the point one
2 defense position on the team, which is normally the
3 second -- second officer into the -- into the residence
4 depending obviously as backup is the first -- the first
5 officer in.

6 We made entry because of the debris on the porch
7 that -- that was located there. We're cross trained so
8 that we made entry. I ended up being the -- the actual
9 point person going in, the first officer into the room.

10 Q So who actually breached the door?

11 A Officer Mathis, I believe, was the one that breached
12 the door with some assistance from Officer Hensley.

13 Q They got the door open.

14 A Yes, sir.

15 Q They would have moved out of the way?

16 A Yes, sir.

17 Q You would have went in?

18 A Yes, sir.

19 Q How long does that process usually take?

20 A Seconds. It's as quick as possible, usually one,
21 maybe two, seconds tops.

22 Q While y'all were at the front door trying to gain
23 entry do you hear the distraction device being set off?

24 A Yes, sir, yes, sir.

25 Q And what else do you hear while that's going on?

Jason Harris
Direct examination by Mr. Bulsa

1 A I hear glass breaking. Shortly after glass breaking
2 hear a loud bang which is the distractionary device going
3 off, yelling from the back.

4 It was kind of muffled. They were around the side of
5 the house toward the back. It sounded like police, search
6 warrant. Like I said, it was a little muffled. And we
7 were also yelling police, search warrant, from the front.
8 As soon as -- I'm sorry. Go ahead.

9 Q You've got them on the side yelling police. At least
10 that's the process.

11 A Yes, sir.

12 Q And then y'all -- are you trying to hit it at the same
13 time, coordinate --

14 A Yes, sir.

15 Q -- the distraction device with the door breach?

16 A Yes, sir.

17 Q Okay. And you're yelling as well?

18 A Yes, sir. From the -- from the first hit on the door
19 with the -- with the ram or whatever we're using to gain
20 entry into the residence we start yelling police, search
21 warrant, so everybody knows who we are and why we're there.

22 Q And describe for the jury what happened that day.

23 A Okay. As we said, or as I said previously, when we
24 moved to the porch to do -- to do the entry on the -- on
25 the front door Officer Hensley -- there was a screen door.

Jason Harris
Direct examination by Mr. Bulsa

1 His job was to pull the screen door open and get it out of
2 the way for Officer Mathis to come with the ram. The ram
3 is what we use to -- to knock in the door so we don't have
4 to use our foot any more.

5 He used the ram. I'm not sure how many hits it took
6 to get in the door. I was focused on the front door. When
7 the door comes open I go in.

8 When the door came open Officer Morrow who was
9 scheduled to be point that day -- like I said, there was
10 some debris on the porch. So I stepped up into the point
11 position and made entry into the front room.

12 The room was pretty dark. I had lights on my weapon.
13 I was carrying a 9mm MP-5 submachinegun. It has a tactical
14 eye on the front of it that I had turned on at the time,
15 plus the light went in the door behind us.

16 When I made entry into the front room, there's a lot
17 of debris to my left-hand side. It was hard to make out
18 what it was.

19 So instead of doing a sweeping motion as I would
20 normally do into the room I came straight ahead. A male
21 and female were on the couch -- black male and white female
22 were on the couch. I shined my light and pointed my weapon
23 at them, again, yelling police, search warrant. I think
24 that was about the fourth time I yelled it. Both of those
25 two put their hands up to their -- demonstrating here to my

Jason Harris
Direct examination by Mr. Bulsa

1 chest -- saying okay, okay.

2 As they did that I turned. I was still in the
3 hallway. As I turned to go toward the back room -- knowing
4 they had already surrendered I was going to the back room.
5 When I turned and focused my attention on the hallway there
6 were two flashes from the back room.

7 I recognized them immediately as gun flashes. I --
8 numerous training and my prior experiences, nightfire and
9 things like that. I immediately recognized gun flashes. I
10 heard the pops from, like I said, numerous training. It's
11 gunfire.

12 And when I heard the second pop I fell to the floor.
13 I had a large -- a large aching pain in my right hip. And
14 when I -- when I fell to the floor I could hearing, start
15 hearing, pops from all around me. Not sure how many -- how
16 many more fires. I could hear them from the front, back
17 and the side.

18 I'm on the floor. And, like I said, I could hear
19 other people hollering. There was a lot of yelling going
20 on -- search warrant, police, police.

21 And, like I said, hearing the pops and a few
22 seconds -- maybe a few seconds went by. And I was being
23 grabbed from the back and taken back toward the front door.

24 Once I got out the front door I saw Officer Shaw above
25 me. I'm assuming he was the one that was dragging me out.

Jason Harris
Direct examination by Mr. Bulsa

1 at the time -- and Officer Bogan running behind him. We
2 got into the front yard. Once in the front yard they laid
3 me on the -- on the ground. And Officer Bogan started
4 rendering aid.

5 Q It took you a while to describe that, but in reality
6 how long did all of that last?

7 A A very few seconds. Most of our -- most of our
8 warrants go within a matter of 10 to 20 seconds. This one
9 was no different. Like I said, it was a lot of things
10 happened in a short period of time, and maybe 20 seconds
11 tops.

12 Q So you hear the gun as it's equipped with a light?

13 A Yes, sir. It has a -- it's equipped. It's a mounted
14 light on the front of the gun.

15 Q Short of like a flashlight.

16 A Yes, sir.

17 Q Okay. Light to see.

18 A Yes, sir. It's actually brighter than normal
19 flashlights.

20 Q Okay. So when you shined it and you saw two people on
21 the couch and you shined it through the doorway could you
22 see anybody in there?

23 A Down the hall?

24 Q Yes, sir. The direction where the shots came from.

25 A No, sir. I -- I -- I was turning, in the process of

Jason Harris
Direct examination by Mr. Bulsa

1 turning, to go down the hallway.

2 When my gun was pointed at the people on the couch,
3 the male and female, I turned to go down the hallway. And
4 my face went before my gun made it there. So my light had
5 not made it to the hallway yet.

6 Q When you looked in the -- did you have an idea of what
7 the diagram of the house was like, the makeup of the rooms?

8 A Yes, sir. I had a previous experience. I've worked
9 the south side of town basically since just about -- since
10 I started patrol there.

11 Q Did you know there were three rooms in that house?

12 A I didn't know precisely, no, sir.

13 Q Okay. But you knew there were rooms separated by
14 doorways?

15 A Yes, sir. I believe so.

16 Q Okay. And so you're calling the hallway the doorway.

17 A Yes, sir. When you -- in that particular residence,
18 it's a duplex. So when you open the front door you're --
19 you're in the living room, but you're staring down the
20 hallway -- excuse me -- down the hallway to the back of the
21 residence. So you're actually in the living room, but
22 you're looking all the way down the hallway.

23 Q And you're describing a hallway. Do you think it was
24 two walls?

25 A Yes, sir.

Jason Harris
Direct examination by Mr. Bulsa

1 Q It's not really two walls. It's -- it's doorframes,
2 right?

3 A Yes, sir. It's a possibility, yes, sir. I don't know
4 for certain. I didn't make it back that far.

5 Q Okay.

6 A But I'm assuming so, yes, sir.

7 Q Okay. So State's Exhibit No. 5. That's the door.
8 You would have made it beyond this point.

9 A Yes, sir. I made it to about the side -- where you
10 see the side of the couch, the arm of the couch, as you can
11 see the hallway in the black portion, came in that doorway.
12 It goes straight to the back. About the side of the couch
13 is where I made it to.

14 Q State's Exhibit 6.

15 A Yes, sir.

16 Q Okay. Now, it wasn't this light when you were in
17 there.

18 A No, sir, no, sir. The living room was a little dimmer
19 than that, but the back room was not that light at all. It
20 was pretty dark.

21 Q Did you essentially fall right there next to the
22 couch?

23 A Yes, sir. I was pretty -- I mean, pretty close to the
24 couch. Right there on the arm.

25 Q And you're telling us you never even got to shine your

Jason Harris
Direct examination by Mr. Bulsa

1 light through that doorway.

2 A No, sir. As -- as you see the door -- the front door
3 on the previous picture is a little offset to the right of
4 the couch.

5 So as I came into the entry I couldn't move to the
6 left to sweep the left of the room. So my weapon and my
7 light went to the left-hand side. So it was kind of
8 catty-cornered from me when I saw both people get -- show
9 both hands. And they were clear, had no weapons in their
10 hands.

11 I started to turn. There it is. It started to turn
12 to the right toward the hallway or the doorway. And, like
13 I said, my head moved faster than my hands, I guess,
14 because I never actually got the light in the hallway until
15 I saw the flashes from the gun.

16 Q You can see some sort of tub or container next to that
17 couch. Do you see it?

18 A The graded container there, or you referring to
19 something else?

20 Q This right here.

21 A Yes, sir. It's dark. I really can't see.

22 Q You can see the top of it here.

23 A Okay. Yeah.

24 Q Did you make it to that far in?

25 A No, sir, no, sir. I was flat on the floor when --

Jason Harris
Direct examination by Mr. Bulsa

1 when I laid down. So I don't believe I was that far back.

2 Q So you didn't fall on top of that.

3 A No, sir. I don't believe so.

4 Q Okay. And were you still aware of what was going on
5 around you as you were laying on the floor?

6 A Yes, sir. I was -- I was face down, so I didn't -- I
7 didn't witness any of it as far as seeing, but I could
8 still hear.

9 I heard, like I said. I heard a lot of shouting,
10 heard a lot of gunfire. I couldn't really tell you who was
11 firing or where the firing was coming from. I know it was
12 front, side and rear. But I couldn't tell you who or what.
13 I was face down.

14 Q So you never -- you never even pulled your trigger.

15 A No, sir, no, sir. As I fell to the floor my sergeant
16 who was behind me at the time he -- I could feel him step
17 over me, which is what we're trained to do. If you go
18 down, you just stay there and everybody else will take care
19 of you because you don't want slow up anybody. So that's
20 exactly how we're trained.

21 So if I would have pulled the trigger I'd have been
22 shooting at him in the back.

23 Q Show you State's Exhibit 23. Were you dressed as
24 these officers are dressed?

25 A Yes, sir, I was.

Jason Harris
Direct examination by Mr. Bulsa

1 Q All right.

2 A Do you want me to describe it?

3 Q But your goggles would have been down.

4 A Actually I have a pair of goggles, but I have a pair
5 of safety glasses I wear. So my goggles were above my --
6 like theirs above their head. But my safety glasses were
7 across my face.

8 Q Okay. Now, you were taken to the hospital?

9 A Yes, sir. I was transported by E.M.S.

10 Q And how long did you stay in the hospital?

11 A Several hours. I don't know the exact timeframe.
12 They had me pretty medicated once I got there.

13 Q Where was your wound?

14 A In my right hip. It's just around the -- if you feel
15 just around the hipbone area. And then the exit wound --
16 it didn't actually come out. They had to surgically remove
17 it -- the bullet.

18 Q Okay. How far did it travel into your body?

19 A It actually entered into the front, front of my hip
20 area. It hit the bone and ricocheted around. And it ended
21 up in my right buttocks cheek. And that's where it was
22 surgery removed from.

23 Q How long were you incapacitated?

24 A I was out of work for three months, I believe, before
25 I returned to full duty.

Jason Harris
Cross-examination by Ms. Jones

1 Q Are you married?

2 A Yes, sir.

3 Q Children?

4 A Yes, sir.

5 Q I guess your wife was pretty frightened.

6 A Oh, yes, sir. She did not like the phone call I got
7 or she got.

8 Q Thank you. Answer any questions Ms. Jones has.

9 CROSS-EXAMINATION

10 BY MS. JONES

11 Q Officer Harris, you indicated that you were the first
12 man through the door.

13 A Yes, ma'am.

14 Q Okay. And you testified that Morrow was supposed to
15 actually be the first one in.

16 A Yes, ma'am. According to the -- the lineup that day,
17 yes, ma'am.

18 Q Okay. But he got tied up with some clutter.

19 A Yes, ma'am. There was some clutter on the porch. And
20 that's just the way it happens sometimes.

21 Q Okay. And did you see him physically get kind of tied
22 up with the clutter and so you made the snap decision to go
23 in?

24 A No, ma'am. When we were breaching the door I'm facing
25 the door. My focus is on that door.

Jason Harris
Cross-examination by Ms. Jones

1 As far as cover, the people breaching the door does
2 not have any weapons in their hands. So I'm covering
3 those, those officers. And when -- when the door came open
4 somebody said go, and I just stepped up and went in.

5 Q Okay. Did the person who was -- actually had the ram,
6 did they have to actually step out of the way before you
7 could proceed?

8 A Yes, ma'am. They actually stepped -- they're not
9 really in the way. He slings around to the side so he's
10 actually kind on the doorframe. And as he swings the ram
11 when he comes back on his back swing, he just stands out of
12 the way.

13 Q Okay. And then you entered the residence, correct?

14 A Yes, ma'am.

15 Q Do you recall exactly -- I think you initially said
16 that you made it to the side of the couch but then there
17 was that thing there --

18 A Possibly.

19 Q -- so you probably couldn't have made it in. Can you
20 guess as to how many steps you -- you made in before you
21 went down?

22 A I -- I really don't know. I can give a guess of maybe
23 five or ten, between five and ten steps.

24 Q Okay.

25 A Like I said, I really don't know. I didn't count my

Jason Harris
Cross-examination by Ms. Jones

1 steps.

2 Q It happened pretty fast?

3 A Yes, ma'am.

4 Q Okay. And you didn't -- initially when you first went
5 in did you feel anybody to your sides, or was it just you?

6 A No, ma'am. The other officers when we go in -- as
7 that way where you come in there's a single file because of
8 the doorway. You can't get two people through the doorway
9 at the same time. So everybody was to my rear.

10 Q Okay. And you indicated you saw two people on the
11 couch.

12 A Yes, ma'am.

13 Q A male and a female.

14 A Yes, ma'am.

15 Q Okay. And you said that they put their hands up.

16 A Yes, ma'am.

17 Q And they said okay, okay.

18 A Yes, ma'am.

19 Q Okay. So in your belief they were surrendering.

20 A Yes, ma'am.

21 Q And you didn't feel that they were a threat.

22 A No, ma'am.

23 Q Okay. So then you went to the back of the house to
24 try and secure that.

25 A I tried to, yes, ma'am.

Jason Harris
Cross-examination by Ms. Jones

- 1 Q Okay. And at that point when you started to step
2 towards the back, is that when you seen or heard the
3 gunfire?
- 4 A Both. I saw and heard the gunfire, yes, ma'am.
- 5 Q Okay. What was the lighting condition?
- 6 A It was a lot of dim lighting, dim to dark.
- 7 Q Pretty dark.
- 8 A Yes, ma'am.
- 9 Q And you said you wore safety glasses.
- 10 A Yes, ma'am.
- 11 Q Were they the clear kind?
- 12 A Yes, ma'am. They're clear.
- 13 Q How big of a flashlight would you say is on your gun?
- 14 A Maybe a [sic] inch or 2-inch lens, but it's brighter
15 than normal flashlights, and they're made-for-weapon
16 lights.
- 17 Q Okay. And up indicated you saw and heard the gunfire.
- 18 A Yes, ma'am.
- 19 Q And was it pretty instantaneous you went down?
- 20 A Yes, ma'am, however fast a bullet travels.
- 21 Q Okay. So you think you got hit on the first shot.
- 22 A No, ma'am. Second shot.
- 23 Q Second shot.
- 24 A Yes, ma'am.
- 25 Q Was it pretty rapid fire or was it --

Jason Harris
Cross-examination by Ms. Jones

- 1 (whereupon, the defense attorney snapped her fingers.)
2 A No. It was -- it was in between those two. It wasn't
3 like an automatic fire, but it was a pop, pop.
4 Q Okay. As if someone was just squeezing the trigger.
5 A Yes. Long enough for me to see both flashes from the
6 gun, yes, ma'am.
7 Q Okay. And then you went down.
8 A Yes, ma'am.
9 Q And you're trained to just stay down.
10 A Yes, ma'am.
11 Q Okay. And you testified that you felt a sergeant
12 standing over you.
13 A Well, I didn't feel him standing over me, no, ma'am.
14 I knew it was my sergeant from his voice. I felt him step
15 over me into the front of me.
16 Q Okay. Fair enough. Step over you.
17 A Yes, ma'am.
18 Q Who was that sergeant?
19 A It was Sergeant Hillers.
20 Q Hillers. Okay. And did you notice anybody else
21 besides Sergeant Hillers?
22 A I could hear other voices, yes, ma'am. I couldn't
23 tell you. I believe it was Officer Morrow and Officer
24 Cooper. But, as I said, there was gunfire going on, and I
25 was -- I was on the floor. So I didn't see.

Jason Harris
Cross-examination by Ms. Jones

1 Q Okay. So after you heard that initial pop, pop, and
2 you went down, could you hear the other gunfire from the
3 back of you?

4 A Yes, ma'am.

5 Q Okay. And you said that -- how long do you think that
6 gunfire lasted?

7 A Everything -- when -- in a situation like that
8 everything -- everybody acts different, but 10 to 15
9 seconds maybe.

10 Q Okay. And then at some point -- well, let me ask you
11 this. Were you pulled out prior to the gunfire ceasing?

12 A No, ma'am, no, ma'am.

13 Q Okay. So the gunfire stopped.

14 A Yes, ma'am.

15 Q And then you were dragged out.

16 A Yes, ma'am.

17 Q Okay. And after the gunfire stopped did you see any
18 movement in the back?

19 A I -- like I said, I was face down on the floor. I
20 didn't see anything at all but the floor. And then I saw
21 the sky. The officer --

22 Q Okay. So he drug you out pretty fast.

23 A Yes, ma'am. Officer Shaw got me out quick.

24 Q Okay. A couple of seconds?

25 A Maybe.

Jason Harris
Cross-examination by Ms. Jones

1 Q Okay. And you weren't concentrating at necessarily
2 what was going on in the back.

3 A No. I was trying to keep myself still. I knew being
4 shot in the hip -- I've been to numerous medical training
5 with the tactical team, and I know how serious a shot like
6 that can be. So I was trying to stay as still as possible.

7 Q Okay. And they dragged you out. And you were taken
8 by ambulance to the hospital, right?

9 A Yes, ma'am.

10 Q And you testified you were shot in the hip, correct?

11 A Yes, ma'am.

12 Q Could you stand up and exactly show us exactly
13 where -- I hate to put you on the spot -- so we can get a
14 better idea of where?

15 A Yes, ma'am. The bullet actually entered. I have a
16 scar here. And then it was actually surgically removed.
17 The other scar is right approximately here.

18 Q Okay. And was that your -- the only wound that you
19 suffered --

20 A Yes, ma'am.

21 Q -- bullet-wise?

22 A Yes, ma'am.

23 Q Okay.

24 MS. JONES: I have nothing further, Your Honor.

25

Jason Harris
Redirect examination by Mr. Bulsa

1 REDIRECT EXAMINATION

2 BY MR. BULSA

3 Q Do you know who -- which officers were behind you?

4 A Like I said, from voices it sounded like Officer
5 Morrow and Officer Copper, but everybody was shouting. So
6 they were the closest, the loudest voices I could hear. So
7 I assume they was the closest. I didn't actually see them.
8 Like I said, I was face down on the floor.

9 Q As far as the plan was concerned were they to be
10 coming in behind you?

11 A Officer Morrow -- in the plan Officer Morrow would
12 have been in front of me, but because of the hold-up on the
13 porch obviously he fell in behind the stack.

14 Q Okay. Was Cooper?

15 A Yes, sir. Cooper would have been the third or fourth
16 man in the door, I believe.

17 Q So Morrow, Cooper, yourself and Soules?

18 A Yes, sir.

19 Q All right. And you said you heard two shots and it
20 was the second shot that --

21 A Yes, sir.

22 Q -- made you fall. You heard other shots afterwards.
23 Did you hear other shots coming from the same direction
24 that you got shot from?

25 A Yes, sir, I did.

Jeff Cooper
Direct examination by Mr. Bulsa

1 Q Okay. So even when you went down the shots didn't
2 stop.

3 A No, sir, no, they did not.

4 Q Thank you. That's all I have.

5 THE COURT: You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: We'll take a short break. I'll ask the
8 jury to please go to your jury room. Do not discuss the
9 case. I'll bring you back after that break.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: Court's in recess for 15 minutes.

13 (Whereupon, a recess was taken.)

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

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: All right. Mr. Bulsa.

18 MR. BULSA: The state calls Jeff Cooper.

19 JEFF COOPER, having been first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BULSA

22 Q Officer, please introduce yourself to the jury.

23 A Officer Jeff Cooper.

24 Q How long have you been a police officer?

25 A Fifteen years.

Jeff Cooper
Direct examination by Mr. Bulsa

1 Q How long has that been with the public safety
2 department?

3 A All of it since 1997.

4 Q What are your duties at this time?

5 A I'm assigned to the traffic division.

6 Q What were your duties back in January of 2011?

7 A I was also assigned to the traffic division primarily.
8 And I'm also assigned to the tactical team and the fatality
9 reconstruction team.

10 Q How long had you been with the tactical team?

11 A Ten years.

12 Q Are you still on that now?

13 A Yes, sir.

14 Q So you participated in this event that occurred on
15 January the 6th of 2011?

16 A Yes, sir.

17 Q What was your role to be?

18 A I was assigned to point two defense, which about the
19 fourth man in the door. My primary goal is to go in and
20 safely secure each individual in the house and deem it safe
21 for narcotics to come and do their search warrant.

22 Q Okay. Tell the jury what you recall happening that
23 day.

24 A On that day we made the approach. We -- as we make
25 the approach we cover the windows on both sides of the

Jeff Cooper
Direct examination by Mr. Bulsa

1 house.

2 We got up to the front door. I'm not sure exactly
3 what all happened with the front door because I was
4 covering the windows on each -- on my side.

5 Q Wait a minute. You were covering the front room?

6 A Yes, sir.

7 Q So somebody's at the door and --

8 A Front window.

9 Q Set of double windows and porch.

10 A Yes, sir.

11 Q Okay.

12 A Once entry was made I started hearing gunfire. I did
13 hear Sergeant Hillers call that officer was down.

14 At that time I was on the right side of the doorframe
15 right at the door, one foot on the porch, one foot actually
16 on the threshold of the doorway.

17 I could not see back into the house back towards the
18 bathroom where the gunshots were coming from because at
19 that time Sergeant Hillers was standing in front of me. I
20 was covering the two individuals on the couch.

21 As Sergeant Hillers was progressing on in the male
22 that was on the couch presented a firearm and pointed it at
23 the -- my team members, and so at that time I fired upon
24 him.

25 Q When you heard the first shots where were you located,

Jeff Cooper
Direct examination by Mr. Bulsa

1 again?

2 A I was at the -- I was on the porch when the first ones
3 started. And then as we was progressing in, at that time I
4 stopped at the doorway.

5 Sergeant Hillers had already made it into the house a
6 couple of steps, but he was blocking my view.

7 Q You were basically in the doorway.

8 A I was in the doorway, yes, sir.

9 Q Okay. And where was -- let's see. Hillers was in
10 front of you. Harris was in front of him. Where was
11 Morrow?

12 A Morrow was to my left. We were pretty much taking up
13 the doorway coming in.

14 Q Okay. Do you recall how many shots you heard?

15 A No, sir.

16 Q Okay. Did you see Harris fall?

17 A No, sir.

18 Q All right. Tell us why you -- why you drew on -- or
19 actually you had your weapon out, right?

20 A Yes, sir. My weapon was already out. When we make
21 entry our weapons are already out.

22 Q Was it your job to secure that front room?

23 A The way it's set up and the way we're trained, you
24 flow through the house. I can't tell you which room I'm
25 going to secure. We may get tied up in a front room.

Jeff Cooper
Direct examination by Mr. Bulsa

1 There may not be anybody in the front room. We may not see
2 anybody until the second room. But everybody works as a
3 team. And as we flow we secure individuals.

4 Q How much light do you recall there being in that room?

5 A Most of the light was coming from the doorway in
6 behind us. It was earlier in the morning, and it was dark
7 in there. Most of the light was coming from, you know, the
8 dawn light coming in from sun.

9 Q And how was the window covering in that room?

10 A I can't recall.

11 Q Do you know if you could see in through the window
12 covering?

13 A No, sir. I could not see into the window.

14 Q Okay. The door was closed. The window was covered.
15 The door opens. The light floods in the room. The
16 officers go in, and their attention gets drawn to the
17 couch? How --

18 A I -- I knew from gunfire I was hearing -- I knew the
19 individuals on the couch were not the immediate gun threat.
20 I was just covering them because the officer that was in
21 front of me was focused down the hallway. And then the
22 individual on the couch presented a firearm at that time.

23 Q You say presented a firearm.

24 A He pointed at us.

25 Q Do you know where he -- do you know where it was at?

Jeff Cooper
Direct examination by Mr. Bulsa

1 A It come from his waistband or pocket area. I'm not
2 sure exactly where it came from or where he had it stored.

3 Q And did you try to get him to put it down?

4 A We were hollering police, search warrant, get on the
5 ground, police, search warrant. So the words -- he dropped
6 the weapon. I can't say I did say that, but I know I was
7 announcing police, search warrant, with everybody else.

8 Q But unless -- you definitely heard shots fired in your
9 direction before you saw that other man with the gun --

10 A Yes, sir.

11 Q -- and because of the circumstances and the gun in
12 what y'all were yelling -- is that -- that's what led you
13 to shoot him?

14 A Yes, sir.

15 Q And what happened when you fired?

16 A When I -- the first couple of times I fired he sat
17 back. He drew his legs up into his chest. I think he
18 was trying to cover his mid section. And he still had the
19 gun pointed between his legs right towards the rest of the
20 SWAT officers and myself -- I'm sorry -- that was there at
21 the doorway. So I continued to shoot until he dropped the
22 weapon.

23 Q Are you describing sort of in a curled-up position?

24 A Yes, sir.

25 Q Almost trying to protect himself with his legs?

Jeff Cooper
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 Q Okay. But he still didn't drop the gun.

3 A No, sir.

4 Q Do you know how many times you would have fired on
5 him?

6 A I'm thinking six to eight times. I don't know a
7 hundred percent.

8 Q Did he eventually drop the weapon?

9 A Yes, sir. Once he dropped the weapon I ceased firing.

10 Q Then what did you do?

11 A I progressed on forward into the house. I -- like I
12 said earlier, I knew that them two on the couch was not the
13 immediate threat. I knew Sergeant Hillers had returned
14 fire down the hallway. I did not know if that threat had
15 been neutralized or not.

16 Not knowing exactly how many shots I had fired, I
17 reloaded a gun. I stepped over Officer Harris. At that
18 point in time I still didn't know which officer it was. I
19 just knew an officer was down. I stepped over Officer
20 Harris to provide security for people that come in behind
21 me to take care of him.

22 Once we got to the doorway there Officer Morrow bumped
23 up to me. He said let's go -- let me know that he's with
24 me. We progressed on back through the house hollering, you
25 know, police, search warrant, let's see your hands, let's

Jeff Cooper
Direct examination by Mr. Bulsa

1 see your hands.

2 After just a few seconds of that two hands come out
3 from the bathroom door below the door handle, no weapon or
4 anything.

5 Sergeant -- I'm sorry -- Officer Morrow opened the
6 bathroom door. The individual that was in the bathroom --
7 he laid on the floor. Another officer -- I don't know
8 which one it was -- come in and started securing him. I
9 walked back out the front door.

10 Q Okay. Now, after you fired your rounds at the man on
11 the couch --

12 A Yes, sir.

13 Q -- did you hear any other shots?

14 A No, sir.

15 Q Okay. So the shots had ceased.

16 A They had ceased.

17 Q How close was the lady to Mr. Rogers on the couch?

18 A He got in her lap. I mean, they were -- they were
19 touching.

20 Q Okay. So we learned she was struck one time, right?

21 A Yes, sir.

22 Q Okay. All right. Did you have any illumination
23 device on your gun like a light?

24 A Yes, sir. At that time I -- I just had the handgun on
25 me, and the handgun does have a small flashlight mounted up

Jeff Cooper
Direct examination by Mr. Bulsa

1 under them.

2 Q And did it shine on the gentleman that was on the
3 couch?

4 A It shined where the gun's pointed, yes, sir.

5 Q How far out does that light go?

6 A I guess it really depends on how dark it is on a --
7 you know, the lighting situation we were in. It would
8 probably safely light maybe 10 to 12 foot maybe.

9 Q Okay. As you progressed into the interior of the home
10 and got to the doorway where Morrow bumped up against you
11 were you able to shine that light into the bathroom area?

12 A Well, in the area, yes, sir. My -- the light was on
13 into the area. And, like I said, I did not see anybody.
14 We just started calling out, let's see your hands, let's
15 see your hands. And then after a few seconds of that we
16 saw hands coming out from the bathroom door.

17 Q We've seen the pictures. It's kind of cluttered.

18 A Very cluttered.

19 Q Couch. And then there's some sort of tub like thing,
20 and then there's actually a piece of furniture against the
21 wall.

22 So did you or Morrow actually go into that center room
23 before the defendant came out of the bathroom?

24 A Yes, sir. We was just a few feet from the bathroom
25 door.

Jeff Cooper
Direct examination by Mr. Bulsa

1 Q All right. And his hands came out.

2 A Yes, sir.

3 Q And what did you do at that point?

4 A I was covering -- basically, I was covering for
5 Officer Morrow.

6 Officer Morrow opened the bathroom door if I remember
7 correctly, or either the individual in there pushed the
8 door open with his hands. And he laid prone on the floor
9 at that time.

10 Q I missed something. You believed the door was
11 actually closed to the bathroom?

12 A Best of -- best of my recollection it -- it wasn't
13 closed all the way complete. It was open maybe a foot or
14 something.

15 Q Okay. So it was --

16 A It wasn't closed all the way latched. You know, it
17 was like open a little bit. But you couldn't see into the
18 bathroom.

19 Q Okay. So it was closed enough to hide visibility of
20 somebody being in there.

21 A Yes, sir.

22 Q Okay. All right. So you were the cover guy, and
23 Morrow went in to where the defendant was.

24 A Yes, sir, and then -- well, when they -- once the door
25 opened the individual proned out into the floor, into the

Jeff Cooper
Direct examination by Mr. Bulsa

1 living quarters there, on into the bathroom.

2 Q You said he proned out. He laid out in the floor?

3 A Yes, sir.

4 Q Okay. Did you have any contact with him at that
5 point?

6 A No, sir.

7 Q Where did you go?

8 A I turned around and walked straight back out the front
9 door.

10 Q And what did you do?

11 A officer Harwell was out there. And just from training
12 in shooting situations, he was the highest ranking officer
13 on the scene. So I handed my handgun over to him and told
14 him that I had fired some rounds.

15 Q What was the purpose of that?

16 A Secure my weapon for a SLED investigation.

17 Q Okay. Did you want to have to shoot someone?

18 A No, sir, no, sir.

19 Q Did you -- how did that make you feel after you fired
20 your weapon?

21 A Well, it's sort of a -- mixed feelings with it
22 because, I mean, I never want to take somebody's life or
23 have to do anything like that. But that -- that day I done
24 what I had to do, or he could take my life or one of my
25 fellow officer's lives, so.

Jeff Cooper
Cross-examination by Ms. Jones

1 Q And you're certain you saw a weapon in his hand.

2 A Oh, yes, sir, yes, sir.

3 Q And you're certain you actually saw -- you heard
4 gunshots before that guy even presented a weapon.

5 A Yes, sir.

6 Q Thank you. Answer any questions Ms. Jones has.

7 CROSS-EXAMINATION

8 BY MS. JONES

9 Q Officer Cooper, in terms of the officers through the
10 door, what number were you, would you say -- three, four?

11 A Three and four were standing there side by side.
12 Officer Morrow should have been the third one in and I
13 should have been the fourth one in. And we was right there
14 together.

15 Q Okay. So you were right together. So it was Harris,
16 Miller, and then you were right with Officer Morrow.

17 A Morrow, yes, ma'am.

18 Q Okay. And were you already through? I think up
19 indicated you had one foot on the porch and one through
20 sort of --

21 A Right at the threshold at the door, yes, ma'am.

22 Q And you didn't hear or you didn't see the officer get
23 shot -- Officer Harris.

24 A No, ma'am.

25 Q Correct?

Jeff Cooper
Cross-examination by Ms. Jones

- 1 A No, ma'am.
- 2 Q But you could hear the gunshot.
- 3 A Yes, ma'am.
- 4 Q Okay. And we've heard lots of testimony that this
- 5 room was pretty dark. It was hard to see in there.
- 6 A Well, we had a light coming in from behind us by this
- 7 time.
- 8 Q But is it fair to say times when you enter a dark room
- 9 it takes a while for your eyes to adjust?
- 10 A I wasn't in the dark room. I was on the lighted porch
- 11 looking into the dark room.
- 12 Q Okay. Looking into a dark room.
- 13 A Yes.
- 14 Q And so you're saying that your eyes didn't need to
- 15 adjust at all. You could focus right away.
- 16 A I seen everything very clearly.
- 17 Q Okay. And it's your testimony that Mr. Williams
- 18 didn't have his hands up and saying okay, okay.
- 19 A At first, yes.
- 20 Q Okay. So at first he did.
- 21 A And then he changed his mind.
- 22 Q And then he changed his mind.
- 23 A Yes, ma'am.
- 24 Q And he reached in and got a gun out.
- 25 A Yes, ma'am.

Jeff Cooper
Cross-examination by Ms. Jones

1 Q And what did he do with that gun?

2 A He pointed it at us.

3 Q Okay. How did he point it? Did he get up off the
4 couch? Did he just point it?

5 A He was pointing the barrel towards us.

6 Q Okay. I think in your written statement you indicated
7 he was advancing towards you.

8 A Uh-huh.

9 Q Does that mean he got up off the couch and was
10 advancing towards you?

11 A He was advancing the gun up towards us pointing it at
12 us.

13 Q Okay. And at that point you shot at him, correct?

14 A Yes, ma'am.

15 Q Okay. And then he leaned back and put his legs up.

16 A Yes, ma'am.

17 Q Okay. And you can -- and he continued to be advancing
18 his gun.

19 A At that time it wasn't advancing. It was flat
20 pointing it then.

21 Q Okay. And were any fired shot [sic] from this gun?

22 A No, ma'am.

23 Q Okay. And then at some point he jumped into
24 Ms. Gentry's lap?

25 A No, ma'am. When he had his legs pulled up, he was in

Jeff Cooper
Cross-examination by Ms. Jones

1 her lap at that time.

2 Q Okay. So at some point -- because there's testimony
3 they were sitting side by side. So you're saying at some
4 point he stopped getting up. He went into Ms. Gentry's lap
5 and then pulled a gun out and started advancing towards you
6 with a gun?

7 A I didn't say he advanced towards me with the gun,
8 ma'am.

9 Q Okay. But advanced -- put a gun.

10 A Yes, ma'am.

11 Q While he's sitting on Ms. Gentry's lap?

12 A Yes, ma'am.

13 Q Okay. And is that your contention how Ms. Gentry got
14 shot?

15 A Ma'am?

16 Q Is that your contention how she got shot, because
17 Mr. Williams was sitting on her lap?

18 A Yes, ma'am.

19 Q Okay. And were you aware that Mr. Williams had been
20 shot 15 times?

21 A No, ma'am.

22 Q Okay. How many times do you think you shot him?

23 A Six to eight.

24 Q And isn't it fair to say that when you came in you
25 heard gunshots, you were nervous, you were scared, you saw

Jeff Cooper
Cross-examination by Ms. Jones

1 a man on a couch and you just started shooting?

2 A No, ma'am.

3 Q Okay. Do you understand or realize that Mr. Williams
4 had been shot in the buttocks?

5 A When he pulls his legs up high enough that could be,
6 yes, ma'am.

7 Q Okay. So you're saying you can pull your legs high
8 enough up to get shot in the back region --

9 A Yes, ma'am.

10 Q -- while sitting on somebody.

11 A Yes, ma'am.

12 Q Okay. Do you know where Ms. Gentry was shot?

13 A No, ma'am.

14 Q Were you aware she was shot in the hip area --

15 A No, ma'am.

16 Q -- and the exit was in her buttocks as well?

17 A No, ma'am.

18 Q Do you recall writing a report in this case?

19 A Yes, ma'am.

20 Q Okay. And in those reports they have to be -- try and
21 take important information down, correct?

22 A Yes.

23 Q Okay. Because it's important, especially a shooting
24 case, correct?

25 A Yes, ma'am.

Jeff Cooper
Cross-examination by Ms. Jones

1 Q Okay. This was a pretty serious case, correct?

2 A Yes, ma'am.

3 Q Okay. And I would imagine where the suspects were and
4 what they were doing is pretty important stuff, correct?

5 A Yes, ma'am.

6 Q Information you put into your police report, correct?

7 A Yes, ma'am.

8 Q Okay.

9 (Photograph marked Defendant's Exhibit No. 2 for
10 Identification.)

11 Q I'm handing you something labeled Defendant's
12 Exhibit 2. Do you recognize that?

13 A Yes, ma'am.

14 Q Okay. That's your statement, correct?

15 A Yes, ma'am.

16 Q Okay. And in your statement you indicated that the --
17 the female was sitting next to the male, correct?

18 A I don't know which line you're on. Where you at --
19 first page, second page?

20 Q I'd like you to read the report to refresh your
21 memory.

22 A Okay.

23 (Pause.)

24 A Yes, ma'am. "Beside him on the same couch was a white
25 female with a white shirt."

Jeff Cooper
Cross-examination by Ms. Jones

1 Q Okay. And then you indicated that you saw the male on
2 the couch, the black male, with a silver gun and he
3 advanced towards the other officers. In fearing for safety
4 you fired.

5 A Yes, ma'am.

6 Q Okay. And then you called to him, police, search
7 warrant. And he continued to threaten you. "So I shot the
8 black man on the couch." Correct?

9 A Yes, ma'am.

10 Q "Until he dropped the gun." Correct?

11 A Yes, ma'am.

12 Q Okay. Nowhere in there do you talk about him pulling
13 up his legs and coming into a fetal position, correct?

14 A No, ma'am.

15 Q Nowhere in that report do you talk about him jumping
16 into Ms. Gentry's lap and still menacing with the gun,
17 correct?

18 A I indicated that he was beside her. Every single move
19 that he made was not indicated, no, ma'am.

20 Q Okay. But being beside somebody and in their lap are
21 two separate and distinct things, correct?

22 A You can start out beside them and end up in their lap.

23 Q That's not what you wrote, is it?

24 A Like I said, I put where he started. I did not
25 indicate his every move that he made during the shootout.

Jeff Cooper
Cross-examination by Ms. Jones

1 I did not indicate every move.

2 He did not sit still the whole time we were shooting.

3 I'm letting you know where he ended up, was in her lap with
4 his legs pulled up.

5 Q That's your testimony today, correct?

6 A That's the truth, yes, ma'am.

7 Q That's not in your report.

8 A Okay.

9 Q Fair enough?

10 A Fair enough.

11 Q Were you aware that that gun was sent to SLED, the gun
12 that you claim Mr. Williams had for touch D.N.A.? Were you
13 aware of that?

14 MR. BULSA: Objection, Your Honor. May we approach?

15 THE COURT: Sustained.

16 (Bench conference held off the record in the presence
17 of the jury but out of the hearing of the jury.)

18 Q At some point did the male fall to the ground?

19 A He fell.

20 Q Or roll to the ground?

21 A He fell on the couch or rolled off of her onto the
22 couch more.

23 Q Okay. So he rolled off --

24 A Maybe his lower portion of his body, but I can't
25 recall exactly how -- the position that he was in when I

Jeff Cooper
Cross-examination by Ms. Jones

1 advanced onto the house. I can't recall the exact
2 position.

3 Q Okay. But at some point he was on the floor, correct?

4 A I don't recall the position he was in when I advanced
5 on.

6 Q Okay. Do you know who secured Mr. Williams?

7 A No, ma'am.

8 Q Okay. It wasn't you.

9 A No, ma'am.

10 Q Okay. Did you secure Ms. Gentry?

11 A No, ma'am.

12 Q Okay. The only person you helped secure was Mr.
13 Moore.

14 A Yes, ma'am.

15 Q Okay. So after you -- after Mr. Williams according to
16 your statement dropped the gun, you then advanced to the
17 back of the house?

18 A Yes, ma'am.

19 Q Okay. And was it dark there?

20 A Yes, ma'am.

21 Q Okay. And at that point when did the -- let me ask
22 you this. When did the gunfire stop?

23 A As in what relations, time-wise or --

24 Q In relation to where you were and what you were doing.

25 A I can't recall each and every shot, but, I mean, once

Jeff Cooper
Cross-examination by Ms. Jones

1 my situation and the individual that was pointing the gun
2 at us -- once he dropped his weapon I stopped firing. I
3 don't recall any more gunshots, you know.

4 Q Okay. So there was no more coming from the back to
5 your knowledge.

6 A No, ma'am.

7 Q Okay. So at that point you went in the back.

8 A Yes, ma'am.

9 Q And you asked -- you thought somebody was in the
10 bathroom?

11 A Yes, ma'am. Well, I didn't know where they were. We
12 was just calling them out.

13 Q Okay. Did you hear any noises in the bathroom to
14 suspect he was there rather than in the kitchen, or did you
15 just hit the bathroom first?

16 A We were advancing, and the bathroom was straight in
17 front of us.

18 Q Okay. And you asked for hands, and somebody was in
19 there, correct?

20 A Yes, ma'am.

21 Q Okay. And you got hands.

22 A Yes, ma'am.

23 Q Okay. Was that person when they showed you your [sic]
24 hands lying on the floor at that point, or were they still
25 up, standing upright, to your knowledge?

Jeff Cooper
Cross-examination by Ms. Jones

1 A As low as the hands were, because the bathroom door
2 was still closed -- they just come out from the bathroom
3 door. From how low the hands were, I don't know for a
4 fact. I would assume they was sitting on the floor.

5 Q So they were low to the ground.

6 A It was below the doorknob.

7 Q Okay. Weren't getting ready to run out of the door as
8 far as you were concerned if he was low on the ground.

9 A Yes, ma'am.

10 Q Okay. And then you identified that person in the
11 bathroom as Mr. Moore, correct?

12 A Yes, ma'am.

13 Q Okay. And you indicated that you turned over your
14 weapon to SLED?

15 A No, ma'am.

16 Q Who did you turn your weapon over to?

17 A Officer Harwell with the Spartanburg City Police.

18 Q Okay. And did you know that there might be an
19 investigation into this shooting?

20 A I knew there would be.

21 Q Okay. And that your actions would be questioned?

22 A Yes, ma'am.

23 Q Okay. And which was another reason why you wrote a
24 report, correct?

25 A Yes, ma'am.

Jeff Cooper
Redirect examination by Mr. Bulsa

1 Q And probably why that report should be accurate,
2 correct?

3 A It is.

4 Q Important information in there, correct?

5 A It is.

6 MS. JONES: I have nothing further.

7 REDIRECT EXAMINATION

8 BY MR. BULSA

9 Q Officer Cooper, I want to go into your report. I
10 think the way Ms. Jones asked you a question might be a
11 little unclear.

12 You described seeing the man on the couch with a gun in
13 his hand. You don't immediately begin shooting when you see
14 that, do you?

15 A No, sir.

16 Q What did you do?

17 A Like we was -- they was still -- Officer or Sergeant
18 Hillers was addressing the situation down the hallway. I
19 saw the gun. We were hollering police, search warrant.

20 Once the gun was pointed towards me and the rest of
21 the team members is when I felt threatened, and that's when
22 I started shooting the gun.

23 Q So you tried to get him to put the gun down.

24 A Yes, sir.

25 Q So it's not like you saw it and immediately started

Jeff Cooper
Redirect examination by Mr. Bulsa

1 shooting.

2 A No. We was announcing police, search warrant, and had
3 police wrote all over us.

4 Q Okay. And you clearly had already heard shots coming
5 from another area in the house, right?

6 A Yes, sir.

7 Q Okay. So it's not like you were just ready to shoot
8 whoever you saw.

9 A No, sir, no, sir.

10 Q And, in fact, you described it in your report that you
11 shot -- first time tried to get him to put the gun down,
12 and he still didn't. And then that caused you to have to
13 shoot again.

14 A Yes, sir.

15 Q Okay. All right. And when did you realize that an
16 officer had been hit?

17 A I didn't see the officer, but I knew an officer had
18 been hit.

19 As soon as they went in I heard Sergeant Hillers,
20 officer down, officer down. I wasn't sure which officer.
21 I knew it had to be in front of me because I couldn't see
22 because Sergeant Hillers was in front of me. So I knew
23 immediately, you know, once I heard the gunshots that we
24 had an officer down because Sergeant Hillers was calling
25 officer down.

Jeff Cooper
Redirect examination by Mr. Bulsa

1 Q Okay. So basically pretty much right when it happened
2 you heard --

3 A Yes.

4 Q -- scream or something. And that would have been
5 before you saw the man on the couch with the gun.

6 A Yes, sir.

7 Q Okay. So even knowing an officer was down, that still
8 didn't cause you to immediately shoot at someone that you
9 saw with a gun.

10 A When I immediately saw the individual on the couch it
11 was not a threat. Then he made himself a threat.

12 Q Okay. All right. And then after you neutralized that
13 threat you went to check the other part of the house.

14 A Yes, sir.

15 Q Okay. And did you fire any rounds into the bathroom?

16 A No, sir.

17 Q Okay. You suspected that's where the gunman was,
18 right?

19 A In the back part of the house, yes, sir.

20 Q Okay. All right. Did you fire any rounds into the
21 back part of the house?

22 A No, sir.

23 Q But you were giving that person an opportunity to give
24 up.

25 A That's what we were hoping for.

Jeff Cooper
Recross-examination by Ms. Jones

1 Q All right. And is all of that your training? Is that
2 how you're supposed to handle these kind of situations?

3 A Yes, sir.

4 Q Thank you, Officer.

5 MS. JONES: Just briefly.

6 RECROSS-EXAMINATION

7 BY MS. JONES

8 Q I can tell you're pretty nervous today, correct? A
9 little bit?

10 A I wouldn't say pretty nervous, no, ma'am, I mean.

11 Q A little cracking in your voice.

12 A That's my voice.

13 Q Okay. When you went into this house and you heard
14 gunfire was your adrenaline pumping?

15 A Adrenaline's always pumping on -- I mean, when
16 gunfire. This is not my first situation with gunfire or
17 anything.

18 Q But you knew that an officer might be down, might be
19 injured. You already have your energy and your adrenaline
20 pumping when you went into that house, correct?

21 A Yes, ma'am.

22 MS. JONES: Nothing further.

23 THE COURT: You may step down.

24 MR. BULSA: Your Honor, we ask that Officer Cooper be
25 excused for the day.

1 THE COURT: He may be.

2 THE WITNESS: Thank you, Your Honor.

3 (Whereupon, the witness was excused.)

4 THE COURT: All right. Ladies and gentlemen, we're
5 going to break for the afternoon.

6 Keep in mind the caution I've given you previously.
7 No discussions about the case; no investigation, no
8 research.

9 Do have a good evening. Please report to your jury
10 room at 9:30 in the morning, 9:30 in the morning.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: Court is in recess until 9:30 in the
14 morning.

15 END OF PROCEEDINGS MARCH 21, 2012

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Shane Morrow
Direct examination by Mr. Bulsa

1 (Proceedings March 22, 2012)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are we ready for the jury?

5 MR. BULSA: Yes, sir.

6 MS. JONES: Yes, sir, Your Honor.

7 THE COURT: Okay. Bring them in, please.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Good morning, ladies and gentlemen.

11 As you know, when we recessed yesterday the state was
12 in the midst of their presentation of evidence. So we'll
13 continue with that presentation this morning.

14 MR. BULSA: The state calls Shane Morrow.

15 SHANE MORROW, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BULSA

18 Q Officer, please introduce yourself to the jury.

19 A My name is Officer Shane Morrow.

20 Q Okay. Are you employed with the Spartanburg Public
21 safety?

22 A Yes, sir.

23 Q For how long?

24 A For approximately eight years.

25 Q Have you had any other police experience?

Shane Morrow
Direct examination by Mr. Bulsa

1 A A couple of other years. I've got about 12 years
2 experience all together.

3 Q And what are your duties with the public safety
4 department?

5 A I'm currently assigned by the V.C.T.F., the violent
6 crimes task force, and also a member of the SWAT team.

7 Q Okay. Is the SWAT team the tactical?

8 A It is a tactical unit, yes, sir.

9 Q And did you participate in the incident that occurred
10 on January the 6th of 2011 at [REDACTED] Owens Street?

11 A Yes, sir.

12 Q What was your role for being there?

13 A My role in that operation was, point one, I was
14 supposed to make the first entry into the door.

15 The porch was kind of cluttered. So I moved to the
16 left side of the door. That put Officer Harris in the
17 position to be point one, the first one to enter the house.

18 Q Your voice is dropping.

19 A I'm sorry. Let me. Okay.

20 Q So someone else was going to breach the door and you
21 were the first officer in?

22 A That's correct, sir.

23 Q Okay. If that didn't occur that way, which officer
24 were you in the door?

25 A I was the second officer in the door.

Shane Morrow
Direct examination by Mr. Bulsa

1 Q And what did you encounter when you went inside?

2 A As I was approaching the door I observed a black male
3 and a white female sitting on the couch together. They
4 were sitting side by side.

5 I observed Officer Harris look to his left. I seen
6 hands go up. He looked straight, and he looked at fire at
7 that moment.

8 I stepped in to the left and observed the subject had
9 a handgun. He was currently into a ball. His feet were
10 pulled up to his chest right next to the female.

11 I fired two shots. The threat was over. I moved on
12 to the back with Officer Cooper.

13 Q And where was Officer Cooper while you were --

14 A Officer Cooper was -- was to my right.

15 Q Okay. Were both of you basically in the doorway?

16 A Yes, sir. I was a step inside the doorway.

17 Q You were a step inside.

18 A Yes, sir.

19 Q By that time Harris had already made it into the room?

20 A Yes, sir.

21 Q Did you actually see him fall?

22 A Yes, I did.

23 Q Could you tell where the shots were coming from?

24 A At first, no, sir.

25 Q And you said you saw the man on the couch with a

Shane Morrow
Direct examination by Mr. Bulsa

1 pistol.

2 A Yes, sir.

3 Q Did you at one point see him without a pistol?

4 A I did.

5 Q Okay. And this must have been going on pretty
6 quickly.

7 A Yes, sir. A matter of seconds.

8 Q Okay. Did you notice where he pulled his gun from?

9 A The waist area.

10 Q What was done either by you or Officer Cooper to try
11 to keep from shooting that man?

12 A Police, search warrant, was always called when we go
13 into a house. As soon as we start knocking on the door
14 it's called out several times. We're marked 360 with
15 police all over our equipment. And that's how we notified
16 them we were police.

17 Q Okay. Did you make any comments or direct comments to
18 the man on the couch --

19 A No, sir.

20 Q -- to try to get him to drop this gun?

21 A No, sir. I perceived a threat and took action.

22 Q Did you hear Officer Cooper trying to get him to put
23 his gun down?

24 A Police, search warrant, is all I ever heard.

25 Q How many rounds did you shoot?

Shane Morrow
Direct examination by Mr. Bulsa

1 A Two times.

2 Q And what kind of weapon did you have?

3 A Had a DPMS AR-15 style assault weapon, rifle.

4 Q And after you fired your rounds what did you do?

5 A The threat was over with. We had no more threat. The
6 subject's gun fell out of his hands.

7 We moved to the secondary threat, which is where the
8 shots were primary -- were coming from in the back room.
9 We headed that way.

10 Q Do you recall how many shots you heard?

11 A Several, multiple. I can't -- I can't tell you a
12 definite number.

13 Q Okay. At what point did you realize that the shots
14 were coming from the back room or the middle of the room
15 near the back?

16 A From the direction that Officer Harris fell it was
17 determined that it was coming from that area.

18 Q And how far into that other room did you get to the
19 second room? How far into the house did you get?

20 A I got all the way into the second room, was basically
21 the third room.

22 I muzzled the curtain with my weapon to make sure
23 there was nothing behind the curtain.

24 We were calling the suspect out, let me see your
25 hands, police, search warrant. The suspect held his hands

Shane Morrow
Direct examination by Mr. Bulsa

1 out the door below the doorknob. Appeared to be maybe he
2 was on his knees when he surrendered.

3 Q You said you muzzled the curtain. What do you mean by
4 that?

5 A Muzzled the curtain, moved it out of the way. There
6 was a curtain covering the doorway to the next room. I
7 muzzled it out of the way, and that's when I seen the hands
8 come out of the bathroom to my right-hand side. The
9 doorway's to the left of the bathroom.

10 Q Okay. And once he came out of the bathroom did you
11 have any contact with him?

12 A No. I provided cover, and the other officers pulled
13 him out of the bathroom. And I observed a handgun laying
14 on the bathroom floor where the suspect was at.

15 Q And then what did you do?

16 A I immediately left out of the house after we -- after
17 we were sure that the rest house was clear, because there
18 may be another suspect involved. We cleared the rest of
19 the house. We moved out to the front porch.

20 I immediately started gathering up weapons and turned
21 my weapon over to the senior man on the scene, which was
22 Lieutenant Harwell.

23 Q You said you cleared the rest of the house. What
24 other rooms did you clear?

25 A There was a back bedroom that was on the -- behind

Shane Morrow
Cross-examination by Ms. Jones

1 close -- there was three rooms -- the living room, the
2 bedroom and I think maybe a kitchen area. I'm not real
3 sure because I never made entry into the house after that.

4 Q Did you clear the kitchen?

5 A The kitchen was cleared. I'm not sure if it was by
6 me. I can't remember if it was me or another officer.

7 Q Did it appear there were ever any other persons in
8 that house?

9 A No, sir. There was no other persons.

10 Q So to your knowledge there was just three people in
11 there.

12 A That's correct.

13 Q All right. Thank you. Answer any questions Ms. Jones
14 may move.

15 CROSS-EXAMINATION

16 BY MS. JONES

17 Q Is it Sergeant Morrow?

18 A No, ma'am. Senior patrol officer.

19 Q Officer. Officer Morrow, you indicated you were the
20 second person in the house, is that correct?

21 A That's correct.

22 Q And you were directly behind Officer Harris.

23 A Yes, ma'am. When we go in, we split.

24 Q Can you tell me how many steps you were behind him
25 approximately?

Shane Morrow
Cross-examination by Ms. Jones

- 1 A He was at the couch armrest. So I was probably right,
2 just right, inside the door. He was probably five or six
3 steps inside.
- 4 Q Five or six steps inside.
- 5 A Yes, ma'am.
- 6 Q And then at that point you heard some gunfire.
- 7 A Yes, ma'am.
- 8 Q Okay. And you couldn't tell quite where it was coming
9 from.
- 10 A That's correct.
- 11 Q Okay. And you also indicated you saw somebody on the
12 couch with their hands up, then they put their hands down
13 and reached for their waistband?
- 14 A That was before I entered the house when I saw the
15 hands up.
- 16 Q Okay.
- 17 A That's when I seen Officer Harris go down.
- 18 Q Okay. You wrote a report in this, correct?
- 19 A That's correct.
- 20 Q Okay. And, again, okay, beating a dead horse here,
21 but those reports are supposed to be accurate, right?
- 22 A Yes, ma'am.
- 23 Q You put everything in because obviously trials take a
24 while to get to, correct?
- 25 A Yes, ma'am.

Shane Morrow
Cross-examination by Ms. Jones

1 Q And you've been trained to put those important details
2 in your report, correct?

3 A Yes, ma'am.

4 Q In fact, you have your report there, correct, with
5 you?

6 A That's correct.

7 Q Because details get fuzzy and you wanted to make sure
8 that --

9 A Yes, ma'am.

10 Q Okay. Fair enough. Where does it say in your report
11 that the subject had his hands up, reached down for his
12 waistband and then pointed at you?

13 A It does not.

14 Q Okay. In fact, the only thing that's in your report
15 is that you saw somebody on the couch with the gun pointed
16 towards you, correct?

17 A That's correct.

18 Q Okay. So you left out that important detail.

19 A Yes, ma'am.

20 Q Okay. And you also indicate that the female was
21 sitting next to the male.

22 A Yes.

23 Q Did you ever see that male jump into the female's lap?

24 A He was curled up next to her almost in her lap.

25 Q Okay.

Shane Morrow
Cross-examination by Ms. Jones

- 1 A Appeared to be in her lap.
- 2 Q So now he was in her lap.
- 3 A It appeared that way.
- 4 Q Okay. Again, that's not in your report either.
- 5 A That's correct.
- 6 Q All right. Sitting side by side almost looking like
- 7 in a fetal position.
- 8 A Yes, ma'am.
- 9 Q Okay. So as he's sitting on the couch in a fetal
- 10 position apparently he's able to do this, get down and
- 11 reach out as he's pointing a gun in mere seconds.
- 12 A Yes, ma'am.
- 13 Q Okay. And, again, that's not in your police report.
- 14 A That's correct.
- 15 Q First time we're hearing that is today, correct?
- 16 A Yes, ma'am.
- 17 Q Have you talked with solicitor Bulsa about this case?
- 18 A No, ma'am.
- 19 Q You've never talked with solicitor Bulsa.
- 20 A We've discussed why I've got to be in here. We've had
- 21 maybe a round robin. And that was it.
- 22 Q Okay.
- 23 A Or part.
- 24 Q You've never discussed your report with Officer or --
- 25 A Never read my statement to him, no, ma'am.

Shane Morrow
Cross-examination by Ms. Jones

1 Q Never discussed your statement.

2 A No.

3 Q So he never indicated to you that Officer Harris
4 indicated that the hand -- subject's hands were up and how
5 possibly with the hands up that you saw a gun. He never
6 asked that question of you?

7 A Not that I recall, ma'am, no.

8 Q You don't recall or it didn't happen?

9 A I didn't. I don't recall.

10 Q Okay. So now you're admitting that you might have
11 talked with Officer --

12 A I do not recall that portion.

13 MR. BULSA: Objection, Your Honor. That's asked and
14 answered. I'm not sure it's proper.

15 THE COURT: Overruled.

16 Go ahead.

17 A Could you repeat your question?

18 Q I'm sorry. Now you're saying you do remember talking
19 with Solicitor Bulsa about the case.

20 A I don't remember going over the entire statement with
21 him, ma'am. I don't remember that. It was brief. We
22 stayed in there probably 30 minutes and went over the case,
23 the whole entirety of the case.

24 Q Okay. So you did go over your statement with
25 Solicitor Bulsa.

Shane Morrow
Cross-examination by Ms. Jones

1 A I may have.

2 Q Okay. And did Solicitor Bulsa tell you what the
3 other --

4 MR. BULSA: Objection, Your Honor. Now she is asking
5 for hearsay from me.

6 THE COURT: Let me see y'all just a minute.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 Q Was your statement the only statement that you
10 reviewed with Solicitor Bulsa?

11 A No. There were other people.

12 Q There were other people at this meeting?

13 A Yes, ma'am.

14 Q Who else was at this meeting?

15 A Almost everybody involved.

16 Q I'm sorry?

17 A Almost everyone involved.

18 Q So everybody involved with this case was in the
19 meeting with Solicitor Bulsa?

20 A Yes.

21 Q And you discussed the case.

22 A Yes. We went over the case briefly, yes.

23 Q You also testified that you fired two shots.

24 A That's correct.

25 Q Okay. Did you recall Officer Cooper firing any shots?

Shane Morrow
Cross-examination by Ms. Jones

1 A I did not hear the shots.

2 Q You didn't hear Officer Cooper's shots?

3 A No. I seen his pistol recoiling.

4 Q Okay. where was he in relation to where you were
5 seated?

6 A He's on the right-hand side of me.

7 Q To his right. was he hair line with you? was he a
8 little farther up? Do you remember?

9 A I was a little further up than him. He was to my
10 right, maybe a foot behind me. I know he was inside the
11 doorway, maybe a foot inside the doorway, one foot inside
12 the doorway.

13 Q Okay. And when all of this gunfire was happening, do
14 you recall any words or screaming or anything along those
15 lines?

16 A I didn't hear any screaming. All I heard was police,
17 search warrant, when we first entered. And it was all --
18 it was like my ears shut down.

19 Q So your ears shut down.

20 A Yes, ma'am.

21 Q when do you think your ears shut down?

22 A when -- after I heard the pops from the suspect and
23 then I guess right after that.

24 Q So did you experience that tunnel vision that we heard
25 about earlier where you're just sort of focusing and

Shane Morrow
Cross-examination by Ms. Jones

- 1 everything else is just put out of your mind?
- 2 A No television.
- 3 Q Okay.
- 4 A Just auditory exclusion. I'm not a doctor, so.
- 5 Q Okay. Auditory exclusion.
- 6 A Yes, ma'am.
- 7 Q Okay. You indicated then after you went past the
- 8 couch -- did you -- this house was pretty small.
- 9 A Very small.
- 10 Q Did you just maneuver around Officer Harris and make
- 11 your way to the back?
- 12 A Yes, ma'am.
- 13 Q Okay. And you indicated you found somebody in the
- 14 bathroom, correct?
- 15 A Yes, ma'am.
- 16 Q Okay. Did you indicate the door was a little open, or
- 17 closed?
- 18 A Enough room to get his hands out.
- 19 Q Okay.
- 20 A I couldn't see inside.
- 21 Q Okay. And when you initially approached the door --
- 22 because I'm assuming it was -- for testimony it was dark.
- 23 Did you have a flashlight? Was there a lot more light in
- 24 there? How were you able to see his hands?
- 25 A There was a light on my gun. It was very dark, I

Shane Morrow
Cross-examination by Ms. Jones

1 guess, because of the heavy curtain -- heavy curtains over
2 the windows. There was no light in there. The only light
3 we had was back lit from the doorway.

4 Q Okay. So you basically saw the hands via your
5 flashlight on your gun?

6 A Yes, ma'am.

7 Q Okay. Did you initially see the hands or did you have
8 to ask to see the hands and then you saw the hands?

9 A I almost made it in the third room before I looked
10 over and seen the hands.

11 Q Okay. So the hands were already --

12 A We were challenging. We were challenging --

13 Q Okay.

14 A -- the suspect.

15 Q Okay.

16 A In case there's other people involved we normally
17 challenge someone. So we say let me see your hands,
18 police, search warrant. We challenge to make sure there's
19 no one else in the house.

20 That's when the hands came out. When I noticed the
21 curtain to the third room, I looked over to my right and
22 his hands were out.

23 Q Okay. So sounds like you're just starting to clear
24 the house and you're just yelling to anybody who'll listen
25 hands out, hands out, hands out. And then when you

Shane Morrow
Cross-examination by Ms. Jones

1 switched your flashlight to the bathroom area you saw
2 hands.

3 A Yes, ma'am.

4 Q And, now, were they low on the ground? Were they sort
5 of droiling or were they higher? Do you recall?

6 A Like I testified before to Mr. Bulsa that --

7 Q You're a little hard to hear. I'm sorry.

8 A I'm sorry. I'll get a little bit closer to the mic.

9 Like I said before to Mr. Bulsa, that it appeared maybe he
10 was on his knees.

11 Q Okay.

12 A Or maybe he was in a seated position. I'm not really
13 sure what position he was in, but he was lower than the
14 doorknob.

15 Q Okay. And you -- were you then the one who handcuffed
16 him?

17 A No, I'm not.

18 Q Okay. But at some point did you ask him to get on
19 his --

20 A Get on his stomach, yes, ma'am.

21 Q Stomach. And was -- did he comply?

22 A Yes, he did.

23 Q Okay. And you later identified that person as Mr.
24 Moore?

25 A That's correct.

Shane Morrow
Cross-examination by Ms. Jones

1 Q Okay. How long do you think he was in the house
2 handcuffed before he was taken out? Do you know?

3 A I -- I can't give you that answer. I'm not really
4 sure.

5 Q Okay. Fair enough. And when you left that bathroom
6 area you said you exited the house.

7 A Yes, ma'am. I went back outside to check on the
8 officer that was down and check on the rest of the people
9 to make sure everybody was okay.

10 Q Okay. And from the time -- then we heard testimony
11 that SLED came to do their investigation? Did you stay
12 there that entire time?

13 A No, ma'am.

14 Q Okay. Where did you go?

15 A I went immediately to the police department.

16 Q Okay. And at some point did you ever come back to the
17 house?

18 A Never went back to the house.

19 Q Okay. So where did you complete your statement -- at
20 the police station?

21 A At the police station.

22 MS. JONES: I have nothing further, Your Honor.

23

24

25

Shane Morrow
Redirect examination by Mr. Bulsa

1 REDIRECT EXAMINATION

2 BY MR. BULSA

3 Q She calls it a statement, but isn't it a supplemental
4 report?

5 A I'm sorry?

6 Q Didn't you do a supplemental report?

7 A This is my -- my statement serves as my supplement
8 report, and also to SLED. It served as all three.

9 Q That's the same thing, isn't it?

10 A That's correct, sir.

11 Q Okay. And she asked about meeting with myself about
12 this case. Isn't that normal course of a case?

13 A Yes, sir.

14 Q And, in fact, I believe we met at least once at the
15 solicitor's office and once at city hall?

16 A Briefly at city hall I think we met to get everybody
17 together.

18 Q But you don't recall coming to the solicitor's office?

19 A I do recall coming to the solicitor's office in the
20 conference room.

21 Q Okay. And you did have other officers present to
22 discuss the case.

23 A Yes, sir.

24 Q I believe we even went over some of the photos at that
25 time, didn't we?

Shane Morrow
Redirect examination by Mr. Bulsa

- 1 A That's correct.
- 2 Q Okay. So we were preparing for this case.
- 3 A That's correct.
- 4 Q And did I in any way direct you as to what you should
- 5 testify to?
- 6 A No, sir.
- 7 Q Did I tell anybody what they needed to testify to
- 8 other than the truth?
- 9 A No, sir.
- 10 Q Now, was it clear from your role in this case -- was
- 11 it clear as to where the shots came from that struck
- 12 Officer Harris?
- 13 A Yes, because of the position that Officer Harris went
- 14 down.
- 15 Q And where did those shots come from?
- 16 A From the back bathroom.
- 17 Q And how many people were back there?
- 18 A One.
- 19 Q All right. And that man was -- was that the
- 20 defendant?
- 21 A That's correct -- Mr. Moore.
- 22 Q And when he stuck his hands out and laid down was
- 23 there a weapon nearby?
- 24 A Yes. In the bathroom floor.
- 25 Q Okay. And the fact that you shot at Mr. Rogers was

Adrian Patton
Direct examination by Mr. Bulsa

- 1 because you saw a weapon in his hand, is that right?
- 2 A Yes.
- 3 Q Did you fire any rounds at the defendant?
- 4 A No.
- 5 Q Would you have if you had seen a gun in his hand?
- 6 A Yes.
- 7 Q But you didn't a gun in his hand. In fact, you didn't
- 8 even see him until he stuck out, right?
- 9 A That's correct.
- 10 Q All right. So wasn't he somewhat concealed as to
- 11 where he was?
- 12 A Yes. He was concealed behind the bathroom door.
- 13 Q Okay. And did you act as you were trained to act?
- 14 A That's correct.
- 15 Q Thank you.
- 16 MR. BULSA: No further questions.
- 17 THE COURT: You may step down.
- 18 MR. BULSA: The state calls Officer Patton.
- 19 ADRIAN PATTON, having been
- 20 first duly sworn, testified as follows:
- 21 DIRECT EXAMINATION BY MR. BULSA
- 22 Q Officer, please introduce yourself to the jury.
- 23 A Adrian Patton.
- 24 Q And what is your role in the police department?
- 25 A I'm presently a sergeant on patrol.

Adrian Patton
Direct examination by Mr. Bulsa

1 Q How long have you been with the public safety
2 department?

3 A Ten years.

4 Q How long have you been a sergeant?

5 A A little over a year.

6 Q Okay. So you made sergeant after this incident.

7 A Right. February, the month after.

8 Q And what was your role in this incident at [REDACTED] Owens
9 Street?

10 A My role was point two.

11 Q So you were on the tactical unit?

12 A Yes, sir, I was on the tactical unit.

13 Q And what is a point two?

14 A Point two is basically the fourth person in, third or
15 fourth. It depends on how -- how well I know --

16 Q Do you recall the actual lineup at that -- that day?

17 A Yes, sir.

18 Q Would you tell us what you recall that to be?

19 A Officer Morrow was point one. Officer Harris was
20 point one defense. The team leader was Sergeant Mark
21 Hillers. And then I was point two.

22 Q Where was Shane Morrow?

23 A Shane Morrow was -- at the beginning he was in front
24 of me to the left of the door.

25 Q Okay.

Adrian Patton
Direct examination by Mr. Bulsa

1 A Or on the left side of the door.

2 Q All right. And who was the actual breach man?

3 A The breach man -- Officer Hensley was opening the
4 screen door and Officer Mathis was the breach with the ram.

5 Q Okay. So you're lined up. Let's help the jury get a
6 picture of this. Y'all lined up crammed onto that porch,
7 or were you down the steps?

8 A No. The point -- point one defense team leader are
9 primarily at the door, usually to the side of it some way
10 ready to make entry.

11 As we -- they -- we stopped early and allowed the
12 person that's going to be at the screen door and the ram or
13 the entry or the breach person to get up and do their job.

14 Point two would be -- at that -- at that point, point
15 two is if we can all get on -- on the steps, that's fine.
16 we all kind of slide out of the way.

17 When they open up the door the ram person, the
18 screen-door person, they slide over to the other side and
19 allow point one and point two, the team leader, and then
20 point -- or point one -- point one defense -- usually the
21 team leader goes in at this time, or he can direct
22 everybody to go. And then it's point two -- and point two
23 defense.

24 Q Sounds like you've gotta -- it has to be orchestrated
25 pretty -- pretty good.

Adrian Patton
Direct examination by Mr. Bulsa

- 1 A It is.
- 2 Q Do you train to do these kind of things?
- 3 A Yes, sir, we -- yes, sir.
- 4 Q All right. So does it sort of come automatic when you
5 actually reach a scene to do this?
- 6 A Yes, sir. After you've done several of them it's --
7 you feed off each other. It's a -- it's a normal process.
- 8 Q Okay. From your position could you hear the
9 distraction device go off?
- 10 A Yes, sir, I could.
- 11 Q And what else did you hear?
- 12 A Several pops. It sounded like from inside the -- the
13 house.
- 14 Q Okay. Was anyone -- anybody on your team calling out
15 anything?
- 16 A Yes, sir. We were yelling police, search warrant,
17 once the -- once the door was breached.
- 18 Q All right. And how about from the side of the house?
19 Could you hear anything from the side of the house?
- 20 A Not that I can -- other than the distraction device, I
21 couldn't, and the window -- and window breaking, I
22 couldn't. I didn't hear -- I didn't hear anybody yelling
23 because I was focused frontwards.
- 24 Q Okay. Were you yelling yourself?
- 25 A Yes.

Adrian Patton
Direct examination by Mr. Bulsa

1 Q All right. So you could have been yelling and not
2 have heard somebody else yelling.

3 A Yes, sir.

4 Q Okay. Well, tell us from your perspective what you
5 saw and what you did.

6 A Okay. Once the door was breached and the door opened
7 I saw Officer Harris make entry. And we were yelling
8 police, search warrant. I hear these shots from inside of
9 the house. I watched Officer Harris fall and yell when he
10 hit the ground.

11 At that time as we normally would flow -- Officer
12 Morrow and Sergeant Hillers was already inside the door. I
13 could -- after -- after I saw Officer Harris fall they were
14 in front of me. So I -- I couldn't go any further. I slid
15 over behind Officer Morrow like I normally would to be able
16 to enter in right after him and be his defense.

17 Q Where was Officer Cooper?

18 A Officer Cooper was -- at the beginning was behind me.
19 But, like I said, as they -- as they closed in and we heard
20 the shots I stepped -- I stepped to the left. Officer
21 Cooper stepped to the right.

22 Q Okay. And both him and --

23 A That put him in a position to look into the living
24 room.

25 Q So were there four officers pretty much at the doorway

Adrian Patton
Direct examination by Mr. Bulsa

1 at the time of the shots?

2 A Yes, sir.

3 Q Harris.

4 A It was Harris was already inside the --

5 Q Okay. And Hillers, Cooper, Morrow. And then you were
6 behind them.

7 A And I was right behind Officer Morrow.

8 Q Okay. Got you. All right. So you saw -- you heard
9 the shots. You saw Harris go down. And then what
10 happened?

11 A Like I said, I -- I saw him fall down. They closed in
12 the door. So I couldn't go any further. I couldn't even
13 raise my -- the gun up to even look for a threat.

14 I stepped to the left and was -- I mean, I was right
15 on Officer Morrow ready to enter in right behind him.
16 Coop -- Officer Copper was stepped to the right. And
17 that's when I -- I observed Officer Cooper point his weapon
18 into the house and fire.

19 Q Okay. And then what happened?

20 A Once the -- once Officer Cooper had stopped firing
21 we -- the rest of the team -- we continued to go inside.

22 The first team was focused on the back room where the
23 shots were coming from or where the other threat was.

24 I walked in, cleared my section of the living room and
25 observed the black male and a white female on the couch. I

Adrian Patton
Direct examination by Mr. Bulsa

1 yelled for the black male to put his hands up. He was --
2 still had his hands kind of down and wouldn't put his hands
3 up.

4 So we -- so I pulled him to the floor. As I did a
5 silver handgun fell and hit the floor and bounced right
6 beside him.

7 At that time I was trying to get -- we were trying to
8 secure him, but he still was struggling with us. Another
9 team member stepped in, grabbed Officer Harris, and I saw
10 Officer Harris being pulled out.

11 So at that time it was cluttered. I couldn't hardly
12 move. So I -- I pulled the -- the black male that I had.
13 I did pull him out on the front porch where I had more
14 room.

15 Q Could you tell he had been injured?

16 A Yes. As soon as I -- as soon as I pulled him onto the
17 floor I saw the gun land right beside him. I could tell
18 that he was bleeding a lot from the midsection. I couldn't
19 see any wounds at the time, but I could see blood on him.

20 Like I said, I looked back. Officer Harris was out of
21 the way. So I pulled him out to be able to get more --
22 more room to maneuver.

23 We's able to secure him on the front porch. And once
24 we's able to do that I remember turning out to the yard and
25 looking at the other officers out there to make sure that

Adrian Patton
Direct examination by Mr. Bulsa

1 E.M.S. was on the way, make sure we already called them. I
2 could see -- I could see Officer-Medic Bogan already
3 working with Officer Harris.

4 I stepped back in and saw the -- that the female had
5 a -- had a wound to her lower thigh area. And it appeared
6 to be an exit wound up to the higher buttocks. I knew that
7 wasn't life threatening at the time.

8 Stepped to the back, and when I stepped to the back
9 room Officer Mathis was covering the defendant identified
10 as Toby Moore.

11 He -- Officer Har -- Officer Mathis had -- had his
12 weapon in his right hand and then had the actual gun that
13 fell onto the floor in his left hand.

14 At that time I -- I did take the -- the silver handgun
15 that I saw hit the floor. I took it out so he could have
16 more control over his own weapon and placed it on -- I
17 think it was -- it was something setting beside him. It
18 was either a cooler or a table or something. But I set it
19 right there.

20 At that time we had to physically check the subject
21 laying on the floor -- he wouldn't talk to us -- to see if
22 he was injured, so physically checked for any injuries.

23 Q So you actually saw -- saw the silver gun drop, and
24 then you later --

25 A Right.

Adrian Patton
Cross-examination by Ms. Jones

1 Q -- took it from Mathis and put it on the --

2 A I put it -- I placed it on -- I think it was a cooler.

3 It was either a cooler or a table that was setting directly
4 beside him.

5 Q All right. And did you have anything else to do with
6 the weapon?

7 A No, sir. I -- I made sure. In my statement I
8 actually said I made sure that nothing else was moved until
9 we could get somebody in to take photos.

10 Q All right. Did you have any personal contact with the
11 defendant?

12 A Other than trying to -- I spoke to him trying to ask
13 is he hurt or has he been injured. No response. So we
14 physically checked him ourselves.

15 Q All right. Okay. Thank you. Answer any questions
16 Ms. Jones has.

17 CROSS-EXAMINATION

18 BY MS. JONES

19 Q Sergeant Patton, you indicated you were the fourth
20 person in, correct?

21 A Not counting Officer Harris, so I was the -- after
22 Officer Harris -- I saw him fall down -- I was the fourth
23 person in after that.

24 Q Okay. Was there anybody else behind you from the
25 tactical team, do you recall?

Adrian Patton
Cross-examination by Ms. Jones

1 A There were -- there were people behind me, but I
2 don't -- I don't know the order of people that came in.

3 Q Okay. Fair enough. You testified that you saw Cooper
4 point his gun in the -- looks like the couch area or that
5 general direction -- and fired his gun, correct?

6 A Yes, ma'am.

7 Q Okay. And at the time you were kind of behind other
8 people. Could you see exactly what he was shooting at?

9 A I couldn't, no, ma'am.

10 Q Okay. And when you could hear all of these gunshots
11 could you kind of make out what direction these shots were
12 being fired?

13 A At the time, no, ma'am.

14 Q Okay. Was it happening pretty fast?

15 A Yes, ma'am.

16 Q Okay. And how long would you say from the first shot
17 fired to the last shot fired? The integral time?

18 A A matter of seconds. I can't -- I have -- I don't --
19 I don't know, but it was -- it was fairly quick.

20 Q Okay. Fairly quick. And did you experience any of
21 this auditory exclusion that we've heard about today?

22 A Yes, ma'am.

23 Q Okay. And describe what happened, how that affected
24 you.

25 A It's just like they said before. I mean, I -- I

Adrian Patton
Cross-examination by Ms. Jones

1 observed everything, saw everything. I just couldn't hear
2 the shots.

3 Q Okay. You couldn't hear all of the shots going on?

4 A After the first -- after the first four or five or
5 several shots that I heard at the beginning, I never heard
6 any more.

7 Q Okay.

8 A But I saw.

9 Q And did you hear anybody screaming or yelling or --
10 after those first shots are fired and your ears start to
11 shut down?

12 A I didn't hear anybody yelling after that until we -- I
13 started actually entering into the house.

14 Q Okay. But once that immediate danger seemed to be
15 over, then you started to be able to hear and sort of
16 function again, your ears function I should say.

17 A Once I entered into the house.

18 Q Okay. And it seems like this circumstance and scene
19 where there are shots being fired -- not really sure --
20 your ears kind of start to shut down a little bit -- a
21 little bit chaotic or a little bit -- just not going as
22 planned.

23 A Well, you can't really plan for these things. I mean,
24 you -- you plan, but things happen differently. You train
25 for it.

Adrian Patton
Cross-examination by Ms. Jones

1 Q But your plan is there's a distraction device, you're
2 immediately supposed to breach that door. And so you have
3 a little bit of time before that shock value so that you're
4 able to get the suspects under control before they're able
5 to reach for anything.

6 A That's the idea, yes.

7 Q Okay. And that didn't happen today, this particular
8 day, correct?

9 A Not this time.

10 Q Okay. They had problems with the distraction device,
11 getting it through the curtain. You had trouble getting
12 the ram, the door open, because there was a screen issue.
13 So things just were going a little slower than
14 participated, fair to say?

15 A I don't recall some of that stuff. I wasn't -- I
16 wasn't over on the side, so I don't know what they had --

17 Q Okay.

18 A -- and --

19 Q So you didn't specifically see the door being rammed?

20 A I saw the door being rammed, yes.

21 Q Okay. And did you see some of the problems they were
22 having? The screen door apparently was stuck or latched or
23 a string?

24 A Yeah. I remember a string being on the door.

25 Q Okay. And so then they had to ram the whole entire

Adrian Patton
Cross-examination by Ms. Jones

1 door.

2 A I don't remember how they --

3 Q Okay.

4 A -- opened the door on that one.

5 Q Let me ask you this. From the time you got to the
6 door to try and open it to the time it was actually opened,
7 do you remember how many seconds had elapsed?

8 A No, ma'am.

9 Q Okay. Could you guesstimate?

10 A From the time we arrived on the -- at the door to the
11 time it was opened?

12 Q No. I'm sorry. When you first started you indicated
13 you didn't see them trying to ram it. Do you know how long
14 that took?

15 A Maybe seconds. I don't know. I can't tell you
16 exactly how long.

17 Q Fair enough.

18 (Photograph marked Defendant's Exhibit No. 3 for
19 Identification.)

20 Q Now, going back to what you observed on the couch, you
21 indicated that you saw a male and a female on the couch,
22 correct?

23 A Yes, ma'am.

24 Q Okay. And you said -- your testimony was that you
25 tried to get his hands up but he wouldn't raise them

Adrian Patton
Cross-examination by Ms. Jones

1 apparently.

2 A No. He would not -- he would not raise his hands.

3 Q Okay. Were you aware at that time that he had been
4 shot?

5 A Not until I actually had -- actually pulled him to the
6 floor --

7 Q Okay.

8 A -- and I saw the blood at this time as I was putting
9 my hands on him to be able to secure him.

10 Q Okay. And then he was on the floor.

11 Okay. I'm going show you something that's been marked
12 Defendant's Exhibit 3. Do you recognize that?

13 A Yes, ma'am.

14 Q Okay. Is that the floor where Mr. Rogers eventually
15 ended up before y'all pulled him out?

16 A Yes, ma'am.

17 Q Okay.

18 MS. JONES: Your Honor, I would like to enter
19 Defendant's Exhibit 3 into evidence.

20 MR. BULSA: No objection.

21 THE COURT: It's admitted.

22 (Photograph marked Defendant's Exhibit No. 3.)

23 Q While that warms up, you also indicated you saw a
24 female. And she apparently had a wound as well, correct?

25 A Yes, ma'am.

Adrian Patton
Cross-examination by Ms. Jones

1 Q And you observed that.

2 A Yes, ma'am.

3 Q Okay. And I think you described it in your report as
4 the back lower left thigh, correct, with an exit wound to
5 her upper left buttocks region?

6 A Yeah. I -- I put what -- what appeared to be an exit
7 wound. I wasn't sure. I'm not -- I'm not a medical
8 expert.

9 Q Fair enough. So let's just clarify that as appears.
10 It looked like it exited. So when you're talking about the
11 back thigh you meant back here. And there appeared to be
12 an exit wound a little bit higher up.

13 A Yes, ma'am.

14 Q Fair enough.

15 Now, was she actually taken out as well of the house
16 for medical attention, or was she treated on the couch at
17 the scene, do you remember?

18 A She was -- she was left on the couch for a little
19 while. I'm not sure when she was taken out.

20 Like I said, I went in and realized it wasn't a
21 life-threatening issue, and I had put in my report that I
22 had -- by this time other E.M.S. units were arriving, and I
23 directed them to the subject on the front porch --

24 Q Okay.

25 A -- because he was the more severe at the time.

Adrian Patton
Cross-examination by Ms. Jones

1 Q And at some point she was taken to the hospital,
2 correct, for treatment?

3 A Yes, ma'am.

4 Q And those were the only injuries you're aware of that
5 she suffered.

6 A That's all I observed that day, yes.

7 Q Now, just to reiterate, that was the -- that was the
8 area in which Mr. Rogers was until he was taken out to the
9 porch area for further treatment, correct?

10 A Yes, ma'am.

11 Q Thank you.

12 And I think it was your testimony that you didn't pick
13 up this gun that was on that floor.

14 A No, ma'am. I was -- I was dealing with Mr. Rogers.

15 Q Okay. And actually Mr. Mathis is the one who gave it
16 to you.

17 A When I -- when I entered back in after securing
18 Mr. Rogers, when I made it to the back room, Officer Mathis
19 was -- was holding that -- that gun, yes, ma'am.

20 Q Okay. And you indicated you might have put it on a
21 cooler, correct, or something like that?

22 A It was something standing or setting right beside
23 officer Mathis.

24 Q I'm going to show you something marked Defendant's
25 Exhibit 1. Does that look like the cooler and the -- that

Adrian Patton
Cross-examination by Ms. Jones

1 you put it on or that thing that you thought you put it on?

2 A Yes, it -- it looks like the gun, yes, no doubt but --

3 Q Is that the gun that you -- that Mr. Mathis gave you
4 or Officer Mathis gave you? And is that basically what you
5 put it on?

6 A Yes. I mean, I -- I can't remember if it was -- like
7 I said, apparently it was a cooler, but I remember it was a
8 cooler or a table beside him. I wasn't -- it was something
9 setting right beside him.

10 Q Okay. But is that the gun that was handed to you? Is
11 that a fair, accurate statement?

12 A Yes. I had to take -- I took it from him.

13 Q Okay.

14 A He was holding both guns, and I said, here, let me
15 have this, I'll put it right here --

16 Q Okay.

17 A -- and make sure nothing else was moved.

18 Q Okay. And just for -- okay. But that's the gun you
19 remember taking.

20 A Yes, ma'am.

21 Q All right. Fair enough. Thank you.

22 And you also attended a briefing prior to this search
23 warrant being executed, correct?

24 A There was one at city hall.

25 Q Okay. And what was the purpose of that briefing?

Adrian Patton
Cross-examination by Ms. Jones

1 A I believe we were talking about when the case may be
2 coming up.

3 Q No. I'm sorry. Before this search warrant was
4 issued.

5 A Oh, this one.

6 Q Yes.

7 A The normal process behind it, the plan that we had.

8 Q Okay. So you all meet prior to going over to the
9 house regarding any type of search warrant?

10 A Yes, ma'am.

11 Q Get your gear on, go over the plan. Okay. And at
12 that point too are you told anything to be aware of or be
13 cautious of?

14 A Any cautions that we know of, whether it was the sus
15 -- the people that live there have prior gun charges or
16 there has been something, you know, anything like that
17 nature.

18 Q Okay. And that's to put you on notice of potential
19 pitfalls or anything like that?

20 A Yes, ma'am.

21 Q Okay. And were you put on any notice here regarding
22 what to be aware of when you were searching -- executing
23 the search warrant, do you recall?

24 MR. BULSA: I need to object. I believe she's asking
25 for hearsay.

Adrian Patton
Cross-examination by Ms. Jones

1 MS. JONES: Your Honor, it's not to -- it's not
2 hearsay. It's not to prove the truth of the matter
3 asserted but simply to show a state of mind when entering a
4 home of what he was supposed to be aware of and what
5 cautions and things they do in order to protect from that.
6 It's simply what he's on notice for, state of mind.

7 THE COURT: Overrule your objection.

8 A Okay. Can you repeat the question?

9 Q I'm sorry. It was a lot of information.

10 Were you put on any particular notice regarding this
11 particular residence at that briefing, do you recall?

12 A Yes. I am looking at my --

13 Q Let me be more specific. Were you put on notice that
14 there potentially might be a gun in the residence?

15 A Yes, ma'am. I -- I put in here that there was a
16 suspect that lives there has been a victim of a home
17 invasion in the past and made note that we should identify
18 ourselves as police and we have a search warrant.

19 Q Okay. So you were made aware that he had been a
20 victim of a home invasion and that he potentially could
21 have a gun and to use extra caution in identifying
22 yourselves as police officers.

23 A Yes.

24 Q Thank you. Nothing further.

25

Adrian Patton
Redirect examination by Mr. Bulsa

1 REDIRECT EXAMINATION

2 BY MR. BULSA

3 Q And did you act with extra caution?

4 A Yes, sir.

5 Q Okay. And did you identify yourselves as police
6 officers?

7 A Yes, sir, we did.

8 Q And did you locate guns in the residence?

9 A Yes, sir.

10 Q Okay. So the Intel was accurate, is that right?

11 A Yeah, it was accurate.

12 Q From your location did you see Officer Cooper or
13 Officer Morrow fire at anyone on the couch?

14 A I saw Officer Cooper fire.

15 Q Okay. All right. From your perspective could you
16 tell if he struck anyone at that time?

17 A Not from what I -- I couldn't -- I could not see what
18 he was actually firing at the time.

19 Q You didn't see a person on the couch.

20 A No, sir.

21 Q You saw him shooting into the front room.

22 A Yes, sir.

23 Q All right. And you were -- were you the first officer
24 to the man on the couch?

25 A Yes, sir. I guess everybody else had already bypassed

Adrian Patton
Redirect examination by Mr. Bulsa

1 him and was focusing on the back room, and I went to him,
2 yes, sir.

3 Q Because Harris got shot and fell straight down. So
4 there was a threat in the second room. The threat in the
5 first room had been defeated. So you go to take care of
6 the man on the couch.

7 A Yes, sir.

8 Q Okay. All right. At that time when you went towards
9 him did you know he had a weapon?

10 A I didn't, no, sir.

11 Q Okay. And he was -- he was actually on the couch when
12 you got to him?

13 A Yes, sir.

14 Q And you laid him in the floor. What was the purpose
15 of doing that?

16 A He was -- he wasn't placing his hands up at that --
17 like I said, at the time I placed him on the floor and in
18 order to secure him --

19 Q Okay.

20 A It's a better position to be able to secure someone.

21 Q Okay. And Ms. Jones put that picture into evidence to
22 show the blood on the floor. That's where he would have
23 been placed?

24 A Yes, sir.

25 Q And the gun that he had, where did it drop to?

Adrian Patton
Redirect examination by Mr. Bulsa

1 A It -- it landed directly beside him, and I remember
2 rolling. But I did not see. It was right beside him. It
3 looked like it fell out of his lap or -- it was either in
4 his lap or right beside him in the couch.

5 Q Okay. So it didn't actually fall into the blood.

6 A I don't remember it falling in the blood but --

7 Q Okay. And was that blood on the floor -- it would
8 have been him bleeding. Was he on his stomach?

9 A Yes, yes. When I pulled him -- when I pulled him off
10 the couch he was placed on his stomach.

11 Q Okay. That's where the blood came from his body. All
12 right. And so the gun wasn't actually underneath him. You
13 could still see it as you placed him on the ground.

14 A Yes.

15 Q But was it still close to him?

16 A It was still close to him.

17 Q Did you see anybody try to secure that weapon?

18 A I can't remember. I don't remember anybody trying to
19 secure it at that time. I was focused on him.

20 Q Okay. So you're dealing with -- and that's proper
21 training, right?

22 A Yes, sir.

23 Q You're dealing with a man, okay, and the other
24 officers are in the room, right?

25 A Yes, sir.

Adrian Patton
Redirect examination by Mr. Bulsa

1 Q Okay. So if somebody had secured that weapon would
2 that be the correct thing to do?

3 A That would have been the correct thing to do, yes,
4 sir.

5 Q Okay. So you're getting the man out of the way and
6 somebody else might be getting the weapon out of the way.

7 A Yes, sir.

8 Q All right. Did it surprise you that Officer Mathis
9 had the gun in the other room?

10 A Well, I won't say -- I didn't -- yeah, I guess
11 somewhat.

12 Q Were you more experienced than him?

13 A Yes, sir.

14 Q Okay. So you took it and placed it down. You knew
15 that it needed to be investigated.

16 A Yes, sir, I was -- I was in -- I was assigned to
17 investigations at this time, so I knew everybody was
18 secure. And so I am starting to think evidence-wise -- no.

19 Q All right. Thank you. That's all I have.

20 THE COURT: You may step down.

21 MR. BULSA: The state calls Officer Hensley.

22

23

24

25

Jeremy Hensley
Direct examination by Mr. Bulsa

1 JEREMY HENSLEY, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q Officer, please introduce yourself to the jury.

5 A I'm Jeremy Hensley. I'm a patrol officer with
6 Spartanburg city, been there approximately three and a half
7 years. On the tactical team about a year and a half.

8 Q Okay. Would you make sure you speak up a little bit
9 further? Okay. You've been on the tactical team how long?

10 A About a year and a half now.

11 Q On this date.

12 A Yes, sir, up to this day.

13 Q So how long had you been on the team back when this
14 happened?

15 A Only around a month, somewhere in the
16 month-to-two-month range.

17 Q Okay. So how many assignments had you been on with
18 the tactical team before this happened?

19 A I don't recall an exact number.

20 Q Could it have been many?

21 A Not too many.

22 Q Okay. All right. Now, what was your role to be in
23 this, in this incident?

24 A I was at that time the shield position or breach
25 assist. My job was to approach the screen door or the door

Jeremy Hensley
Direct examination by Mr. Bulsa

1 first and if there was a screen door to either open or
2 remove it out of the way so that the officer who did the
3 ram position was able to hit the actual residence entrance
4 door and open it.

5 Q Okay. And did you encounter any resistance when you
6 tried to do that?

7 A Yes, sir, I did.

8 Q What happened?

9 A I -- I approached the door and the tactical stack.
10 Sergeant Hillers called me around to -- he called for
11 breach-up. That's myself and Officer Mathis who was at the
12 ram position that day.

13 We -- we move around the stack. There's about four
14 subjects in front of us. Well, point one and point two.
15 But -- I'm sorry. Hang on. Point one, and point one
16 defense, and point two, and point two defense, and the team
17 leader stands to the side.

18 The team leader calls us around. I go to open the
19 screen door that day. When I did I noticed that it was
20 tied to the actual residence door.

21 I attempted to open it and noticed that it was tied
22 with some type of black shoe string or something. I went
23 to pull on it. It wouldn't open.

24 At that time I grabbed my breach tool and went to hit
25 through the screen door to yank it open with that. When I

Jeremy Hensley
Direct examination by Mr. Bulsa

1 did the breach tool slipped out of my hand.

2 At that time Officer Mathis went ahead and rammed the
3 door which helped out, because it actually broke the
4 whatever -- whatever that string was tied to inside. I
5 believe it was the doorknob on the other side. I'm not --
6 I'm not a hundred percent on that, because it actually
7 broke through. And at the time I was able to open the
8 door.

9 Q Okay. And then where did you go when the other men
10 entered?

11 A At -- at that time once my -- my job was, my initial
12 job was, done. I take the door and either open it all to
13 the -- back to the residence, and I dropped my shield. I
14 dropped down my breach tool. And at that time I start
15 drawing my weapon and prepare to line up in the stack and
16 enter the residence.

17 Q What did you observe from your position was going on?

18 A From my position I went to turn to set the shield down
19 while I'm holding the door.

20 As I go to draw my weapon and enter the residence I
21 observed Officer Cooper was standing immediately to me, to
22 beside me. Sergeant Hillers was next, and then in the
23 doorway. And then Officer Morrow was to his left.

24 And so as I went to turn in to enter the residence I
25 heard, I distinctly heard, approximately four or so shots

Jeremy Hensley
Direct examination by Mr. Bulsa

1 right off the bat. I immediately knew at that time that
2 those were not shots fired from our weapons that we carry.

3 At that time I observed Officer Cooper who was
4 immediately beside me and Officer Morrow -- had their guns.
5 And I observed them returning fire.

6 Q what did you do?

7 A I -- I was -- I -- I couldn't advance because they
8 were in the doorway area. So I -- I waited there with my
9 weapon. And I -- at that time I picked up my shield
10 because I thought that they may call me up to the front
11 with the shield to -- in case we were continuing to take
12 fire.

13 Q And did you have to do that?

14 A No, sir, I did not.

15 Q what did you do?

16 A After the firing ceased we entered the residence. We
17 continued to do our job as we planned once the threat
18 was -- wasn't, you know, there was no longer a threat.

19 We went in. I filed to the left because the person in
20 front of me filed to the right. And as I come into the
21 left I observed the -- the black male, Mr. Rogers, subject
22 and the white female. Mr. Rogers when I observed him was
23 already onto the floor area.

24 Q Did you see Officer Patton was down?

25 A No, sir. I -- I approached Mr. Rogers because I had

Jeremy Hensley
Direct examination by Mr. Bulsa

1 my gun pointed at him. My attention was on Mr. Rogers and
2 the white female on the couch. I did not pay attention to
3 my officers because I didn't see them as a threat.

4 Q Okay.

5 A I was advised by another officer behind me. I don't
6 know who it was. But they said that his gun had not been
7 secured. So that also caught my attention.

8 I grabbed Mr. Rogers -- I want to say pants leg, maybe
9 ankle area -- and I kind of started -- either his body -- I
10 started pulling him somewhat towards me until I observed
11 the gun laying there on the floor.

12 I know Officer Patton came up behind me and continued
13 with Mr. Rogers pulling him toward the front of the
14 residence.

15 I secured that weapon at that time. And the white
16 female was still on the couch. I did observe her wound,
17 her left buttock, thigh area. I placed handcuffs on her
18 and stood by with her.

19 Q Okay. When you secured the weapon you saw the -- did
20 you see the picture of that --

21 A Yes, sir.

22 Q -- defense attorney put up? You saw the blood?

23 A I -- the picture with the blood, yes, sir.

24 Q Yes, sir. Could you give some approximation as to
25 where that pistol was found by you?

Jeremy Hensley
Direct examination by Mr. Bulsa

1 A He was laying right beside the couch when I observed
2 him. As I pulled him -- I don't know -- I don't know how
3 far. Like I said, I don't even remember if his body slid
4 as much as it may have rolled a little bit.

5 I just know that as I pulled on his leg the weapon
6 came into view from somewhat, you know, under his torso
7 area. Exactly where, I don't know. I know the gun was --
8 was pretty much underneath him.

9 And he -- I do remember at one point his hands coming
10 up to his chest area as I was pulling because I was -- I
11 did -- I continued to order him keep, you know, let me see
12 your hands, keep your hands up, while I was pulling him
13 towards me.

14 Q Did the gun have blood on it?

15 A Sir?

16 Q Did the gun have any blood on it?

17 A I -- I don't recall. I -- I didn't pay attention to
18 something like that, no, sir.

19 Q Okay. What did you do with the gun?

20 A I held onto the gun until I walked back to the area
21 where Mr. Moore was located. At that time I handed the gun
22 to Officer Mathis.

23 Q Why did you do that?

24 A I just handed it over to him, and my attention went to
25 Mr. Moore.

Jeremy Hensley
Direct examination by Mr. Bulsa

1 Q You don't recall why you did that?

2 A I ended up escorting him out of the residence that
3 day.

4 Q Mr. Moore?

5 A Yes, sir.

6 Q All right. I'm still trying to figure out. Why would
7 you pass it off to another officer instead of putting it
8 down?

9 A I don't recall exactly why I passed it off. He took
10 over the weapon so that I -- I -- like I said, I -- I was
11 with Mr. Moore at that time. He -- he took the weapon from
12 me so that I could focus my attention on him.

13 Q Okay. You -- you were basically inexperienced at
14 this, weren't you, at that time?

15 A Yes, sir, at the time it was very new to me.

16 Q Okay. All right. But/and the reason you actually
17 picked it up was why? Why did you pick the weapon up?

18 A To secure it.

19 Q What were you afraid might happen?

20 A Well, the subject on the floor was laying there beside
21 it, and there was a subject on the couch beside it. And I
22 knew that shots were already exchanged. And knowing at the
23 time I didn't who exactly fired the shots, so I can't sit
24 there and take a chance with that. I don't know if it came
25 from the female or the male. I didn't know at that time.

Jeremy Hensley
Cross-examination by Ms. Jones

1 So I secured the weapon for, you know.

2 Q Is that your policy?

3 A In that situation, yes, sir.

4 Q Okay. So the safety of the officers is important.

5 A Yes, sir, officer safety. And I know if I have it,
6 then the suspect can't use it.

7 Q Thank you. Answer any questions Ms. Jones has.

8 CROSS-EXAMINATION

9 BY MS. JONES

10 Q Officer Hensley, how -- you indicated that you were
11 basically inexperienced, is that correct?

12 A No, ma'am. I indicated I was new to it.

13 Q Okay. So you were new.

14 A Yes, ma'am.

15 Q And --

16 THE COURT: Excuse me just a minute.

17 Let me ask you not to lean past the microphone.

18 You're leaning past the microphone.

19 THE WITNESS: Okay.

20 Q You've been trained, correct, as a police officer?

21 A Yes, ma'am.

22 Q Don't you have to go to classes and actually -- where
23 do you have to go to become a police officer? Maybe I
24 should start that way.

25 A To the police academy.

Jeremy Hensley
Cross-examination by Ms. Jones

- 1 Q Okay. How long is that police academy?
- 2 A Nine weeks at the time.
- 3 Q Nine weeks at the time. Did you have any other formal
- 4 training besides the police academy?
- 5 A Yes, ma'am.
- 6 Q Where?
- 7 A On the job.
- 8 Q On the job.
- 9 A Yes, ma'am.
- 10 Q Okay. Did you go to the police academy after
- 11 graduating high school or some college or tech school?
- 12 A No, ma'am.
- 13 Q When -- so you just finished high school and go to the
- 14 police academy? Or tell me a little bit about that.
- 15 A My highest education is a diploma, yes.
- 16 Q Okay. So out of high school you go to the police
- 17 academy for nine weeks, is that correct?
- 18 A Yes, ma'am.
- 19 Q And in that 9-week course you're going to learn about
- 20 evidence, correct?
- 21 A Yes, ma'am.
- 22 Q Okay. And proper procedures in securing evidence,
- 23 correct?
- 24 A Yes, ma'am.
- 25 Q The importance of putting evidence in bags and not

Jeremy Hensley
Cross-examination by Ms. Jones

- 1 tampering with evidence, correct?
- 2 A Yes, ma'am.
- 3 Q Writing police reports, writing incident reports,
- 4 correct?
- 5 A Correct.
- 6 Q Executing search warrants, how to get search warrants.
- 7 All of those things are covered, correct?
- 8 A Yes, ma'am.
- 9 Q Okay. And, in fact, you receive additional training
- 10 because you were part of the SWAT team, or T.N.T. as
- 11 they're called.
- 12 A Yes, ma'am.
- 13 Q How long -- how much training was that?
- 14 A At that time I had been training with them around a
- 15 2-month time period.
- 16 Q Okay. Did you take any specialized classes for that?
- 17 A We do specialized training for that, yes.
- 18 Q Okay. Are those weekend classes, week-night classes
- 19 or just on-the-job classes?
- 20 A No. We train with each other. There are members of
- 21 our team who are instructors at particular things, and they
- 22 take over the role of training because they're certified to
- 23 do so.
- 24 Q Okay. So -- so you were trained basically for the
- 25 tactical unit of executing a search warrant.

Jeremy Hensley
Cross-examination by Ms. Jones

1 A Yes, ma'am.

2 Q Now, you testified that -- I'm not sure I heard
3 that -- what number were you in terms of entering through
4 the house? We know Harris was first, followed my Cooper,
5 Hillers, Morrow. And where -- what number were you?

6 A I want to say five.

7 Q You were the fifth man in.

8 A Yes, ma'am.

9 Q Okay. And you indicated in your direct testimony that
10 once that door was breached you heard four shots fired in
11 rapid succession.

12 A Yes, ma'am. I heard around approximately four shots
13 fired.

14 Q Okay. Approximately.

15 A Yes, ma'am.

16 Q You couldn't say for sure?

17 A I said around four shots initially. And then I know
18 other gunfire happened. But just right off I remember
19 about four shots being fired quickly.

20 Q And you observed -- you basically heard return fire
21 from your officers.

22 A Yes.

23 Q Okay. And do you recall officer Morrow pulling the
24 trigger on his gun?

25 A Yes, ma'am.

Jeremy Hensley
Cross-examination by Ms. Jones

- 1 Q And at that point Officer Harris fell?
- 2 A Yes.
- 3 Q Okay. So that's what you recall. You recall hearing
- 4 four shots being fired, some gunfire returning and Officer
- 5 Harris falling.
- 6 A Yes, ma'am.
- 7 Q Okay. Sounds like this was a little bit chaotic or
- 8 confusing. And you're probably not used to having all of
- 9 this gunfire, correct?
- 10 A That's -- that's opinion.
- 11 Q Okay. Well, let me ask you this. What was the scene
- 12 like?
- 13 A The scene was from my point of view as controlled as
- 14 it could have been.
- 15 Q Okay. So this was a controlled operation.
- 16 A I said as it could have been, yes.
- 17 Q Okay. So you don't think there was anything really
- 18 out of the ordinary in terms of the execution of this plan.
- 19 A With the majority of them the suspects don't shoot at
- 20 us, no.
- 21 Q Okay. In fact, would this be the first time that
- 22 you'd ever been involved with shots returned and fire being
- 23 returned?
- 24 A That's not the first time being around when a gun -- a
- 25 gun's been going off, no.

Jeremy Hensley
Cross-examination by Ms. Jones

1 Q Okay. Now, did you also experience some of this
2 auditory exclusion that we've heard the other officers talk
3 about?

4 A I would not say to that extent. I do recall the shots
5 being fired.

6 Q Okay.

7 A And I do recall that the first shots that I heard
8 fired were not coming from our guns. So I know initially I
9 didn't experience that.

10 Q Okay. And do you recall since you were sort of
11 farther back and perhaps hadn't breached the door yet where
12 those shots had been fired inside the house? Could you
13 tell?

14 A No. I didn't know a room that they came from, no.

15 Q Okay. And you indicated I think too that you were the
16 person who was going to get that screen door open and you
17 encountered some problems with that.

18 A Yes, ma'am.

19 Q Okay. So did you hear the distraction device and then
20 start trying to do the screen door, or were you already
21 working on the screen door when you heard the distraction
22 device?

23 A No. My job was to open the screen door.

24 Q Okay. Did you hear the distraction device at all?

25 A Not -- not before I opened the screen door.

Jeremy Hensley
Cross-examination by Ms. Jones

1 Q Okay. So you were able to get the screen door opened
2 and then you heard it? Let me ask you this. When did you
3 hear the distraction device?

4 A Are you talking about the flashbang?

5 Q Yes, the flashbang.

6 A That's after the door is opened.

7 Q Okay. So after the door had been rammed open is when
8 you heard the distraction device, the flashbang?

9 A I don't recall, ma'am.

10 Q Okay. You just don't remember when you heard it.

11 A I was focused on my job, yes.

12 Q Okay. Fair enough. How long would you say that it
13 took you to get that screen door open?

14 A I don't -- I didn't time it.

15 Q Seconds?

16 A A matter of seconds, yes.

17 Q Okay. And then once that screen door was opened, what
18 happened at that point?

19 A We began to make entry into the residence announcing
20 ourselves.

21 Q Okay. And that's basically when you started hearing
22 the shots being fired.

23 A Yes, ma'am.

24 Q Okay. Did this happen all pretty quickly?

25 A Yes, ma'am.

Jeremy Hensley
Cross-examination by Ms. Jones

1 Q Okay. And did you hear any -- besides that we've
2 heard, the search warrant, police -- did you hear any other
3 conversation or noise or screaming, anything along those
4 lines?

5 A No, ma'am.

6 Q Okay.

7 A I don't recall any like -- necessarily like screaming.
8 I know standing beside -- and also myself yelling police,
9 search warrant, that that was pretty loud itself.

10 Q Okay. But you didn't hear any other voices or
11 anything?

12 A Not that I recall.

13 Q Okay. And you indicated also when you came into the
14 house you did observe the man laying in front of the couch,
15 correct?

16 A Yes, ma'am.

17 Q Okay. And as you're pulling on his leg -- let me ask
18 you this. Did you notice he had been shot when you first
19 came up to him?

20 A I noticed the blood on him.

21 Q Okay. And, in fact --

22 A And the pool of blood around him.

23 Q Okay. He had a pool of blood around him obvious. And
24 you saw that photo. Did you notice that he had injuries to
25 his buttock region and back thigh? Did you see that?

Jeremy Hensley
Cross-examination by Ms. Jones

- 1 A I didn't check that, no, ma'am.
- 2 Q Did you see blood on his pants?
- 3 A I seen blood around him and on his arm.
- 4 Q Okay. Let me ask. Did you see the blood on the back
- 5 of his pants when you were with him?
- 6 A Not when I was -- no, I didn't necessarily notice the
- 7 blood on the back of his pants. I said I noticed the blood
- 8 around him and I noticed he was bleeding or had blood
- 9 coming from him.
- 10 Q Okay.
- 11 A Exactly where, no, I didn't check him.
- 12 Q Okay. You just started pulling on him, and then you
- 13 noticed that there was a gun underneath him, correct?
- 14 A I noticed that as I pulled him towards me a -- a gun
- 15 was exposed. Not exactly sure where the gun was underneath
- 16 him, or maybe it was under his head area. I'm not sure.
- 17 Q Okay. But you did put in your report that a gun was
- 18 found underneath him somewhere.
- 19 A Yes.
- 20 Q Where underneath you're not sure.
- 21 A Yes, ma'am. Exactly where, that's correct.
- 22 Q Okay. And at that point an officer took the man onto
- 23 the porch.
- 24 A Yes.
- 25 Q Is that fair enough? Okay. And then you picked up

Jeremy Hensley
Cross-examination by Ms. Jones

1 that gun.

2 A Yes, ma'am.

3 Q Okay. And walk me through what you did at that point.

4 You're holding the gun. What do you do?

5 A I held onto the gun until I gave it to another

6 officer.

7 Q Okay. Well, I'm just asking. You know, you're on the

8 couch. You pick up the gun. What do you do at that point?

9 What's your next step?

10 A I had a white female subject there beside me.

11 Q Okay. So you're standing there watching the white

12 female with the gun in your hand.

13 A Yes, ma'am.

14 Q Okay. How long elapses?

15 A I don't recall.

16 Q You don't recall.

17 A No.

18 Q Okay. And then at some point the white female is put

19 in handcuffs?

20 A Yes.

21 Q Okay. Who puts her in handcuffs?

22 A I don't recall.

23 Q Okay.

24 A I believe I put handcuffs on her, but I'm not a

25 hundred percent sure on that.

Jeremy Hensley
Cross-examination by Ms. Jones

1 Q And where in the sequence of events do you put
2 handcuffs on her?

3 A After the male is removed.

4 Q Okay. So the male is removed. You pick up the gun.
5 You put the gun down to put handcuffs on her and then
6 picked the gun back up?

7 A Like I said, I don't recall. I -- I -- I may have
8 held the gun and -- she was laying on the couch. It wasn't
9 an immediate threat.

10 Q Okay.

11 A I mean, I had eyes on her. So I -- I put -- I --
12 handcuffs were placed on her. I believe I put handcuffs on
13 her, and I'm not sure, you know. I'm not sure anything
14 else you're asking.

15 Q I meant so did you put handcuffs on her before you
16 picked up the gun or after you picked up the gun.

17 A It would have been after.

18 Q Okay. Did you still have the gun in your hand when
19 you're putting handcuffs on her?

20 A I don't recall.

21 Q Okay. Well, where specifically did you get rid of the
22 gun? Was it in the living room area; was in it the back
23 area near the bathroom?

24 A It was in the back area near the bathroom where
25 Mr. Moore was located, is when I handed it to Officer

Jeremy Hensley
Cross-examination by Ms. Jones

1 Mathis.

2 Q Okay. So is it possible then that you walked back to
3 the bathroom area and handed off the handgun and then --

4 A That's possible.

5 Q I'm sorry?

6 A That's possible.

7 Q Okay. So you're not really sure. You know he had the
8 gun and you know you had to handcuff Ms. Gentry, but not
9 sure what you did with the gun while Ms. Gentry was being
10 handcuffed.

11 A There's a table, a coffee table, right there. I mean,
12 I could have set it right there while I handcuffed her.

13 Q Okay. And then you picked the gun back up?

14 A Yeah, because he was out of the living room at that
15 point.

16 Q Okay.

17 A And it was safe, maybe safe, to do so at that time.
18 But, like I said, I don't recall exactly where the gun was.

19 Q Well, if she was handcuffed and he was out, why would
20 you pick up the gun again?

21 A Ma'am?

22 Q If she's handcuffed and the male subject who'd been
23 shot is out on the porch, why do you pick up the gun again?

24 A Just safety purposes, keeping it.

25 Q Okay. Well, who else was in the house to get it?

Jeremy Hensley
Cross-examination by Ms. Jones

- 1 A I -- I didn't know at that time, ma'am. I hadn't been
2 to the back of the house at that point.
- 3 Q Okay. And nobody yelled clear, clear, the house is
4 clear?
- 5 A Yes, ma'am.
- 6 Q Okay. They did yell that.
- 7 A Yes, ma'am.
- 8 Q Okay. So why are you picking up the gun?
- 9 A I picked it up because it was evidence.
- 10 Q Okay. But you didn't put it in an evidence bag.
- 11 A No, ma'am. I didn't have them on me.
- 12 Q Okay. But if the house is -- okay. Fair enough. So
13 you pick up the gun again. Do you immediately walk back to
14 the bathroom area?
- 15 A I -- no, ma'am. I waited until the paramedics left
16 with the female.
- 17 Q Okay. How long were you holding this gun for?
- 18 A I don't know, ma'am.
- 19 Q Five minutes?
- 20 A I don't know.
- 21 Q Ten minutes? Can you -- can you estimate?
- 22 A No, ma'am.
- 23 Q A while?
- 24 A Until paramedics got there.
- 25 Q I'm sorry?

Jeremy Hensley
Cross-examination by Ms. Jones

1 A Until the paramedics arrived.

2 Q How long did the paramedics take, do you remember?

3 A I don't.

4 Q Okay. So after the paramedics remove her you'll
5 holding the gun, and then you walk back and hand it off to
6 an officer, is that correct?

7 A Yes, ma'am.

8 Q Okay. Did you see the gun after that?

9 A Maybe late -- variably, whatever. I don't know -- I
10 don't -- I don't remember necessarily seeing that gun after
11 that point.

12 Q Okay. After you handed the gun off, what did you do
13 at that point?

14 A I was focused on Mr. Moore laying on the floor.

15 Q Okay. Were you one of the officers to escort Mr.
16 Moore out of the house?

17 A I was, ma'am.

18 Q Okay.

19 MS. JONES: No further questions.

20 MR. BULSA: Nothing further, Your Honor.

21 THE COURT: You may step down.

22 MR. BULSA: The state calls officer Mathis.

23

24

25

Brendall Mathis
Direct examination by Mr. Bulsa

1 BRENDALL MATHIS, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q officer Mathis, introduce yourself to the jury.

5 A My name's Officer Brendall Mathis. I've been with the
6 Spartanburg Public Safety Department a little over four
7 years.

8 Q Okay. And what are your duties with the public
9 safety?

10 A I'm currently assigned to the violent crimes task
11 force.

12 Q What were your duties back in January of 2011?

13 A I was on patrol, but I was also assigned to the
14 tactical team.

15 Q Okay. And did you go to [REDACTED] Owens Street with that
16 tactical unit?

17 A Yes, sir.

18 Q And was your role the point man, the breach man?

19 A I was the breach man.

20 Q And what does that mean you're supposed to do?

21 A I'm -- I have the -- the breach ram. And as we
22 approach the house I'm the one that actually breaches the
23 front door of the residence to gain entry into the house.

24 Q Okay. And were you able to do that?

25 A Yes, sir. We had a little bit of an issue with the

Brendall Mathis
Direct examination by Mr. Bulsa

1 screen door, as Officer Hensley mentioned.

2 He -- I watched him pull on the screen door to try and
3 get it open, and it was like it was -- it was stuck. He
4 used a tool to try and open it.

5 Once the tool slipped out of his hand I actually used
6 the ram. I tried to hit the -- the screen door to cause
7 the screen to break, but I believe I actually hit the door
8 to the house, which in turn gave us the same situation.
9 The screen door broke loose. He was able to move the
10 screen door out of the way, and then I was able to actually
11 hit the door a second time and gain entry into the
12 residence.

13 Q Okay. And once you gained entry did you stop to look
14 inside?

15 A Once the -- once the door came open I rolled out of
16 the way to the left, and I was actually standing on the
17 wall in between the front door and the windows, standing
18 right there. And I believe Officer Morrow was the one on
19 the left-hand corner of the door. And I was standing up
20 against the wall beside him.

21 Q Let me show you State's Exhibit No. 4. After you
22 breached the door you would have rolled to your left?

23 A Yes, sir. Where the -- the door is opened -- where
24 you can see the door open to the -- the residence, just to
25 the left of that looks like a little small mailbox right

Brendall Mathis
Direct examination by Mr. Bulsa

1 there.

2 Officer Morrow was on the left-hand side of the door,
3 and I was basically up against that same wall directly
4 behind him just as we would normally do waiting to flow
5 into the residence.

6 Q Okay. So after you breached the door you didn't have
7 any time to look inside to see what you could see.

8 A I did not. Once I -- once I breach the door I move
9 out of the way as fast as I can so that the -- the point
10 guys can actually enter the house and -- and begin to clear
11 so that they have direct access to that front room.

12 Q When you're banging on the door are you yelling out
13 anything?

14 A Once I -- once I hit the door and roll outta the way
15 and we begin to make entry into the house is where I as
16 well as the other team members begin to yell police
17 department, search warrant, police department, search
18 warrant.

19 Q So you're yelling that in the house, and what do you
20 hear?

21 A As soon as I saw the guys begin to enter, our point
22 guys, I started hearing several gunshots. I'm not real
23 sure how many I heard. I just began to hear them.

24 At that time I looked at the door, and I could tell
25 Sergeant Hillers was returning fire. And Officer Cooper

Brendall Mathis
Direct examination by Mr. Bulsa

1 was firing into the residence as well.

2 Q What did you do?

3 A I basically stayed in the same spot until they ceased
4 firing their weapons, and we began to flow into the
5 residence. And then that's when I entered, after those
6 guys.

7 Q Where did you go when you went into the residence?

8 A I went straight towards the -- the middle room, I
9 guess which was more of a bedroom if you want to call it
10 that.

11 I had to step over Officer Harris who was laying right
12 there in the floor inside the residence beside the couch.

13 Q What did you do once you got into that other room?

14 A Once I went into the other room I observed officers
15 Morrow and Cooper were at the bathroom. And I could see a
16 black male subject that was laying in the floor.

17 At that time I approached them, took ahold of him and
18 pulled him out of the bathroom so that I could -- because
19 the house was so small, I pulled him into the main room so
20 that I could get handcuffs on him.

21 At the time that I pulled him out I noticed that there
22 was a black handgun that was laying in the floor of the
23 bathroom. And one single shell casing at the doorway
24 caught my eye as well.

25 And as I pulled him out he was laying face down on the

Brendall Mathis
Direct examination by Mr. Bulsa

1 ground. I actually holstered my weapon and placed
2 handcuffs on that subject there at the time.

3 Q And did anybody come up to you while you were in that
4 room?

5 A Once I had handcuffs on him I was covering him. The
6 weapon was at his feet. Other officers were continuing to
7 clear the residence.

8 At that time -- I'm not real sure how long it took,
9 but Officer Hensley came to the back room. I noticed that
10 he was actually holding a silver like colored handgun in
11 his hand. And he was asking for handcuffs.

12 So I actually took the silver handgun that he had and
13 gave him my -- I don't remember if I gave him a set of my
14 handcuffs or if he had another set of handcuffs. He just
15 didn't have a free hand to grab them. I actually took that
16 weapon from him and held onto that while I continued to
17 cover the subject that was in the back.

18 Q What did you do with that weapon?

19 A Again, after a -- after a period of time -- I'm not
20 sure how long -- but Sergeant Patton actually came to the
21 back.

22 He asked me where I got -- got that. I said Hensley
23 brought it to me from the front room. He said let me have
24 it. And he took it and actually set it on top of a blue
25 and white cooler that was sitting right next to me where I

Brendall Mathis
Direct examination by Mr. Bulsa

1 was standing. He placed it on top of that cooler. And I
2 stayed basically right there between the handgun on the
3 cooler and the subject that was laying in the floor just
4 for security purposes for that weapon.

5 Q How long did Mr. Moore stay in the floor?

6 A I'm not sure. Once -- once we had the weapon down,
7 myself and Sergeant Patton actually began trying to talk to
8 him. We asked him if he was hit, if he was hurt. He just
9 sat there and would not respond to any of our questions.

10 I recall rolling him over just to see if there was any
11 blood or anything, if he was injured or anything like that.

12 We also had paramedics come back once they arrived on
13 the scene. I remember one or two of them actually came
14 back. And they as well rolled him over to make sure that
15 he was not injured. Once they --

16 Q He was actually checked by paramedics in the room?

17 A Yes, sir. They -- he stayed there. We actually
18 checked him for any injuries to make sure that he wasn't.

19 And, again, I'm not real sure of the timeframe, but I
20 do recall that paramedics came back into that back room
21 once they arrived. They were asking him questions that he
22 would not respond to.

23 They actually rolled him over and checked him to make
24 sure that he was not injured or bleeding, anything like
25 that.

Brendall Mathis
Cross-examination by Ms. Jones

1 Once they advised that he didn't seem to have any
2 injuries on him, then they left, I'm assuming, back to the
3 front room where the other subjects were.

4 Q And did you eventually escort him out?

5 A I helped -- myself and Officer Hensley actually stood
6 him up. And Officer Hensley walked him out and I was -- I
7 walked out right behind them.

8 Q Sergeant Hillers. Was he there during this time?

9 A Yes, sir, he was.

10 Q Was he in that middle room with the suspect?

11 A I don't recall where he was at. I know that I
12 remember him coming back into the -- the middle room.

13 Him being the team leader, from what I recall he was
14 basically going back and forth checking on everybody to
15 make sure everybody was good, going back outside, as well
16 as Sergeant Patton. He was, you know, doing the same
17 thing -- checking back and forth to make sure everybody was
18 good and the scene was under control.

19 Q Thank you, Officer. Answer any questions Ms. Jones
20 may have.

21 CROSS-EXAMINATION

22 BY MS. JONES

23 Q Officer Mathis, you indicated you were the breach man,
24 correct?

25 A Yes, ma'am.

Brendall Mathis
Cross-examination by Ms. Jones

1 Q okay. And so you had that big black battering ram.

2 A Yes, ma'am.

3 Q okay. How many times did you say it took for you to
4 hit the door before it finally gave way?

5 A The best I recall it took twice.

6 Q Two times?

7 A Yes, ma'am.

8 Q Do you -- and do you recall hearing the flashbang, the
9 distraction device?

10 A I don't recall hearing the flashbang on the side of
11 the house, no, ma'am.

12 Q okay. So what was your cue then to start opening the
13 screen door and bashing?

14 A Once we -- once we approached the house and the other
15 officers actually stacked up on the house --

16 Q okay.

17 A -- we were advised by the team leader, Sergeant
18 Hillers, that he basically says breach up.

19 At that time myself and Officer Hensley approached the
20 door, and he began to try and get the screen door open.
21 But, again, like I said, he had some issue with the string
22 or some -- something was holding the door closed. And then
23 that's when I actually hit the door which caused it to
24 dislodge or loosen up, what not, so that he could actually
25 open it.

Brendall Mathis
Cross-examination by Ms. Jones

1 Q okay. And you testified that it was only after all
2 the gunfire had stopped that you actually entered the
3 house.

4 A Yes, ma'am.

5 Q okay. And you were the one who received the silver
6 gun, correct?

7 A Yes, ma'am.

8 Q okay. And you don't remember how long you were
9 holding that gun.

10 A I don't recall. I just remember Officer Hensley
11 coming back and asking for handcuffs.

12 I took it from him because, more or less like
13 everybody else, his hands were full. So I took it so that
14 he was able to go handcuff someone else, I'm assuming.

15 Q okay.

16 MS. JONES: No further questions.

17 MR. BULSA: Nothing further.

18 THE WITNESS: Yes.

19 THE COURT: You may step down.

20 MR. BULSA: The state calls officer Bagwell.

21 THE COURT: We're going to take a short. We'll take a
22 short break.

23 I'll ask the jurors to please go to your jury room.
24 Don't talk about the case. I'll bring you back after that
25 break.

Jeff Kindley
Direct examination by Mr. Bulsa

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: Court is in recess for 15 minutes.

4 (Whereupon, a recess was taken.)

5 THE COURT: Are you ready for the jury?

6 MR. BULSA: Yes, sir. We're going to shift. I called
7 one officer's name. We're going to shift it to --

8 THE COURT: You have already called it.

9 MR. BULSA: -- SLED.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: All right. Mr. Bulsa.

13 MR. BULSA: The state calls Jeff Kindley.

14 JEFF KINDLEY, having been
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. BULSA

17 Q Please introduce yourself to the jury.

18 A My name is Jeff Kindley. I'm an agent with the South
19 Carolina Law Enforcement Division, or SLED.

20 Q What are your duties with SLED?

21 A I'm a regional investigator. Basically, SLED split
22 the state into four regions, and the 12 upset counties of
23 South Carolina are considered the Piedmont region. I'm an
24 investigator assigned to that region.

25 Q Okay. And did you assist in the investigation of a

Jeff Kindley
Direct examination by Mr. Bulsa

1 shooting that occurred at [REDACTED] Owens -- [REDACTED] -- Street in
2 Spartanburg?

3 A Yes, sir, I did.

4 Q Okay. That involved an officer shooting?

5 A Yes, sir.

6 Q And actually an officer got shot.

7 A Yes, sir.

8 Q And during your part of the investigation did you go
9 to a hospital to visit that officer?

10 A Yes, sir, I did.

11 Q And were you handed anything from the doctor?

12 A Yes, sir, I was.

13 Q What were you given?

14 A I was given actually from the doctor himself -- I was
15 given a container, a sealed container, with a projectile
16 inside.

17 Q Okay. And what were you going to do with that?

18 A Well, in addition to receiving that from the doctor
19 there was also some clothing there that medical staff had
20 put in there. It was the officer's clothing.

21 The projectile and the bag, I collected those, filled
22 out a -- a receipt for them, interdepartmental receipt for
23 them, to take them back to the scene where a crime scene
24 agent was working.

25 Q Okay. So you were going to transfer that to a crime

Jeff Kindley
Direct examination by Mr. Bulsa

1 scene agent?

2 A Yes, sir.

3 Q She was collecting all the evidence?

4 A Yes, sir.

5 Q Was that Melissa Wallace?

6 A Yes, sir. Melissa Skipper.

7 (Bullet marked State's Exhibit No. 30 for
8 Identification.)

9 Q All right. Let me show you what's been marked State's
10 Exhibit for Identification 30.

11 A Yes, sir.

12 Q Does that appear to be the container that you
13 received?

14 A Yes, sir, it is.

15 Q I believe the bullet is actually out of the container
16 now. It's in another bag.

17 A Yes, sir. It was -- when I received it the doctor had
18 actually sealed it, and the projectile that's in the bottom
19 of the bag was inside of this cottony bandage stuff.

20 Q Okay. And that is how you transferred it to -- as I
21 know her -- Ms. Wallace.

22 A Yes, sir.

23 Q Okay. Did you have any part in actually helping her
24 process the crime scene?

25 A No, sir.

Melissa skipper wallace
Direct examination by Mr. Bulsa

1 Q All right. Thank you. That's all I have. Answer any
2 questions Ms. Jones may have.

3 A Yes, sir.

4 MS. JONES: Your Honor, I have no questions.

5 THE COURT: You may step down.

6 THE WITNESS: Thank you sir.

7 MR. BULSA: The state calls Melissa wallace.

8 MELISSA SKIPPER WALLACE,
9 having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BULSA

11 Q would you please introduce yourself to the jury?

12 A My name is Melissa skipper wallace.

13 Q okay. who are you employed with?

14 A I'm employed with the South Carolina Law Enforcement
15 Division, commonly known as SLED.

16 Q And how long have you been with SLED?

17 A Just over six and a half years.

18 Q What are your duties with SLED?

19 A I am assigned to the crime scene and latent print
20 department within our forensic laboratory. I respond to
21 and process crime scenes in all 46 counties of the state
22 when requested by state, local or federal agencies.

23 I also collect -- process evidence collected from
24 those scenes, as well as evidence submitted to our
25 laboratory for latent fingerprints, fingerprint

Melissa skipper wallace
Direct examination by Mr. Bulsa

1 comparisons, footwear comparisons, tire tread comparisons,
2 blood stain pattern analysis and crime scene
3 reconstruction.

4 Q Do you process a lot of scenes?

5 A A good bit, yes, sir.

6 Q Were you called to Spartanburg County on January the
7 6th of 2011?

8 A I was.

9 Q Specifically [REDACTED] Owens Street?

10 A Yes.

11 Q Were you requested by local law enforcement?

12 A I was.

13 Q All right. And when you arrived what was the
14 condition of the scene?

15 A The -- the house was taped off and secured. There
16 were a lot of Spartanburg Public Safety Officers around, as
17 well as some officers from the county. I was the first
18 SLED agent to arrive on the scene.

19 Q Okay. Were you allowed to go inside the residence at
20 that time?

21 A The search warrant for the residence had not been
22 secured.

23 We requested a second search warrant for the
24 officer-involved shooting as opposed to the search warrant
25 that the narcotics team was there to execute. And the

Melissa skipper wallace
Direct examination by Mr. Bulsa

1 search warrant for the crime itself, for the
2 officer-involved shooting, had not been secured at that
3 time. So, no, I did not enter the residence then.

4 Q So you were aware there was -- had already been a
5 search warrant for a narcotics search, but you decided not
6 to act under that one and wait for a second search warrant?

7 A That's correct.

8 Q Is that because of the nature of the shooting?

9 A That's correct.

10 Q Wanted to make sure everything was done properly?

11 A That's correct.

12 Q Okay. And when it arrived what did you then begin
13 doing?

14 A Prior to the search warrant being signed I went ahead
15 and took some general photographs of the exterior of the
16 residence outside of the tape, the street.

17 And there was a cartridge case that we located up the
18 street at the intersection. I went ahead and photographed
19 that and collected that as well.

20 After the search warrant was secured, the second
21 search warrant was secured, we began doing an initial
22 walk-through, the investigators, to point out certain
23 things and to establish the events that had occurred during
24 the shooting.

25 Q All right. You saw a lot of pictures yesterday, but

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1 Let's -- we're going to go into some more today.

2 (Photograph marked State's Exhibit No. 31 for
3 Identification; photograph marked State's Exhibit No. 32 for
4 Identification.)

5 Q Let me show you what's been marked States's 31 and 32.
6 Do those show the front and back of that residence?

7 A State's Exhibit 31 shows the front and State's
8 Exhibit 32 shows the rear, yes.

9 Q Okay.

10 MR. BULSA: Your Honor, the state would offer these
11 into evidence.

12 MS. JONES: No objection, Your Honor.

13 THE COURT: What are the numbers again?

14 MR. BULSA: Thirty-one and 32.

15 (Photograph marked State's Exhibit No. 31; photograph
16 marked State's Exhibit No. 32.)

17 Q Previously State's 24 has been entered. Is that the
18 actual site of that residence?

19 A Yes, it is.

20 Q Okay. So you began your work outside while you're
21 waiting to get inside, is that right?

22 A That's correct.

23 Q Did you start identifying objects on the porch before
24 you went into the residence?

25 A No, I did not.

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1 Q Okay. You waited for the search warrant before you
2 even entered the porch?

3 A We waited for the search warrant before we even
4 entered the yard.

5 Q Entered the yard?

6 A Uh-huh.

7 Q Okay. Now, when you go into a residence like this how
8 do you actually proceed and locate items?

9 A When we first do our initial walk-through, we walk
10 through with investigators who can point out certain things
11 of evidence.

12 They've already been there. They know what things we
13 should be looking for. They give us some background
14 information and other things that we know we need to be
15 looking for and just give a layout of what we basically
16 have to do while we're there.

17 Q You did a walk-through. And then began taking
18 pictures?

19 A That's correct.

20 Q And then did you mark items and take additional
21 pictures?

22 A That's correct.

23 Q And do you create a diagram to help document what you
24 found?

25 A I do.

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1 (Diagram marked State's Exhibit No. 33 for
2 Identification.)

3 Q I show you what's been marked State's 33 for
4 Identification. Do you recognize that diagram?

5 A I do.

6 Q Is that what you prepared after investigating this
7 case?

8 A I did.

9 Q You don't actually do that on the scene, do you?

10 A I do a rough sketch on scene, just pen and paper.
11 Once I get back to the office I'll do something a little
12 more formal like this on the computer.

13 Q Okay. Is that drawn to scale?

14 A No, it's not.

15 Q Are all items depicted on it?

16 A No, they're not.

17 Q Why would you not put all the items on it?

18 A Sometimes I don't list items that we recovered that we
19 didn't have a marker for.

20 In this case there was a cartridge case we located up
21 under the front end of the bathtub, and we didn't find it
22 until we actually slid a piece of cardboard out. It's not
23 shown on the diagram. Sometimes it's hard to show things
24 that are in walls. In this case I listed most everything
25 else.

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1 MR. BULSA: Your Honor, the state would offer State's
2 33 into evidence.

3 MS. JONES: No objection, Your Honor.

4 THE COURT: It's admitted.

5 (Diagram marked State's Exhibit No. 33.)

6 Q This is a little better picture of the front of this
7 house. Is this how it looked when you arrived?

8 A Yes.

9 Q Okay. Screen door appears to be broken. Front door
10 opened.

11 A Yes.

12 Q It's a little bit awkward setup we have in this
13 courtroom. So if you need to step down to look at this,
14 let me know. Here is a pointer.

15 State's 24 is the side. And does that show the window
16 where the distraction device was entered?

17 A That's the window there where the flashbang went
18 through.

19 Q All right. And State's 32. Does this show the rear
20 of the residence?

21 A It does.

22 Q And does it appear that either of those doors had been
23 opened that morning?

24 A They had not.

25 Q Showing you State's 33, your diagram. As we're

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1 looking at this the porch appears to be to the right-hand
2 side hand of this diagram?

3 A That's correct.

4 Q And would you go through with the jury the various
5 items that you have marked on the porch area?

6 A This area is the front porch. We have some cartridge
7 cases here.

8 C and D are listed here as Spear 40 caliber S & Ws. K
9 was also a 40 caliber cartridge case; H was also a 40
10 caliber cartridge case; G, which is here, also a 40 caliber
11 cartridge case; I was a .223 cartridge case; J was a fired
12 bullet; L was a black jacket. And then these numbers are
13 actually on the wall. Those are -- those are bullet holes.

14 Q Okay. So you located two different types of shell
15 casings on the front porch.

16 A That's correct.

17 Q Now, you had no way of knowing how many weapons fired
18 those shell casings, did you?

19 A If I can refer to my notes, I actually received the
20 officers' weapons prior to the search warrant being
21 secured.

22 At that time I had been advised that three officers
23 had fired their weapons, and I had three separate weapons.

24 Q Were they different makes and models?

25 A Yes. One was a Glock 40 caliber. One was a -- a MP-5

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1 rifle and one was an AR-15.

2 Q Okay. Based on that information and the weapons you
3 had received -- the shell casings on the front porch, were
4 they fired? Did you believe them to have been fired by the
5 officers?

6 A Yes.

7 Q Two of the officers, just two?

8 A Just two from the front porch.

9 Q Okay. All right.

10 (Photographs marked State's Exhibits Nos. 34 through 38
11 for Identification.)

12 Q I show you a series of photographs marked State's 34
13 through 38 for Identification. Do you recognize those
14 photographs?

15 A I do.

16 Q Okay. Were those photos that you took?

17 A They were either taken by me or Agent Carl Kindley who
18 was with me.

19 Q Do they depict what you recovered from the scene?

20 A They do.

21 MR. BULSA: Your Honor, the state would offer State's
22 34 through 38 into evidence.

23 MS. JONES: No objection, Your Honor.

24 THE COURT: They're admitted.

25 (Photographs marked State's Exhibits Nos. 34 through

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1 38.)

2 Q State's 34 appears to show the front porch.

3 A Yes.

4 Q Okay. Do you see various markers -- or we see yellow
5 things. Tell the jury what those are.

6 A They're yellow placards. Those are lettered. I use
7 those to mark evidence. It makes it easier to show the
8 relationship in photographs. Those are also the
9 corresponding letters and the diagram.

10 Q State's 35 is a more closeup view of some of those
11 placards.

12 A That's correct. That's actually to the right side of
13 the front door.

14 Q What do those placards depict, again?

15 A B, C and D are all 40 caliber cartridge cases.

16 Q State's 36. What is that showing us?

17 A That's the left-hand side of the steps, the lower
18 portion of that front door of apartment ■, as well as the
19 area below the front window of that same apartment.

20 It depicts E which is a -- an fired bullet; F which is
21 the clothing there. G is -- G and H are 40 caliber
22 cartridge cases; I is a 223 cartridge case; J is a fired
23 bullet; and L is the black jacket.

24 It's hard to see, but just below the bottom of that
25 screen door where it's open, there's a marker to the side

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1 on the left -- I'm sorry -- the right-hand side. That is
2 marker K, and it was also a 40 caliber cartridge case.

3 Q Point that out, what you're talking about.

4 A Right there.

5 Q Okay. Now, let's go back to the diagram. We talked
6 about the items on the porch. And I want to -- when you
7 walked into the front room, what did you observe?

8 A As we entered the front room we observed some
9 cartridge cases here around this coffee table.

10 There was a bullet hole through the wall over the
11 mailbox. There was a fired bullet at the base of the door.
12 There was also two bullet holes in the doorframe.

13 We located this bullet hole later on at the scene. It
14 was behind a curtain. We also located some bullet holes in
15 this wall that led into the second room.

16 Q Okay. State's 37. Does that show the placards in the
17 front room?

18 A It does. That's taken from the threshold of that
19 front door.

20 Q Okay. And State's 38 appears to be a reverse view.

21 A It is.

22 Q Okay. All right.

23 (Photographs marked State's Exhibits Nos. 39 through 45
24 for Identification.)

25 Q Agent, while we're talking about the front room let me

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1 show you a series of other pictures marked State's 39
2 through 45 for Identification. Do you recognize those
3 photos?

4 A Yes, I do.

5 Q Do they accurately depict what you saw that day?

6 A They do.

7 MR. BULSA: Your Honor, the state would offer State's
8 39 through 45 into evidence.

9 MS. JONES: No objection, Your Honor.

10 THE COURT: They're admitted.

11 (Photographs marked State's Exhibits Nos. 39 through
12 45.)

13 Q Agent, I'm not sure I asked you what the placards show
14 in this picture, State's 38, as depicting. Could you tell
15 the jury what they're showing?

16 A Marker M is depicting a 223 cartridge case; N is
17 depicting a 40 caliber cartridge case; and O, which is on
18 top of a table in the dog kennel, is depicting a 9mm
19 cartridge case.

20 Q I believe in your diagram there is not shown in any of
21 these pictures another marker, P. What is that supposed to
22 depict?

23 A P was also a 9mm cartridge case. It wasn't visible
24 around that table. There's a different photograph of that.

25 Q And which officer had the 9mm?

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- 1 A I believe it was Hillers.
- 2 Q Officer Hillers. Okay. So how many cartridge cases,
- 3 9mm, you found in this front room -- two?
- 4 A Two. That's correct.
- 5 Q And how many 40 caliber casings did you find?
- 6 A I have seven from the house.
- 7 Q And which officer had that firearm?
- 8 A That was Officer Cooper.
- 9 Q Okay. The other round was a 223?
- 10 A That's correct.
- 11 Q How many casings did you find of those?
- 12 A Two.
- 13 Q Which officer had that?
- 14 A Officer Morrow.
- 15 Q Okay. Are you confident that you found everything in
- 16 this house?
- 17 A We did search the house. Occasionally we do miss
- 18 things, but the house was very cluttered. And we attempted
- 19 to recover everything that we could.
- 20 Q Pictures easily document the numerous items in the
- 21 home, do they not?
- 22 A Yes.
- 23 Q Okay. Moving to other photographs. State's 39
- 24 appears to be a view back towards the front door.
- 25 A It is.

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1 Q What is it meant to document?

2 A There was a bullet hole there. It also documents a
3 bullet hole -- bullet holes in the side of the doorframe,
4 as well as damage to the -- the doorframe and the door from
5 the ram.

6 Q Okay. Item or picture 40. What is that showing us?

7 A That's a closer view of the upper bullet hole in the
8 right side of the doorframe, as well as the damage on the
9 door.

10 Q Did you recover a round that you could associate with
11 that hole?

12 A I did.

13 Q Where did you recover it?

14 A It was -- we had to pull the doorframe off. It was in
15 the -- in the wood behind the -- the frame.

16 Q And what number, what item number, would that be on
17 your diagram?

18 A That would be No. 1 right there on the right side of
19 the door from the inside.

20 Q Is that 1/2?

21 A It is. They were in line vertically on the doorframe.

22 Q Okay. And two was where?

23 A It was a lower bullet hole in that same doorframe.

24 Q Okay. I believe I have a closeup of that. That's the
25 one you're pointing at, the bottom of this?

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- 1 A That's that hole.
- 2 Q Did you pull it out of that hole?
- 3 A We did.
- 4 Q Could you tell what caliber either of these bullets
- 5 were?
- 6 A I'm not a firearms expert.
- 7 Q Did they appear to be similar?
- 8 A I don't -- I don't recall.
- 9 Q All right. Now, State's 41. What is this showing us?
- 10 A That's the same bullet hole behind the front door. We
- 11 marked it with some tape that has scale on it. And also we
- 12 run dowel rods through bullet holes that we can associate
- 13 to each other just to show trajectory.
- 14 Q So this is suggesting that it went all the way through
- 15 the wall?
- 16 A It did.
- 17 Q So the jury has a good perspective, State's 39, is
- 18 that the hole we see to the left of this picture?
- 19 A It's right there.
- 20 Q The door. And approximately how high off the ground
- 21 is that?
- 22 A Five or six feet maybe.
- 23 Q Okay. State's 42 shows -- what does that show us?
- 24 A That's the exterior of the residence. That's the
- 25 corresponding bullet hole just above the mailbox. And

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1 that's that same dowel rod that goes through to the
2 interior of the residence. It's also marked with scale
3 tape for reference.

4 Q And State's 43. What does that show us?

5 A That's the same front door, the lower portion of the
6 door. There's a fired bullet that was underneath the door
7 that we couldn't see. When the door was actually opened --
8 once we removed the door we located it just underneath the
9 edge of the door.

10 Q So it wasn't a casing. It was a bullet?

11 A It's a fired bullet, that's correct.

12 Q Now, State's 44. What is this showing us?

13 A State's 44 is again showing -- using dowel rods to
14 show trajectory of bullet holes. There's a bullet hole
15 here and a bullet hole here that correspond on the exterior
16 or the -- the second-room doorframe. There's also a bullet
17 hole there. And it's just below the mantle.

18 Q In your experience can you tell which direction these
19 rounds would have been fired from?

20 A These rounds appeared to have been coming from the
21 front to the back of the residence. This one definitely.
22 We didn't recover it. But the wood on the other side of
23 that doorframe is broken away, which is consistent with the
24 bullet path being from the front of the residence to the
25 back of the residence.

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1 Q I believe I have a picture right here, State's 45.

2 Does that show that?

3 A That is the corresponding bullet holes in the previous
4 picture, yes.

5 Q Now, the rounds fired we saw in State's 39 near the
6 front door, I guess it's easy to surmise those bullets from
7 the casing were fired toward the front door. Can you tell
8 which direction the round would have come from to the left
9 side of the door?

10 A To the left side of the door it's more consistent with
11 it being inside to outside, again, due to the wood breaking
12 away on the opposite side.

13 The -- the force pushes the -- the surface or the
14 substance away, again, just like it did on those interior
15 walls. It'll -- it'll break away a little bit larger than
16 the -- the opposite hole.

17 Q Okay. Now, how long were you at this residence?

18 A I arrived about 9:00 o'clock in the morning and I left
19 the residence at 15 till 5:00.

20 Q You were there quite a while?

21 A About eight hours.

22 Q A full day's work.

23 A Yes, sir.

24 Q You would have been there when the narcotics officers
25 finally got in to search for drugs.

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1 A I was, yes.

2 Q while you were searching for any items that might
3 relate to a shooting did you come across the -- the drugs
4 and drug paraphernalia?

5 A We did, yes.

6 Q Did you do anything with those items?

7 A We photographed them where they were, and they were
8 collected by Spartanburg D.P.S.

9 Q So you didn't move them in any way?

10 A No, I did not.

11 Q The same with any monies that might have been found?

12 A That's correct with the exception of the money and I
13 think it was pills that we located in the pants that were
14 on the front porch.

15 Q Those would have been the pants cut off Mr. Rogers?

16 A That's correct -- that's correct. We signed those
17 over once they were photographed.

18 Q You signed them over to -- back to Spartanburg Public
19 safety?

20 A Yes.

21 Q Okay. Were you actually collecting the clothing --

22 A I did, yes.

23 Q -- where Mr. Rogers was shot by the police?

24 A That's correct.

25 Q And any drug substance he had, you gave it back to the

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1 police department.

2 A That's correct.

3 Q All right. Now, moving past that front room, you
4 talked to us about the holes in the wall separating the
5 two. What did you find in the next room?

6 A As the previous picture showed, these are the bullet
7 holes in that doorframe that goes between the second room
8 and the front room. Also, that's the bullet hole
9 underneath the mantel, and it's on the -- it's in the front
10 room.

11 This would be the second room. There's a little love
12 seat next to the wall that was basically a -- next to the
13 wall-play.

14 Q was the Colt .32 handgun that -- which was on top of
15 the blue and white cooler.

16 These are more bullet holes here -- 10, 11, 12 and
17 13 -- which went through the wall that separated the
18 bathroom, kitchen and secondary room.

19 Q What direction did they appear to be?

20 A Front to back.

21 Q Did they appear consistent in a line with item six?

22 A They are, yes.

23 Q All right. How did you choose which furnishings to
24 note in your diagram? You don't have everything noted.

25 A Basically just big items of evidence that are easy

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1 reference points. When I'm looking back at the photographs
2 it's just easy to -- to reference how everything was
3 positioned in the rooms.

4 Q Show you a picture that's previously been marked
5 State's 11. That has the picture of the firearm in it.

6 A Yes. That's the blue and white cooler. That would be
7 the -- the Colt handgun. This is the bottom threshold of
8 the doorway going into the bathroom. That's the same love
9 seat. And this is the doorway going into the kitchen.

10 Q So there does not appear to be much space between the
11 table and that love seat.

12 A There was not. There were small walkways throughout
13 the house.

14 (Photographs marked State's Exhibits Nos. 46 through 50
15 for Identification.)

16 Q I show you another series of photographs marked
17 State's 46 through 50 for Identification. Do you recognize
18 those?

19 A I do.

20 Q Do they accurately depict what you saw and observed
21 that day?

22 A They do.

23 MR. BULSA: Your Honor, the state would offer 46
24 through 50 into evidence.

25 MS. JONES: No objection, Your Honor.

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1 THE COURT: They're admitted.

2 (Photographs marked State's Exhibits Nos. 46 through
3 50.)

4 Q Starting with 46 show us the view towards the
5 bathroom.

6 A It's from the doorway, from the front room to the
7 secondary room. That's the doorway into the bathroom.
8 That's the doorway into the kitchen. That's the blue and
9 white cooler. And that's the love seat that was up against
10 the wall.

11 Q And where are the holes in the wall?

12 A I'm not sure from this picture if that's a hole or
13 that's a hole, but there are two in this wall.

14 Q Okay. All right. And we can see a faint outline of a
15 pistol at the bottom.

16 A That's right. There's a handgun there.

17 Q State's 47. Where is that picture taken from?

18 A That's taken from the threshold of the doorway going
19 into the bathroom after we placed markers down. S denotes
20 the handgun; V was a handgun that was up underneath the
21 bathtub; and R is a cartridge case there at the base of the
22 door.

23 Q Okay. State's 48. What is that showing?

24 A That is a view of the handgun that was up underneath
25 the bathtub. That's the handle of the handgun.

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1 Q So that would be what you would have associated
2 with --

3 A Yes.

4 Q -- placard B.

5 Okay. State's 49.

6 A This is inside the bathtub. This is the wall to the
7 left-hand side of the doorway. And the wall over here
8 would be to the right-hand side of the doorway just as we
9 were looking at it. U is a cartridge. No. Sorry. U is a
10 fired bullet; and T was a cartridge case.

11 Q What size cartridge cases was it?

12 A T is a .45.

13 Q And what was the one in the floor?

14 A The -- the one further out in the floor that's visible
15 in the photograph is a .45.

16 Q What kind of weapon was recovered from the floor?

17 A That's a Hi-Point 45 caliber handgun.

18 Q Okay. Those are the items I think you denoted on your
19 diagram. Did you find something else in that room?

20 A We did.

21 Q What did you find?

22 A While further searching the bathroom to make sure that
23 we hadn't missed any evidence there was a piece of
24 cardboard that was up under the -- the front end of the
25 bathtub. When I pulled that piece of cardboard out there

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1 was a cartridge case up underneath it as well. And once it
2 was out in the floor we photographed that as well.

3 Q Okay. And State's 50. Is that showing that other
4 casing?

5 A That's a closeup of the cartridge case that came from
6 the front portion of the bathtub, up underneath the
7 bathtub. There's the piece of cardboard.

8 Q I actually have it upside down.

9 A Yes, yes. The bathtub is over here, and that's the
10 edge of the toilet.

11 Q Okay. So a total of three casings were found in the
12 bathroom.

13 A That's correct, yes.

14 Q Okay. While you were looking in the residence did you
15 come across any long guns?

16 A Yes.

17 Q Do you recall what you saw?

18 A I remember there being a shotgun that we located
19 leaned up against the corner of the wall here beside the
20 bathroom.

21 Q Why didn't you seize it?

22 A Based on the investigation it wasn't used in this
23 incident, so we did not collect it. SLED did not collect
24 it.

25 Q Would that have been something for you to leave for

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1 the narcotics agents?

2 A Yes.

3 Q Okay.

4 (Cartridge casings and bullets marked State's Exhibits
5 Nos. 51 through 55 for Identification.)

6 Q All right. When you collect -- specifically in this
7 instance -- the shell casings and fired rounds, how do you
8 actually package them?

9 A Typically with any firearms evidence I package it in
10 what we call chem wipes. It's kinda like tissue paper.
11 Then we package it in either a tin or something like a
12 matchbox so that we can send it to firearms and it doesn't
13 damage their evidence in any way.

14 Q Did you note on the canister to the best of your
15 ability where you located each item?

16 A Yes, we did.

17 Q I show you a series of packages, State's 51 through
18 55. Do these packages contain some canisters that you
19 would have collected?

20 A They do.

21 Q Okay. You didn't package them in these plastic bags,
22 did you?

23 A No, I did not. They were packaged in the tins, the
24 metal containers, inside the plastic bags.

25 Q Okay. And they were put in the plastic bags by the

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1 analyst?

2 A They appeared to be put in by the firearms analyst,
3 yes, sir.

4 MR. BULSA: Your Honor, the state would offer State's
5 51 through 55 into evidence.

6 MS. JONES: No objection, Your Honor.

7 THE COURT: They're admitted.

8 (Cartridge casings and bullets marked State's Exhibits
9 Nos. 51 through 55.)

10 Q Let me show you what's been previously marked for
11 identification as State's 30. Did you receive that from
12 Agent Kindley?

13 A I did.

14 Q And did you package it with the rest of the items to
15 be submitted for firearms analysis?

16 A I did.

17 MR. BULSA: Your Honor, the state would offer State's
18 30 into evidence.

19 MS. JONES: No objection, Your Honor.

20 THE COURT: It is admitted.

21 (Bullet marked State's Exhibit No. 30.)

22 Q From your notations on these tins, coupled with the
23 diagram, the jury will be able to identify which item goes
24 with each placard and number or letter, correct?

25 A That's correct, yes.

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1 Q Okay. And to make sure the record is clear, how many
2 types of firearms does it appear to you -- let me put it
3 this way. Do these appear to be all of these shell casings
4 and fired rounds that you recovered? If there's not, tell
5 us where -- what might be missing.

6 A It does appear to be everything that I recovered from
7 the scene.

8 Q Let me -- there's a few others I need to ask you
9 about.

10 A There actually were some fragments that I recovered
11 from the couch area in the front room as well.

12 Q I separated these last night and I didn't realize I
13 had some others.

14 (Cartridge casings and bullets marked State's Exhibits
15 Nos. 56 through 59 for Identification.)

16 Q I want you to also look at State's 56 through 59 for
17 Identification.

18 A That appears to be the -- the rest of the firearms
19 evidence collected from the scene.

20 MR. BULSA: The state would offer 56 through 59 into
21 evidence.

22 MS. JONES: No objection, Your Honor.

23 THE COURT: They're admitted.

24 (Cartridge casings and bullets marked State's Exhibits
25 Nos. 56 through 59.)

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- 1 Q Show the jury these. State's 54 is a series of shell
2 casings. Tell us what those -- are those the 40 caliber?
3 They appear to be 40 caliber.
- 4 A Yes, yes.
- 5 Q There are seven of them?
- 6 A Yes.
- 7 Q That's what you previously testified you found, seven
8 40 caliber?
- 9 A That's correct.
- 10 Q And State's 51, shell casings. Are those the ones
11 from the bathroom?
- 12 A Yes.
- 13 Q State's 52. Those appear to be the 223s?
- 14 A They are, yes.
- 15 Q Okay. And State's 53. That's the 9mm.
- 16 A Two of those are the 9mm cartridges cases, yes.
- 17 Q And the other two are bullets.
- 18 A Are fired bullets, yes.
- 19 Q And so those appear to be the shell casings that were
20 recovered inside or on the porch, is that right?
- 21 A Some of those are from the porch; some of those are
22 from the front room.
- 23 Q They correspond to the residence.
- 24 A Yes.
- 25 Q State's 58 appears to be another shell casing. And

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1 can you tell us about this? Do you need to look at it?

2 A That's the cartridge case that was located in the
3 street at the intersection of Owens and Stewart, I believe.

4 Q Okay. See Owens.

5 A Yes.

6 Q And Owens Street is the street this house was located
7 on?

8 A Yes. Owens Street is out front here, and Stewart
9 intersected down here.

10 Q What caliber is -- can you tell what caliber that
11 shell casing was?

12 A No, I cannot. The head stamp is pretty messed up. I
13 can only make out that it's F-C.

14 Q Okay. And do you even know if it was associated with
15 this shooting?

16 A Not sure, no.

17 Q Why did you collect it?

18 A Just to cover all bases. It was a cartridge case
19 located in the area of the scene.

20 Q Okay. Do items often get kicked around and moved --

21 A They do.

22 Q -- during incidents?

23 A They do.

24 Q And the remaining items that you looked at, State's --
25 looks like 55 is a series of fired bullets.

Melissa skipper wallace
Direct examination by Mr. Bulsa

- 1 A Yes, they are fired bullets.
- 2 Q Fifty-six appears to be some fragments.
- 3 A That's correct.
- 4 Q Specifically the bedsheet. Is that what that reads on
- 5 there?
- 6 A That's correct. That was our bedsheet that was
- 7 located -- I think it was on the couch in the front room.
- 8 It was either on the couch or in front of it. It was the
- 9 couch area.
- 10 Q Item 59 appears to be some fragments.
- 11 A Yes.
- 12 Q Excuse me. That's 57. I have 57 as fragments.
- 13 Fifty-nine are other fragments.
- 14 A Those are fired bullets.
- 15 Q Okay. Bullets. Appears to be a lot of rounds were
- 16 fired in this incident.
- 17 A That's correct.
- 18 Q And you secured all of those and took them to SLED and
- 19 submitted them for firearms examination and analysis?
- 20 A Some of the fired bullets I actually swabbed for
- 21 D.N.A. to see if we could determine if they had struck
- 22 Rogers. And then they were submitted to the firearms
- 23 department.
- 24 Q Okay. And how many weapons did you actually recover?
- 25 A There were three officers' weapons that we seized, as

Melissa skipper wallace
Direct examination by Mr. Bulsa

1 well as three handguns from the residence.

2 Q So a total of six?

3 A That's correct.

4 Q And those would have been submitted for firearms
5 analysis?

6 A The handguns from the residence I actually processed
7 for fingerprints, and swabbed those as well for touch
8 D.N.A. And then they were forwarded on to the firearms
9 department.

10 Q Were you able to lift any fingerprints off them?

11 A No, I was not.

12 Q Okay. Is that uncommon?

13 A No, it's not. It's -- it's more common to not obtain
14 fingerprints off of guns than it's common.

15 Q Do you know what happened to the officers' firearms?

16 A They were submitted to the firearms department for
17 analysis with the cartridge cases and fired bullets that we
18 recovered.

19 Q Would they have been returned back to them?

20 A I'm sorry?

21 Q Would they have been returned back to them later?

22 A To the officers?

23 Q Yes, ma'am.

24 A Typically, yes. But I don't know in this instance.

25 (Hi-Point handgun and bullets marked State's Exhibit

Melissa skipper wallace
Direct examination by Mr. Bulsa

1 Nos. 60 for Identification; Colt handgun with magazine and
2 unfired cartridges marked State's Exhibit No. 61 for
3 Identification; and Taurus revolver and unfired cartridges
4 marked State's Exhibit No. 62 for Identification.)

5 Q All right. I've got three boxes that contain
6 firearms -- State's 60, 61 and 62 for Identification. Will
7 you open those boxes and see if you can identify the
8 objects?

9 A State's 60 is the Hi-Point handgun, .45, that was
10 recovered from the scene, as well as some unfired bullets
11 that were also collected with the handgun.

12 Q Okay. Was the .45 from the bathroom?

13 A That's correct.

14 Q All right. Next one.

15 A State's Exhibit 61 is the Colt handgun with magazine
16 and unfired cartridges that was collected from the top of
17 the blue and white cooler denoted as Q.

18 Q Okay.

19 A And State's Exhibit 62 is the Taurus revolver and
20 unfired cartridges that was located up underneath the
21 bathtub.

22 Q Would you take that one out? I don't believe the jury
23 has actually seen a picture of that, where it was located.
24 Was that fully loaded?

25 A It was. It did not appear to have been fired.

Melissa skipper wallace
Direct examination by Mr. Bulsa

1 Q Okay. How about the -- you can put it back in. How
2 about the .45? Did it -- give it back to you. Let me move
3 these into evidence first. I don't believe I have.

4 MS. JONES: No objection.

5 THE COURT: They're admitted.

6 (Hi-Point handgun and bullets marked State's Exhibit
7 Nos. 60; Colt handgun with magazine and unfired cartridges
8 marked State's Exhibit No. 61; and Taurus revolver and
9 unfired cartridges marked State's Exhibit No. 62.)

10 Q So the resolver had six rounds?

11 A I believe so. I'm not sure if it's a five or a six
12 cylinder.

13 Q Okay. One, two, three, four, five, six. The .45,
14 would you take it out? And how many rounds were with it?

15 A Five.

16 Q Are you familiar with how many rounds a clip might
17 hold?

18 A I'm not sure how many this one holds. Typically
19 magazines hold ten, but I'm not sure about this one.

20 Q Okay. State's 61, the silver pistol. Pull that out.
21 How many rounds did it have?

22 A Looks like seven.

23 Q All right. So each gun had rounds loaded into it?

24 A That's correct.

25 Q Okay. Were the rounds and the weapons secured in the

Melissa skipper wallace
Cross-examination by Ms. Jones

1 same fashion and submitted to SLED to the analyst?

2 A I'm sorry?

3 Q Were these weapons secured in the same fashion?

4 A I secured them while I was at the scene, and then they
5 were packaged once I got back to the lab for submission to
6 the firearms department after I processed them for latent
7 fingerprints.

8 Q Okay. All right. I think that's all I have right
9 now. Thank you. Answer any questions Ms. Jones may have.

10 THE COURT: Please adjust that microphone.

11 CROSS-EXAMINATION

12 BY MS. JONES

13 Q Agent Wallace, you indicated you had worked for SLED
14 for six and a half years --

15 A Approximately, yes.

16 Q -- doing just what you're doing now, the firearms and
17 collecting and processing the scenes?

18 A I'm not assigned to the firearms department, no. I
19 process crime scenes, and I process evidence for latent
20 fingerprints, footwear comparisons, tire tread comparisons,
21 blood stain pattern analysis and crime scene
22 reconstruction.

23 Q So you've been doing that for six a half years.

24 A Yes.

25 Q Okay. You indicated that -- were you the only one who

Melissa skipper wallace
Cross-examination by Ms. Jones

1 was collecting the shell casings and the bullets at the
2 scene?

3 A They were either collected by me or in my presence.

4 Q So you were the head person.

5 A That's correct.

6 Q Okay. And you indicated that the house was fairly
7 cluttered, correct?

8 A Yes.

9 Q And you tried your best to recover all the shell
10 casings and fired bullets that you could find.

11 A That's correct.

12 Q Okay. Is it fair to say there might have been one,
13 two, three that might not have been collected just due to
14 the clutter?

15 A It's possible.

16 Q Okay. And outside the same thing. The yard wasn't
17 really kept up very well. There was a lot of clutter.

18 A We did run a metal detector in the front yard in an
19 attempt to locate any fired bullets or additional cartridge
20 cases, and we had negative results with that.

21 I also searched a residence, a vacant residence,
22 across the street for any bullet holes or anything like
23 that and also did not locate any bullet holes.

24 THE COURT: Excuse me. Ma'am, would you direct your
25 responses to the person that's asking you the questions so

Melissa skipper wallace
Cross-examination by Ms. Jones

1 the court reporter can see your face?

2 THE WITNESS: Yes.

3 MS. JONES: Thank you.

4 BY MS. JONES

5 Q Okay. Were all of the shell casings collected and the
6 bullet casings -- it's not an exact match, correct?

7 For example, I think there were 17 bullets found and
8 only 13 cartridges. Is that a fair assessment? In other
9 words, you didn't collect the same amount of bullets as the
10 same amount of cartridges, correct?

11 A Cartridges or cartridge cases?

12 Q Cartridge casings. Thank you.

13 A I'm -- I'm not sure. I don't think so, no. I know we
14 did not recover one from four. That's one of them. And
15 also the bullet hole that went through the exterior of the
16 residence we did not recover as well.

17 Q And that's not necessarily uncommon, correct?

18 A No.

19 Q You testified that you collected the Hi-Point as well
20 as the Colt .32.

21 A That's correct.

22 Q Okay. And you, in fact, swabbed the .45 for D.N.A.,
23 correct?

24 A I did swab the handgrips of the .45 for D.N.A., yes.

25 Q Okay. And you didn't do any analysis on that, right?

Melissa skipper wallace
Cross-examination by Ms. Jones

- 1 A No. I submitted that to the D.N.A. department.
- 2 Q Okay. And that's also located within SLED?
- 3 A Within the forensic laboratory, yes.
- 4 Q And you also swabbed the handgrip of the Colt .32.
- 5 A That's correct.
- 6 Q Okay. And same thing. Did you submit that to the
- 7 D.N.A. analysis department?
- 8 A I did.
- 9 Q Okay. And when you were handling that Colt .32 did
- 10 you notice a lot of blood or body material on it?
- 11 A I did not.
- 12 Q Okay. And if you had would that have been a concern
- 13 to you and you would have marked it and noted it and sent
- 14 it on for further testing?
- 15 A Would have collected it, yes.
- 16 Q Did you also collect bullet fragments from the
- 17 autopsy?
- 18 A Yes. I received them from Dr. Wren.
- 19 Q Okay. And how many did you receive, do you recall?
- 20 A I have three fired bullets, and I just have it listed
- 21 as bullets fragments from the autopsy.
- 22 Q Okay.
- 23 A I don't know the exact number.
- 24 Q Okay. of the bullet fragments?
- 25 A That's correct.

Melissa skipper wallace
Cross-examination by Ms. Jones

1 Q Okay. But you collected all of that?

2 A I did.

3 Q Now, when you talk about shell casings, the shell
4 casings are actually what's thrown from the gun when the
5 bullet fires. Is that a fair assessment?

6 A If it's a semiautomatic, yes.

7 Q Okay. And so when you're talking about the shell
8 casings that you were collecting, that's basically what you
9 were collecting from the semiautomatic weapons.

10 A Yes.

11 Q Okay. Do you know how far they can travel when
12 they've been ejected from the gun?

13 A It's -- that depends. And that's a firearms'
14 question.

15 Q Okay. And you don't have any expertise in that?

16 A No, ma'am.

17 Q Okay. And I think you testified that -- vision isn't
18 very good. B, D and C were cartridge casings?

19 A They were, yes.

20 Q And they were the 40 caliber type, correct?

21 A That's correct.

22 Q And those were actually from Cooper's gun or the gun
23 that you collected from Cooper -- Officer Cooper.

24 A I was advised that came from Cooper. I did not
25 collect that directly from Cooper.

Melissa skipper wallace
Cross-examination by Ms. Jones

1 Q Okay. But it's your information that that was his, in
2 fact, gun that he was firing.

3 A That's correct.

4 Q Okay. Did you find any Colt .32 bullets or shell
5 casings?

6 A Yes.

7 Q Where did you find those?

8 A There was an unfired bullet or cartridge which ended
9 up at the bottom of the steps. And it's been noted as
10 marker E.

11 Q Okay. And that was in -- you said that wasn't fired?

12 A That's correct.

13 Q Okay. So you didn't find any evidence that that Colt
14 .32 had been fired that particular day.

15 A That's correct.

16 Q Okay. And the 9mm gun you found, I think you
17 indicated there were three shell casings, is that correct,
18 from the bathroom?

19 A From the bathroom? There were two 9mms from the front
20 room.

21 Q Okay.

22 A And there were three cartridge cases, which were .45s,
23 from the bathroom.

24 Q Did you find any other .45 shell casings other than
25 the bathroom?

Dr. Brian Thurston
Direct examination by Mr. Bulsa

1 A I did not, no.

2 MS. JONES: I have no further questions, Your Honor.

3 MR. BULSA: Nothing further.

4 THE COURT: You may step down.

5 MR. BULSA: We ask she be excused.

6 THE COURT: She may be.

7 THE WITNESS: Thank you, Your Honor.

8 (Whereupon, the witness was excused.)

9 MR. BULSA: Your Honor, may I step outside? I'm
10 expecting the doctor.

11 (Whereupon, the witness was excused.)

12 DR. BRIAN THURSTON, having
13 been first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. BULSA

15 Q Doctor, please introduce yourself to the jury.

16 A My name is Dr. Brian Thurston. I'm a chief resident
17 in trauma and general surgery at Spartanburg Regional.

18 Q How long have you been with Spartanburg Regional?

19 A Slightly less than four years.

20 Q Where did you do your residency?

21 A I am currently in my residency now. I attended
22 medical school at Texas Tech.

23 Q Okay. And I guess being in the E.R. you treat trauma
24 patients.

25 A Yes, sir. We treat approximately a thousand trauma

Dr. Brian Thurston
Direct examination by Mr. Bulsa

1 patients a year on the surgical trauma service. I'm unsure
2 as to the total number of trauma patients that are seen at
3 our hospital.

4 Q Do you recall being on duty January the 6th of 2011?

5 A Yes, sir.

6 Q And did you treat an officer who had received a
7 gunshot wound?

8 A Yes, sir.

9 Q And could you tell us the condition that officer was
10 in when you met him?

11 A To the best of my recollection and upon review of the
12 medical records this was a gentleman who had sustained a
13 gunshot wound to the right lower abdomen and hip region.

14 He was brought in as a -- what we call a code trauma,
15 which is our highest level of trauma activation.

16 We -- we performed standard advanced trauma life
17 support protocol on him. He was noted to have a single
18 gunshot wound.

19 Imaging was undertaken which did confirm that there
20 was no injury which required further operative intervention
21 for him. And as such he was felt -- that he could be
22 safely managed as an outpatient.

23 The bullet was removed in the emergency room and
24 handed to the police investigator. It was removed by me
25 and placed in a sealed specimen container and handed

Dr. Brian Thurston
Direct examination by Mr. Bulsa

1 personally by me to the police investigator.

2 Q What was the severity of his wound?

3 A He was a very lucky gentleman. He sustained a -- a
4 large caliber gunshot wound to his lower abdomen.

5 The immediate concern was that it was potentially a
6 life-threatening or limb-threatening wound. Luckily for
7 him, workup determined that that was not the case. But it
8 was certainly -- the concern was there immediately that
9 this was a life-or-limb-threatening wound.

10 Q You said the workup determined it wasn't the case.
11 What do you mean?

12 A We -- we obtained plain film x-rays and reviewed them
13 with our radiologist. And based on the entry wound and
14 where we could palpate the foreign body in his right
15 posterior hip that he was -- the bullet itself had not
16 damaged any intra-abdominal structures.

17 We also performed a vascular exam, which included
18 Doppler exams of the arteries and veins in his lower
19 extremities which confirmed no vascular injury.

20 Q How far over would -- if the bullet had struck
21 somewhere else in that region, or would it?

22 A A matter of millimeters could certainly have made a
23 difference with regards to life or limb in him.

24 Q Thank you, Doctor. That's all I have. Answer any
25 questions Ms. Jones may have.

Dr. Brian Thurston
Cross-examination by Ms. Jones

1 CROSS-EXAMINATION

2 BY MS. JONES

3 Q Doctor, is it fair to say when anybody's brought in
4 with a gunshot wound that you hear over the broadcast
5 system that somebody's been shot that trauma is probably
6 going to go into high alert, prepare for the worst and hope
7 for the best?

8 A It depends on the location of the gunshot wound, the
9 suspected mechanism and the stability of the patient. Not
10 all gunshot wounds receive the highest level activation.

11 We had a multitiered system. Most gunshot wounds
12 receive at least a moderate level activation, but they do
13 not all receive the highest level.

14 Q Okay. And the information you had was it was going to
15 be in the hip region?

16 A The information I had was that it was in the lower
17 abdomen region.

18 Q Okay. And that would be concern.

19 A That would certainly be concern.

20 Q And were you aware that this was a multi-victim
21 incident?

22 A I received multiple trauma notifications at the same
23 time. So certainly we were aware that we had multiple
24 trauma victims. I was not aware that they were involved in
25 the same incident until afterwards.

Dr. Brian Thurston
Cross-examination by Ms. Jones

1 Q Okay. And so to your knowledge did you just treat --
2 did you treat anybody else associated with this to your
3 knowledge?

4 A Not in the emergency room. In the intensive care unit
5 I did participate in the gentleman's care who expired for
6 approximately 15 minutes before he ultimately expired.

7 Q Okay. So you actually looked at Mr. Williams in the
8 intensive care unit. And he was under your care until he
9 passed away?

10 A I had no dealings with him in the emergency room or
11 the operating room, only in the intensive care unit, that
12 is correct.

13 Q Okay. And were you aware that he had been shot
14 multiple times?

15 A I was not aware of the circumstances of his initial
16 presentation to the emergency room. I was only aware of
17 what was told to me by the surgical team upon his coming to
18 the intensive care unit. And it was that a gentleman had
19 sustained multiple gunshot wounds and was in critical
20 condition.

21 Q Fair enough.

22 MS. JONES: I have nothing further, Your Honor.
23
24
25

Dr. Brian Thurston
Redirect examination by Mr. Bulsa
Recross-examination by Ms. Jones

1 REDIRECT EXAMINATION

2 BY MR. BULSA

3 Q Did you review those records prior to coming to court?

4 A I reviewed the records of Officer Harris. I was not
5 able to review the records of the other gentleman.

6 Q Based on your -- your dealings with him in the
7 trauma -- I think you said intensive care unit.

8 A Yes, sir.

9 Q Do you recall where his wounds were located?

10 A He had a significant number of gunshot wounds, mostly
11 located to his lower abdomen and pelvis and lower extremity
12 region, and a porosity of gunshot wounds to his torso,
13 upper extremities.

14 Q Okay. That means?

15 A He had a bunch of bullet wounds in his hips and legs.

16 Q Okay. Thank you.

17 MR. BULSA: That's all I have.

18 RECROSS-EXAMINATION

19 BY MS. JONES

20 Q Okay. Follow up to that. Were you aware that they
21 were front and back?

22 A I was not. When we see gunshot wounds in -- both in
23 the trauma bay and in the intensive care you unit we never
24 assume trajectory of the bullet with regards to entry or
25 exit.

Dr. Brian Thurston
Recross-examination by Ms. Jones

1 It is only upon investigation by the pathologist or
2 any sort of person with higher level expertise. We simply
3 count the number of holes and make sure that the number of
4 holes plus foreign bodies adds up so that we can
5 potentially treat all injuries.

6 Q Okay. And with that understanding of your expertise
7 were you aware or understood that he had holes in the front
8 and the back?

9 A It was my understanding that he had multiple holes.

10 Q Okay. And after he expired did he go to pathology for
11 an autopsy?

12 A I do not know that. I know that all trauma victims
13 who die within 24 hours of presentation to the emergency
14 room are referred to the coroner. The decision as to
15 whether or not to perform an autopsy is -- is not made by
16 us.

17 Q Thank you.

18 MS. JONES: Nothing further.

19 MR. BULSA: Nothing further.

20 THE COURT: You may step down.

21 MR. BULSA: We ask that he be excused.

22 THE COURT: He may be.

23 (Whereupon, the witness was excused.)

24 MR. BULSA: Michelle Eichenmiller.

25

Michelle Eichenmiller
Direct examination by Mr. Bulsa

1 MICHELLE EICHENMILLER, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q Agent, would you please introduce yourself to the
5 jury?

6 A My name is Michelle Eichenmiller.

7 Q Who are you employed with?

8 A I work for the South Carolina Law Enforcement
9 Division, commonly known as SLED. I work in the forensic
10 lab.

11 THE COURT: Excuse me. Please don't turn your back to
12 the court reporter.

13 Q Are you also an agent with SLED?

14 A Yes.

15 Q Okay. And how long have you been with SLED?

16 A Approximately six years.

17 Q Would you give us the benefit of your education and
18 training in the area of firearms?

19 A I have a bachelor's degree and undergraduate degree in
20 biology, and then I have a master of science in forensic
21 science.

22 To be a firearms examiner we need to go through the
23 SLED in-house training program which is approximately three
24 to four years of training.

25 I studied under court-qualified examiners. I prepped

Michelle Eichenmiller
Direct examination by Mr. Bulsa

1 cases for them, as well as studying and reading on my own.

2 I did a lot of microscope work to learn what they're
3 looking at and to figure it out, and many practical exams.

4 In order to, quote, graduate from the program I had to pass
5 a final. I did a mock court and several practical exams.

6 Q You ever testified in court as an expert before?

7 A This will be No. 7.

8 Q What is your actual expertise?

9 A I'm a forensic scientist in the firearms
10 identification.

11 MR. BULSA: Your Honor, the state would offer her as
12 an expert as such.

13 MS. JONES: No objection, Your Honor.

14 THE COURT: She is so qualified.

15 Q Now, you receive items of evidence from various police
16 departments and some of your own -- other agents at SLED?

17 A Yes.

18 Q And in this case in particular did you receive items
19 that were submitted by Melissa Wallace?

20 A Yes, I did.

21 Q You received a number of items, did you not?

22 A Quite a good number.

23 Q Okay. You were here and you saw us display those.

24 Okay. And what is it -- what are you actually looking for
25 when you examine these items?

Michelle Eichenmiller
Direct examination by Mr. Bulsa

1 A Firearms identification is a branch of forensic
2 science that deals with identifying fired bullets or other
3 ammunition components back to the firearm that fired them.

4 Q So you start with a firearm that you're presented
5 with. Do you determine if they're working in working
6 condition?

7 A Yes. As part of my exams I'll -- I take pictures of
8 everything I've got to document. I'll write down make,
9 model, serial number, calibers. I'll make sure they're in
10 working order.

11 Q And in this case do you recall how many weapons were
12 actually submitted to you?

13 A There were six.

14 Q Six. Okay. And we've seen -- were three noted as
15 being from officers?

16 A Yes.

17 Q And then there were three others that were noted as
18 being recovered from the scene?

19 A Yes.

20 Q Okay. And you saw them displayed.

21 A Yes.

22 Q Were each of those in working order?

23 A May I refer to my notes?

24 Q Yes, ma'am, you may.

25 A Yes. They all worked correctly.

Michelle Eichenmiller
Direct examination by Mr. Bulsa

1 Q Okay. And so we have a good understanding, State's
2 Exhibit 60, this will be the .45, I believe.

3 A Yes.

4 Q Are you familiar with how many rounds that the clip
5 would hold?

6 A If I --

7 Q Yes, ma'am.

8 A The magazine will hold nine and the gun total will
9 hold ten, because there could be one in the chamber.

10 Q One in the chamber and possibly nine. Okay. And you
11 received the weapon plus five rounds.

12 A Correct.

13 Q Okay. State's 62, the revolver is pretty easy. It
14 only holds a number of -- in the cylinder, right?

15 A Correct.

16 Q It's a 6-cylinder revolver.

17 A Right.

18 Q And all of those items were included.

19 A Correct.

20 Q Now, the silver -- getting to the model -- what model
21 is this, State's 61?

22 A Officially it's a Colt Model 1903 Hammerli.

23 Q Okay. And what brand -- what caliber weapon?

24 A It's a .32 auto.

25 Q Okay. And how many rounds would this clip hold?

Michelle Eichenmiller
Direct examination by Mr. Bulsa

1 A That one I'm not sure. Since it wasn't fired at the
2 scene we didn't do the full workup. We have a short form
3 for just submitting it to AFIS. It was submitted with
4 seven unfired cartridges though.

5 Q Okay. When you say it wasn't fired at the scene,
6 where did you get that information?

7 A Just looking over all the evidence I had received.
8 There were no .32 auto cartridge cases or bullets.

9 Q Okay. So none of these items would have matched that
10 weapon.

11 A Correct.

12 Q Okay. So you excluded that from further analysis.

13 A Correct.

14 Q Did you do the same thing with the revolver?

15 A That one I wasn't sure on. We can't tell a bullet
16 caliber right off the bat. Some of them we can like the
17 .32. The .38 was close to other ones that had been fired.
18 So I had to do the full workup on the revolver.

19 Q Well, did anything match this revolver?

20 A I believe there were.

21 Q Okay. What -- what actually matched it?

22 A There were two fired bullets. It's SLED lab number
23 items 31 and 34.

24 Q SLED items 31 and 34.

25 A According to the submission paperwork, it's marker one

Michelle Eichenmiller
Direct examination by Mr. Bulsa

1 and marker 14.

2 Q That's what I was looking for. Thank you. Marker one
3 and 14. So maybe I should have left that machine on. One
4 and 14 appear to be near the window, front window.

5 okay. So at some point that weapon was fired in that
6 house leaving rounds in a wall.

7 A Correct.

8 Q And you have no idea when. Okay. And then we go to
9 the named subject that is the .45. What did you find that
10 fit?

11 A Item five fired items -- SLED's lab numbers items 20
12 through 22.

13 Q okay.

14 A Which were three .45 auto caliber cartridge cases.

15 Q okay.

16 A And it also matched items 32 and 39, which were two
17 fired bullets.

18 Q Thirty-two. Now, you packaged these, did you not, and
19 you actually sealed them?

20 A I did.

21 Q okay. Let me do it this way. I think State's 51
22 would match -- were the items you say matched 45, the .45,
23 is that correct?

24 A Yes. This is one fired bullet and three fired
25 cartridge cases.

Michelle Eichenmiller
Direct examination by Mr. Bulsa

1 Q Okay. And those were recovered to your knowledge at
2 the scene, right?

3 A Correct.

4 Q And what was the other item number you said?

5 A Thirty-nine.

6 Q So you matched five items submitted to you to this
7 .45?

8 A Correct.

9 Q And item 39 was recovered from where?

10 A SLED item 39 was the fired bullet from Officer Harris.

11 Q Okay. State's 30. All right. So we have five
12 objects to go with this gun.

13 A Correct.

14 Q Okay. All right. And you also analyzed the rest of
15 the items. Did you compare those to the officers' weapons?

16 A Correct.

17 Q Okay. When you -- when you were analyzing these did
18 you know which officer had which gun?

19 A According to the submission paperwork it was just -- I
20 think just to keep them straight.

21 Q Okay. Because there were so many. Briefly in -- with
22 Officer Cooper, it appears that he had a Glock, right?

23 A According to the paperwork, yes, it was Officer
24 Cooper's Glock.

25 Q Okay. And what items that you received matched his?

Michelle Eichenmiller
Direct examination by Mr. Bulsa

- 1 Let's talk specifically about shell casings.
- 2 A Okay. SLED item numbers nine through 15, which were
3 seven fired .45 S & W caliver cartridge cases were all
4 fired by item four, the Glock semiautomatic pistol.
- 5 Q Okay. All right. And that would be State's 54 that
6 you packaged?
- 7 A Correct.
- 8 Q Seven separate seals?
- 9 A Right.
- 10 Q Now, talking about shell casings, Officer Hillers'
11 weapon, what size weapon was that? MP-5?
- 12 A Officer Hillers' was an HKMP-5, 9mm Luger caliber
13 sub-machinegun.
- 14 Q Okay. And is that State's 53? Actually you were able
15 to identify two rounds that went with it.
- 16 A Correct.
- 17 Q Those two rounds were rounds that were found in the
18 bathroom area to your knowledge?
- 19 A I'm not sure where they were found.
- 20 Q Not sure where they were found. Okay. That weapon
21 fired two rounds that were submitted to you.
- 22 A Correct.
- 23 Q And the remaining weapon, Officer Morrow's, appears to
24 be some sort of rifle.
- 25 A Correct. It was a DPMS-AR15, which is a 223 Remington

Michelle Eichenmiller
Direct examination by Mr. Bulsa

1 caliber rifle.

2 Q Shown in State's 52.

3 A Correct. That's it.

4 Q Okay. And then we heard about Agent Wallace
5 collecting a variety of other rounds.

6 Let me ask you about one more. There's one other shell
7 casings that she testified about finding in a roadway. Were
8 you able to ever identify what that might have went with?

9 A No. This is SLED item eight, and it was not fired by
10 any of the firearms that were submitted in this case.

11 Q None of the six?

12 A No.

13 Q Okay. So that could have come from another incident
14 altogether.

15 A Correct.

16 Q Okay. Now, the rest of these items, State's 55, 56,
17 57 and 59, are a variety of spent rounds and fragments.
18 Could you identify any of them or match them with any of
19 the weapons?

20 A There were several fragments that were listed as
21 recovered from in and around the couch. Those I couldn't
22 do anything with. They were all fragments, SLED item Nos.
23 38, 37 and 36.

24 Thirty-six and 38 had no marks of value, so I couldn't
25 do any kind of identification with those.

Michelle Eichenmiller
Direct examination by Mr. Bulsa

1 Thirty-seven was compared to the item two rifle, which
2 is the AR-15. It was inconclusive. From my experience the
3 small fragments would be from a 223 bullet, but they
4 fragment on impact, so they -- I couldn't identify for
5 certain that that was that firearm.

6 Q Okay.

7 MR. BULSA: For the record, that's State's 56 and 57
8 could not be identified or matched to anything.

9 A State's Exhibit, I believe it's, 59 is my item
10 number 31 and 34 -- were fired bullets. Item 31 and 34
11 were actually fired by that Taurus revolver.

12 Q Taurus revolver which would have been --

13 A Item --

14 Q Officer Cooper's?

15 A No, the revolver.

16 Q Oh, those are the ones that came out of the wall.

17 A Right.

18 Q Out of the wall near the window. Would have come from
19 a different --

20 A Twenty-three and 25 and 35 were all consistent with
21 being fired from a polygamy rifle barrel which would be
22 consistent with a Glock.

23 I compared them to the Glock that was submitted, and
24 they didn't have enough marks of value for me to say
25 definitively it was that firearm.

Michelle Eichenmiller
Cross-examination by Ms. Jones

1 Q Most likely based on the circumstances, probably was.

2 A Correct.

3 Q Okay. I think that those are all the items. Thank
4 you. Please answer any questions that Ms. Jones might have
5 of you.

6 CROSS-EXAMINATION

7 BY MS. JONES

8 Q You indicated that not and all of the bullets were --
9 that were recovered could be matched because there might
10 have been fragments or things like that, correct?

11 A Correct.

12 Q Is that uncommon?

13 A It's not uncommon.

14 Q So typically unless it's in real good shape it's hard
15 for you to identify.

16 A That's not necessarily true too. I've had some really
17 well-marked fragments before. These ones just weren't.

18 Q Okay. And we've had a lot of testimony in regards to
19 shell casings located at the scene. The shell casings are
20 projectiles from the gun. Do you know how far projectiles
21 can travel -- the shell casings?

22 A There's no scientific way to show that because there's
23 many variables, and we don't do any kind of testing related
24 to ejection patterns.

25 Q Okay. So you indicated it can be variable.

Michelle Eichenmiller
Cross-examination by Ms. Jones

1 A Yeah. There could be a lot of variables.

2 Q And generally do they just drop down or do they fly
3 back or --

4 A It depends on the firearm and the circumstances, the
5 way it was held.

6 Q Okay. So just where the shell casing is located
7 doesn't necessarily mean the gun was actually physically
8 within a-foot of that.

9 A Doesn't necessarily mean that.

10 Q Okay. Fair enough. And you also received bullets and
11 bullet fragments from the autopsy of the decedent, is that
12 correct?

13 A Correct.

14 Q Okay. And it appears from your report that you were
15 not able to conclusively identify which weapon that those
16 might have came from.

17 A Well, they are most consistent with coming from the
18 Glock.

19 Q Okay.

20 A At least the items 26, 27 and 28, the actual fired
21 bullets. They were 40 caliber. They came from the same
22 general rifling characteristics that a Glock has. I just
23 couldn't definitively say it was that Glock.

24 Q Okay. And also item No. 30, which were the fragments
25 from the decedent, looks like you couldn't identify those

Michelle Eichenmiller
Cross-examination by Ms. Jones

1 necessarily either. But, again, look like they might have
2 came from the Glock?

3 A No. The item 30 fragments appear to be 22 caliber,
4 which would have been consistent with AR-15 rifle.

5 Q And who the AR-15 rifle?

6 A Officer Morrow.

7 Q And that's the only thing you did on this case, is
8 look and identify the bullets and bullet fragments.

9 A Yes, ma'am.

10 Q Thank you.

11 MS. JONES: I have nothing further.

12 MR. BULSA: Nothing further.

13 THE COURT: You may step down.

14 MR. BULSA: I ask that she be excused.

15 THE COURT: She may be.

16 (Whereupon, the witness was excused.)

17 THE COURT: We'll break for lunch.

18 Remember my caution. No discussions, no research, no
19 investigations.

20 Have a good lunch. Please report to your jury room at
21 2:30, at 2:30 this afternoon.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Court is in recess until 2:15, excuse me,
25 2:30.

1 (Whereupon, a recess was taken.)

2 THE COURT: All right. Are we ready for the jury?

3 MR. BULSA: Yes, sir.

4 THE COURT: Bring them in.

5 MS. JONES: Your Honor, are we going to do a little
6 explanation as to why we are doing that, or do you just
7 want me to call her?

8 THE COURT: No. I'm going to tell them.

9 MS. JONES: Okay. Thank you.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: Good afternoon, ladies and gentlemen.

13 As you know, the state is still in the midst of their
14 presentation, but there is a witness who might be
15 unavailable later that the defense wishes to call. And so
16 we're going to take that witness out of order.

17 This is a defense witness, or at least a witness being
18 called by the defense. And once that's concluded we'll go
19 back into the state's presentation.

20 Ms. Jones.

21 MS. JONES: Thank you, Your Honor. The defense calls
22 Ms. Lillie S. Gallman to the stand.

23

24

25

Lillie S. Gallman
Direct examination by Ms. Jones

1 LILLIE S. GALLMAN, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. JONES

4 Q Ms. Gallman, can you state and spell your last name
5 for the record?

6 A My name is Lillie Smalls Gallman. Last name is
7 spelled G-A-L-L-M-A-N.

8 Q And, Ms. Gallman, where are you employed?

9 A I'm employed with the South Carolina Law Enforcement
10 Division as a forensic D.N.A. analyst.

11 Q And how long have you been in that position?

12 A Since January of 1990.

13 Q 1990?

14 A Yes.

15 Q And what is your educational background?

16 A I have a degree in biology from the University of
17 South Carolina. Once I received my degree I continued
18 working there in the area of molecular genetics.

19 As I stated, I started working with the South Carolina
20 Law Enforcement in January of 1990 as a forensic D.N.A.
21 analyst.

22 Since that time I have attended the South Carolina
23 Criminal Justice Academy. I've also attended the F.B.I.
24 D.N.A. classes. And I've taken advanced courses in
25 genetics.

Lillie S. Gallman
Direct examination by Ms. Jones

1 MR. BULSA: Your Honor, the state will stipulate to
2 her expertise.

3 THE COURT: Is that sufficient, Ms. Jones?

4 MS. JONES: It is, Your Honor. Thank you.

5 THE COURT: Okay.

6 Q Were you the D.N.A. -- did you do D.N.A. analysis in
7 regard to a case, an officer shooting, that happened in
8 January of 2011? And specifically SLED lab L-1100308.

9 A Yes.

10 Q Okay. And did you receive swabs from -- let me ask
11 you this. Who did you receive swabs from?

12 A In this particular case there were swabs that were
13 submitted from the grip of a handgun and also swabs from
14 fired bullets. They were deposited in the D.N.A. drop box,
15 and they were retrieved from there and then finally placed
16 in my custody for analysis.

17 Q And did you do an analysis of the swabs from the
18 handguns?

19 A Yes, I did.

20 Q Okay. And more specifically in your report you have a
21 6.1 swab from a handgun, or handgrip rather. Which gun is
22 that referring to?

23 A Based on the log-in sheet it states that it's one Colt
24 .32 with one magazine from marker Q.

25 Q So that would have been a Colt handgun.

Lillie S. Gallman
Direct examination by Ms. Jones

1 A Yes.

2 Q Okay. And did you compare the swab to any D.N.A.?

3 A In this case a standard was given to me from Toby
4 Moore, and which was a buccal swab, and then a live
5 standard from William Rogers.

6 Q Okay.

7 A These two D.N.A. standards were compared to item 6.1,
8 which is the swab from the handgrip.

9 Q okay. And as it related to -- you indicated Mr. Toby
10 Moore. What was the result of that analysis regarding that
11 Colt gun?

12 A I'm reading from my report. It states that the D.N.A.
13 obtained from item 6.1 is a mixture of at least two
14 individuals. Toby Moore cannot be excluded as a possible
15 contributor to this mixture. That's as it's related to
16 Toby Moore.

17 Q And what about William Rogers?

18 A And I go on as stated in my report. William Rogers is
19 excluded as a possible contributor to this mixture. And
20 finally I'll give this statistical value to that particular
21 mixture, and it's approximately one in one.

22 Q Okay. And what does that exactly mean?

23 A That means that when I look at the particular mixture
24 that I have based on my protocol I decide which locus can
25 be used to generate frequency. And in this particular

Lillie S. Gallman
Direct examination by Ms. Jones

1 instance only -- one minute, please. Only one of the 16
2 loci could be used to generate the frequency.

3 There's -- there is a mixture there, but the quantity
4 of D.N.A. is very low. So based on our protocol only
5 certain -- the criteria -- following the criteria for
6 including a particular locus into a frequency stat, I could
7 only use one of the 16.

8 Q Okay. And so on that basis you excluded William
9 Rogers from -- from that hand swab of the gun?

10 A What is done is D.N.A. profile is developed from
11 whatever standards are submitted to me. And then I compare
12 that standard to whatever D.N.A. is obtained from the
13 evidence.

14 If there's alleles or points that are missing that
15 should belong to one individual that is not there, then you
16 look at each of the 16 areas on it. And if so many are
17 missing, then you will have to deem that person excluded
18 from that mixture.

19 Q Okay. And sounds like then that's what you did for
20 Mr. Rogers. But you could not exclude Mr. Moore. Is that
21 a fair statement?

22 A No, I could not, because there were -- based on the
23 information I have there was enough there to say that I
24 could not exclude him.

25 Q Okay. But there was just not enough there in terms

Lillie S. Gallman
Cross-examination by Mr. Bulsa

1 of --

2 A There was not enough there for Mr. Rogers, to include
3 him. Not stating that he did not touch the item, but the
4 D.N.A. that was left behind was not enough to include him
5 in the mixture.

6 Q Fair enough. Thank you.

7 MS. JONES: I have no further questions, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BULSA

10 Q Ms. Gallman, explain what touch D.N.A. is.

11 A I didn't hear you.

12 Q Explain what touch D.N.A. is.

13 A When we refer to touch D.N.A. it's when an individual,
14 as stated -- state -- is touching that item. It depends on
15 whether -- whether this person is leaving any D.N.A. behind
16 as to how many cells from that person's hand or whatever
17 particular body part that touched this item is left behind.
18 So I can touch an item and leave more D.N.A. than, say, he
19 does.

20 Q Doesn't mean you're going to actually find it.

21 A That's -- that's the problem with touch D.N.A. When a
22 person touches it you don't know how many cells are being
23 left behind. So what's there is what we get. So if
24 there's not enough cells there to include a person, then we
25 would have to exclude them.

Lillie S. Gallman
Cross-examination by Mr. Bulsa

1 Q okay. I believe you said that there was a low
2 quantity of D.N.A., 6.1?

3 A Yes.

4 Q okay. So even though you have to say it's excluded
5 that's not really definitive, is it?

6 A No, it's not. On this particular item at all 16 loci
7 there's -- I can see D.N.A. there. But since the quantity
8 is low based on our protocol I can't even include them in
9 the statistics.

10 Q And did you also analyze any touch D.N.A. off another
11 pistol?

12 A Yes, I did.

13 Q Which pistol was that?

14 A That was logged in at SLED as item No. 5, and that's
15 the 45 caliber.

16 Q .45.

17 A Yes.

18 Q Okay. Did you compare that touch D.N.A. to both of
19 the individuals -- Mr. Rogers and Mr. Moore?

20 A Yes, I did.

21 Q And what are the results of that test?

22 A I'm reading from my report again, and it states that,
23 "The D.N.A. obtained from item 5.1 is a mixture of at least
24 three individuals. Williams Rogers cannot be excluded as a
25 possible contributor to this mixture and no conclusory

Lillie S. Gallman
Cross-examination by Mr. Bulsa

1 statement can be made as to the inclusion or exclusion of
2 Toby Moore to this mixture." And the probability statement
3 is that the probability of randomly selecting an unrelated
4 individual who could have contributed to this mixture is
5 approximately one in 1,500.

6 Q So your tests don't really tell us much of anything,
7 it's just that enough wasn't picked up to even test.

8 A In this particular case when you have mixtures on
9 items it makes it even more difficult when you're using
10 touch D.N.A. to distinguish who's there and who's not.

11 So looking at every loci you have to decide if this
12 person is in there or not. And if there's enough missing,
13 then you exclude them. But on occasion like with Mr. Moore
14 with item No. 5.1, I couldn't include or exclude him based
15 on the information that I had.

16 Q Okay. Thank you, ma'am.

17 MR. BULSA: That's all I have.

18 MS. JONES: No further questions.

19 THE COURT: You may step down.

20 MR. BULSA: No objection to her being released, Your
21 Honor.

22 THE COURT: She may be excused.

23 (Whereupon, the witness was excused.)

24 MR. BULSA: The state would call Tim Stacy.

25

Timothy Stacy
Direct examination by Mr. Bulsa

1 TIMOTHY STACY, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q officer, please introduce yourself to the jury.

5 A My name is Timothy Stacy. I've been with Spartanburg
6 Department of Public Safety for approximately 16 years.

7 Q Okay. And what are your current duties?

8 A I am assigned to the narcotics division.

9 Q How long have you been with the narcotics division?

10 A Six or seven years.

11 Q So you were with them back in January of 2011?

12 A I was, sir.

13 Q Were you part of a group that were assigned to execute
14 a search warrant at [REDACTED] Owens Street?

15 A Yes, sir, I was.

16 Q Okay. And did you go to that residence sometime after
17 7:00 o'clock that morning?

18 A Yes, sir.

19 Q Okay. Where were you located when the tactical unit
20 was trying to gain entry into the residence?

21 A I was in the back yard covering the back door.

22 Q Okay. And why were you back there?

23 A Part of the assignment that day normally -- what is
24 assigned is the officers that are not tactical officers
25 will take care of the perimeter on the outside of the

Timothy Stacy
Direct examination by Mr. Bulsa

1 residence and -- excuse me. Pollen is eating me up. But
2 our assignment was to go to the back yard to ensure that
3 nobody come out the back door.

4 Q Okay. And while you were back there did anyone come
5 out?

6 A No, sir.

7 Q And while you were in the back of the residence did
8 you hear anything going on either to the side or the front
9 of the building?

10 A We could hear or I could hear -- I heard the glass
11 break when they introduced the distraction device from the
12 left-hand side of the house as facing the house. I could
13 hear the glass break on that side of the house.

14 I heard the distraction device and I heard -- I heard
15 the breach of the front door, and then I heard the officers
16 yelling police, search warrant.

17 Seemed like I also heard police, get on the ground.
18 That's being yelled just over and over and over. And all
19 of this just, you know, happened sort of kind of
20 simultaneously or within a few seconds.

21 Q Did you hear any firearms being discharged?

22 A Within just a -- just a few -- a couple of seconds, a
23 few seconds, of a breach of the door the distraction device
24 going off, you know, we started hearing shots being fired,
25 what we thought were going off inside the house.

Timothy Stacy
Direct examination by Mr. Bulsa

1 Q And what did you do as you heard that?

2 A Well, other officers recognized the shots. One of the
3 officers started saying we've got shots fired, we've got
4 shots fired.

5 And I think myself as well as the rest of us
6 officers -- we wanted to go back around front to assist
7 with anything that was actively going on at that point.
8 But, you know, we had to just stop and gather ourselves and
9 understand we still had a responsibility at that back door.

10 And I made that verbally known that, you know, we had
11 to -- we had to hold tight. We couldn't go back to the
12 front until we were called back to the front.

13 So, you know, I think they was -- I think there was
14 four of us at the back, two on each side. So, you know, we
15 sort of took cover as best we could at the back of the
16 house and held that point until we did get the okay to come
17 back around to the front of the house.

18 Q And while you were back there did anyone try to leave
19 the residence from any other entry or exit point?

20 A No, sir.

21 Q Okay. All right. And at some point you were allowed
22 to go back in front of the house?

23 A Yes. I don't remember exactly what prompted us to
24 come back to the front of the house, but, yeah, by the time
25 I come back to the front of the house the subject that had

Timothy Stacy
Direct examination by Mr. Bulsa

1 been shot, he had already -- he was already on the front
2 porch.

3 And I don't think Mr. Moore had brought -- been
4 brought out of the house at that point. I know Officer
5 Harris was out of the house in the yard being attended to.
6 And, like I say, the other subject that had been shot was
7 on the front porch.

8 Q Okay. Did you have any role in the investigation of
9 the shooting?

10 A No, sir.

11 Q Did you participate in the subsequent search warrant
12 to look for any narcotics?

13 A Yes, sir. At just before 3:00 o'clock that afternoon
14 if I'm not mistaken SLED -- SLED released the house back to
15 us to actually take care of the narcotics end of the search
16 warrant or the narcotics search warrant. There was two
17 separate search warrants that day.

18 Q And to your recollection where was most of the
19 majority of the drugs found in that house?

20 A The second room back would have been like a living
21 room, slash, bedroom. It was set up mostly as a living
22 room, a living area, with a couch and maybe an end table or
23 something along those lines. But it was the second room
24 back from the front entrance of the residence.

25 Q And to your knowledge who was residing at that

Timothy Stacy
Cross-examination by Ms. Jones

1 residence?

2 A Mr. Moore was the name that we were given prior to
3 going to the residence.

4 Q Thank you. That's all I have. Answer any questions
5 Ms. Jones may have.

6 CROSS-EXAMINATION

7 BY MS. JONES

8 Q You indicated that you were at the back door covering
9 it, correct?

10 A Yes, ma'am.

11 Q Did anybody come out that back door?

12 A No, ma'am.

13 Q Okay. And you -- did you hear the distraction device,
14 or you went to the door first, do you recall?

15 A There is no way possible for me to be able to tell you
16 which one happened first.

17 I -- just my memory, I don't recall. I just know that
18 I heard -- I could hear the distraction device. I heard
19 the door breached. I don't know that that's the way it
20 happened because it all happened within just a -- just a
21 few seconds.

22 Q Okay. And then you heard some shots fired. So is it
23 fair to say it was kind of moving like this, pretty fast?

24 (Whereupon, Ms. Jones snapped fingers.)

25 A Oh, yeah, absolutely.

Timothy Stacy
Cross-examination by Ms. Jones

1 Q And then you were hearing officers say police, get
2 down.

3 A I heard police search, warrant. And seems like I also
4 heard police, get on the ground, or police, let me see your
5 hands.

6 They was several different officers yelling, you know,
7 one or all of those different phrases.

8 Q okay. So it sounds like there was a lot of yelling
9 going on from various people.

10 A There was a lot of yelling going off, but it was -- it
11 was -- it was extremely obvious what was being said.

12 Q okay. And did you hear any screaming from anybody
13 inside the residence, do you recall, or yelling?

14 A Not that I recall, no.

15 Q okay. And you also assisted in searching the house
16 for any type of illegal drugs or illegal substances, is
17 that correct?

18 A Yes, ma'am.

19 Q okay. Who else was involved with gathering all the
20 drugs in the house?

21 A It would have been case agent Investigator Kirby,
22 Investigator Bagwell, Inspector Harwell, Investigator
23 Edwards. I think that was probably all that was on the
24 assignment that morning.

25 Q okay.

Jeff Kirby
Direct examination by Mr. Bulsa

1 MS. JONES: No further questions.

2 MR. BULSA: Nothing further, Your Honor.

3 THE COURT: You may step down.

4 MR. BULSA: The state calls Jeff Kirby.

5 JEFF KIRBY, having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BULSA

8 Q Please introduce yourself to the jury.

9 A My name is Jeff Kirby. I've been with the Spartanburg
10 Public Safety Department for approximately ten years now.
11 The past eight years I have served on the narcotics unit,
12 and I was present that morning in January of the search
13 warrant at [REDACTED] Owens Street.

14 Q Was this your narcotics case?

15 A Yes, sir, it was.

16 Q You're the one that actually obtained the search
17 warrant?

18 A Yes, sir.

19 Q And who to your knowledge was residing at that
20 residence?

21 A Mr. Toby Moore.

22 Q Okay. And where exactly would you have been located
23 during the assault in the residence?

24 A I was -- as the tactical approached the residence I
25 was behind them covering the front yard of the residence.

Jeff Kirby
Direct examination by Mr. Bulsa

1 There's a vehicle parked in the yard. I was to the
2 right side of that vehicle at about the driver's-side door.

3 Q Did you have any role to play in the entry?

4 A No, sir.

5 Q So you had a good observation of what was going on at
6 the front door though, didn't you?

7 A Yes, sir, I did.

8 Q Describe what you saw happen.

9 A Well, as we approached I seen the two tactical guys go
10 down the left side of the residence.

11 I seen the other tactical guys approach the front
12 door. As they approached the front door if memory serves
13 me I -- I remember hearing the glass break on the left
14 side.

15 At that time the bang went off and the door was
16 breached almost simultaneously. I hear police, search
17 warrant, coming from the left side of the house and from
18 the front.

19 And immediately after that I hear -- it sounded like
20 two gunshots because I -- I hesitated before I moved
21 further. And then after the first two initial gunshots I
22 heard rapid gunfire. And that's when it dawned on me that,
23 yeah, we've got shots fired.

24 So I backed back up and took cover behind that
25 vehicle. And I heard Jason holler, or I heard somebody

Jeff Kirby
Direct examination by Mr. Bulsa

1 from inside holler I been hit, I been hit.

2 And then it was pure chaos for a few minutes after
3 that. And then I seen them dragging Jason out, and then
4 the Mr. Rogers subject. I seen them drag him out onto the
5 porch. He was still resisting their efforts to try and
6 detain him. He was wanting to put up a fight with a couple
7 of the tactical guys, but they were able to get him
8 handcuffed.

9 Q Could you tell he had been shot?

10 A From -- from where I was at, yes, sir, you could tell
11 that he had been shot. You could see the blood. Where he
12 had been shot, I couldn't tell. I just seen the blood.

13 Q How long did you have to stay out of the residence
14 before you could go in?

15 A Oh, it was -- it was, well, late into the afternoon.
16 I never went into the residence until after SLED turned the
17 house back over to us at which time Lieutenant Harwell who
18 was the return officer -- they advised him that we were
19 clear to conduct our narcotics search.

20 Q Okay. Now, you participated in that search.

21 A Yes, sir, I did.

22 Q And were you aware of what all was found?

23 A Yeah. To -- to the best of my recollection without
24 having to go through notes, I mean, most of all of the
25 illegal narcotics contraband was located in that center

Jeff Kirby
Direct examination by Mr. Bulsa

1 room. Most of it was actually in plain view. I mean, it
2 didn't take a whole lot of searching to find it.

3 Q We saw several pictures yesterday of white powder
4 substances in these little boxes.

5 A Yes, sir.

6 Q Okay. And, in fact, show you what's been marked
7 State's Exhibit 29. Is this a series of bags similar to
8 photographs showing all the cocaine and crack cocaine that
9 was found?

10 A Yes, sir.

11 Q Okay. And not only was that found, wasn't there a
12 large quantity of material thought to be marijuana?

13 A Yes, sir, there was. It was in a small dorm type
14 refrigerator that was located in the center room. You
15 know, just open the refrigerator door, and it was in a
16 gallon-size zip-lock bag.

17 Q And there were several other bags found as well,
18 right?

19 A Yes, sir, there was. That's correct.

20 Q And how about any pill type substance?

21 A Yeah. There was numerous pills located throughout the
22 residence. I mean, I couldn't even begin to tell you how
23 many.

24 Q Okay.

25 A But it was numerous.

Jeff Kirby
Cross-examination by Ms. Jones

1 Q Okay. All right. Thank you. Answer any questions
2 Ms. Jones may have.

3 CROSS-EXAMINATION

4 BY MS. JONES

5 Q Mr. Kirby, you were in charge of the search warrant
6 team, correct?

7 A No, ma'am, not -- not in charge of the tactical team,
8 no, ma'am.

9 Q Wasn't there the T.N.T. team that was going to breach
10 the door and get in and then the other group was going to
11 go in and actually search the house?

12 A That's correct, yes.

13 Q And you were in charge of the folks that were going to
14 go in and search the house, correct?

15 A That's correct, yes.

16 Q And how many folks did you have with you?

17 A I believe there was five from the narcotics division,
18 and I think there may have been two from our violent crimes
19 task force.

20 Q So if my math is good about seven people.

21 A Yeah, roughly seven, yes, ma'am.

22 Q And with you that would have been eight.

23 A Yes, ma'am.

24 Q How long did it take you to search the residence?

25 A If I -- if I had to guess -- I mean, I don't have a

Jeff Kirby
Cross-examination by Ms. Jones

1 copy of my actual search warrant here with me, but roughly
2 an hour and a half.

3 Q And you indicated you found a lot of the drugs in the
4 center room.

5 A That's correct.

6 Q And apparently that looked like it was more of a
7 living room area?

8 A Well, I guess you could say living room, slash,
9 bedroom.

10 Q Fair to say that you agree with some of the testimony
11 we've heard today that it was pretty cluttered?

12 A Oh, absolutely.

13 Q Did you notice any mail or letters or anything along
14 those lines in the house?

15 A Not -- not right off, I don't. I mean, not without
16 going through every item that was recovered, no, I don't.

17 Q Okay. So you don't recall whether or not you took any
18 of that type of evidence?

19 A Well, I mean, there was four or five other people in
20 there searching. If they would have found those items
21 Lieutenant Harwell would have been the one to recover it.
22 They would have called him. So me, not to my knowledge,
23 no, ma'am.

24 Q You're -- you're getting more of the drugs, right?

25 A Well, mainly trying to get the stuff that's in plain

Jeff Kirby
Redirect examination by Mr. Bulsa

1 view initially first, yes.

2 Q Okay. And then you go through the house a little bit
3 more and --

4 A Yeah, a little more detail.

5 Q Okay. Fair enough.

6 MS. JONES: I have no further questions, Your Honor.

7 MR. BULSA: Just briefly.

8 REDIRECT EXAMINATION

9 BY MR. BULSA

10 Q Mr. Kirby, did you expect to find anybody else in that
11 residence that day?

12 A I'm sorry?

13 Q Did you expect to find anybody else in the residence?

14 A No, sir, I didn't.

15 Q You only expected to find Mr. Moore.

16 A Mr. Moore, that's correct.

17 Q Okay. And were you familiar at all with Mr. Rogers?

18 A No, sir, I wasn't.

19 Q How about the lady that was there?

20 A No, sir.

21 Q Thank you.

22 MR. BULSA: That's all I have.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you, Your Honor.

25 MR. BULSA: The state calls Brandy Edwards.

Brandy Edwards
Direct examination by Mr. Bulsa

1 (Photographs marked State's Exhibit Nos. 63, 64 and 65
2 for Identification.)

3 BRANDY EDWARDS, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BULSA

6 Q okay. officer, please introduce yourself to the jury.

7 A My name is Brandy Edwards.

8 Q And you're employed with the Spartanburg Public Safety
9 Department?

10 A Yes, sir.

11 Q For how long?

12 A It'll be seven years in April.

13 Q Who are you assigned to?

14 A Currently I'm assigned to the narcotics unit.

15 Q How long? How long have you been with them?

16 A It'll be four years in August.

17 Q okay. Were you part of a team that went to [REDACTED]
18 Owens Street?

19 A Yes, sir.

20 Q Were you there in the morning hours?

21 A Yes, sir, I was.

22 Q Where were you located during the --

23 A I was in the front of the house on the -- as we
24 approached the house, I would have been on the passenger
25 side of the vehicle that Investigator Kirby testified to.

Brandy Edwards
Direct examination by Mr. Bulsa

1 Q Okay. So you're out in the front yard?

2 A Yes, sir.

3 Q You had a view of everything that was going on?

4 A Yes, sir, I did.

5 Q Pretty much see what he saw?

6 A Yes, sir.

7 Q Anything else stand out in your mind?

8 A No, sir.

9 Q Was it clear to where you were standing that the
10 officers were announcing their presence?

11 A Yes, sir. It was very clear.

12 Q Did you have any role at all in the actual attempted
13 entry into the house?

14 A No, sir, I did not.

15 Q Were you assigned a yell or announce your presence at
16 all?

17 A No, sir. We are typically not assigned specifically
18 to announce our present -- presence when we're taking care
19 of the perimeter of the house. It's good procedure to do
20 so if someone attempts to flee and you're going after them,
21 but normally we -- we don't do that.

22 Q The people announcing their presence are the ones
23 going into the house?

24 A Most of the time, yes, sir.

25 Q Or to the side of the house.

Brandy Edwards
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 Q Now, did you participate in the actual search of the
3 residence for narcotics?

4 A I did, yes, sir.

5 Q And did you take some of the pictures that we saw
6 yesterday?

7 A I did, yes, sir.

8 Q So a lot of the items we saw, looks like almost all of
9 them, were found in that center room, is that right?

10 A A majority of them were, yes, sir.

11 Q And I want to show you what's been marked State's
12 Exhibits 63, 64, 65 for Identification. Do you recognize
13 those photographs?

14 A Yes, sir, I do.

15 Q Did you take those?

16 A I did, yes, sir.

17 Q Those represent items that were in the house?

18 A Yes, sir. They are.

19 MR. BULSA: The state would offer State's 63 through
20 65 as evidence, Your Honor.

21 MS. JONES: No objection.

22 THE COURT: They're admitted.

23 (Photographs marked State's Exhibits Nos. 63 through
24 65.)

25 Q And I don't know that we need to show them at this

Brandy Edwards
Cross-examination by Ms. Jones

1 point, but what do they depict? Tell the jury what they
2 depict.

3 A This first picture shows a shotgun up against the
4 wall. It's actually right outside the bathroom.

5 The second picture shows Lieutenant Harwell holding
6 another shotgun that was located in the closet in that same
7 center room.

8 And the third picture is going to show the small
9 dorm-type refrigerator where the marijuana was located with
10 a large knife laying on top of it, also in that same center
11 room.

12 Q Okay. So those were all in proximity of the drugs
13 found.

14 A Yes, sir.

15 Q Okay. And where Mr. Moore was found.

16 A Yes, sir.

17 Q Okay. All right. Thank you. That's all I have.

18 Answer any questions Ms. Jones may have.

19 CROSS-EXAMINATION

20 BY MS. JONES

21 Q Ms. Edwards, I think I heard you indicate you weren't
22 part of the tactical team that breached the house, correct?

23 A Correct.

24 Q Where were you exactly?

25 A In the front yard. If you're looking at the house I

Mylnor Beach
Direct examination by Mr. Bulsa

1 would have been to the left of the red car that was parked
2 in the front.

3 Q Okay.

4 MS. JONES: I have no further questions, Your Honor.

5 MR. BULSA: Nothing.

6 THE COURT: You may step down.

7 MR. BULSA: The state calls Mylnor Beach.

8 (Photograph marked State's Exhibit No. 66 for
9 Identification; marijuana marked State's Exhibit No. 67 for
10 Identification.)

11 MYLNOR BEACH, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BULSA

14 Q Will you please introduce yourself?

15 A Sir?

16 Q Introduce yourself to the jury, please.

17 A My name is Mylnor Beach. I'm employed by Spartanburg
18 Public Safety as property and evidence technician, City of
19 Spartanburg. I've been employed with them -- will be six
20 years next month.

21 Q Now, Mr. Beach, you're not actually a police officer,
22 are you?

23 A No, sir.

24 Q You're a civilian working with the police department.

25 A I'm a civilian, a property and evidence technician,

Mylnor Beach
Direct examination by Mr. Bulsa

1 certified marijuana analyst and a Glock armorer.

2 Q Okay. So your job is to help secure the integrity of
3 any evidence.

4 A Any -- any property and evidence that's turned in by
5 any of the officers from any of the divisions, it's our job
6 to receive it, check it, secure it, log it in, assign a
7 location to it and maintain the integrity of that evidence.

8 Q Okay. And is part of your job to transport drug
9 evidence from the city to the county for testing?

10 A Yes, sir. If -- if we have a BEST envelope that's
11 been turned in, it's delivered to the county lab for their
12 testing purposes either by myself or my partner, David
13 Reeves. We're the only two people that touch the drugs
14 after it's put in the drop box area or either handed to us
15 in evidence.

16 Q Now, you don't technically touch the drugs. You just
17 touch the bag, right?

18 A BEST envelopes we only touch the bag because it's
19 already sealed. If we should by chance get a BEST envelope
20 in where the envelope wasn't sealed it, we would not be
21 receive it. It would be rejected and the officer would
22 have to come back and get it.

23 Q All right. Now, you also mentioned that you're a
24 certified marijuana analyst.

25 A Yes, sir.

Mylnor Beach
Direct examination by Mr. Bulsa

1 Q Give us the benefit of your training in that area.

2 A Okay. I have been certified by the South Carolina Law
3 Enforcement Division. I was originally certified in May of
4 2006. I've been recertified one time since that point. So
5 almost, here again, in May will be six years.

6 Q And have you testified as an expert --

7 A Yes, I have.

8 Q -- as a marijuana analyst?

9 A Yes, sir.

10 Q Okay.

11 MR. BULSA: Your Honor, the state would offer
12 Mr. Beach as an expert in the analysis of marijuana.

13 MS. JONES: We have no objections, Your Honor.

14 THE COURT: He is so qualified.

15 Q All right. Now, let me show you what's been marked
16 State's Exhibit 67 for Identification. Look inside that
17 bag and see if you can identify what's in there. Why don't
18 you pull it out and set it on the bar?

19 A Okay. There are five packages of marijuana that has
20 been tested by me and put -- put in these containers for
21 storage. I was trying to count to make sure.

22 Q That's fine.

23 A I did five individual tests.

24 okay. Also in the bag -- once I got through doing the
25 analysis on all of the packages -- I have an analyst report

Mylnor Beach
Direct examination by Mr. Bulsa

1 that I fill out for each -- each bag. Each copy was put in
2 here and marked, the marijuana analysis, to keep it
3 together.

4 Q All right. And are these items that you received in
5 relation to a search at [REDACTED] Owens Street on
6 January 6th of 2011?

7 A Yes, sir.

8 THE CLERK: Your Honor, the state would offer this
9 into evidence.

10 MS. JONES: No objection Your Honor.

11 MR. BULSA: State's 65, 67.

12 THE COURT: It's admitted.

13 (Photograph previously marked State's Exhibit No. 65;
14 marijuana marked State's Exhibit No. 67.)

15 Q See the items here, but I have a photograph,
16 State's 66 for Identification. Is that a photograph of all
17 of the bags laid out?

18 A Yes, sir, it appears to be, yes, sir.

19 MR. BULSA: Your Honor, the state would offer 66 into
20 evidence as well.

21 MS. JONES: No objection.

22 THE COURT: It's admitted.

23 (Photograph marked State's Exhibit No. 66.)

24 Q So tell us the results of your tests on these bags,
25 please.

Mylnor Beach
Direct examination by Mr. Bulsa

1 A Okay. Start with this one first. This particular bag
2 I have marked as one bag containing green leafy substance
3 found in the refrigerator. It did test positive for
4 marijuana.

5 What we test for is tetrahydrocannabinol. It's a
6 microscopic test and a chemical test, and it has to pass
7 all aspects of those tests to be considered positive for
8 marijuana, and it was positive.

9 Q What was the weight?

10 A This weight was 447.57 grams. That's the -- that was
11 the net weight of the green leafy substance, not the
12 packaging.

13 Q Okay.

14 A There were two baggies of green leafy substance found
15 in the drawer of the coffee table in the center room, and
16 I'm going off the officer's reports because I wasn't on the
17 scene. Both of these items tested positive for marijuana.
18 One bag weighed 10.58 grams and one bag weighed
19 111.15 grams for a total of 121.73 grams on this package.

20 This particular baggie was marked as found on the
21 third shelf down. It was one baggie that weighed
22 7.74 grams. It tested positive for marijuana.

23 One baggie green of leafy substance found in the end
24 table in the living room. It tested positive for
25 marijuana. The weight on it was 8.62 grams.

Mylnor Beach
Direct examination by Mr. Bulsa

1 And then the last bag I have that was tested, let's
2 see, was found in box in the coffee table. It was positive
3 for marijuana, and it weighed 0.33 grams.

4 So all -- all five bags that I received and tested
5 were positive. The total weight of all of the bags was
6 585.99 grams.

7 Q How many grams are in an ounce?

8 A I can't answer that without my chart.

9 Q Okay. All right. And I guess you secured it back in
10 your property room?

11 A Yes, sir. We have a -- a separate drug room that's
12 located within the property and evidence room. It's the
13 most highly secured room in the evidence room. And
14 that's -- that's by COLEA standards that we have to meet.
15 And you have to be an officer or employee of public safety
16 to gain access to the general area where we are.

17 But there's a series of -- there are five different
18 locked doors that take five -- five different keys to get
19 into the drug room.

20 The only people that have a key to our area besides
21 myself is my partner who's been with the department ten and
22 a half years and then Major Lamb, our supervisor.

23 Q Okay. Thank you. Answer any questions Ms. Jones may
24 have for you.

25 MS. JONES: Your Honor, I have no questions.

1 THE COURT: Step down.

2 MR. BULSA: Nothing further.

3 Your Honor, we ask Mr. Beach be excused.

4 THE COURT: You may be.

5 (Whereupon, the witness was excused.)

6 MR. BULSA: Your Honor, the state would rest at this
7 time.

8 THE COURT: Ladies and gentlemen, that's all of the
9 evidence to be offered by the state.

10 Before we go further I've got some legal matters to
11 address. So I'll ask you please go to your jury room. But
12 do not yet discuss the case.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: Any motions or other matters, Ms. Jones?

16 MS. JONES: Yes, Your Honor.

17 Your Honor, we would make a motion for a directed
18 verdict regarding the drugs, Your Honor, and the
19 indictments that relate to that.

20 As you heard today as well as yesterday, there was
21 testimony that three people were found in this home.
22 However, there was no conclusive evidence offered or
23 brought in as to actually who was living in this home.

24 There was no rental agreement produced. There was
25 no -- the lady who rented the house, she wasn't brought in

1 on whether or not it was actually owned perhaps by Mr.
2 Moore or somebody else. There simply was no ownership
3 provided in terms of the house.

4 There was no mail that was offered into evidence;
5 there was no clothing or anything, personal effects, that
6 were offered -- pictures, anything to suggest who was
7 actually living in the home.

8 The only evidence that was provided was that the
9 majority of the drugs were found, were located in the
10 center of the house where nobody was actually located.

11 There was ample testimony that Mr. Moore was found in
12 the bathroom and there was ample testimony that Mr. Rogers
13 as well as Ms. Gentry were located in the front area.

14 There was testimony provided that Mr. Gentry had some
15 pills on his pocket -- in his pocket, as well as some
16 money. But there was nothing found on Mr. Moore.

17 So he can't be in actual possession of the drugs, and
18 we allege that if he wasn't in actual possession the state
19 would have to prove constructive possession, which is
20 knowledge of the drugs.

21 They must show that he had dominion and control or the
22 right to exercise dominion and control. And there just,
23 again, is nothing to suggest he knew or should have known
24 about the drugs, and, again, who owned this house in terms
25 of having these drugs, Your Honor.

1 we would also make a directed verdict in regard to the
2 half-mile charge as well, Your Honor. There was testimony
3 that this -- there was testimony in regard to some parks
4 and perhaps a school, but there was no testimony as to
5 physical feet or whether or not it classified as a half a
6 mile.

7 I think there was an officer who testified that it was
8 within walking distance, but walking distance can be a
9 mile -- or lots of people who exercise and bike and do
10 different things.

11 They need to provide actual evidence, and there
12 certainly wasn't any. And there's ways that they could
13 have done that.

14 They could have gotten in their car. And everybody
15 has those odometers. There's ways to measure that. That
16 simply wasn't done in this case. We would ask for a
17 directed verdict on that, Your Honor.

18 And we would also renew and -- the previous objections
19 that we made initially in regard to the motion for a
20 continuance. We just simply renew that and preserve that
21 issue for appeal, Your Honor.

22 THE COURT: I think Lieutenant Harwell testified it
23 was four-tenths of a mile from Duncan Park. You don't
24 recall that?

25 MS. JONES: I don't recall that.

1 THE COURT: Okay.

2 MR. BULSA: I think he did, and then he said the other
3 park was closer than Duncan Park.

4 THE COURT: All right. What about the other issues,
5 Mr. Bulsa?

6 MR. BULSA: Your Honor, the information the police
7 were operating on was this was Mr. Moore's residence. This
8 is where he was staying. Several officers testified to
9 that.

10 He was clearly found in the bathroom, which is right
11 off the center of the room. There's no way he would have
12 gotten into that bathroom without being in that center room
13 prior to the entry into the house.

14 It's clear that this was in the residence. So the
15 jury can find that from the facts.

16 THE COURT: All right. Motion for a directed verdict
17 is denied.

18 Anything else?

19 MS. JONES: In regard to motions, no, sir.

20 THE COURT: Or anything else.

21 MS. JONES: No, sir, not at this time.

22 I have talked with my client in regard to whether or
23 not he wants to testify, and it's my understanding that he
24 does not.

25 I will confer with him, but we will have some

1 requested jury instructions. But other than that, I don't
2 have anything else, sir.

3 THE COURT: How much time do you need to talk with
4 him?

5 MS. JONES: Probably about five minutes, so.

6 THE COURT: We will take ten minutes.

7 MS. JONES: To make sure he hasn't changed his mind,
8 sir.

9 THE COURT: We will take ten minutes.

10 MS. JONES: Thank you, sir.

11 (Whereupon, a recess was taken.)

12 THE COURT: Ms. Jones, have you talked to your client
13 about his right to testify and not?

14 MS. JONES: I did, Your Honor.

15 THE COURT: Does he indicate what he wishes to do?

16 MS. JONES: He wishes not to testify, sir.

17 THE COURT: All right. Mr. Moore, you've heard your
18 lawyer tell me that you do not wish to testify. Is that
19 true?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you've had plenty of time to discuss
22 with her your right to testify, as well as not testify?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And have you and she discussed the
25 advantages and disadvantages of testifying, as well as not

1 testifying?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And you understand what those advantages
4 and disadvantages are?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you've had plenty of time to reflect
7 upon your decision?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What is it?

10 THE DEFENDANT: I wish not to.

11 THE COURT: And is that a decision that you reached of
12 your own free will and accord?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Anybody pressured you into that decision?

15 THE DEFENDANT: No, sir.

16 THE COURT: You made that decision on your own?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You're satisfied with it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that you can't change
21 your mind later? Because once we conclude all of the
22 testimony and evidence will have been received. And so you
23 can't wait until the jury comes back with a decision and
24 then decide that you prefer to do something else. Do you
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now is the only chance you have to testify
3 or call any other witnesses if you wish to or present any
4 other evidence. But you have no other witnesses?

5 THE DEFENDANT: No, sir.

6 THE COURT: You do not wish to testify or present any
7 other evidence?

8 THE DEFENDANT: No, sir.

9 THE COURT: Okay. You can have a seat.

10 All right. I think we'll have to argue and charge in
11 the morning. How long are y'all going to take to argue?

12 MR. BULSA: Probably longer than my normal argument.

13 THE COURT: What's your normal?

14 MR. BULSA: Fifteen minutes.

15 THE COURT: Oh.

16 MR. BULSA: Ten or 15 minutes. It's probably three
17 hours.

18 THE COURT: Yours?

19 MR. BULSA: Yes, sir.

20 THE COURT: Three hours. Okay. Why don't you go
21 ahead and start? As soon as we leave you can get started.

22 MS. JONES, what about you?

23 MS. JONES: I can't imagine myself arguing more than
24 30 minutes.

25 THE COURT: Okay. So probably an hour between them?

1 MR. BULSA: Yes, sir.

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

3 (The following takes place in the presence of the
4 jury.)

5 THE COURT: All right. Ladies and gentlemen, as you
6 know, all of the state's evidence has been received. So
7 we'll now proceed with any to be offered by the defense.

8 Ms. Jones.

9 MS. JONES: Your Honor, the defense has no other
10 witnesses, so we rest at this time.

11 THE COURT: All right. That's all the testimony and
12 other evidence to be offered in the trial of the case.

13 What remains to be done are the lawyers' final
14 summations, after which I'll instruct you on the law that's
15 applicable. And then you'll begin with your deliberations.

16 I anticipate that all of that's going to take much
17 longer than what we have left of the afternoon. So we're
18 going to recess for the afternoon. We'll resume in the
19 morning at 9:30 at which time we'll hear from the lawyers,
20 I'll instruct you on the law and you can begin with your
21 deliberations.

22 So as you leave and during the overnight recess keep
23 in my mind my caution given earlier. No discussions about
24 the case; no research; no investigation.

25 Do have a good evening. Please report your jury room

1 at 9:30 in the morning, 9:30 in the morning.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any jury-instruction requests from the
5 state?

6 MR. BULSA: Yes, sir, Your Honor.

7 We would ask that the court charge the statutory
8 inferences as to weight for both the marijuana and the
9 cocaine and the crack cocaine.

10 THE COURT: All right. What's that statute number?

11 MR. BULSA: I believe it's 44-53-370 and 375.

12 THE COURT: That's not the statutory inferences.

13 MR. BULSA: I believe the inferences are within those
14 statutes.

15 THE COURT: Okay.

16 MR. BULSA: I'll doublecheck, but I believe that's it.

17 THE COURT: All right. Anything else?

18 MR. BULSA: Just the definition of actual and
19 constructive possession.

20 THE COURT: Okay.

21 MR. BULSA: And I believe the attempted murder and
22 firearm count are pretty standard -- I guess the statutes
23 that apply to those.

24 THE COURT: They're not too standard, because that's
25 that a new statute.

1 MR. BULSA: I know. Yes, sir, that's why. This is my
2 first trial on attempted murder.

3 THE COURT: All right. Ms. Jones.

4 MS. JONES: Thank you, Your Honor.

5 I should initially out of an abundance of caution
6 since we did take a witness out of sequence just simply
7 renew my motion for a directed verdict based on the
8 arguments that you heard, reserve all of those issues for
9 appeal.

10 THE COURT: Okay.

11 MS. JONES: And we would request -- as to the drug
12 charge we would request or just simply the drug
13 indictments, mere presence, Your Honor, since this is going
14 to be more of a constructive type of case and not actual.

15 THE COURT: Okay.

16 MS. JONES: And obviously that wouldn't apply to the
17 attempted murder warrants. And I'm not sure how that would
18 necessarily play out in the instructions.

19 We would also request in regard to the attempted
20 murder on Mr. Harris -- we would also request the lesser
21 included of assault and battery of a high and aggravated
22 nature, the new law.

23 And as to -- I don't believe the way that statute is
24 written that it would apply to the other three that weren't
25 hit. I think what the proper lesser included on that,

1 would be the assault and battery of first degree. So we
2 would request those on the other three, sir.

3 THE COURT: Okay.

4 MS. JONES: I don't have any others, sir.

5 THE COURT: All right. Anything further?

6 MR. BULSA: No, sir.

7 THE COURT: Court is in recess until 9:30 in the
8 morning.

9 END OF PROCEEDINGS MARCH 22, 2012

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Closing arguments

1 (Proceedings March 23, 2012)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Let me see y'all just a minute, please.

5 (Bench conference held off the record.)

6 THE COURT: All right. Any matters we need to address
7 before the jury is brought in?

8 MR. BULSA: Not from the state, Your Honor.

9 MS. JONES: No, sir.

10 THE COURT: Okay. Bring them in, please.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: Good morning, ladies and gentlemen.

14 As you know, when we recessed yesterday all the
15 evidence had been received. And so what now remains to be
16 done are the lawyers' final summations, after which I'll
17 give you the legal instruction. And then you can begin
18 with your deliberations.

19 So please give the lawyers your attention now as they
20 give you their final summations.

21 Ms. Jones.

22 MS. JONES: Thank you, Your Honor.

23 Good morning, ladies and gentlemen.

24 You've sat through a great bit of testimony. Today is
25 going on your third day, and we hope to not be too long

Closing arguments

1 actually.

2 As I indicated initially when I spoke with you at
3 openings, this is a case that just didn't go as planned.
4 You heard ample testimony that this was a search-warrant
5 execution that went wrong. It didn't go right from the
6 initial point of entry when they tried.

7 You recall there was a tactical team, and the tactical
8 team is supposed to do the distraction device. And at the
9 same time that battering ram is supposed to go off. And
10 you have 37 seconds to get and secure the place. That's
11 how it's supposed to work.

12 It's supposed to freeze people. Supposed to catch
13 them by surprise because we hear all of these loud noises
14 going on. Stress takes over and you can't move. That's
15 how this was supposed to go.

16 Ladies and gentlemen, we heard ample testimony that
17 that's not how it went. They took the distraction device
18 and they tried to push it through the window. They broke
19 the window. Then there was a big curtain, and they
20 couldn't move that curtain.

21 And there was conflicting testimony as to whether or
22 not the light that is supposed to flash actually went off.
23 And our understanding is it was in the center room. And
24 there was no testimony that at the time that distraction
25 device went off that there was anybody in the center room.

Closing arguments

1 We had testimony that there was somebody in the
2 bathroom and we had testimony there were two more people in
3 the front room.

4 There was also conflicting testimony as to what went
5 off first, because they were having trouble with that
6 distraction device. Did it go first or was the ramming
7 going on first? It was confusing. Because the battering
8 ram folks also had a problem. And you heard that.

9 The screen door. It was latched, and it was latched
10 in such a way that they couldn't open it.

11 So then we heard I believe it was Officer Hensley that
12 was the person that tried to pry the screen door open. He
13 testified he got it open, but another officer testified he
14 actually dropped the prying device. And so then that
15 officer just stepped up and did the ramming and opened both
16 doors. But it took about three to five seconds to open
17 that door. It didn't go according to plan. Supposed to be
18 simultaneous. Didn't happen that way.

19 Now, you also heard testimony that they're all
20 shouting police, search warrant, police, search warrant.
21 But, ladies and gentlemen, when you're under stress and
22 that door ain't opening are you concentrating on getting
23 the door open or are you concentrating on talking?

24 Can our minds work like that when we're under stress
25 doing both things at once, or was there a little bit of a

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1 delay?

2 Ladies and gentlemen, there was also a lot of
3 confusion in terms of who was supposed to go in. Mr.
4 Harris was not the first person who was supposed to go in.
5 It was Morrow. But he slipped and cluttered and jumped.
6 Not going according to plan.

7 And he finally gets in, and he says he sees two people
8 on the couch. They evidently see them because they raise
9 their hands. So he moves on. And they hear pop, pop, pop.
10 He goes down. And then return fire. That's according to
11 Officer Harris.

12 Officer Hensley had a different view. Officer Hensley
13 indicated he went in. He heard a pop, pop. He saw return
14 gunfire from his own people, and then Harris went down.
15 Confusion.

16 We heard other officers say they saw Harris go in,
17 they saw him go down. They didn't know where that gunfire
18 was coming from, so they just started shooting. Then they
19 claimed somebody on the couch had a gun and that's why they
20 took him out.

21 It's interesting to note the person who was taken from
22 the scene, the person who didn't -- wasn't there to try and
23 compare notes to figure out what happened -- was the man
24 who never saw a gun, and that was Officer Harris, the one
25 who was injured, the one who had to go to the hospital to

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1 get care. He's the one who said those people on the couch
2 were not a threat, so I was moving, going back, and it was
3 really dark. My job is to clear the house. Wasn't going
4 to plan, but that's my job.

5 The other officers there as Mr. Williams is bleeding
6 out, they're the ones now who claim they saw that gun.

7 Let's think about this for a moment. Officer Cooper's
8 testimony regarding what Mr. Williams was doing, does that
9 make any sense, ladies and gentlemen?

10 This is all going like this.

11 (Whereupon, counsel popped fingers.)

12 MS. JONES: You heard testimony three to five seconds
13 at most. Three to five seconds by the time the first shot
14 is fired until it's over.

15 Does it really make sense that somebody on the couch
16 is going to go like this, to like this, to jumping onto
17 somebody's lap and then lift their legs up and still point?
18 Can you do that on three to five seconds?

19 And if you're going to be so brazen to pull a gun why
20 are you not shooting it? If he's Bonnie and Clyde why is
21 he not shooting that gun? Does that make any sense?

22 And how does the woman who apparently gets sat on gets
23 shot in the back of the thigh with an exit wound on her
24 buttocks? How does that happen if she's sitting down and
25 being sat upon? Someone's not telling the truth about what

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1 happened on that couch in that front room.

2 We heard Officer -- one of the officers -- Soules I
3 believe it was -- Officer Soules -- said, yeah, you know, I
4 saw that gun and saw the gun on the floor and I saw it in
5 that bloody pool.

6 That gun was messed up with all of that blood, and
7 here's actually where the blood is pooling. That's the gun
8 that he threatened us with or that I heard he was
9 threatening with.

10 This evidence will certainly go back with you, ladies
11 and gentlemen. And it is the cure. This gun has no blood
12 on it, nothing.

13 officer Soules testified this gun was covered in
14 blood. And then I asked him, well, is it standard police
15 procedure to take Clorox and clean off evidence, a gun you
16 claim this man had and you clean it off? Is that proper
17 procedure? I don't know. I just saw the gun and it was
18 covered in blood. And that's the gun Mr. Williams had.

19 And I'm sure the state is going to argue, well, you
20 know what, Mr. Soules got it wrong. His adrenaline's
21 pumping. He's new. He's inexperienced. He thought it
22 would have blood on it because look at the mess.

23 Okay. Well, say he was mistaken. Is it possible for
24 a gun to hit the floor in this mess and not get anything on
25 it? Because you heard from the SLED CSC team. Look at all

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1 of that.

2 You heard from her. She didn't see any blood or
3 anything. She couldn't even get prints from it. Something
4 that's been laying in that, a wet liquid with three or four
5 officers handling it, doesn't get anything on it? Does
6 that make any sense, ladies and gentlemen, or is someone
7 lying about it? And if they're lying about this what else
8 are they lying about?

9 Now, the state is going to claim in regard to that
10 touch D.N.A. that while Mr. Williams, or Mr. Rogers rather,
11 was excluded from touching the gun, doesn't necessarily
12 mean he didn't. But, again, you have several officers
13 saying he apparently is so comfortable with the gun that he
14 just carries it on his waistband at all times. Don't you
15 think he'd have something on it?

16 And not only did he do this, but then he did this and
17 then he did this and then he's still holding it, and then
18 it falls, or in the lap or something.

19 Was there testimony you believe on that? Not going to
20 have anything on it, because blood D.N.A. is pretty good.
21 It's better than touch D.N.A. And, again, like you heard
22 from SLED, they didn't put any of that in because they
23 didn't see it.

24 They also claim that this is where he's been shot on
25 the couch. He was advancing. He was jumping up into other

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1 people's laps. Where's the blood? Why is there no blood
2 on that couch? There was ample testimony this man was
3 bleeding. He'd been shot multiple times. They were
4 getting him out onto the porch to save his life. That's
5 where he was shot. Where is the blood? Not there, ladies
6 and gentlemen.

7 And this whole story about Hensley picking up the gun
8 and holding it makes absolutely no sense. Evidence
9 indicated that when he was -- he didn't see the gun lying
10 on the side like the other officer said. He said you know
11 what, he's actually laying on it or something. Someone
12 pulled him and the gun fell out. Again, in that blood pool
13 maybe it didn't get any blood on it.

14 And then he's going to pick this gun up, and he simply
15 holds it. I asked him. I grilled him on the stand about
16 that. How long did you hold it? I don't know. Did you
17 put it down to handcuff Ms. Gentry? I don't know. Is that
18 proper procedure? Yes. I was securing the gun. Did you
19 put it in evidence? No. I didn't have an evidence bag.
20 Did you ask to get one? Grunt, grunt. Well, inexperience.
21 I think that was what the state tried to allege.

22 You know what? One of those SWAT people, one of these
23 guys who's specially trained to go into people's homes when
24 they're not expecting it, oh, I guess he's just
25 inexperienced. We need to excuse his behavior because he

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1 is inexperienced.

2 Is that the standard you want? Is that the standard
3 we want these officers to live by when they're going into
4 people's homes with guns and distraction devices with
5 potentially kids in the home? Because that's what we heard
6 the officer say. Well, we just use these distraction
7 devices a lot if there's children in the home because we
8 don't get want to get hurt.

9 And yet we have this inexperienced officer apparently
10 who is just walking around with a piece of evidence. No
11 one knew how long he's holding it. And then he hands it
12 off to another officer. And I asked that officer how long
13 did you hold that gun. Well, I don't know.

14 And then he gives it to another officer, and that gun
15 finally makes a resting place on the cooler. And again
16 they're not trying to secure it. They're just putting it
17 on a cooler. And this is just to give a context of where
18 that cooler was. That's in the center room.

19 Now, contrast that behavior to the behavior of the
20 other weapon.

21 Bear with me for a moment.

22 (Pause.)

23 MS. JONES: You may recall that you heard testimony
24 that at some point they realized shots were being fired
25 from the bathroom. And I think Officer Harris when he

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1 testified, he indicated when he first heard the pop, pop,
2 pop he thought it was coming from the back area, the
3 bathroom area.

4 Contrast the treatment of this gun with that gun.
5 officers testified the gun was in the bathroom. And you
6 heard me talk about that, is that standard procedure to
7 leave a gun where it is. And they said, well, if it's
8 secure, yes, you leave guns and you leave evidence where
9 it's supposed to be because you want to take pictures. You
10 don't want to contaminate it. You don't want to get your
11 fingerprints on it.

12 This is a better closeup. And this is the alleged
13 triggerman. They leave his gun next to him, because you
14 heard testimony they handcuff this Mr. Moore outside the
15 bathroom door, put him in handcuffs.

16 The man who is the triggerman didn't leave this gun
17 here, but the man who'd been shot multiple times is being
18 pulled out into -- out of the house. We've got to take his
19 gun and move it around three or four times? Does that make
20 any sense, ladies and gentlemen, or is someone lying? And
21 if they're lying about that initial gun are they lying
22 about this?

23 Let's think about this for a moment. Play devil's
24 advocate. And to believe these officers that when they
25 initially came in that there was gunfire from the bathroom,

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1 let's think about this for a minute.

2 We know the bathroom was at the far end of the hall
3 and that it was still dark. We also know that there was a
4 television on in the center room. And you may recall I
5 specifically asked about that television. And they said,
6 no, we never turned it off while they're doing all of this.

7 I suppose, again, they don't want to mess with
8 evidence. It's important to leave things as we find them.
9 A television is on, and this is the room, the center room,
10 that they've indicated where the distraction device went.

11 So is it possible, ladies and gentlemen, with the T.V.
12 on -- you're in the bathroom with the door closed. There's
13 ramming going on. Hear something at the door? Going to be
14 confusing?

15 We also heard about this auditory exclusion, these
16 highly trained officers. They trained for this moment.
17 They're SWAT team. And you heard several times were you
18 nervous. Oh, no. I got my training.

19 Adrenaline pumping? Sure. But I can control it
20 because I've got that training. And yet push comes to
21 shove, they get auditory exclusion.

22 And I asked Mr. Hillers, Officer Hillers, could you
23 hear the gunshots behind you. No. I couldn't hear
24 anything. I had auditory exclusion. I got stressed. I
25 couldn't hear.

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1 Well, if trained SWAT members can experience auditory
2 exclusion, can't hear what's going on around them, they get
3 that tunnel vision, what happens to ordinary folks? What
4 happens to them? They just have perfect hearing right
5 away, or is there confusion?

6 Because we know the person who was in the bathroom if,
7 in fact, that's where those gunshots were fired -- there
8 was only three shots. It -- and there was no more
9 testimony regarding after a pop, pop, pop or a pop, pop.

10 The only people returning gunfire were the police.
11 That's it. So, again, could auditory exclusion have been
12 affecting people in that residence, or was this malice on
13 the part of those occupants in the residence? They're a
14 Bonnie and Clyde kind of people, and if they're going to go
15 down, they're going to go down in a blaze of glory. Is
16 that it, or it's something again that didn't go according
17 to plan? Mass chaos, both sides.

18 We also heard testimony regarding a lot of drugs. And
19 I think that there is no question that this house had a lot
20 of things in it and it was very cluttered. Probably fair
21 to say it was some kind of party house, probably a drug
22 house. I'm not going to insult your intelligence. But
23 they talk about continually how drugs were found in the
24 center room.

25 Well, what's the relevance of that? Because they

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1 didn't tie anybody to that middle room. who's in the
2 center room? whose marijuana was found in the fridge?

3 There's no mail. They didn't get any mail. People
4 get power bills; they get letters; they get junk mail. who
5 was living there?

6 We heard officers testify, well, their information was
7 that Mr. Moore was living there. They didn't introduce who
8 owned the house, and if somebody owned it whether or not
9 they were actually living there or if it was being rented
10 and by whom. And who was staying in this center room?
11 They said that there was some type of -- there's a living
12 room/bedroom area. well, where is the bed?

13 We know that this is one side of that middle room.
14 And maybe that's a bed. But does that look like anybody
15 had been sleeping on it? And where is the personal
16 effects? I mean, through all of this clutter there had to
17 be something with a name. Clothes size. You can compare
18 clothes size to the people that were in the house. It
19 wasn't done. Here is the other side. This is the couch.
20 Maybe someone was staying there.

21 It was a shotty investigation, ladies and gentlemen.
22 If they want to convict a man of everything but the kitchen
23 sink don't you expect a little bit more than, well, we
24 found some drugs, found him in the bathroom? we're going
25 to arrest that guy. Do we expect a little bit more from

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1 the prosecutors?

2 I mean, look at this Army of people who've been
3 sitting here day after day. They can't collect a piece of
4 mail? Well, they just had their man. Officer down, and
5 then another person down. That's not going to look good.
6 So if they're lying about one thing, what else are they
7 lying about?

8 And I understand this is hard. And what I'm asking
9 you to do is to think about the evidence, to use your
10 common sense and judgment. It's hard, because these are
11 officers and we generally like officers. They're the ones
12 who help us. They're the ones we call for 9-1-1 if our
13 house has been broken into. They're the ones who come.

14 And you're right. They do serve and protect. But we
15 also want them to be honest and we also want them not to
16 cover up and we also want them to be truthful.

17 If they accidentally shot Mr. Williams they should
18 should've just been truthful about that, because there was
19 mass chaos. We heard officers say we didn't know where
20 that gunfire was coming from.

21 Sure they would have got judged a little bit later on,
22 but we could have put it in context. Instead they're
23 wanting you to buy some gun theory, a gun that had no
24 blood, a gun that nothing.

25 And their story about those two people on the couch

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1 makes no sense, because Amanda Gentry got buck shot in the
2 back. And there's no testimony that she was ever anywhere
3 but sitting on that couch.

4 Ladies and gentlemen, you do not get shot in the back
5 of the thigh sitting on a couch and you do not get shot in
6 the back of the thigh while somebody else is sitting on
7 you. That story makes no sense. And if that story does
8 not make sense, what else are they lying about?

9 We know Mr. Williams was shot several times and we
10 know that there were only three shots fired from that
11 bathroom. And we also know when they went through hands
12 up, hands up, hands up, and they went like this, they saw
13 hands. And they were low to the ground, and that door was
14 partially shut.

15 Is that Bonnie and Clyde behavior? Is that Shester
16 the cat smiling and grinning from ear to ear as Officer
17 Hillers would have us believe? No.

18 That's someone who is scared, someone whose house that
19 he's in the bathroom in under siege, mass confusion. When
20 that mass confusion settled down you saw hands.

21 This is not attempted murder. And, ladies and
22 gentlemen, they haven't even proven who the drugs were,
23 because you're going to have two, actual and constructive.

24 Actual possession of drugs is what's on you. It's in
25 your pocket; it's in your pocketbook; it's in your

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1 underwear. We find drugs all over, and the officers will
2 tell you that too. That's actual possession.

3 Constructive possession is you have to be able to
4 exercise control and dominion over that, those drugs.

5 Well, Mr. Moore was found in the bathroom. And we
6 have nothing else to tie him to that residence other than
7 officers saying, well, we had information, we had
8 information that he lived there.

9 Can we believe that? And don't we want something else
10 called corroboration? Don't we want a lease agreement, tax
11 records, mail?

12 We saw prescription bottles. Whose name was on there?
13 I don't know because they didn't bother to get that
14 information. It wasn't important. They had their man, and
15 they threw the book at him to charge him. Charge him with
16 everything we can. Let's put the focus on him and his
17 behavior and let us be the shining knights.

18 It doesn't work that way, ladies and gentlemen, and I
19 implore you to do your job. This job is going to be
20 difficult.

21 And the state is going to say it's not the officers'
22 conduct that's in question. Don't buy into that. Don't
23 lose sight of what happened here.

24 An officer got shot. That's true. But we have to
25 look at their conduct, because what they say and what the

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1 evidence shows doesn't match.

2 I think when you go back when you discuss this you're
3 going to find my client not guilty of attempted murder, and
4 you're going to have to reach the conclusion they didn't
5 prove their case regarding the drugs either. Thank you.

6 THE COURT: Mr. Bulsa.

7 MR. BULSA: Ladies and gentlemen, I read recently life
8 is a lot about priorities, and that's what you have in this
9 case. You have priorities to decide. I want to draw your
10 attention to those priorities.

11 It's almost as if we sat here for the last two days
12 trying not one case but more like three cases.

13 We started off presenting evidence about the search
14 warrant, the residence being Mr. Moore's, the drugs they
15 expected to find.

16 And then we go into the information about the officer
17 shooting, which seems like a second case, because if the
18 officers were there to secure that residence the narcotics
19 officers are going to do what they're trained to do.

20 And then the defense turns this case on its head and
21 almost tries to make this a case about a wrongful death,
22 whether Mr. Rogers' death was right or wrong. While that
23 is important, it is not for this venue. It is not for this
24 forum.

25 I'm not going to ask you to just disregard that. I'm

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1 going to ask that you overlook the yelling and screaming by
2 the defense counsel.

3 Ladies and gentlemen, this is a serious case. It's a
4 violent case. And who created this case? The man who
5 lived at [REDACTED] Owens Street, Spartanburg, South Carolina.
6 [REDACTED] Owens Street in a residential community near Duncan
7 Park and near Mary H. Wright School and near public
8 playgrounds -- a man who had a multitude of drugs, cocaine,
9 cocaine base, otherwise known as crack cocaine, marijuana,
10 a variety of pills, monies, paraphernalia, scales, baggies.

11 He was conducting a business from that residence --
12 monies. The drawer in the coffee table looked as if it was
13 almost a cash register. He had the money neatly aligned
14 and drugs in there with it. The person in that home was
15 selling drugs out of that home, I submit to you.

16 And, ladies and gentlemen, the information the police
17 had were corroborated when they went in the door. This is
18 the man that came out of that center room. This is the man
19 that sought refuge in that bathroom getting protection from
20 the door and the doorframe and fired on the police officers
21 doing their priority, doing their duty.

22 The police are here to protect. They're to protect
23 themselves; they're to protect the citizens. They had to
24 even protect Mr. Moore. They tried to. They tried to
25 deploy a distraction device so as to disorient him so he

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1 doesn't go for one of those guns that the police were
2 highly suspecting to be there.

3 And how many did we find in the residence, ladies and
4 gentlemen? Not one pistol, not two pistols, not three
5 pistols but two long guns as well, and a bowling knife.

6 This man was prepared to protect what he had in that
7 residence. And what did he have? Cocaine, marijuana,
8 pills, money.

9 Please do not get dissuade by the screaming and
10 yelling about these officers. If these officers wanted to
11 lie and to plant a gun, which is apparently what defense
12 counsel is implying, wouldn't they put it on the floor near
13 the couch or on top of the couch with a man they say had
14 it?

15 They did what their training tells them. Secure the
16 weapon. That man was still resisting even though he'd been
17 shot. Secure the weapon. They got it away from him.
18 That's reasonable.

19 They didn't have to move Mr. Moore's because the
20 shooting had stopped. Both men had been subdued. Mr.
21 Moore came out with his hands up and laid on the floor.
22 Mr. Rogers didn't. Nobody likes the fact that he died.

23 The police do not go into these houses, ladies and
24 gentlemen, with guns blazing. They go in to protect and
25 secure. Things happen. It's a small room cluttered with

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1 stuff, two people on the couch. You heard about the wounds
2 to the body. It is very consistent with the way the
3 officers described it.

4 Ladies and gentlemen, priority is, No. 1, is to decide
5 on the drugs. The judge will charge you on basically four
6 laws involving these drugs.

7 This is a picture. I want to take all of the drugs
8 out. You've got -- in this picture it shows the packaging
9 of crack cocaine and powder cocaine.

10 Crack cocaine is cocaine base. Powder cocaine is
11 cocaine. The judge will charge you first -- I don't know
12 what order he's going to do it -- but the trafficking
13 cocaine case deals with the amount of drugs that he had and
14 how much -- how much he possessed.

15 The law allows you to infer -- actually it tells you
16 if he's -- has over 28 grams of cocaine in his possession,
17 if you find it's in his possession, constructive or actual,
18 he's guilty of trafficking in cocaine. What did the
19 evidence tell us? Clearly it was over 28 grams. It was
20 almost 37 grams.

21 Now, the other two drug charges involving cocaine
22 base, being crack cocaine and marijuana, they deal with
23 weight as well, but they talk about a second element, that
24 being intent to distribute.

25 That means he's got the drugs. He's got the drugs and

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1 he's intending to sell it. what's he going to do with it?

2 Is he going to share it with people coming to the house?

3 Is he going to hold a store, make some sells?

4 okay. And the law tells you that you can infer from
5 the amount of drugs he had that that is exactly what he
6 intended to do. So when crack cocaine or cocaine base, the
7 law says if he has greater than one gram you can infer that
8 that's what he was doing.

9 what does their evidence show? He had over 7 grams of
10 cocaine base or crack cocaine. And that drug expert told
11 us that the drugs are sold in much smaller quantities than
12 a gram on the street. So you can clearly infer -- and I
13 submit to you it proves -- that he was going to sell that
14 cocaine base.

15 The same goes for marijuana. Marijuana has an
16 inference in the law that you can infer that he was going
17 to sell that marijuana or distribute it, that he had over
18 28 grams. And how much did the marijuana expert tell you?
19 Almost 586 grams of marijuana. I submit to you that it's
20 clear that he's violated those laws involving the cocaine,
21 crack cocaine and marijuana.

22 we had Officer Harwell talk about the location of this
23 house in the community, because, as I told you, the law
24 frowns upon -- we've got so many pictures. I'm sorry, but
25 we had -- we like to present these cases with pictures,

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1 because you're only hearing this one time. Hopefully you
2 got a good view and understanding when we presented it.

3 The picture I was looking for one was the one showing
4 the house in the community and the proximity to the park,
5 Duncan Park. It is clear that this house is within half
6 mile.

7 The law does not like people selling drugs near our
8 children. So they have a special law that says if you're
9 possessing drugs within a half mile of a public park or
10 school and you intend to sell them that you're guilty of
11 another crime. So that's exactly what he was doing.

12 And the law also says that if you possess weapons
13 while you're committing a violent crime, being firearms or
14 knife, you are also guilty of possession of a firearm or
15 knife during the commission of a violent crime. And,
16 ladies and gentlemen, the law is that trafficking cocaine
17 is a violent crime.

18 So before these policemen even entered that residence
19 this defendant was already committing a violent crime by
20 the laws of South Carolina by merely possessing over
21 28 grams of cocaine. He had himself armed with a multitude
22 of firearms. That is your first priority. Second priority
23 is you decide about the attempted murders.

24 Ladies and gentlemen, these officers went into this
25 residence, but because of the way this man had his house

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1 set up they couldn't gain as quick access as they would
2 like to have. He had the thick curtain over the window,
3 which what does that suggest? That suggests that that room
4 is possibly serving as a bedroom as well to block out
5 light.

6 He had the door somehow rigged so you couldn't open
7 the screen door up easily. And he had his weapons readily
8 accessible to him. He had one gun he was firing, a second
9 gun up under the bathtub so when he ran out of bullets, and
10 then he had a third gun, a shotgun, just right outside the
11 bathroom door.

12 Ladies and gentlemen, we are fortunate that we didn't
13 lose an officer that day. We're fortunate we didn't lose
14 more than one officer that day.

15 You heard about the injury to Officer Harris. You
16 heard the doctor testify how fortunate he was. But by mere
17 millimeters he could have faced a death gunshot wound. We
18 are lucky we have Officer Harris here today.

19 And I submit to you, ladies and gentlemen, that
20 there's another officer that might have been even luckier.
21 We know by the physical evidence that Officer Wallace was
22 able to find and locate -- and you recall she had trouble
23 finding things, because the third shell in the bathroom was
24 up under a tub that had bounced in there. She had trouble
25 finding it.

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1 But we know at least three rounds were fired towards
2 the door. One struck Officer Harris and one hit up here
3 and one hit here and there was a fourth one I believe right
4 there.

5 Remember where Sergeant Hillers said he was located
6 when he was getting ready to go into the house? He was to
7 the right side of the door near a mail box right in here.
8 Where does this hole exit this house? Right here is what
9 probably would have been his head.

10 The man firing the weapon was aiming to kill. It
11 wasn't a 1-shot, oh, I'm sorry, I didn't know it was police
12 officers.

13 He came covering the bathroom shooting. Officers were
14 clearly yelling. Most of the officers were yelling.

15 Then we had the two other officers in the doorway --
16 Morrow and Cooper -- also within danger of those shots. So
17 you have four attempted murder charges. One involves an
18 actual striking of Officer Harris who fell to the floor.
19 The other three involved the shooting at the other officers
20 in the doorway. They should be thanking the Lord that
21 they're not dead.

22 Defense attorney wants to talk about the officers
23 lying and can't believe what they say. Put that in context
24 with what happened.

25 Do you really think they liked having to kill a man?

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1 Do you really think they were trying to cover it up? If
2 they did, they sure didn't get it, do a very good job at
3 it. Their stories had some small inconsistencies because
4 they had a different perspective of what was going on.

5 An officer picks up a gun because he sees it as a
6 danger. The defendant shot first. The police saw another
7 man with a gun. What are they supposed to do? Officer
8 Cooper tried to get him to put it down. Do they just sit
9 there and get shot at again?

10 Is it really hard to believe that a man like Mr. Moore
11 who had a friend over that would have been carrying his own
12 gun? He had two to his disposal in the bathroom. Two more
13 long guns in the same room. It's not unreasonable to
14 believe that Mr. Rogers had his own gun.

15 He had some pills, drugs, in his pocket, and he was
16 there visiting his drug buddy. He comes packing himself.
17 He hears buddy, fired shots. So he draws his gun. That's
18 what's reasonable. That's what happened. That is what's
19 true.

20 Ms. Jones wants to talk about us, there not being any
21 paperwork showing the defendant lived there. But remember
22 in her opening statement she commented about the defendant
23 having been a victim of a home invasion.

24 I mean, there's really no more evidence of that talked
25 about except when she asked one of the officers what

Closing arguments

1 information did you have. And I think it was Officer
2 Patton said, well, we had information that he'd been a
3 victim of a home invasion, so we knew he probably had some
4 guns himself.

5 Well, we know the revolver wasn't fired the day of the
6 incident because it had all of its rounds still in it. It
7 had all six rounds still in it. But there were some
8 bullets pulled out of the window near the door. A lot
9 visible in that picture, but we have a diagram of the SLED
10 agent in the room which would have coincided with this
11 shot. So he was shot in the house before.

12 It doesn't give him a right to shoot at the police as
13 they come in. You're supposed to stop and look at who's
14 coming in your house. You don't just fire a weapon,
15 especially if you are in the narcotics business. You've
16 got to expect the police are going to be coming after you
17 at some time.

18 So I draw your attention back to the priorities you
19 have in this case, decide whether the drug charges exist.
20 I submit to you there's ample proof.

21 This man was trafficking in cocaine, possessing
22 cocaine base with the intent to distribute it, possessing
23 marijuana with the intent to distribute it, and possessing
24 those drugs within a half mile intending to distribute it,
25 carrying -- possessing firearms during the commission of a

Closing arguments

1 violent crime. First case.

2 Second case, attempted murder charges. I submit to
3 you he was intending to kill whoever, whatever officer was
4 coming through those doors. We have four in this case that
5 were right within danger. And the other officers on the
6 scene, we had each of them come and talk to you and tell
7 you about their perspective.

8 I hope that you've been able to follow the case as we
9 presented it. And I tried to present it through pictures
10 and testimony so hopefully it could -- you could follow the
11 flow into the room. You could see the pan of the evidence
12 as we crossed the room, how open the drugs were in the
13 center room, give you an idea of where they were found, how
14 in close proximity they were to the defendant. It's clear
15 that the person residing in that room was the one dealing
16 in the drugs.

17 We wanted you to be able to see an accurate picture of
18 where the defendant was in relation to the officers coming
19 through the door and how he was behind the doorframe
20 seeking cover and firing out, almost a straight shot.

21 We wanted you to be able to see the difficulty the
22 officers had to get into that residence, the difficulties
23 they had to deploy the distraction device. They're trained
24 and trained. And when these things happen you revert to
25 your training.

Jury charge

1 It's unfortunate Mr. Rogers died, but I submit to you
2 he died as a result of the defendant's actions because he's
3 the one who pulled the first trigger. But you don't have
4 to decide that. You decide about the drugs and the firing
5 on the officers.

6 I submit to you the judge will charge you on the law
7 in just a few minutes. Listen closely. It is the law.
8 There's a lot for you to consider. I trust that we've made
9 it clear, that all of the elements have been proven, and
10 you'll understand when you hear the law as the judge reads
11 it to you how it fits to the facts of this case.

12 I ask that you take that law, and we've taken this
13 evidence, this evidence and the pictures, and view it if
14 necessary and apply those law -- the facts to the law as he
15 reads it.

16 I submit to you the priority, the duty you have, is
17 actually going to be simple. This man is the one at fault.
18 This man is the drug dealer. This man fired the deadly
19 shots. This man is guilty of everything he's charged with.
20 Thank you, ladies and gentlemen.

21 THE COURT: Does any juror need a short break before I
22 provide you with the legal instruction?

23 (No response.)

24 THE COURT: Okay. Ladies and gentlemen, you of course
25 have heard and seen all of the evidence. You've now heard

Jury charge

1 the final summations of the lawyers. Therefore, it now
2 becomes my duty to instruct you on the law. And then
3 you'll begin deliberations. You'll decide the facts, apply
4 the law and arrive at a fair and just decision.

5 It is your exclusive duty to determine what the facts
6 are. You do that through your own common sense examination
7 and evaluation of all of the testimony and other evidence
8 received during the trial of this case.

9 You 12 jurors alone will decide what weight, value and
10 effect to give to any particular testimony or other
11 evidence in the case.

12 Your sole objective is to simply reach the truth in
13 the matter. By doing that you will fulfilled your
14 obligations as jurors, and that is simply give both the
15 state and the defendant a fair and impartial trial.

16 Now, as you know, in this case the defendant has been
17 accused of having committed nine separate and distinct
18 criminal offenses, although they are alleged to have arisen
19 out of one particular event or course of events which the
20 state alleges occurred back on January the 6th of 2011.
21 But there are nine separate and distinct criminal offenses.
22 You will be called upon to render nine separate and
23 distinct verdicts.

24 As I told you at the outset -- or I believe I did --
25 your verdicts may be the same as they relate to each of the

Jury charge

1 separate charges, or they may be different. That of course
2 will depend upon your determination of fact as it relates
3 to those particular allegations and then your application
4 of the law as that relates to that particular crime as I
5 will have provided it to you.

6 But the defendant is charged with four separate
7 offenses of attempted murder. He's also charged with one
8 count of trafficking in cocaine.

9 Contained in that trafficking in cocaine indictment is
10 also a count two, which is possession of a firearm during
11 the commission of a violent crime, that violent crime
12 alleged to have been the crime of trafficking in cocaine.

13 He's also accused of possession with intent to
14 distribute marijuana.

15 He's also charged with possession with intent to
16 distribute crack cocaine.

17 And he's also charged with possession with intent to
18 distribute crack cocaine within a one-half-mile radius of a
19 public park.

20 Now, as to each of those allegations and as to each of
21 those charges the defendant has entered a plea of not
22 guilty. And, as I told you, that plea of not guilty places
23 upon the state the burden of proving the allegations that
24 they have set forth in each of those indictments, the
25 burden of proving each of the essential elements that make

Jury charge

1 up each of those separate crimes; and therefore the burden
2 is upon the state to establish the defendant's guilt beyond
3 a reasonable doubt before you may find him guilty of any
4 crime that has been alleged against him.

5 The burden is never upon a person accused of a crime
6 to prove that they are not guilty or to prove that they are
7 innocent because in some cases that might not be possible.
8 The burden is always upon the state because they've made
9 the accusation to prove that accusation to your
10 satisfaction beyond a reasonable doubt.

11 As I've stated, it is a vital, important and cardinal
12 rule of law that every defendant in a criminal trial -- and
13 it does not matter how serious the offense might be for
14 which that person stands charged -- that person shall
15 always be presumed innocent of that charge. And that
16 presumption of innocence remains with any defendant, as it
17 does with this defendant, from the time that he is placed
18 under arrest and throughout the course of the criminal
19 process and even throughout the course of the actual trial
20 of the case.

21 That presumption of innocence will be with Mr. Moore
22 even as you go back into your jury room to begin with your
23 deliberations in this case, and that presumption of
24 innocence will be with him in that jury room, and it'll be
25 with him forever unless you 12 jurors unanimously determine

Jury charge

1 that his guilt has been proven beyond a reasonable doubt.

2 In other words, after you've considered all of the
3 evidence in the case and decided the facts and applied the
4 law, if you determine that his guilt has been proven beyond
5 a reasonable doubt as to a particular charge, then he's no
6 longer entitled to that presumption of innocence as it
7 relates to that charge. But it's only if, unless and until
8 you are satisfied of his guilt beyond a reasonable doubt
9 that the presumption of innocence would no longer be
10 applicable.

11 Now, while the state does have the burden of proving
12 the defendant's guilt beyond a reasonable doubt, that does
13 not mean that they must prove his guilt beyond all doubt or
14 beyond any possible doubt. But it does require the state
15 to prove his guilt to your satisfaction beyond a reasonable
16 doubt.

17 The term reasonable doubt should be given its plain
18 and ordinary meaning. A reasonable doubt is the kind of
19 doubt that would cause a reasonable person to hesitate to
20 act upon the information provided. And a defendant in a
21 criminal trial is entitled to any reasonable doubt that
22 arises from the evidence in a case, or lack of that
23 evidence.

24 And if upon any factual issue essential to a finding
25 of a verdict of guilty you have some reasonable doubt as to

Jury charge

1 how that issue should resolved, it would be your duty to
2 resolve that reasonable doubt in favor of the defendant.

3 And therefore if upon your consideration of the whole
4 case you have a reasonable doubt as to his guilt as it
5 relates to a particular charge you must resolve that
6 reasonable doubt in his favor and return a verdict of not
7 guilty as it relates to that charge.

8 And at the same time after you've considered all the
9 evidence in the case and decided the facts and applied the
10 law if you have no reasonable doubt as to his guilt as it
11 relates to a particular charge, it would be your
12 corresponding duty to find him guilty of that charge where
13 it has been proven to your satisfaction beyond a reasonable
14 doubt.

15 Now, the same law that provides that you are the
16 judges of the facts also provides that I am the judge of
17 the law. And that simply means that nobody is going to
18 tell you how to arrive at your determination of fact in
19 this case.

20 You do that, as I've already stated, through the
21 exercise of good judgment and common sense conscientiously
22 applied to the testimony and evidence received during the
23 course of the trial.

24 You must however under your oath as a juror accept the
25 law as I provide it to you as being the law that you are to

Jury charge

1 apply in this case. In other words, you're not to concern
2 yourself with what you thought the law was before you came
3 to serve as a juror this week or what you think the law
4 ought to be.

5 Under your oath as a juror you must accept the law as
6 I provide it to you as being the law that you are to apply
7 in this case. And then you simply take that law and you
8 apply it to the facts as you 12 jurors determine those
9 facts to be based upon your common sense examination of all
10 of the testimony and evidence received during the trial.

11 Now, because you are the sole judges of the facts in
12 this case you are therefore necessarily the sole judges of
13 the credibility and the believability of each witness that
14 has testified. And you 12 jurors alone will decide what
15 weight, value and effect to give to any particular witness'
16 testimony or other evidence in the case. Again, your sole
17 objective is to simply reach the truth in the matter.

18 But there are a number of factors which you should
19 take into consideration as you assess the credibility and
20 the believability of a witness' testimony.

21 You should consider the demeanor of the witness, that
22 is how the witness appeared to you when the witness
23 testified. Did the witness appear to be straightforward?
24 Did the witness appear to be knowledgeable of the facts to
25 which that witness has testified?

Jury charge

1 You may also consider whether or not the testimony of
2 a witness is consistent, or is it inconsistent with that
3 witness' own testimony or with other testimony or other
4 evidence received during the trial.

5 You should also consider how the witness came to know
6 the facts to which a witness has testified. In other
7 words, what was that particular witness' opportunity and
8 ability to perceive the existence of those facts to which
9 that witness has testified by having previously used his or
10 her senses, and then what is the ability of that witness to
11 be able to come into court and to accurately recollect to
12 you as to what they have previously seen or heard, or felt
13 for that matter.

14 You should also consider any bias or prejudice or
15 interest that a witness might have with regard to the case.
16 In other words, do you find some reason that a particular
17 witness would come into court and would testify one way or
18 another to help or to hurt one side or the other.

19 You may consider any interest that a witness might
20 have in the outcome of the case if you determine that that
21 witness does have such an interest and you find that that
22 interest would bear upon that particular witness'
23 credibility.

24 You should also consider whether or not the testimony
25 of a witness is strengthened, or is it weakened by other

Jury charge

1 testimony or other evidence received during the course of
2 the trial.

3 Now, you've also heard testimony from one or more
4 witnesses who were qualified as experts in a particular
5 field. Understand that most times witnesses are not
6 permitted to testify in an opinion form.

7 However, where a person has special education,
8 training and experience with respect to a particular
9 subject matter, then that person may be qualified as an
10 expert in that particular field. And where that witness is
11 qualified as an expert, then that witness may testify in an
12 opinion form as it relates to the facts of the matter.

13 You must however assess the credibility of
14 expert-witness testimony just as you do any other witness'
15 testimony. And you will decide what weight, value and
16 effect to give to expert witnesses' testimony, just as you
17 do any other.

18 Because you are the judges of the facts and because
19 you are the judges of the credibility of each witness you
20 are permitted to believe as much or as little of what a
21 witness has testified to as you deem is appropriate.

22 And therefore you may believe everything that a
23 witness testified to. You may choose to believe none of
24 it. You may believe one portion of a witness' testimony
25 and reject some other portion of that same witness'

Jury charge

1 testimony. And in a given case you could believe one
2 witness as opposed to several, or several as opposed to
3 one.

4 But whatever your good judgment and common sense tells
5 you is the most believable and credible testimony is the
6 testimony you should accept, and you should reject any
7 testimony that you find not to be credible or believable.
8 Again, your sole objective is to simply reach the truth in
9 the matter. And by doing that you will have fulfilled your
10 obligations as jurors.

11 Now, while there are various forms of evidence such as
12 testimony, photographs, documents, charts and other types
13 of physical exhibits, there are really only two types of
14 evidence. Either or both of those types of evidence may be
15 used to prove any fact that is in issue. But the two types
16 of evidence are direct evidence and circumstantial
17 evidence.

18 Direct evidence is the testimony of a person who
19 testifies from actual knowledge of that fact. It is
20 testimony by a person who has perceived the existence of
21 some fact by means of his or her senses, and then they come
22 into court and they testify as to what they have previously
23 perceived.

24 Circumstantial evidence, on the other hand, is the
25 proof of some other fact or set of facts which taken either

Jury charge

1 singly or collectively may prove the existence of a fact in
2 question as a necessary consequence, that is by an
3 inference.

4 An inference is simply a deduction of fact that may
5 logically and reasonably be drawn from the proof of some
6 other fact or set of facts. In other words, it's not a
7 fact proven by the direct testimony of a person based upon
8 their personal perception, but it is a conclusion which
9 might reasonably be drawn from proof of other facts.

10 In other words, you may infer that a particular event
11 occurred or that a particular fact exists based upon the
12 proof of sufficient factual circumstances which would
13 reasonably warrant your arriving at a particular
14 conclusion.

15 The law however makes absolutely no distinction
16 between the weight or value to be given to direct evidence
17 as opposed to circumstantial evidence, nor is a greater
18 degree of certainty required of circumstantial evidence as
19 opposed to direct evidence.

20 Whatever the type of evidence used to prove any fact
21 in issue, you should consider all of the evidence presented
22 during the trial of this case. And after carefully
23 considering all of that evidence and weighing it in your
24 minds if you are not convinced of the guilt of the
25 defendant as it relates to a particular charge beyond a

Jury charge

1 reasonable doubt, then you must resolve that doubt in his
2 favor and find him not guilty as it relates to that
3 particular criminal offense.

4 Now, as you know, there are nine separate and distinct
5 criminal offenses alleged. I am going to instruct you on
6 the law as it relates to each of those separate and
7 distinct criminal offenses.

8 Four of those offenses are the crime or alleged to be
9 the crime of attempted murder. So the law as it relates to
10 attempted murder will apply to each of those four separate
11 indictments.

12 Also with regard to those indictments, and the others
13 too or some of the others, I'll also be charging you on
14 lesser included offenses.

15 Under the principle that any greater offense
16 necessarily includes a lesser offense, I will charge you
17 some lesser offenses that relate to some of these
18 indictments.

19 And of course whether the defendant has been proven
20 guilty of the greater or been proven guilty of the lesser
21 or not proven at all will depend upon your determination of
22 fact and then your application of the law as to whether you
23 will find him guilty of the greater offense, the lesser
24 offense or find him not guilty of any particular offense.

25 I'm going to begin with the crime of attempted murder.

Jury charge

1 Attempted murder is a statutory offense.

2 The legislature meets every year from January to June.
3 They're meeting right now -- not today -- but they meet
4 Tuesday through Thursday, but during the course of those
5 sessions they pass a number of laws and rules and
6 regulations that govern our conduct in a variety of ways.

7 Some of those laws are criminal penalty statutes, and
8 when they pass such a statute it simply prohibits us from
9 engaging in particular types of conduct. And where we are
10 found to have engaged in that conduct in violation of that
11 statute or what's prohibited by that statute, then it would
12 subject us to some form of punishment or penalty for having
13 engaged in that conduct.

14 Please understand however that you are never to be
15 concerned with any punishment or penalty. That's nothing
16 something that a jury decides. Your sole obligation and
17 duty in this case is to determine whether or not the
18 defendant has been proven guilty of some crime beyond a
19 reasonable doubt. And you're to do that without any regard
20 to the consequence of that decision.

21 But attempted murder is set forth in 16-3-29 of the
22 Code of Laws. And that statute provides that a person who
23 with an intent to kill attempts to kill another person with
24 malice aforethought, either expressed or implied, commits
25 the crime of attempted murder.

Jury charge

1 The term attempt refers to the commission of some
2 overt act or acts which are done in furtherance of an
3 intent to do a specific thing which tends towards the
4 accomplishment of the intended goal but which falls short
5 of completion.

6 Regarding the crime of attempted murder, the term
7 attempt refers to the commission of some overt act or acts
8 tending towards the completion of the crime of murder which
9 would become part and parcel of that criminal offense if
10 completed but which falls short of the completion because
11 the person intended to be killed is not killed.

12 The crime of attempted murder requires proof of a
13 specific intent to kill another person with malice
14 aforethought accompanied by some overt act towards the
15 completion of the crime of murder. So it does require that
16 the attempt be accompanied by a state of mind referred to
17 as malice aforethought.

18 Malice is an essential element of the crime of murder
19 and of attempted murder. The term malice refers to a state
20 of mind connoting an ill will and having the intent to
21 kill.

22 The term malice is a technical term importing
23 wickedness and excluding just cause or legal excuse. It is
24 something which springs from depravity, from a heart devoid
25 of social duty and fatally bent on mischief. It is a state

Jury charge

1 of mind indicating an extreme disregard for or an extreme
2 indifference to human life.

3 Malice may be likewise defined as a state of mind
4 which indicates a formed purpose and design to do a
5 wrongful act under circumstances that exclude any legal
6 right to do it.

7 The words expressed or implied malice do not mean
8 different kinds of malice but merely the manner in which
9 malice may be shown to have existed, that is to say either
10 by direct evidence or by circumstantial evidence from which
11 the existence of malice may be reasonably inferred.

12 The existence of malice, as well as any intent or
13 state of mind, may be inferred from acts, declarations and
14 conduct of the accused, as well as from any other
15 circumstances shown to have existed at the time of the
16 event and from which you might reasonably infer the
17 existence of malice as often the state of a person's mind
18 can only be proven by circumstantial evidence.

19 In other words, you may infer the existence of a
20 specific intent to kill, as well as malice, based upon
21 proof of sufficient factual circumstances which would
22 reasonably warrant your arriving at that conclusion.

23 Malice may be expressed as where there is an expressed
24 threat to kill or a lying in wait or where the
25 circumstances show directly that the intent to kill was

Jury charge

1 entertained by the person accused of attempted murder.

2 Malice may be inferred, though no expressed intent to
3 kill is proven by direct evidence, where the facts and
4 circumstances which have been proven by the evidence in the
5 case satisfy you beyond a reasonable doubt that malice was
6 present in the mind of the perpetrator at the time any
7 attempted killing took place.

8 Even if the factual circumstances proven are
9 sufficient to give rise to an inference, such an inference
10 would simply be an evidentiary fact to be taken into
11 consideration by you 12 jurors along with all of the
12 evidence received during the trial of the case, and you
13 should give such reasonable inferences any weight, if any,
14 that you determine they should receive, if any.

15 The state is required to prove malice, just as it must
16 proven any other essential element of the crime of
17 attempted murder, and it is for you 12 jurors to determine
18 whether or not that has been proven beyond a reasonable
19 doubt.

20 It's also essential that it not only be malice but
21 that there be malice aforethought. The law does not
22 require that malice must exist for any appreciable length
23 of time before the commission of an act in the attempt to
24 kill another person. Indeed, it may be conceived at the
25 very moment that the act constituting the attempt is

Jury charge

1 committed.

2 It is sufficient in the law so long as the state has
3 proven beyond a reasonable doubt both a specific intent to
4 kill and malice aforethought beyond a reasonable doubt.

5 Now, as I've stated, with regard to the crimes of
6 attempted murder there are four separate indictments
7 because they allege four separate individuals as the
8 victims.

9 With regard to Indictment 2968, that's the indictment
10 alleging attempted murder which involved Officer Jason
11 Harris, you are also going to be permitted to consider the
12 lesser included offense of assault and battery of a high
13 and aggravated nature in the event that the state has
14 failed to prove all of the essential elements of the crime
15 of attempted murder.

16 Section 16-3-600(b)(1) provides that a person commits
17 the crime of assault and battery of a high and aggravated
18 nature if the person unlawfully injures another person and
19 either great bodily injury resulted or the act was
20 accomplished by means likely to produce death or great
21 bodily injury.

22 So aggravated assault and battery is the injury of
23 another person which results in either great bodily injury
24 or the act was accomplished by means likely to produce
25 death or great bodily injury.

Jury charge

1 With regard to Indictments 2012 Nos. 64, 65 and 66,
2 those are the indictments that allege attempted murder as
3 it relates to officers Morrow, Hillers and Cooper.

4 In the event the state has failed to prove as to any
5 one of those indictments all of the essential elements of
6 the crime of attempted murder, then as to each of those
7 indictments you are permitted to consider the lesser
8 included offense of assault and battery in the first
9 degree.

10 Section 16-3-600(b) provides that a person commits the
11 crime of assault and battery in the first degree if the
12 person unlawfully offers or attempts to injure another
13 person and the act is accompanied -- excuse me -- is
14 accomplished by means likely to produce death or great
15 bodily injury.

16 So assault and battery in the first degree requires
17 proof that the person offered or attempted to injure
18 another person and the acts in that offer or attempt were
19 likely to produce death or great bodily injury.

20 Also, let me explain to you that I'm giving you the
21 instruction on these various offenses in the order that I
22 choose to give them, but you don't pay any significance to
23 that order. You can address these indictments in any order
24 you wish to.

25 I just simply have to do it in some form, so I select

Jury charge

1 my own method for doing that. But you shouldn't attach any
2 significance to that.

3 The next crime that I'm going to address is the
4 indictment alleging trafficking in cocaine. Section
5 44-53-370 of the Code of Laws provides that any person who
6 knowingly has in his actual or constructive possession ten
7 grams or more of cocaine is guilty of trafficking in
8 cocaine.

9 Now, the state alleges in this case that the defendant
10 did traffic in 28 grams or more of cocaine. Before the
11 defendant may be found guilty of trafficking in cocaine as
12 it is alleged in that indictment it would be necessary that
13 the state has proven to your satisfaction beyond a
14 reasonable doubt that the defendant did knowingly have in
15 his actual or constructive possession a quantity of
16 28 grams or more of cocaine.

17 Cocaine is classified as a Schedule Two drug in the
18 Code of Laws. And a controlled substance under the law of
19 this state includes the drug in its pure form as well as
20 the substance in any -- pure form or any compound or
21 mixture of that controlled substance.

22 You are also instructed that where two or more people
23 act together with a common intent and purpose and they
24 combine, conspire, plan or otherwise agree to the
25 commission of a crime, each person who is present to aid,

Jury charge

1 abet, assist or participate in that crime is equally
2 guilty.

3 The law refers to that as being the hand of one is the
4 hand of all or the act of one is the act of all so long as
5 it is proven that each is aiding, abetting, assisting and
6 participating in the commission of that particular crime.

7 Now, with regard to the crime of trafficking in
8 cocaine, before the defendant may be found guilty of
9 trafficking by actual or constructive possession as is
10 alleged in this particular case it must be proven beyond a
11 reasonable doubt that he did knowingly or intentionally
12 have in his actual or constructive possession the cocaine
13 which is alleged to have been possessed.

14 And I am going to instruct you on what constitutes
15 possession of a substance. I'm doing that in the context
16 of the trafficking in cocaine indictment. But the same law
17 as to what constitutes possession is also applicable to the
18 indictments charging possession with intent to distribute
19 marijuana, possession with intent to distribute crack
20 cocaine and possession with intent to distribute crack
21 cocaine within a half mile of a park.

22 So I'm not going to duplicate it. This instruction on
23 what constitutes possession will apply to each of those
24 other indictments.

25 within the meaning of the statute knowingly is defined

Jury charge

1 as having knowledge of the fact. It is an act which is
2 done wilfully, purposefully and consciously. And
3 intentionally is defined as purposefully, that is by aim or
4 design and not by accident or inadvertence.

5 It may be further defined as the state of a person's
6 mind which directs his actions towards a specific object or
7 goal.

8 Actual possession of a substance occurs when the
9 substance is shown to be in the actual physical custody of
10 the person charged with possession and with knowledge of
11 its presence.

12 Constructive possession, on the other hand, occurs
13 when a person, although not in actual physical custody of
14 the substance, exercises dominion and control over that
15 substance or has the right and intent to exercise dominion
16 and control over that substance.

17 A person has possession of a substance within the
18 meaning of the law when he has both the power and the
19 intent to control the disposition or use of that substance.

20 The act of possession, as well as the element of
21 knowledge, may be proven by direct evidence or
22 circumstantial evidence or by a combination of both types
23 of evidence. And possession of a substance may be jointly
24 shared by two or more persons.

25 You are permitted to infer the act of possession of a

Jury charge

1 substance, as well as the element of knowledge, from the
2 evidence of acts, declarations or conduct of the person
3 charged with possession, as well as any other circumstances
4 established by the evidence in the case which would
5 reasonably warrant your arriving at that conclusion.

6 You are instructed however that proof of a mere
7 presence of the defendant at or near a location where a
8 quantity of cocaine or some other drug is found is not
9 sufficient by itself to prove the defendant guilty of
10 possession of that substance.

11 A defendant's mere presence where a quantity of
12 cocaine or some other drug is located even with knowledge
13 of its presence is not sufficient standing alone to prove
14 the defendant guilty of possession of that drug. And
15 neither does the mere association with a person who commits
16 a crime make a defendant guilty of any crime committed by
17 that other person.

18 So if after your review of the evidence presented in
19 this case you determine that the state has only proven that
20 the defendant was merely present at or near a place where a
21 quantity of cocaine or some other drug was located, but the
22 state has failed to prove that the defendant possessed that
23 drug beyond a reasonable doubt, then you must find him not
24 guilty of that crime which requires proof of possession of
25 that substance.

Jury charge

1 On the other hand, after you have carefully considered
2 all of the evidence in the case and you have determined the
3 facts and applied the law, if you have no reasonable doubt
4 as to the defendant's guilt as it relates to having
5 possessed a particular substance, then you would find the
6 defendant guilty of that crime where possession is required
7 to be proven.

8 With regard to trafficking in cocaine, as I've stated,
9 before the defendant could be found guilty of trafficking
10 in cocaine it would be necessary that the state has proven
11 to your satisfaction beyond a reasonable doubt that the
12 defendant did possess more -- 28 or more grams of cocaine
13 and he possessed that either actually or constructively.

14 The second count of that indictment, the trafficking
15 in cocaine, is an indictment for possession of a firearm
16 during the commission of a violent crime.

17 Section 16-23-490 of the Code of Laws provides that it
18 shall be unlawful to possess a firearm or visibly display
19 what appears to be a firearm during the commission of a
20 violent crime.

21 Section 16-1-60 provides that the crime of trafficking
22 in cocaine is classified as a violent crime under the law.
23 Therefore in order for the defendant to be found guilty of
24 a violation of that particular section of law it would be
25 necessary that the evidence in this case establishes to

Jury charge

1 your satisfaction beyond a reasonable doubt that the
2 defendant did commit the crime of trafficking in cocaine
3 and that during the commission of that crime he did possess
4 a firearm or did visibly display what appeared to be a
5 firearm.

6 The next indictment -- well, actually the next two
7 indictments I'm going to instruct you as to are the
8 indictments for possession with intent to distribute
9 marijuana and possession with intent to distribute crack
10 cocaine.

11 As I've told you, the law as it relates to what
12 constitutes possession is applicable to these two
13 indictments, just as it is applicable to the trafficking in
14 cocaine indictment.

15 In order to return a verdict of guilty as to an
16 indictment charging the defendant with possession with
17 intent to distribute a particular drug, not only must the
18 state prove beyond a reasonable doubt that he possessed
19 that particular substance, but the state must prove beyond
20 a reasonable doubt that he had a specific intent to
21 distribute that controlled substance, whether or not it was
22 to be in exchange for money or any other valuable
23 consideration.

24 To distribute means to actually or constructively
25 transfer or attempt to transfer a controlled substance from

Jury charge

1 one person to another whether or not it was in exchange for
2 something of value.

3 Intent is a state of mind which operates jointly with
4 an act in the commission of a crime. Intent is the state
5 of a person's mind which directs his actions towards a
6 specific object or goal.

7 The indictment charging the defendant with possession
8 with intent to distribute in this case -- in this case
9 possession with intent to distribute marijuana and
10 possession with intent to distribute crack cocaine and
11 possession with intent to distribute crack cocaine within a
12 half mile of a public park means an intent to distribute
13 those substances.

14 In determining whether or not the defendant intended
15 to distribute those controlled substances if you find that
16 he did possess those, you should consider all of the
17 evidence in the case including the circumstances
18 surrounding the defendant's possession of those drugs, the
19 amount of the substances possessed by the defendant, the
20 manner in which they were possessed, as well as any other
21 facts or circumstances proven by the evidence in the case
22 that you find to be reasonably relevant and probative on
23 the issue of that intent. And, as I've stated, intent may
24 be proven by direct evidence, as well as circumstantial
25 evidence, or by a combination of the two.

Jury charge

1 Section 44-53-370 of the Code of Laws of South
2 Carolina provides that you are permitted to infer an intent
3 to distribute a particular drug upon proof of possession of
4 more than one gram of cocaine base or crack cocaine or upon
5 proof of possession of 28 grams or one ounce or more of
6 marijuana.

7 where you are permitted to -- where the law allows you
8 or permits you to make an inference based upon the
9 possession of a certain amount of drugs it's simply an
10 evidentiary fact to be taken into consideration by you 12
11 jurors along with all of the other evidence received during
12 the trial of the case, and you may give such an inference
13 whatever weight, if any, you determine it should receive,
14 if any.

15 In other words, you are permitted to infer that fact
16 if you find it reasonable, but you are in no way required
17 to do so.

18 You simply must determine whether or not the defendant
19 has been proven guilty beyond a reasonable doubt of
20 possession with intent to distribute marijuana, as well as
21 possession with intent to distribute crack cocaine, based
22 upon all of the evidence received during the trial of the
23 case and any reasonable inferences that might be drawn from
24 that evidence.

25 The remaining indictment -- so with regard to those

Jury charge

1 two indictments the state has to prove beyond a reasonable
2 doubt that the defendant possessed crack cocaine and at the
3 time he possessed it he intended to distribute it.

4 The other indictment, the state has to prove he
5 possessed marijuana and that at the time he possessed it he
6 intended to distribute it.

7 Now, with regard to those two indictments you're also
8 going to be permitted to consider the lesser included
9 offense of possession.

10 In other words, if you find the state has proven that
11 he did possess crack cocaine and/or that he did possess
12 marijuana but you're not convinced beyond a reasonable
13 doubt that he intended to distribute that substance, then
14 you may find him guilty of only the lesser included offense
15 of possession of that substance.

16 The remaining indictment is possession with intent to
17 distribute crack cocaine within one half-mile of a school.

18 Section 44-53-445 of the Code of Laws of South
19 Carolina provides that it is a separate criminal offense
20 for a person to possess with intent to distribute a
21 controlled substance while in, on or within a one-half-mile
22 radius of the grounds of a public school or a public
23 playground or public park.

24 You are instructed that crack cocaine is classified as
25 a Schedule Two controlled substance under the law of this

Jury charge

1 state.

2 So with regard to that particular indictment the state
3 would have to prove that the defendant possessed some
4 quantity of crack cocaine and that at the time he possessed
5 it he intended to distribute it and that that possession
6 with intent to distribute did occur within a one-half-mile
7 radius of a public school, playground or park.

8 Ladies and gentlemen, as I told you at the outset, you
9 are instructed, and I emphasize to you, that the fact that
10 a defendant does not testify during the course of a
11 criminal trial is not a circumstance or a fact that you may
12 consider in the slightest degree against the defendant or
13 in your determination as to whether or not his guilt has
14 been proven beyond a reasonable doubt.

15 As I have stated, the state is required to prove his
16 guilt beyond a reasonable doubt. The defendant is never
17 required to prove anything because in many cases that might
18 not even be possible.

19 And therefore you are not to draw any inference nor
20 reach any conclusion from the fact that a defendant does
21 not testify during the trial of the case, nor may you even
22 discuss that fact or consider that fact in any way during
23 your deliberations or in your determination as to whether
24 or not his guilt has been proven beyond a reasonable doubt.

25 Now, ladies and gentlemen, I am not in any way

Jury charge

1 concerned with what your decisions are, but, as I stated,
2 your verdicts must be unanimous. All 12 of you must be in
3 agreement before any decision may be reached as it relates
4 to any particular indictment.

5 Now, Madam Forelady, as you know, you're going to
6 preside over the jury deliberations in the jury room simply
7 to ensure that those deliberations are carried out in some
8 orderly fashion. But all jurors are expected to
9 participate, because the verdicts are going to be a
10 consensus of your opinions. And the decision must be
11 unanimous.

12 During your deliberations there may come a time where
13 you have a question about the facts or evidence in a case.
14 Please understand that I am never permitted to comment upon
15 the facts or evidence. I am never permitted to answer
16 questions that relate to issues of fact or the evidence in
17 the case.

18 All of the evidence that is going to be presented in
19 this case has been presented. No additional evidence may
20 be received.

21 Sometimes jurors go back and they start thinking about
22 something else that they think might help them. Don't ask
23 me about that because even if there was something out there
24 that existed that you could have that you think might help
25 you, it can't be received now that you are going back to

Jury charge

1 deliberate and the evidence has closed. So no additional
2 evidence can be received now that you are to begin with
3 your deliberations.

4 If at any time you have a question about the law that
5 is applicable, I am permitted to answer those questions.
6 So if you need for me to reinstruct you on the law, if you
7 need for me to provide you an explanation of some principle
8 that I've already provided, if you need a clarification of
9 the law, let me know of that fact and I'll be happy to
10 provide you with that reinstruction, explanation or
11 clarification as to the law that you are to apply.

12 Madam Forelady, when you go back if there ever arises
13 an occasion where you need to address some matter to me, if
14 you'll write it on a piece of paper, give it to the
15 bailiff, he'll provide it to me, and I'll respond to those
16 questions or deal with those issues.

17 Also, you're going to be called upon as the foreperson
18 to indicate the jury's unanimous decision. You'll do that
19 on the back of each indictment that you'll have in the jury
20 room.

21 You'll see on the back of those indictments the word
22 verdict in the lower left-hand corner on the back of the
23 indictment. Beneath that word you'll indicate the jury's
24 unanimous decision, whatever that decision may be.

25 You'll also sign your name as the foreperson and

Jury charge

1 you'll also put the appropriate date. You're the only
2 juror that must sign the verdict form.

3 Now, you have quite a number of potential verdicts in
4 this case.

5 With respect to the indictment wherein Officer Harris
6 is alleged to be the victim you'll have three potential
7 verdict forms. Those forms are guilty, guilty of assault
8 and battery of a high and aggravated nature, and not
9 guilty. So whatever that decision is, indicate it in that
10 space provided.

11 With regard to the three other attempted murder
12 indictments involving Morrow, Hillers and Cooper, you also
13 have three potential verdict forms as to those three
14 indictments.

15 Those verdict forms are guilty, guilty of assault and
16 battery in the first degree, and not guilty. So whatever
17 that decision is, indicate it in the space provided.

18 With regard to the indictment for trafficking in
19 cocaine, you have two potential verdict forms. Those are
20 guilty and not guilty.

21 A second count of that indictment is possession of a
22 firearm during the commission of a violent crime. You have
23 two potential verdict forms. They are guilty and not
24 guilty.

25 Understand that if you find the defendant to be not

Jury charge

1 guilty of trafficking in cocaine he may not under any
2 circumstances be guilty of possession of a firearm during
3 the commission of a violent crime because that, the
4 elements of that offense, require him to be found guilty of
5 a violent crime, which in this case is alleged to be the
6 trafficking.

7 With regard to the indictments for possession with
8 intent to distribute marijuana and possession with intent
9 to distribute crack cocaine, you also have three potential
10 verdict forms.

11 Those forms are guilty, guilty of possession of crack
12 cocaine and/or marijuana, and not guilty. So whatever that
13 verdict form is, indicate it in the space provided.

14 And the remaining indictment is possession with intent
15 to distribute crack cocaine within a half mile of a school.
16 You have two potential verdict foams. Those are guilty and
17 not guilty.

18 Now, Madam Forelady, for you -- for your benefit, as
19 well as for the benefit of the jurors, I have -- you're
20 going to have the indictments as I've indicated on which
21 you will indicate the jury's unanimous decision.

22 I have also prepared for your benefit a sheet -- or it
23 has two sheets actually -- but these are the potential
24 verdict forms that relate to each indictment. So these are
25 simply for your guidance, and they show what for each

Jury charge

1 indictment -- what the potential verdict forms are. And so
2 you can just follow that as a guide. But you'll need to
3 indicate the jury's decision on the back of each of the
4 separate indictments.

5 And of course if you find the defendant guilty of the
6 greater offense, that is the offense that's actually
7 alleged in the indictment, then you would not consider any
8 lesser included offense.

9 You only consider lesser included offenses when the
10 state has failed to prove the defendant to be guilty of the
11 greater offense. And of course you can only find the
12 defendant guilty of some lesser included offense if the
13 elements of those offenses have been proven beyond a
14 reasonable doubt. Otherwise the verdict has to be not
15 guilty as it relates to that particular charge.

16 Well, I think that concludes the instruction, so I'll
17 ask you to please go to your jury room. Do not yet begin
18 your deliberations.

19 I've got some matters I'll need to address with the
20 lawyers. If I do not need to bring you back for any reason
21 I'll send word by way of the bailiff that you may begin
22 deliberations.

23 In that event he'll bring to the jury room all of the
24 exhibits which have been introduced.

25 And to you, Madam Forelady, he'll also bring the

Jury charge

1 indictments, as well as the verdict-form guide.

2 One other thing. It's 11:15 right now, and it's not
3 quite lunchtime. But it does take about an hour, and
4 sometimes just over an hour, to have lunch ordered,
5 prepared and delivered.

6 So as you -- when the bailiff instructs you to begin
7 deliberations just keep in mind that timeframe. And that's
8 one thing you can discuss when you go back, is whether or
9 not you want to order lunch now or you want to wait some
10 time to see how deliberations go.

11 I'll leave that up to you. But just keep in mind it
12 takes a little bit over an hour to have that done. So I'll
13 let you make that determination, and you'll let us know
14 when and if you need to order lunch.

15 All right. Twelve primary jurors.

16 Ms. Voll, I'll ask you to stay with me.

17 The 12 primary jurors please retire to your jury room,
18 but await my instruction as to when to begin.

19 (Whereupon, the jury retired to deliberate at
20 11:17 a.m.)

21 (Whereupon, the alternate juror was excused.)

22 THE COURT: Are there any exceptions taken to the
23 instruction or requests for additions to the instruction by
24 the state?

25 MR. BULSA: No, Your Honor.

Jury charge

1 THE COURT: By the defendant?

2 MS. JONES: No, sir.

3 THE COURT: Will y'all verify the exhibits please
4 before they go back?

5 (Pause.)

6 THE COURT: All the exhibits are accounted for?

7 MS. JONES: Yes, sir.

8 MR. BULSA: Yes, sir.

9 THE COURT: All right. Send them back and tell the
10 jury to begin deliberations and notify us when they have
11 concluded.

12 We will be at ease while they are deliberating.

13 (Whereupon, a recess was taken.)

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

15 (Whereupon, the jury returned to the courtroom at
16 1:37 p.m.)

17 THE COURT: Madam forelady, I have your note, and you
18 and your fellow jurors have requested that I reinstruct you
19 on the term malice aforethought, as well as the crimes of
20 assault and battery of a high and aggravated nature and
21 assault and battery in the first degree.

22 THE FOREPERSON: Yes, sir.

23 THE COURT: All right. I'll begin with the
24 explanation of malice and malice aforethought.

25 Malice is an essential element of the crime of murder

Jury charge

1 and attempted murder. And the term malice refers to a
2 state of mind connoting an ill will and having the intent
3 to kill.

4 The term malice is a technical importing wickedness
5 and excluding just cause or legal excuse. It is something
6 which springs from depravity, from a heart devoid of social
7 duty and fatally bent on mischief. It is a state of mind
8 indicating an extreme disregard for and an extreme
9 indifference to human life.

10 Malice may be likewise defined as a state of mind
11 which indicates a formed purpose and design to do a
12 wrongful act under circumstances that exclude any legal
13 right to do it.

14 Malice may be expressed as where there is an expressed
15 threat to kill or a lying in wait or where the
16 circumstances show directly that the intent to kill was
17 entertained by the person attempting to kill another.

18 Malice may be inferred, though no expressed intent to
19 kill is proven by direct evidence, where the facts and the
20 circumstances which have been proven by the evidence in the
21 case satisfy you beyond a reasonable doubt that malice was
22 present in the mind of the perpetrator at the time any
23 attempted killing took place.

24 It is also essential that malice be aforethought, and
25 the law does not require that malice must exist for any

Jury charge

1 appreciable length of time before the commission of an act
2 in an attempt to kill another person.

3 Indeed, it may be conceived at the very moment that
4 the act constituting the attempt is committed. That is
5 sufficient in the law so long as the state does prove
6 beyond a reasonable doubt both the existence of malice and
7 the commission of an act or acts by the defendant with a
8 specific intent and in an effort to kill another person.

9 The statutory reference of 16-3-600 defines assault
10 and battery of a high and aggravated nature. And it
11 provides that a person commits the offense of assault and
12 battery of a high and aggravated nature if the person
13 unlawfully injures another person and the act is
14 accomplished by means likely to produce death or great
15 bodily harm.

16 Statute 16-3-600 defines assault and battery in the
17 first degree. And it states a person commits the offense
18 of assault and battery in the first degree if the person
19 unlawfully offers or attempts to injure another person and
20 the act is accomplished by means likely to produce death or
21 great bodily injury.

22 All right. Hopefully that will answer that question.
23 But in any event if you need me to provide further
24 instruction, please let me know. And if you need me to
25 provide that again I can do that also.

Verdict

1 THE FOREPERSON: Thank you.

2 THE COURT: Okay. Please return to your jury room and
3 continue with your deliberations.

4 (Whereupon, the jury retired to deliberate at
5 1:42 p.m.)

6 THE COURT: Is there any exception taken to that
7 additional instruction by the state?

8 MR. BULSA: No, Your Honor.

9 THE COURT: The defendant?

10 MS. JONES: No, Your Honor.

11 THE COURT: All right. We will continue to be at
12 ease.

13 (Question from the jury marked Court's Exhibit No. 1.)

14 (Whereupon, a recess was taken.)

15 THE COURT: The jury has reached a decision. Are we
16 ready to receive it?

17 MR. BULSA: Yes, sir.

18 MS. JONES: Yes, sir, Your Honor.

19 THE COURT: Bring them in.

20 (Whereupon, the jury returned to the courtroom at
21 3:00 p.m. to report its verdict.)

22 THE COURT: Madam forelady, have you and your fellow
23 jurors reached a unanimous decision as to each of the
24 separate charges?

25 THE FOREPERSON: Yes, Your Honor.

Verdict

1 THE COURT: And have you indicated those decisions on
2 the back of the indictments as requested?

3 THE FOREPERSON: Yes, Your Honor.

4 THE COURT: And you signed them and dated them?

5 THE FOREPERSON: Yes, Your Honor.

6 THE COURT: If you will, please hand those up by way
7 of the bailiff.

8 You may publish the verdicts.

9 THE CLERK: In the State of South Carolina, in the
10 County of Spartanburg, in the Court of General Sessions,
11 the State of South Carolina vs. Toby Eugene Moore, as the
12 Indictment No. 2011-GS-42-2968 for attempted murder, the
13 jury unanimously finds the defendant guilty.

14 As in the Indictment 2012-GS-42-0064, the jury
15 unanimously finds the defendant guilty.

16 As in Indictment 2012-GS-42-0065 for attempted murder,
17 the jury unanimously finds the defendant guilty.

18 As in Indictment 2012-GS-42-0066 for attempted murder,
19 the jury unanimously finds the defendant guilty.

20 As in Indictment No. 2011-GS-42-2969 with two counts
21 of trafficking in cocaine, possession of firearm during the
22 commission of a violent crime, the jury unanimously finds
23 the defendant guilty on count one and count two.

24 As in Indictment No. 2011-GS-42-2966 for possession
25 with intent to distribute marijuana, the jury unanimously

Verdict

1 finds the defendant guilty.

2 As in Indictment No. 2011-GS-42-2967 for possession
3 with intent to distribute methamphetamine or cocaine base,
4 the jury unanimously finds the defendant guilty.

5 As in Indictment No. 2011-GS-42-2965 for possession
6 with intent to distribute cocaine base within one-half mile
7 of school, the jury unanimously finds the defendant guilty.

8 Ladies and gentlemen of the jury, is this your verdict
9 and still your verdict? If so, please raise your right
10 hand.

11 (Whereupon, all responded in the affirmative.)

12 THE CLERK: So say you all.

13 THE COURT: Is there any other matters to be addressed
14 with the jury present?

15 MS. JONES: Your Honor, we would request a polling.

16 THE COURT: All right. Poll the jury please, ma'am.

17 THE CLERK: Ladies and gentlemen of the jury, I will
18 pose a question to you, after which I will ask you to stand
19 individually and respond to the question.

20 Juror No. 160, would you please stand?

21 Is this your verdict and still your verdict?

22 THE JUROR: Yes, it is.

23 THE CLERK: Thank you. You may be seated.

24 Juror No. 104, is this your verdict and still your
25 verdict?

Verdict

1 THE JUROR: Yes, it is.

2 THE CLERK: Thank you. You may be seated.

3 Juror No. 14, is this your verdict and still your
4 verdict?

5 THE JUROR: Yes, it is.

6 THE CLERK: Juror No. 114, is this your verdict and
7 still your verdict?

8 THE JUROR: Yes, it is.

9 THE CLERK: Juror No. 72, is this your verdict and
10 still your verdict?

11 THE JUROR: Yes, it is.

12 THE CLERK: Juror No. 180, is this your verdict and
13 still your verdict?

14 THE JUROR: Yes, it is.

15 THE CLERK: Juror No. 28, is this your verdict and
16 still your verdict?

17 THE JUROR: Yes, it is.

18 THE CLERK: Juror No. 147, is this your verdict and
19 still your verdict?

20 THE JUROR: Yes, it is.

21 THE CLERK: Juror No. 172, is this your verdict and
22 still your verdict?

23 THE JUROR: Yes, it is.

24 THE CLERK: Juror No. 144, is this your verdict and
25 still your verdict?

Sentence

1 THE JUROR: Yes, it is.

2 THE CLERK: Juror No. 23, is this your verdict and
3 still your verdict?

4 THE JUROR: Yes, it is.

5 THE CLERK: Your Honor, the jury has been polled.

6 THE COURT: Juror No. 35.

7 THE CLERK: I'm sorry.

8 Juror No. 35, is this still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Thank you.

11 The jury has been polled, Your Honor.

12 THE COURT: All right. Any other matters to address
13 with the jury present?

14 MR. BULSA: No, sir.

15 MS. JONES: No, Your Honor.

16 (Whereupon, the trial jury was excused.)

17 THE COURT: These are all first offenses, drug
18 offenses?

19 MR. BULSA: Yes, sir. He has some marijuana
20 possession, but that will not count of course.

21 THE COURT: All right. What else does the state want
22 to present?

23 MR. BULSA: Just his criminal record, Your Honor.

24 In 1999, assault and battery; 2000, two counts of
25 possession, marijuana. Looks like simple possessions.

Sentence

1 Pled in magistrate's court. Then in 2002 looks like open
2 container and possession of marijuana again.

3 THE COURT: All right. Anything else?

4 MR. BULSA: No, sir.

5 THE COURT: All right. Ms. Jones, I'll be glad to
6 hear from you and Mr. Moore.

7 MS. JONES: Thank you, Your Honor.

8 We respectfully respect the jury's decision here, Your
9 Honor, today, and we ask for mercy from the bench.

10 A little bit of background in regard to my client. He
11 was employed at some point prior to being arrested on
12 January 6th of 2011 for what he was found guilty of today.

13 He put in countertops in kitchens. So he is a
14 handyman of sorts, and he has some skills.

15 Your Honor, he is actually married. He has three
16 children -- 18, ten and nine. His wife couldn't be here
17 throughout the week because, one, she works at B.M.W. And
18 I think that this has been obviously very, very stressful
19 and wasn't sure whether her or her mom could go through all
20 of this. And so obviously sometimes it's just best to stay
21 away if they're not going to be able to control their
22 emotions.

23 Your Honor, he does have family support. And
24 throughout this entire incident he has expressed remorse
25 about just everything involved. And obviously if he could

Sentence

1 go back and do it again it would be different. But
2 unfortunately we don't have that hindsight or power to go
3 back, sir.

4 We just respectfully request you have mercy on Mr.
5 Moore. I think he is a redeemable person. I think he's a
6 good person. And unfortunately he's made some bad
7 decisions, sir. Thank you.

8 THE COURT: And who has he expressed remorse to? You
9 said he had expressed remorse. Who did he express that to?

10 MS. JONES: Your Honor, in my discussions with him in
11 preparation for this case he has indicated that he's very
12 sorry that people got hurt. He is very sorry that his
13 cousin, Mr. Williams, was killed in this incident. And
14 it's just been hard on him.

15 THE COURT: All right. Mr. Moore, anything you would
16 like to add to what your lawyer has told me?

17 THE DEFENDANT: No. Thank you, sir.

18 THE COURT: On Indictment 2011-2968, indictment for
19 attempted murder, wherein you have been found guilty by the
20 jury for that offense, the Sentence of the Court is you,
21 Toby Eugene Moore, be confined to the South Carolina
22 Department of Corrections for a period of 30 years.

23 Give him credit for any time he is entitled to
24 pursuant to 24-13-40.

25 Indictment 2012-64, attempted murder, 30 years.

Sentence

1 Indictment 2012-65, attempted murder, 30 years.

2 Indictment 2012-66, attended murder, 30 years.

3 Indictment 2011-2969, trafficking in cocaine, 25 years
4 and \$50,000.

5 Possession of a firearm during the commission of a
6 violent crime, five years.

7 Indictment 2011-2967, possession with intent to
8 distribute crack cocaine, 15 years.

9 Indictment 2011-2966, possession with intent to
10 distribute marijuana, five years.

11 Indictment 2011-2965, possession with intent to
12 distribute crack cocaine within a half mile of a park, ten
13 years and \$25,000, excuse me, and \$10,000.

14 Mr. Moore, you have a right to appeal the verdicts of
15 the jury and the Sentence of the Court. You must file any
16 notices of your intention to appeal those decisions within
17 ten days of today's date.

18 END OF REQUESTED TRANSCRIPT OF RECORD

19

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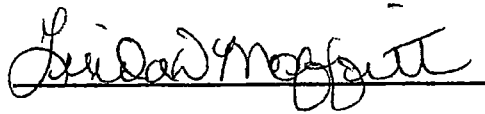
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 21st, 22nd and 23rd days of March 2012.

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

September 26, 2012

A handwritten signature in cursive script, reading "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

Spartanburg County Courthouse
RANDOM STRIKE SHEET

JUDGE NAME : Cole, J. Derham
 TRIAL TYPE : Criminal
 PANEL ID : 2011GS422965-67
 COURTROOM WA

DESCRIPTION : TOBY MOORE

Sorted by: Random Nbr
 Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	GRT	REMARKS
1 Theye, Amy E	160	W	F	(✓)	(✓)	()	
2 Mallory, Elmer P JR	104	B	M	(✓)	(✓)	()	
3 Lawson, Christopher W	97	W	M	(X)	()	()	
4 Jewell, Richard C JR	85	W	M	(X)	()	()	
5 Lankford, Teresa M	96	W	F	(✓)	(X)	()	
6 Gibson, Neely S	63	W	F	(✓)	(X)	()	
7 Birchfield, Kelly A	14	W	M	(✓)	(✓)	()	
8 Middleton, Thomas	114	B	M	(✓)	(✓)	()	
9 Harper, Nathan W	72	W	M	(✓)	(✓)	()	
10 Howell, Kelsey L	79	W	F	(✓)	(X)	()	
11 Neely, Kirk W	122	W	M	(✓)	(X)	()	
12 Wyatt, Lonnie A JR	180	W	M	(✓)	(✓)	()	
13 Caldwell, Patricia D	28	B	F	(✓)	(✓)	()	
14 Copeland, Matthew D	35	W	M	(✓)	(✓)	()	
15 Semande, Lauren D	147	W	F	(✓)	(✓)	()	
16 Walden, Megan B	172	W	F	(✓)	(✓)	()	
17 Samuel, Randy	144	B	M	(✓)	(✓)	()	
18 Roberson, Christina N	142	W	F	(✓)	(X)	()	
19 Bradof, Carol A	23	W	F	(✓)	(✓)	()	
20 Pfeffer, Woody D	130	W	M	(✓)	(X)	()	
21 Voll, Mattera Susan B	170	W	F	(✓)	(✓)	()	
22 Adair, Kenneth B	1	W	M	()	()	()	
23 Ridgeway, Kathy P	140	W	F	()	()	()	
24 Price, Rhonda N	131	W	F	()	()	()	

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Toby Moore, #350242,

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2014-CP-42-2768

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Cor. Inst., 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Spartanburg County Court of General Sessions, Spartanburg, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: See Attachment - A
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) See Attachment - A
 - (b) _____

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- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 22, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. None
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a)
- (b)
- (c)
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See page 9, attached.

(a) _____

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10): See pages 9-13, attached.

(a) _____

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No(d) any other petitions, motions or applications in this or any other Court? Yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof: Pro-se Petition for Rehearing

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. The South Carolina Supreme Court

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Dismissed

ii. _____

iii. _____

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iv. _____

(d) the date of each such disposition:

i. April 10, 2014

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Wise v. South Carolina Dept. Of Corrections, 372 S.C. 173, 642 S.E. 2d 551 (2007)

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
 No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. /ii. /iii. /

(b) the proceedings in which each ground was raised:

i. /ii. /iii. /

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

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- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) ~~preparation, presentation or consideration of any petitions, motions or applications~~
with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Tanya R. Jones, Public Defenders Office, Spartanburg, SC 29306
- ii. John T. Mobley, Esq., Attorney at Law, 925 Calhoun St., Columbia, SC 29201
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial & sentencing
- ii. Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
That Applicant's convictions and sentences be reversed and grant any
other relief this Court deems appropriate.
20. Are you now under sentence from any other court that you have not challenged?
No

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STATE OF SOUTH CAROLINA)

VERIFICATION)

County of)

Toby Moore, #350242,

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Toby E. Moore #350242

SWORN to and subscribed before me this 07
day of July, 2014.

[Signature] (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Toby Moore, #350242,

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Toby E. Moore #350242
Applicant

SWORN or affirmed to and subscribed before me this

07 day of July, 2014.

[Signature]
Notary Public

My Commission Expires: 12-16-2019

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ATTACHMENT - A

Answer to question 4 of the application:

4. (a) Possession with Intent to Distribute Cocaine Base within One-Half Mile of School (11-GS-42-2965);
- (b) Possession with Intent to Distribute Marijuana (11-GS-42-2966);
- (c) Possession with Intent to Distribute Methamphetamine or Cocaine Base (11-GS-42-2967);
- (d) Attempted Murder (11-GS-42-2968)
- (e) Trafficking in Cocaine, Possession of a Firearm During the Commission of a Violent Crime (11-GS-42-2969(A));
- (f) Attempted Murder (12-GS-42-0064);
- (g) Attempted Murder (12-GS-42-0065);
- (h) Attempted Murder (12-GS-42-0066).

Answer to question 5 of the application:

5. Sentences were imposed on March 23, 2014: The sentences were as follows:
Thirty years - Thirty years concurrent - Thirty years concurrent - Thirty years concurrent - Twenty-five years concurrent - Five years concurrent - Fifteen-years concurrent - Ten-years concurrent and Five-years concurrent to be given for Time-served.

10. Concisely the grounds on which Applicant base his allegations on which he is being held in custody unlawfully:

(a) That the Applicant was denied and deprived of due process and equal protection of the law through and by way of ineffective assistance of trial counsel under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, Article One , Section Three of the South Carolina Constitution as well as all other Federal and State Constitutions, statutes, laws and applicable citings.

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

(l) through and by way of ineffective assistance of

(m) appellate counsel

11. Concisely and in the same order the facts which support each of the grounds set out in (10):