

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

S.C. SUPREME COURT

ISAAC GLENARD LYLES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001769

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Isaac G. Lyles,) 2013-GS-42-4570 thru 4575
6 Defendant.) December 4 and 5, 2013
7 Spartanburg, South Carolina

8
9
10 B E F O R E:

11 HONORABLE ROGER L. COUCH, JUDGE; and a jury
12

13
14 A P P E A R A N C E S:

15 SCOTT DANIEL SPIVEY, ESQUIRE
16 Attorney for the State

17 WILLIAM S. BEAN, IV, ESQUIRE
18 Attorney for the Defendant

19
20
21
22 Margaret A. Woods
23 Circuit Court Reporter
24
25

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MOTIONS AND MATTERS

1 (Proceedings December 4, 2013)

2 THE COURT: Alright, Mr. Spivey, you wanna call the case,
3 please.

4 MR. SPIVEY: Yes, sir, Your Honor. Your Honor, this is
5 State v. Isaac Lyles. Your Honor, he's here on multiple
6 indictments, uh, those indictments are Indictments, uh, G --
7 uh, 2013-GS-42-4570, uh, and go all the way through 4575 and
8 4575 I believe A has a, also a a Count Two, has a Count Two on
9 it for possession of weapon during commission of a violent
10 crime, Your Honor, ---

11 THE COURT: What are ---

12 MR. SPIVEY: --- okay.

13 THE COURT: --- the other charges?

14 MR. SPIVEY: Your Honor, they're they're trafficking
15 crack cocaine 10 to 28 grams third offense, trafficking
16 cocaine 10 to 28 grams third offense, possession of a firearm
17 in commission of violent crime, possession with intent to
18 distribute marijuana, as well as three half mile charges, one
19 for each of the drugs: one for half mile crack, ---

20 THE COURT: I see.

21 MS. SPIVEY: --- half mile cocaine, half mile a
22 marijuana, Your Honor.

23 THE COURT: Alright.

24 MR. SPIVEY: Your Honor, I do wanna make you aware also
25 this case we have filed notice of intent to seek life without

MOTIONS AND MATTERS

1 parole, uh, that was served on the defendant. Uh, we've been
2 on the record in fronta Judge Kelly in this case and all plea
3 offers were rejected, uh, and I wanna make the Court aware of
4 that. I want to hand up if you'd like to see it the the
5 notice that we served upon him, uh, but at this ---

6 THE COURT: You can ---

7 MR. SPIVEY: --- point ---

8 THE COURT: --- go ahead and make it a part of the record
9 if you wanna unless Mr. ---

10 MR. SPIVEY: You ---

11 THE COURT: --- Bean has some objection to it.

12 MR. BEAN: Um, I don't, Your Honor.

13 THE COURT: Okay.

14 MR. SPIVEY: Your Honor, this is the, just a copy of the,
15 of the the motion I filed. Attached as exhibits to this
16 particular motion I made were Exhibits A, B and C, uh, those
17 were the certified convictions I obtained from our clerk's
18 office for the prior crimes that were serious or most serious
19 which ---

20 THE COURT: So prior strikes.

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

22 THE COURT: Alright, you can make that a par -- uh, uh,
23 let's make that a Court's Exhibit so it doesn't go to the
24 jury.

25 MR. BEAN: Your Honor, I'd like to address a a matter

MOTIONS AND MATTERS

1 related to that, I don't have any objection to it obviously
2 being put up.

3 THE COURT: Alright, we'll let her mark it and then we'll
4 take that up.

5 MR. BEAN: Thank you.

6 (Notice of intention to seek life imprisonment sentence
7 marked Court's Exhibit No. 1 for identification.)

8 THE COURT: Alright, Mr. Bean, something you wanna take
9 up with the Court?

10 MR. BEAN: Your Honor, uh, excuse me, I don't have it in
11 fronta me but, uh, the the three priors that are listed on
12 there my client raised the question of whether or not the
13 first one of the three which I believe is a PWID, well let me
14 look at it real quick.

15 MR. SPIVEY: I got, ---

16 MR. BEAN: Uh, ---

17 MR. SPIVEY: --- I got a copy ---

18 MR. BEAN: --- the question, his question was whether or
19 not, uh, PWID crack cocaine third offense constitutes a strike
20 under the statute and I've told him that it but I wanted to be
21 sure that I'm correct on that..

22 THE COURT: Well I'm I'm -- Court's understanding of
23 that, uh, that really is a matter that will come up at
24 sentencing ---

25 MR. BEAN: Yes.

MOTIONS AND MATTERS

1 THE COURT: --- so if you wish to make that motion at
2 that time, you've preserved your right to do so.

3 MR. BEAN: Thank you.

4 THE COURT: Alright, anything further before we bring the
5 jury in for jury selection?

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

7 THE COURT: Mr. Bean?

8 MR. BEAN: Uh, no, Your Honor.

9 THE COURT: Alright, I'll ask those that are in the
10 gallery if you would please either in the case of the officers
11 who are with State you can come in front the bar there
12 (indicating), those who are just here observing if you'll go
13 to the back row so jury can have a seat in the front rows.
14 You folks move to the back row while we bring the jury panel
15 in. Thank you.

16 Alright, Mr. Bailiff, you can bring the jury panel in for
17 me. Thank you.

18 Uh, Mr. Bean, while they're coming around I will assume
19 your client has been arraigned on these charges, is that
20 right?

21 MR. BEAN: Uh, Your Honor, I'm not sure he's been
22 arraigned, I know all of 'em been indicted, uh, ---

23 THE COURT: Well is he waiving arraignment and demanding
24 trial by jury?

25 MR. BEAN: Uh, he is, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: Okay. Uh, Mr. Lyles, if you would please
2 stand.

3 (Whereupon, the defendant complied.)

4 THE COURT: Uh, by arraignment wo -- that would be that
5 the charges would be read to you and you would have the right
6 to plead either guilty or not guilty. Uh, I assume you are
7 pleading not guilty to the indictments, is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you requesting trial by jury?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Alright. Are you waiving having those
12 charges read to you at this time? Talk to your lawyer so
13 you'll understand what we're talking about.

14 (Attorney/client discussion held off the record.)

15 THE COURT: Alright, Mr. Lyles, do you know what the
16 charges are?

17 THE DEFENDANT: No, sir.

18 THE COURT: You don't know what you're charged with?

19 THE DEFENDANT: I know what I'm charged with but I'd like
20 for you to read 'em off.

21 MR. BEAN: Your Honor, I I'm sorry, Your Honor. He -- I
22 think we misunderstood each other but apparently he would like
23 to have them read he said.

24 THE COURT: Alright, uh, then, we're gonna have to hold
25 the jury out while I do that. Pass up the indictments. Yes,

MOTIONS AND MATTERS

1 thank you. Stand up, Mr. Lyles.

2 (Whereupon, the defendant complied.)

3 THE COURT: Alright, Mr. Lyles, first case before the
4 Court is Case Number 13-GS-42-4575, that indictment is for
5 trafficking in cocaine base. The indictment states, this is
6 Count One under the indictment, that Isaac, uh, Glenard Lyles
7 did in Spartanburg County on or about October 9 of 2012
8 knowingly sell, manufacturer, deliver, purchase, or bring into
9 the state or did provide financial assistance or did otherwise
10 aid, abet, attempt or conspire to sell, manufacturer, deliver
11 purchase, or bring into the state or did knowingly, actually
12 or constructively, uh, possess or did knowingly attempt to
13 become in actual or constructive possession of more than 10
14 grams of cocaine base, a Schedule II controlled substance in
15 violation of Section 44-53-375 of the Code of Laws of South
16 Carolina 1976 as amended, that is Count One.

17 Count Two is possession of a firearm or a knife during
18 the commission of or an attempt to commit a violent crime,
19 that indictment states that Isaac Glenard Lyles did in
20 Spartanburg County on or about October 9 of 2012 possess or
21 visibly display a firearm or visibly display a knife during
22 the commission, uh, or or attempted commission of a violent
23 crime, to wit, trafficking in cocaine base in violation of
24 Code Section 16-23-490 of the Code of Laws of South Carolina
25 1976 as amended against the peace and dignity of the state and

MOTIONS AND MATTERS

1 contrary to the statute in such case made and provided.

2 Mr. Lyles, did you understand those charges?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: How do you plead?

5 THE DEFENDANT: Not guilty.

6 THE COURT: Do you demand trial by jury?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: The next case is Case Number 13-GS-42-4572,
9 this indictment is for the offense of possession, uh, with
10 intent to distribute cocaine base within one-half mile, that
11 indictment states that Isaac Glenard Lyles did in Spartanburg
12 County on or about October 9 of 2012 distribute, sell ---

13 (Whereupon, a discussion was held off the record.)

14 THE COURT: --- distribute, sell, purchase, manufacture
15 or unlawfully possess with the intent to distribute a quantity
16 of cocaine base a Schedule II controlled substance while in,
17 on, or within a half mile radius of the grounds of a public or
18 private elementary, mi -- middle or secondary school, a public
19 playground or park, a public vocational or trade school or a
20 technical education center or a public or private college or
21 university, to wit, Cleveland Elementary School under the
22 provisions of Section 44-53-445 of the Code of Laws of South
23 Carolina 1976 as amended, such possession not having been
24 authorized by law against the peace and dignity of the State
25 and contrary to the statute and such case made and provided.

MOTIONS AND MATTERS

1 Mr. Lyles, did you understand that indictment?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: How do you plead?

4 THE DEFENDANT: Not guilty.

5 THE COURT: Do you demand trial by jury?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The next indictment is Case Number
8 2013-42-4574, trafficking in cocaine is the charge. The
9 indictment states that Isaac Glenard Lyles did in Spartanburg
10 County on or about October 9 of 2012 knowingly sell,
11 manufacture, cultivate, deliver, purchase or bring into the
12 state or did provide financial assistance or did otherwise
13 aid, abet, attempt or conspire to sell, manufacture,
14 cultivate, deliver, purchase or bring into the state or did
15 knowingly, uh, actually or constructively possess or did
16 knowingly attempt to become in actual or constructive
17 possession of more than 10 grams of cocaine a Schedule II
18 controlled substance in violation of Section 44-53-370 of the
19 Code of Laws of South Carolina 1976 as amended a -- uh,
20 against the peace and dignity of the state and contrary to the
21 statute and such case made and provided. Mr. Lyles, did you
22 understand that indictment?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: How do you plead?

25 THE DEFENDANT: Not guilty.

MOTIONS AND MATTERS

1 THE COURT: Do you demand trial by jury?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: The next case is 2013-GS-42-4570, this is an
4 indictment for possession, uh, of with intent to distribute
5 cocaine within one half mile. This indictment states that
6 Isaac Glenard Lyles did in Spartanburg County on or about
7 October 9 of 2012 distribute, sell, purchase, manufacturer,
8 unlawfully possess with the intent to distribute a quantity of
9 cocaine, a Schedule II control substance, while in, on or
10 within one-half mile radius of the grounds of a public,
11 private, uh, elementary, middle, secondary or public school, a
12 playground, park or public vocational or trade school or a
13 technical education center or a public or private college or
14 university, to wit, Cleveland Elementary School and under the
15 provisions of Section 44-53-445 of the Code of Laws of South
16 Carolina as amended, such possession not having been
17 authorized by law against the peace and dignity of the state
18 and contrary to the statute and such case made and provided.
19 Now, Mr. Lyles, did you understand that indictment?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How do you plead?

22 THE DEFENDANT: Not guilty.

23 THE COURT: Do you demand trial by jury?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: The next indictment is Case Number

MOTIONS AND MATTERS

1 13-GS-42-4573, the indictment is for the offense of possession
2 with intent to distribute. This indictment states that Isaac
3 Glenard Lyles did in Spartanburg County on or about October 9,
4 2012 manufacturer, distribute, dispense, deliver, purchase,
5 aid, abet, uh, attempt or conspire to manufacturer,
6 distribute, dispense, deliver or purchase or possess with the
7 intent to manufacturer, distribute, dispense, deliver or
8 purchase a quantity of marijuana, a Controlled I, a a
9 Schedule I control substance in violation of Section 44-53-370
10 of the Code of Laws of South Carolina 1976 as amended, such
11 distribution not having been authorized by law against the
12 peace and dignity of the state and contrary to the statute and
13 such case made and provided. Mr. Lyles, did you understand
14 that indictment

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How do you plead?

17 THE DEFENDANT: Not guilty.

18 THE COURT: How do you wish to be tried?

19 THE DEFENDANT: Jury.

20 THE COURT: The next case is, uh, Case Number
21 2013-GS-42-4571, that indictment is for possession with intent
22 to distribute within one-half mile. This indictment states
23 that Isaac Glenard Lyles did in Spartanburg County on or about
24 October 9, 2012 distribute, sell, purchase, manufacture, or
25 unlawfully possess with the intent to distribute a quantity of

MOTIONS AND MATTERS

1 marijuana, a Schedule I controlled substance while in, on or
2 within a one-half mile radius of the grounds of a public or
3 private elementary, middle or secondary school, a public
4 playground or park, a public vocational or trade school or a
5 technical education center or a public or private college or
6 university, to wit, Cleveland, uh, Elementary School and under
7 the provisions of Section 44-53-445 of the Code of Laws of
8 South Carolina 1976 as amended, against the peace and dig --
9 excuse me, such possession not having been authorized by law,
10 against the piece and dignity of the state and contrary to the
11 statute and such case made and provided. Mr. Lyles, did you
12 understand that indictment?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: How do you plead?

15 THE DEFENDANT: Not guilty.

16 THE COURT: How do you wish to be tried?

17 THE DEFENDANT: A jury.

18 THE COURT: God grant you a speedy delivery. Is that all
19 of the indictments?

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

21 THE COURT: Alright, sir, you've been arraigned, you can
22 be seated.

23 (Whereupon, the defendant complied.)

24 THE COURT: Bring the jury in.

25 (The following takes place in the presence of the jury

JURY QUALIFICATIONS

1 panel.)

2 THE COURT: Alright, good afternoon, I believe yes, it is
3 afternoon. Ladies and gentlemen, I'll, uh, we are about to
4 begin the trial of the State of South Carolina against Isaac
5 Glenard Lyles. Uh, I have been presented with several
6 indictments, uh, in this case, I'll go over those indictments
7 with yous, uh, the reason I'm doing that is so that you might
8 be in a position to more fully answer questions that I'm about
9 to ask concerning this case.

10 The first indictment I'll discuss with you is Case
11 Number, uh, 2013-GS-42-4570, it's indictment for possession
12 with intent to distribute cocaine within a one-half mile
13 radius of a school. I'm not gonna read the indictment to you
14 word-for-word, I will tell you that the indictment alleges
15 that the defendant Isaac Glenard Lyles did in Spartanburg
16 County on or about October 9 of 2012, uh, distribute a
17 quantity of cocaine within a one-half mile radius of the
18 grounds of Cleveland Elementary School in violation of the
19 statute provided in that case.

20 The next indictment is Case Number 2013-GS-42-4571. This
21 indictment is for the offense of possession with intent to
22 distribute marijuana within a one-half mile radius of a public
23 school. This indictment alleges that the defendant Isaac
24 Glenard Lyles did on October 9th of 2012, uh, distribute a
25 quantity of marijuana within a one-half mile radius of the

JURY QUALIFICATIONS

1 grounds of Cleveland Elementary School in violation of the
2 statute provided in that case.

3 The next indictment is Case No. 2013-GS-42-4572, this
4 indictment is for possession within -- with the intent to
5 distribute cocaine base within a one-half mile radius of a
6 school. This indictment alleges that Isaac Glenard Lyles did
7 in Spartanburg County on or about October 9 of 2012 distribute
8 a quantity of cocaine base, uh, and that's, uh, what is
9 commonly referred to as "crack cocaine", uh, within a one-half
10 mile radius of the grounds of Cleveland Elementary School in
11 violation of the statute in that case provided.

12 The next indictment is Case Number 2013-GS-42-4573, this
13 indictment is for the offense of possession with intent to
14 distribute, uh, in this case marijuana. The indictment states
15 that Isaac Glenard Lyles did in Spartanburg County on or about
16 October 9 of 2012, uh, possess with the intent to distribute a
17 quantity of marijuana in violation of the statute provided in
18 that case.

19 The next charge is 2013-4574, this indictment is for
20 trafficking in cocaine. This indictment states that the
21 defendant did in Spartanburg County on or about October 9 of
22 2012, uh, sell or distribute a quantity of cocaine or was in
23 possession of cocaine, uh, in an amount more than 10 grams in
24 violation of the statute provided in that case.

25 The final indictment is Case Number 2013-GS-4575, this

JURY QUALIFICATIONS

1 indictment is for the offense of trafficking in cocaine base,
2 this indictment, there's two counts in this indictment, the
3 first count alleges that the define -- defendant Isaac Glenard
4 Lyles did in Spartanburg County on or about October 9 of 2012
5 either possess or distribute a quantity of cocaine base in
6 excess of 10 grams in violation of the Code of Laws as
7 provided in that case; Count Two is for the possession of a
8 firearm or a knife during the commission of or attempt to
9 commit a violent crime, that indictment alleges that Isaac
10 Glenard Lyles did in Spartanburg County, uh, possess or
11 visibly display a firearm or a knife while, uh, during the
12 commission or attempted commission of a violent crime, to wit,
13 which was trafficking in cocaine base in violation of the
14 statute provided in that case.

15 I've gone over the indictments again so that you'll
16 understand what the case is about, it should put you in a
17 position to more fully answer questions that I'm about to ask.
18 I will remind you that indictments are simply the documents
19 that bring the cases before the Court, they do not constitute
20 evidence of guilt in any case and cannot be used by a jury in
21 that fashion in determining the guilt or the innocence of any
22 defendant before the Court. I'm going to ask that the
23 attorneys who are involved in this case introduce themselves
24 to you, at this time for the State, if you would please
25 introduce yourself, sir.

JURY QUALIFICATIONS

1 MR. SPIVEY: Thank Your Honor. My name's Scott Spivey, I
2 represent the State as assistant solicitor.

3 THE COURT: Thank you, for the defense.

4 MR. BEAN: Thank Your Honor. Uh, my name is Bill Bean,
5 I'm a lawyer here in Spartanburg and I represent the defendant
6 Mr. Isaac Lyles who is seated here ---

7 (Cross-talk.)

8 THE COURT: Mr. Lyles, if you will please stand and face
9 the jury panel so they can put a face with your name.

10 (Whereupon, the defendant complied.)

11 THE COURT: Thank you, sir, you can be seated.

12 (Whereupon, the defendant complied.)

13 THE COURT: Now before I begin to question you it's
14 important that we assure ourselves the answers to the
15 questions that I'm about to ask are truthful, honest and
16 complete answers, for that reason I'm going going to ask that
17 the clerk please swear you at this time concerning the
18 responses you're about to give. Madam clerk.

19 THE CLERK: Yes, sir.

20 (Whereupon, the jury pool was sworn.)

21 THE CLERK: Thank you, you may be seated.

22 THE COURT: Now if any potential juror either failed or
23 refused to answer or or take the oath that was just
24 administered by the clerk, I'd ask that you now please stand.

25 (No response.)

JURY QUALIFICATIONS

1 THE COURT: Appears that all jurors have been sworn for
2 purposes of my questioning, again, we'll follow the same
3 procedure that I followed with you in the past, I'll ask a
4 series of questions, if the question applies to you or if you
5 have a response, I'll be asking that you stand, I'll need your
6 name and number on the record before I discuss any response
7 you might have to the questions that I have.

8 First question: Is there any member of this jury panel
9 whose ever been related by marriage or are you related by
10 blood to the defendant Isaac Glenard Lyles, if that's true
11 please stand.

12 THE COURT: Name and number, ma'am.

13 JUROR NUMBER 57: Fifty-seven, Cindy Foster.

14 THE COURT: Yes, ma'am.

15 JUROR NUMBER 57: Yes, I was a kin to the Lyles.

16 THE COURT: Alright, ma'am, I believe that, uh, you -- so
17 you know him fairly well.

18 JUROR NUMBER 57: Yes, ma'am.

19 THE COURT: Alright, I'm will excuse you from the trial
20 of the case. You can be seated, you no longer have to answer
21 my questions in this ---

22 JUROR NUMBER 57: Alright, ---

23 THE COURT: --- matter.

24 JUROR NUMBER 57: --- thank you, sir.

25 THE COURT: Alright, anyone else?

JURY QUALIFICATIONS

1 (No response.)

2 THE COURT: Has any member of this jury panel ever had a
3 close social or a personal relationship with the defendant
4 Isaac Lyles, that's true please stand.

5 (No response.)

6 THE COURT: I'm going to go over a list of possible
7 witnesses in this case, if any of them are present in the
8 courtroom when I call their name if they'll stand and face the
9 jury panel so that, uh, we can put a face with the names. Uh,
10 listen carefully, I'll ask you about these individuals when I
11 finish. First of all, Jonathan Lawson with Spartanburg Public
12 Safety. Sir, if you'll stand and face ---

13 (Whereupon, the witness complied.)

14 THE COURT: Thank you, sir, you can be seated.

15 (Whereupon, the witness complied.)

16 THE COURT: Michael Secrest with the Spartanburg, uh,
17 Public Safety Department.

18 (Whereupon, the witness stood.)

19 THE COURT: Thank you. Josh Bagwell, Spartanburg Public
20 Safety; Jeff Kirby with Spartanburg Public Safety.

21 (Whereupon, the witness stood.)

22 THE COURT: Thank you. Edward Wesson, Brendall Mathis
23 with Spartanburg Public Safety, Mylnor Beach with Spartanburg
24 Public Safety, David Reeves with Spartanburg Public Safety,
25 Courtney Burgess with Spartanburg Public Safety, Nikki Hughes

JURY QUALIFICATIONS

1 with the State Law Enforcement Division, Doris Yarborough with
2 the State Law Enforcement Division, Verona Gibson with the
3 State Law Enforcement Division, Maryann Boehm or Boehm,
4 B-O-E-H-M, with State Law Enforcement Division and Beth Stuart
5 with Spartanburg County Sheriff's Office. Now as to the
6 individuals that I just listed as possible witnesses in this
7 case, is there any member of the jury panel who's ever been
8 related by marriage or are you related by blood or have you
9 ever had a close social or a personal relationship with any of
10 the individuals that I've named as possible witnesses in this
11 matter, if that's true, please stand. Name and number, ma'am.

12 JUROR NUMBER 25: Uh, Juror 25, Tracy Burgess.

13 THE COURT: Yes, ma'am.

14 JUROR NUMBER 25: Uh, Courtney Burgess is my
15 daughter-in-law.

16 THE COURT: Alright, ma'am, that I'm gonna excuse you
17 then from the trial of the case. You can be seated but, uh,
18 you no longer have to answer my questions. Anyone else?

19 (No response.)

20 THE COURT: Now as to the attorneys that are involved in
21 this case, has any member of the jury panel ever been
22 represented by the attorneys that are in this case or have
23 they ever appeared on the other side of some legal matter from
24 you, if that's true please stand.

25 (No response.)

JURY QUALIFICATIONS

1 THE COURT: Is there any member of the jury panel who's
2 ever been related by marriage or are you related by blood or
3 have you ever had a close social or a personal relationship
4 with either of the attorneys involved in this trial, if that's
5 true, please stand.

6 THE COURT: Name and number.

7 JUROR NUMBER 8: Vollie Bailey, Number 8.

8 THE COURT: Yes.

9 JUROR NUMBER 8: I go to church with Mr. Bean.

10 THE COURT: Alright, would the fact that you attend
11 church with Mr. Bean and probably acquainted with him would
12 that affect your ability to be fair and impartial in this
13 trial?

14 JUROR NUMBER 8: It would not.

15 THE COURT: Thank you, you can be seated. Anyone else?
16 Yes, sir?

17 JUROR NUMBER 35: Number 35, Don Coggins, I'm acquainted
18 with Mr. Bean.

19 THE COURT: Alright, would that fact affect your ability
20 to be fair and impartial if you were on the jury?

21 JUROR NUMBER 35: No.

22 THE COURT: Thank you, sir. Anyone else?

23 (No response.)

24 THE COURT: Is there any member of the jury panel who has
25 previously served as a witness in either a civil or a criminal

JURY QUALIFICATIONS

1 trial, if that's true please stand.

2 (No response.)

3 THE COURT: Is there any member of the jury panel or a
4 member of your immediate family who has ever been arrested
5 for, charged with or prosecuted for a crime, if that's true
6 please stand. Name and number, ma'am.

7 JUROR NUMBER 15: Sherry Boyter, 15.

8 THE COURT: Yes, ma'am.

9 JUROR NUMBER 15: It was my brother-in-law.

10 THE COURT: He was prosecuted for a crime?

11 JUROR NUMBER 15: Yes, sir.

12 THE COURT: Now would that fact affect your ability to be
13 fair and impartial if you were selected on the jury?

14 JUROR NUMBER 15: No, sir.

15 THE COURT: Thank you, ma'am. Sir, name ---

16 JUROR NUMBER 85: An ---

17 THE COURT: --- and number.

18 JUROR NUMBER 85: Antilius Johnson, 85.

19 THE COURT: Yes, sir.

20 JUROR NUMBER 85: Uh, my brother was incarcerated on drug
21 charges.

22 THE COURT: Alright. Would that affect your impartiality
23 in this case?

24 JUROR NUMBER 85: No, sir.

25 THE COURT: Thank you. Ma'am, name and number.

JURY QUALIFICATIONS

1 JUROR NUMBER 103: Ladonna Manis, 103.

2 THE COURT: Yes, ma'am.

3 JUROR NUMBER 103: My mother-in-law was charged with a
4 crime.

5 THE COURT: Would that affect your impartiality in this
6 matter?

7 JUROR NUMBER 103: No.

8 THE COURT: Thank you very much. Anyone else?

9 (No response.)

10 THE COURT: Is there any member of the jury panel who has
11 had any type of experience as a police officer, uh, at any
12 level: state, federal, uh, military, uh, such that it might
13 affect your ability to be fair and impartial in this case, if
14 that's true please stand.

15 (No response.)

16 THE COURT: Is there any member of this jury panel or a
17 member of your immediate family or a close personal friend of
18 yours who has ever been prosecuted for a drug crime such that
19 it would affect your ability to be fair and impartial in the
20 trial of this case, if that's true please stand.

21 (No response.)

22 THE COURT: Has any member of the jury panel gathered any
23 information about this matter such that it would've caused you
24 to either form or express an opinion about any issue that
25 might be involved in this trial, if that's true please stand.

JURY QUALIFICATIONS

1 (No response.)

2 THE COURT: Is there any member of the jury panel who is
3 aware of any bias or prejudice that you might have either for
4 or against the defense or the State in this matter, if that's
5 true please stand.

6 (No response.)

7 THE COURT: Is there any member of the jury panel who may
8 have been a member of the grand jury, uh, which issued this
9 indictment, that's extremely doubtful since it was issued this
10 year, but if that's the case please stand, I'm required to ask
11 that question.

12 (No response.)

13 THE COURT: Is there any member of the jury panel who is
14 a member of or a contributor to a group that has as its
15 primary concern the promotion of law enforcement and/or
16 victim's rights, these groups would include but not be limited
17 to Mothers Against Drunk Driving, Students Against Drunk
18 Driving, Citizens Against Violent Crime, the South Carolina
19 Trooper's Association, the South Carolina Sheriff's
20 Association or other similarly oriented organizations, if
21 that's true, please stand. Name and number.

22 JUROR NUMBER 25: Number 35, Don Coggins. I've
23 contributed to such groups in the past.

24 THE COURT: Would that affect your ability to be fair and
25 impartial if you were selected to serve?

JURY QUALIFICATIONS

1 JUROR NUMBER 25: No, sir.

2 THE COURT: Thank you. Name and number, sir.

3 JUROR NUMBER 46: Joe Duffessy, 46.

4 THE COURT: Yes, sir.

5 JUROR NUMBER 46: I contributed to the sheriff's
6 office.

7 THE COURT: Alright. Would that affect your impartiality
8 if you were selected to serve?

9 JUROR NUMBER 46: No, sir.

10 THE COURT: Thank you, sir. Anyone else?

11 (No response.)

12 THE COURT: Does any member of this jury panel know of
13 any reason whatsoever why he or she should not serve as a
14 juror in this case with particular emphasis being placed upon
15 your ability to be fair and impartial to both the State and
16 the defense, that's true please stand.

17 (No response.)

18 THE COURT: State have additional questions?

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

20 THE COURT: Defense have additional questions?

21 MR. BEAN: No, Your Honor.

22 THE COURT: Alright, I'll direct the clerk then to
23 prepare a list of potential jurors in the matter.

24 (Pause.)

25 THE COURT: Alright, in this case the State will have

JURY QUALIFICATIONS

1 five strikes, the defense will have five strikes; we'll pick
2 one alternate with the State having one strike, the defense
3 having two. Madam clerk, you made proceed.

4 THE CLERK: Yes, sir. Juror Number 134, Garland
5 Richards.

6 (Garland Richards, a white male came forward.)

7 THE CLERK: What say the State?

8 MR. SPIVEY: Please present this juror.

9 THE CLERK: What say the defense?

10 MR. BEAN: Please excuse the juror.

11 THE CLERK: Juror 154, James Stone.

12 (James Stone, a white male came forward.)

13 THE CLERK: What says the State?

14 MR. SPIVEY: Please present this juror.

15 THE CLERK: What say the defense?

16 MR. BEAN: Please seat the juror.

17 THE COURT: Sir, have a seat in the jury box. Thank you
18 sir.

19 (Whereupon, the juror complied.)

20 THE BAILIFF: Have a seat right.

21 THE CLERK: Juror 106, Karen Mccollum.

22 (Karen Mccollum, a black female came forward.)

23 THE CLERK: What say the State?

24 MR. SPIVEY: Please present this juror.

25 THE CLERK: What say the defense?

JURY QUALIFICATIONS

1 MR. BEAN: Please swear the juror.

2 THE CLERK: Juror Number 2, Floyd Allison.

3 (Floyd Allison, a white male came forward.)

4 THE CLERK: What say the State?

5 MR. SPIVEY: Please present this juror.

6 THE CLERK: What say the defense?

7 MR. BEAN: Please excuse the juror.

8 THE CLERK: Juror 34, Linda Clippard.

9 (Linda Clippard, a white female came forward.)

10 THE CLERK: What say the State?

11 MR. SPIVEY: Please present this juror.

12 THE CLERK: What say the defense?

13 MR. BEAN: What's the number again?

14 THE CLERK: Thirty-four.

15 MR. BEAN: Please excuse this juror.

16 THE CLERK: Juror 55, Shannon Fischer.

17 (Shannon Fischer, a white female came forward.)

18 THE CLERK: What say the State?

19 MR. SPIVEY: Please present this juror.

20 THE CLERK: What say the defense?

21 MR. BEAN: Please swear the juror.

22 THE CLERK: Juror Number 11, Donald Becknell, Jr.

23 (Donald Becknell, Jr., a white male came forward.)

24 THE CLERK: What say the State?

25 MR. SPIVEY: Please present this juror.

JURY QUALIFICATIONS

1 THE CLERK: What say the defense?

2 MR. BEAN: Please swear the juror.

3 THE CLERK: Juror 24, Dennis Browne.

4 (Dennis Browne, a white male came forward.)

5 THE CLERK: What say the State?

6 MR. SPIVEY: Please present this juror.

7 THE CLERK: What say the defense?

8 MR. BEAN: Please swear the juror.

9 THE CLERK: Juror 181, Kady Richards.

10 (Kady Richards, a white female came forward.)

11 THE CLERK: What say the State?

12 MR. SPIVEY: Please present this juror.

13 THE CLERK: What say the defense?

14 MR. BEAN: I I I'm sorry, Your Honor, she's not on my
15 list. I I go from one 177 to 183.

16 THE CLERK: Mr. Bean.

17 THE COURT: She's been qualified, has she not, ---

18 THE CLERK: Yes, sir.

19 THE COURT: --- madam clerk?

20 THE CLERK: Yes, sir, she has.

21 THE COURT: Alright.

22 MR. BEAN: Please swear the juror, Your Honor. Thank you
23 very much.

24 THE CLERK: Juror 74, James Heckathorn.

25 (James Heckathorn, a white male came forward.)

JURY QUALIFICATIONS

1 THE CLERK: What say the State?

2 MR. SPIVEY: Please present this juror.

3 THE CLERK: What say the defense?

4 MR. BEAN: Please swear the juror.

5 THE CLERK: Juror 118, Heather Nabors.

6 (Heather Nabors, a white female came forward.)

7 THE CLERK: What say the State?

8 MR. SPIVEY: Please present this juror.

9 THE CLERK: What say the defense?

10 MR. BEAN: Please swear the juror.

11 THE CLERK: Juror 155, Joshua Summers.

12 (Joshua Summers, a white male came forward.)

13 THE CLERK: What say the State?

14 MR. SPIVEY: Please present this juror.

15 THE CLERK: What say the defense?

16 MR. BEAN: Please swear the juror.

17 THE CLERK: Juror 151, Marilyn Staak.

18 (Marilyn Staak, a white female came forward.)

19 THE CLERK: What say the State?

20 MR. SPIVEY: Please present this juror.

21 THE CLERK: What say the defense?

22 MR. BEAN: Please excuse this juror.

23 THE CLERK: Juror 139, Matthew Ross.

24 (Matthew Ross, a black male came forward.)

25 THE CLERK: What say the State?

JURY QUALIFICATIONS

1 MR. SPIVEY: Please present this juror.

2 THE CLERK: What say the defense?

3 MR. BEAN: Please swear the juror.

4 THE CLERK: Juror 152, Charles Stacey, Jr.

5 (Charles Stacey, Jr., a white male came forward.)

6 THE CLERK: What say the State?

7 MR. SPIVEY: Please excuse this juror.

8 THE CLERK: Juror 103, Ladonna Manis.

9 (Ladonna Manis, a white female came forward.)

10 THE CLERK: What say the State?

11 MR. SPIVEY: Please present this juror.

12 THE CLERK: What say the defense?

13 MR. BEAN: Please swear the juror.

14 THE CLERK: Juror Number 8, Vollie Bailey the third.

15 (Vollie Bailey, a white male came forward.)

16 THE CLERK: What say the State?

17 MR. SPIVEY: Please excuse this juror.

18 THE CLERK: Juror 153, Christian Stevenson.

19 (Christian Stevenson, a white male came forward.)

20 THE CLERK: What say the State?

21 MR. SPIVEY: Please present this juror.

22 THE CLERK: What say the defense?

23 MR. BEAN: Please excuse the juror.

24 THE COURT: That's five strikes for the defense, any

25 other claims will be for cause.

JURY QUALIFICATIONS

1 THE CLERK: Juror Number 69, Donna Halabi.

2 (Donna Halabi, a white female came forward.)

3 THE CLERK: What say the State?

4 MR. SPIVEY: Please present this juror.

5 THE CLERK: What say the defense?

6 MR. BEAN: Please swear the juror.

7 THE COURT: We'll pick the alternate at this time.

8 THE CLERK: Juror 13, Amanda Fitch.

9 (Amanda Fitch, a white female came forward.)

10 THE CLERK: What say the State?

11 MR. SPIVEY: Please present this juror.

12 THE CLERK: What say the defense?

13 MR. BEAN: Please swear the juror.

14 THE CLERK: Jury selection is complete.

15 THE COURT: Thank you, madam clerk. Any objection to the
16 jury selection process from the State?

17 MR. SPIVEY: None, Your Honor.

18 THE COURT: Any from the defense?

19 MR. BEAN: No, Your Honor.

20 THE COURT: Alright, those of you who were not selected
21 as jurors in this case I've been asked to, uh, release you to
22 go back to the assembly room and you should, uh, re-assemble
23 there at two o'clock this afternoon, I believe Judge Hayes may
24 have something for you to do so thank you very much for your
25 cooperation this afternoon, you may step back to the assembly

JURY QUALIFICATIONS

1 room. I'll ask the attorneys to approach briefly while
2 they're leaving.

3 THE BAILIFF: Order in the Court.

4 (Whereupon, the jury pool exited the courtroom.)

5 (Whereupon, a bench conference was held off record.)

6 THE COURT: Alright, ladies and gentlemen, you've been
7 selected on this jury and I do note that it's, uh, about 12:40
8 now, uh, so we're gonna let you go get lunch at this point in
9 time. There's some pretrial matters I have to take up with
10 the lawyers about evidence and some other issues that have to
11 be brought up before the jury trial actually starts, uh, so
12 I'll need to take up those matters with them in your absence,
13 uh, so, uh, as you leave the courthouse let me caution you
14 about just a couple a things. Uh, first of all, when you
15 return to the courtroom you'll be taking an oath concerning
16 your responsibilities as jurors in this case and what that
17 oath is gonna be is that you will have agreed to decide this
18 case based upon the law and the evidence presented in the
19 trial. Now the only place you're going to hear evidence in
20 this case is in this courtroom from witnesses on this
21 (indicating) witness stand who've been sworn to tell the
22 truth, uh, and who will be testifying in the case and then any
23 evidence that will be documents or objects that are put into
24 the record as a result of the testimony of those witnesses.
25 There is no evidence outside of this courtroom so for that

JURY QUALIFICATIONS

1 reason I will caution ya don't try to gather any information
2 about the individuals involved in this case or the issues that
3 might be involved in this case, don't discuss the case with
4 anyone, don't allow anyone to discuss it with you. We've gone
5 to a lotta trouble to pick a jury that has an open mind about
6 the issues in these matters, I want you to keep that open mind
7 until you've heard all the arguments by the lawyers and all
8 the testimony in the case and I've charged you concerning the
9 law and then when I instruct you to begin your deliberations
10 is when you should begin to discuss anything about this case.
11 Hope you realize that even the most innocent conversation you
12 might have even among yourselves if it just concerns what the
13 charges are about that discussion might begin to color your
14 decision in this case and I want you to keep an open mind
15 about everything involved in this case until you're in a
16 position to start making a decision a decision making process
17 should begin so my instructions are don't try to gather any
18 information outside of the courtroom, don't listen to, watch
19 or read any media reports about the events involved in this
20 trial, don't discuss the case with anyone, don't allow anyone
21 to discuss the case with you. It's okay to tell friends or
22 family members that you've been picked on a jury, that's where
23 that discussion should stop and it shouldn't go any further
24 than that, so you can say you've been selected and you might
25 talk to 'em about it when it's over, you don't have a duty

JURY QUALIFICATIONS

1 talk to anybody about anything on the jury, uh, unless you
2 choose to do that.

3 One other important factor I wanna point out to you: I've
4 mentioned to you before that jury tampering is a crime in this
5 state, should someone try to contact your or try to discuss
6 with you something about this case, please report that to the
7 Court, I take those matters very seriously, I can assure you
8 that I would see that the appropriate investigation has begun
9 and if someone needs to be charged I would see that that
10 happens so, uh, please let me know if anyone tries to contact
11 you in an effort to try to influence your decision in this
12 matter.

13 Alright, uh, I'm going to ask that you be back, uh, in
14 the jury room, uh, at two o'clock, uh, I -- now we're not
15 using the jury room that I normally use in this case, the
16 bailiffs will show you to a jury room, I've got a jury in
17 deliberations out there in the case I've got goin' on, so
18 they'll show you to a jury room, uh, that's the place you
19 should report back to, that location, uh, be there about two
20 o'clock, as soon as I finish with the attorneys, we'll have
21 you enter the courtroom and we'll be in a position to start
22 the case, so thank you for your cooperation, I'll be checking
23 with you to be sure you've complied with those instructions so
24 please don't violate those instructions while you're gone, the
25 bailiffs can show you out, thank you very much.

MOTIONS AND MATTERS

1 THE BAILIFF: Okay, exit this way, please.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: I'll give the court, people in the court
5 about an hour for lunch so why don't we say you be back here
6 about, uh, 1:45 and we'll take up those few matters we have to
7 take up before we start the trial. Defendant is in custody,
8 he remains in custody at this time. Court's in recess then
9 till, uh, 1:45.

10 MR. SPIVEY: Thank Your Honor.

11 THE COURT: Thank you.

12 (Whereupon, a recess was taken.)

13 MR. SPIVEY: Your Honor, very quickly. We had some, a a
14 weird moment where he didn't have a complete jury list and I
15 know the record sounded a little odd and I just ---

16 THE COURT: Uh-huh.

17 MR. SPIVEY: --- wanna just state verbally so the record
18 reflect that I I was able to share the jury information for
19 what he did not have, ---

20 THE COURT: Okay, I ---

21 MR. SPIVEY: --- he was able ---

22 THE COURT: --- did note that you, I did note that you
23 passed him information, that true, Mr. Bean?

24 MR. BEAN: It is true, Honor.

25 THE COURT: So you had what you needed to pick the jury.

MOTIONS AND MATTERS

1 MR. BEAN: I did. I was, uh, disappointed that the list
2 I got from the clerk's office didn't have everybody in there
3 but sometimes I'd forgotten those forms don't come back, I ---

4 THE CLERK: That was the, um, people that came in late.

5 THE COURT: People came in late. They fill -- make --
6 they get 'em to fill 'em in when they report, the people that
7 don't send 'em in so they don't always get, uh, early notice.

8 THE CLERK: You want my copy?

9 MR. SPIVEY: I I just wanted that ---

10 MR. BEAN: No, ---

11 MR. SPIVEY: --- to be ---

12 MR. BEAN: --- I'm fine, I I used his as needed so I'm
13 I'm fine.

14 THE COURT: Do I have anything else that you need?

15 THE CLERK: No, sir, I believe that's it. Well your, uh,
16 questions and stuff like that.

17 THE COURT: Oh, yeah, yeah, yeah.

18 (Whereupon, a discussion was held off the record.)

19 THE COURT: Alright, we're back on the record in the case
20 of State vs. Isaac, uh, Lyles. Uh, Mr. Bean, you indicated
21 that perhaps you had some pre-trial matters you'd like the
22 Court to consider.

23 MR. BEAN: I I do, Your Honor, thank you.

24 THE COURT: Yes.

25 MR. BEAN: Uh, first of all, the, uh, defense would make

MOTIONS AND MATTERS

1 a motion to sequester the prosecution witnesses, I think it's
2 in the interest of fairness to my client that the Court do
3 that.

4 THE COURT: Alright, ---

5 MR. BEAN: We would ask ---

6 THE COURT: --- I'll I'll grant that motion with the
7 exception of the chief investigator. Who who is that going to
8 be, Mr. Spivey?

9 MR. SPIVEY: Uh, Your Honor, I I believe that's
10 Investigator Kirby.

11 THE COURT: Alright, then I'll ask any other individuals
12 who would expect to be witnesses in this case to please have a
13 seat in the lobby and, uh, during the -- your sequestration I
14 will instruct you not to discuss your future, present, or
15 past, uh, testimony in the courtroom with anyone until the
16 case has ended by way of verdict so if you'll step outside,
17 please. Thank you, gentlemen.

18 (Whereupon, the witnesses exited the courtroom.)

19 THE COURT: Alright, Mr. Bean, anything else?

20 MR. BEAN: Yes, Your Honor, thank you. Uh, Your Honor,
21 at this time we do have a a motion in limine. We're not
22 contesting, Your Honor, the search warrant, uh, which began
23 this case. Uh, the case, uh, the facts as Your Honor will
24 hear, uh, begins with the execution of the search warrant and
25 we're asking that, uh, any testimony by any of the witnesses

MOTIONS AND MATTERS

1 for the State that speak to the acquisition of the warrant or
2 what they were told by an informant or anybody else, uh, be
3 excluded because it'd be hearsay, uh, since the case as I say
4 actually starts with the execution of the warrant and the
5 subsequent arrest of my client.

6 THE COURT: Any position as to that, Mr. Spivey?

7 MR. SPIVEY: Your Honor, we, that's how we intend to
8 present our case. We will not talk about any informant
9 information that that led to the search warrant or anything
10 about obtaining a search warrant itself ---

11 THE COURT: Okay, ---

12 (Indiscernible cross-talk over Mr. Spivey.)

13 THE COURT: --- unless a course later on Mr. Bean changes
14 his mind and tries to challenge the search warrant I
15 suppose.

16 MR. BEAN: Well I -- that might happen, Your Honor, but I
17 I don't anticipate it ---

18 THE COURT: Okay, ---

19 MR. BEAN: --- at this time, no.

20 THE COURT: --- I understand so I think we have an
21 understanding, Mr. Bean.

22 MR. BEAN: Thank Your Honor, that that's all I have this
23 time I ---

24 THE COURT: Alright, ---

25 MR. BEAN: --- I believe.

MOTIONS AND MATTERS

1 THE COURT: --- I think Mr. Spivey indicated there was
2 one matter the State wished to take up or has that already
3 been dealt with?

4 MR. SPIVEY: Yes, Your Honor. I just wanna inform the
5 Court at this time, uh, I -- we're having some issues with the
6 intake people with SLED and their availability for court.
7 They got, uh, apparently I was about the ninth subpoena they
8 received this week, uh, it's Doris Yarborough and Nikki Hughes
9 were the two intake people, uh, I ---

10 THE COURT: I see.

11 MR. SPIVEY: Stuff got taken out on different dates so
12 our position then under *State v. Hatcher* as long as everything
13 was sealed up and didn't appear to be tampered with and and we
14 then we would still be able to prove chain a custody. I've
15 told them we'll do our best and we're gonna
16 tr -- attempt not to use 'em. If for some reason you feel
17 like there's some deficiency, we're gonna reserve the right to
18 at the end of the trial try to line up a a a time for them to
19 come in but, ---

20 THE COURT: Okay.

21 MR. SPIVEY: --- uh, they're both scheduled to sorta
22 be ---

23 THE COURT: Well I'll have to, ---

24 MR. SPIVEY: --- not around.

25 THE COURT: --- I actually will have to see what the

MOTIONS AND MATTERS

1 proof is as far as the condition of the evidence and how it
2 was delivered and that sorta thing.

3 MR. BEAN: Exactly, Your Honor, and that that would be my
4 point, yes.

5 THE COURT: Alright, well you'll -- we'll -- we -- I
6 understand that that could be an issue we'll ---

7 MR. SPIVEY: That's ---

8 THE COURT: --- we'll do -- deal with it if we need to.

9 MR. SPIVEY: Yes, sir, Your Honor

10 THE COURT: Alright, then are we ready to bring the jury
11 in from the State's perspective? Are you ready for the jury?

12 MR. SPIVEY: Yes, sir, Your Honor, ju -- and also wanna
13 put on the the record just one last thing. Your Honor, we
14 talked in in chambers about one a the witness's, uh,
15 records, ---

16 THE COURT: Yes, we did.

17 MR. SPIVEY: --- Your Honor, it's my understanding his
18 en -- his entire criminal record will come in and I wanna just
19 make that part a the record as well, Your Honor.

20 THE COURT: Yes, that was my my, uh, position in chambers
21 and would be my position if the issue were presented before me
22 at this time.

23 MR. SPIVEY: Yes, sir.

24 THE COURT: Alright, let's bring the jury in.

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

MOTIONS AND MATTERS

1 THE COURT: Just come in and ha -- there's no assigned
2 seats so come in and just fill in and, uh, the only assigned
3 seat is for the alternate, she sits on the back row on the, on
4 the end.

5 Alright, the record will reflect the jury has returned to
6 the courtroom, I wanna thank you for your patience. Uh,
7 unexpectedly or I guess somewhat expectedly I had a, uh, a
8 verdict come in in the case that I tried earlier and so I had
9 to dispose of that matter before I could start with you so I
10 thank you for your patience, uh, it's not a very entertaining
11 place to have to wait back there but I do appreciate your
12 be -- your willingness to do that.

13 Uh, I told that upon your return, uh, to the, uh, uh,
14 courthouse that I would inquire as to whether or not you were
15 able to follow my instructions when you left. If there was
16 any member of the jury panel who was unable to follow the
17 instructions that I gave, please stand.

18 (No response.)

19 THE COURT: It appears that all jurors have been able to
20 comply with the Court's instructions thus far. I also
21 informed you that upon your return that you will be taking an
22 oath concerning your responsibilities as jurors in this case
23 and at this time I'm going to ask the clerk to administer the
24 oath.

25 THE CLERK: Yes, sir.

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1 (Whereupon, the jury was sworn.)

2 THE CLERK: Thank you, you may be seated.

3 THE COURT: Now if there was any member of the jury panel
4 who either failed or refused to take the oath the clerk just
5 administered, please stand.

6 (No response.)

7 THE COURT: Record then will reflect that all jurors have
8 been sworn concerning your responsibilities in this case.
9 Before we begin the trial there's some things that I'd like to
10 go over with you and I'm doing this from the perspective that
11 I, it's my belief that for most of you this would be your
12 first experience in actually serving as a juror in the trial
13 of a criminal case, uh, and for those of you for whom this is
14 your first experience there's some things I'd like to go over
15 with you to make you aware of as far as your duties and
16 responsibilities as well as the duties and responsibilities of
17 myself and the attorneys and the people that are involved in
18 this trial. If you've never been in this position before, if
19 you've never sat on a jury before or participated in the trial
20 of a case by a jury, I would suspect that probably most of
21 what you would know about the jury trial process you would
22 have gathered from television shows you've watched or movies
23 that you've seen, perhaps some books that you've read, uh,
24 there was a time when they had trials on TV, on court TV for a
25 little while but that's kinda gone away at this point in time

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1 it appears but at any rate perhaps on television is where you
2 have, uh, seen most of what you would know about jury trials
3 and, you know, in the case of television and movies, uh, those
4 particular sources of information are always full of
5 interesting story lines, intense drama and action and things
6 of that nature and, uh, it never ceases to amaze me that in
7 the case of television they can have an event occur and the
8 case tried and the matter ended in an hour, they can still
9 stop five or six times to to run commercials for ya so, uh, I
10 hope you realize that when you watch those things or see those
11 things in movies and on television that, uh, the people who
12 write write those scripts take what's called "literary
13 license" with what goes on in courtrooms; in other words, they
14 make what goes on in the courtroom fit the story line so it's
15 interesting, has that intense drama and the twist and turns
16 that go on, that's because those sources of information are
17 intended to entertain you.

18 Now what you're engaged in today is intended for anything
19 but your entertainment. I hope you realize that what you're
20 engaged in is a fundamental part of our government, a
21 fundamental part of our democracy in this country. Uh, if you
22 were to travel around the world and look at the majority of
23 legal systems that exist in this world today, you would find
24 that very few of them allow direct participation in the
25 decision-making process that goes on in those courtrooms by

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1 citizens of those countries, we're different in that respect.
2 We, uh, have a Constitution with a Bill of Rights that
3 guarantees each citizen a right to a trial by jury and that
4 right goes back to a document that was signed in a place
5 called Runnymede, England and that occurred in the year 1215.
6 We're in the year of 2013 so in two more years that document
7 that first embodied the right to a trial by jury will be eight
8 hundred years old in two years. Now a system that's gone on
9 for eight hundred years I would say has been tried and true,
10 it's it's pretty well engrained in our system and that Bill of
11 Rights that we have is a document that a good many people in
12 this country have died in order to see that we still have that
13 and I hope you appreciate the fact that you're engaged in a
14 fundamental part of our democracy by participating in a jury
15 trial in a court of law in this country, hope it's a right we
16 never lose in this country, that's the right to be tried by
17 your fella citizens, uh, whom you're accused of of a crime by
18 the government.

19 Now this courtroom is a place of honor, it's dedicated to
20 the preservation of citizen's rights through both the
21 Constitution of this state and of the United States. Uh, I
22 hope you'll understand that the attorneys who are here are
23 here to represent their client's interest, I'm sure they'll do
24 an excellent job in presenting their client's cases before you
25 during this trial but I want you to realize that first and

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1 foremost these lawyers are also officers of this court. At
2 some point in time they appeared in front of this court or
3 some other court in this state, they took an oath and that
4 oath is prescribed by the Court rules, it's called the
5 "Attorneys Oath", not surprising, but in that oath it contains
6 an agreement by the attorneys that they will assist you in
7 your search for the truth during this trial, for that reason
8 you could expect that they'll act in a reasonable and a
9 professional and an ethical manner in the presentation of
10 their client's case that's before you during this trial. I'm
11 gonna remind you too that you've come in front of this court
12 and you've taken an oath, you've sworn to decide this case
13 based upon the law and the evidence presented during this
14 trial. You're expected now to act in a reasonable and a
15 professional and an ethical manner in the discharge of your
16 duties as jurors in this case. I wanna thank you very much
17 for your willing to accept the responsibility of jury service
18 this week, I wanna thank you for the service that you're
19 rendering to our court system by serving.

20 Now briefly went over with you during jury selection the
21 indictments that are involved in this case and I'm not going
22 to read them to you at this point in time, uh, I'll go over
23 those with you in more detail when I charge you on the law at
24 the close of the trial but these indictments as I told you
25 earlier represent the charges that have been brought before

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1 this, uh, court against this defendant, it informs this court
2 of the charges to be tried and it informs the defendant of the
3 charges that have been lodged against him but the indictment
4 is simply the charge which brings the case into the Court, it
5 does not constitute evidence of guilt in this matter, cannot
6 be used by you in any manner in that regard. To the
7 indictments the defendant has pled not guilty and under the
8 law and the Constitution of this state and of the United
9 States that plea places the sole burden of proof in this case
10 upon the State, it's the State's obligation to prove the
11 allegations that are contained in the indictment to you by
12 proof beyond a reasonable doubt.

13 Now at the close of the trial, I'll go over the
14 responsibilities and what those phrases mean and and and give
15 ya a little more information about the burden of proof and
16 what that, what that is but I will tell you in this case the
17 burden at this point in time of proof is upon the State and
18 it'll be your responsibility as jurors at the close of this
19 trial to determine whether or not the State has met its burden
20 of proof in regards to these indictments that are before the
21 Court. Your purpose as jurors is to find and determine the
22 facts in this case and I will tell you that you under the law
23 of this state are the sole judges of the facts in this case.
24 It'll be my job to act as the presiding officer over this
25 trial, I'll see to it that the proper procedure is filed. I

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1 may be called upon to make rulings concerning the
2 admissibility of evidence or the appropriateness of questions
3 that are being asked during the trial, uh, I wanna tell you
4 now that you should not take from anything that I do in the
5 discharge of my duties as the presiding officer in this case
6 to indicate to you in any manner whatsoever that I have an
7 opinion as to how you determine the facts in this case. I
8 have told you now, I'm gonna tell you several times, you are
9 the sole judges of the facts in this case so the law does not
10 allow me an opinion concerning the facts and I don't have an
11 opinion as to how you determine the facts in this case so
12 don't think from anything that I say or do to indicate
13 otherwise because I can assure you I have no opinion as to how
14 you should determine the facts in this matter.

15 Now the same law that makes you the sole judges of the
16 facts in this case makes me the sole judge of the law in this
17 case. At the close of the trial, once you've heard all the
18 evidence and all the arguments by the lawyers I will charge
19 you or give you the law to be applied in this case and I am
20 the sole judge of the law in this matter so if you came into
21 the courtroom today and you had some opinion as to what the
22 law is or you have some opinion as to what the law ought to
23 be, you should leave those notions outside of the jury room
24 before you begin your deliberations. I will tell you that
25 under the oath that you've taken in this court today you're

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1 required to take the law exactly as I give it to you and then
2 apply that law to the facts as you decide the facts to be,
3 that should put you in a position to render a verdict at the
4 close of the trial in this matter.

5 Now from time to time during this trial it may be
6 necessary for me to rule as I told you on the appropriateness
7 of questions or of the admissibility of evidence, I will tell
8 you that if in my consideration of that particular issue if
9 it's my belief that my discussion with the lawyers about those
10 questions might lead to a discussion of some matter that would
11 not be admissible under the rules of evidence that govern the
12 admissibility of evidence in a courtroom, I may ask you at
13 that time to leave the courtroom, step back to the jury room
14 while those discussions go on. Again, don't take from the
15 fact that I've asked you to step outta the courtroom to
16 indicate that I've got an opinion as to how you determine the
17 facts in this case. I hope you realize it's just me doing my
18 job and my job is to see to it that you decide this case based
19 upon evidence that's been admitted into the record in
20 accordance with the rules that govern the admission of
21 evidence in a court of law. Once I've made a ruling on that
22 particular issue you'll be asked to come back into the
23 courtroom, I'll announce my decision and we'll proceed with
24 the trial but, again, don't think because I've asked you to
25 step out that I some way am trying to indicate to you as to

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1 how you ought to derm -- determine the facts, again, it's just
2 me doing my job as the gatekeeper, the person who decides what
3 complies with the rules and what doesn't comply with the rules
4 in letting evidence come into the trial of the case.

5 In a few minutes we're going to allow the attorneys to
6 make what's called an "opening statement" and attorneys are
7 only allowed to discuss or talk directly with the jury on two
8 occasions during the trial, the first occasion is when we do
9 opening statements, then once all the evidence has been
10 presented they'll do a closing argument or a closing
11 statement, so those are the only two times lawyers are allowed
12 to directly talk to you as the jury. At the opening
13 statements they will tell ya perhaps what the case is about,
14 what they expect to prove, in the closing statements they'll
15 sum up what the evidence is that you've heard from their
16 client's position and urge you to draw certain inferences from
17 that that evidence but I will tell you now that statements
18 made by lawyers at any time during the trial those statements
19 do not constitute evidence in the case. The only evidence
20 you're going to hear is the testimony of witnesses who are
21 sworn to tell the truth who testify from the witness stand and
22 whatever comes into the record through that testimony.
23 Statements by lawyers may argue or tell you what conclusions
24 you oughta draw from the evidence but they do not constitute
25 evidence themselves, therefore they can't be used directly by

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1 you in determining the guilt or the innocence of the defendant
2 in the case.

3 I've told you you're the sole judges of the facts in this
4 case and I'm going to tell you that's gonna make you the sole
5 judge of the credibility or believability of the witnesses you
6 hear and I'm going to ask you when you decide whether to
7 believe a witness or not to believe a witness or believe
8 certain testimony or not believe certain testimony I'll ask
9 you to use your good common sense in making those
10 determinations. You know every single day of your life you
11 make common sensical decisions as to what you choose to
12 believe and what you choose not to believe, today and perhaps
13 tomorrow are gonna be no different than any other day. You'll
14 have to make a determination as to what wit -- what witnesses
15 and what testimony convinces you of its believability or its
16 truthfulness, for that reason I'm going to ask you to listen
17 carefully to what goes on in the courtroom, try to pay
18 attention, don't let your thoughts wander, be in a position to
19 discuss the testimony with your fellow jurors when you begin
20 deliberations, analyze, evaluate the evidence that you hear,
21 be in the position to make those determinations as to
22 credibility.

23 You know as the sole judges of the facts you have the
24 right to believe all of, part of or none of what a particular
25 witness might say. You have the right to believe one witness

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1 against all the others or all the others against one, again,
2 you're the sole judges of the facts, that makes you the sole
3 judges of the credibility and believability of the witnesses
4 you hear. You have the right to consider such factors as
5 whether or not a witness might, uh, have a stake in the
6 outcome of the case, whether or not a witness might be biased
7 or prejudiced one way or the other, you have a right to make a
8 determination as to whether you believe the witness actually
9 had the ability to know the facts about which the witness is
10 testifying and perhaps most importantly of all I've been going
11 into courtrooms now for about thirty-five years and, uh, this
12 the witness stand is always right in front of the jury box and
13 the reason for that is that gives you a chance to observe
14 people as they testify: the way they speak, how they deliver
15 their testimony, so use all a those factors as your common
16 sense tells you to use it, make a determination as to the
17 credibility or believability of the testimony that you hear in
18 the case so, again, pay close attention, try not to let your
19 thoughts wander, it's especially important that you make a
20 decision in this matter based on your your common sense and
21 good consideration of the issues before the Court because
22 under our system of justice ordinarily there's no means by
23 which an erroneous determination of facts made by a jury can
24 ever be corrected so please pay attention, please be in a
25 position to consider those matters when you begin your

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1 deliberations.

2 Now I do not appoint a foreperson of the jury until I
3 charge you on the law. I know on television they appoint that
4 person or elect that person at the beginning of the trial and
5 I don't do it that way. One of the reasons I do that is I
6 like to stress to jurors that at the close of the trial your
7 verdict will have to be unanimous before it's the verdict of
8 the jury, that means each and every one of you must agree upon
9 the verdict before the jury has reached a verdict, for that
10 reason it's my position that no juror in the box is more
11 important than any other juror and I don't want you to think
12 as the case goes along well I'll let the foreperson listen,
13 they'll tell me what to do when it gets to the end because I
14 want each of you to think you might be a foreperson, you might
15 have to lead those discussions at the close of the trial. I
16 want all of ya to be in a position to discuss it among
17 yourselves, be in a position to make a detember ---
18 termination as to the guilt or the innocence of the defendant
19 during your deliberation so I appoint the foreperson at the
20 close of the trial, uh, and don't think I forgot that fact,
21 that's just the way I do it, that's the way I've always done
22 it, worked out pretty well for me so I think it'll work out
23 just fine now. I I wanna be sure I haven't violated anyone's
24 rights in my opening comments to ya, does the State have an
25 objection on opening comment?

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1 MR. SPIVEY: No objection, Your Honor.

2 THE COURT: Any objection from the defense?

3 MR. BEAN: No, Your Honor, uh, excuse me, I do have a
4 matter though to take up with the Court before we start.

5 THE COURT: Alright, we'll do that in just a moment.

6 Now, ladies and gentlemen, as I've told you the the burden of
7 proof is upon the State, uh, to prove the case, for that
8 reason we allow the State to go first with opening statements
9 followed by the defense, uh, then the State gets to go first
10 with presentation of evidence and then followed by any
11 evidence the defendant chooses to put up. Once we've entered
12 all the evidence into the record we'll allow the attorneys to
13 make that closing argument or statement and once that's
14 completed I'll be, uh, charging you concerning the law, once
15 my charge on the law has been completed the case will be
16 turned over to you for your deliberation so that's the process
17 that we'll go through.

18 Uh, I do need to take up somethin' apparently with the
19 attorneys before we actually start the trial, I'll allow you
20 to step back to the jury room one more time and I'm gonna tell
21 ya you'll probly get tired a hearin' me tell you not to start
22 any discussions until I've told you to begin your
23 deliberations but I'll remind ya every time you step outta the
24 courtroom, so don't start any discussions about any matters
25 concerning this case until I've asked you to do so, you may

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1 retire to the jury room.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Mr. Bean.

5 MR. BEAN: Thank Your Honor. At this time the defendant
6 would like to, uh, make a motion to suppress the DNA evidence
7 in the case and, Your Honor, the reason I make it at this time
8 is it's not only in my opinion is it critical to the case but
9 in the event that my motion is granted I don't wanna be in a
10 position where it's already been told to the jury and then if
11 the motion is granted obviously they're left in wonderance
12 so ---

13 THE COURT: Alright.

14 MR. BEAN: --- we would like to, uh, examine the, uh, the
15 affiant who obtained, uh, the search warrant which led to the
16 collection of the DNA from my client.

17 THE COURT: Who is that?

18 MR. SPIVEY: Yes, sir. Your Honor, it's it's Jonathan
19 Lawson.

20 THE COURT: Um-hum.

21 MR. SPIVEY: Your Honor, I, you know, I thought this
22 would take place before the jury was sworn obviously, uh, but,
23 Your Honor, we're we're in the position we're in, we'll see.

24 THE COURT: Is he in the courtroom?

25 MR. SPIVEY: Uh, Your Honor, he's he's outside, I'll go

JONATHAN LAWSON - DIRECT EXAMINATION BY MR. SPIVEY

1 grab him.

2 THE COURT: Step outside and get him.

3 (Pause.)

4 (Whereupon, a discussion was held off the record.)

5 MR. SPIVEY: Your Honor, this time State calls Jonathan
6 Lawson.

7 (Whereupon, a discussion was held off the record.)

8 THE COURT: Come forward, sir, to my left, please be
9 sworn.

10 (Whereupon, the witness came forward.)

11 THE CLERK: You'll set your stuff down. If you'll raise
12 your right hand, put your left hand on the Bible.

13 JONATHAN LAWSON, having been first
14 duly sworn, testified as follows:

15 THE CLERK: Thank you, you have a seat.

16 THE COURT: Once you're seated, sir, state your name for
17 me.

18 THE WITNESS: Name is Jonathan Lawson.

19 THE COURT: Thank you. Your witness, Counselor.

20 MR. SPIVEY: Thank you, Your Honor. Your Honor, uh,
21 excuse me.

22 DIRECT EXAMINATION BY MR. SPIVEY:

23 Q. Mr. Lawson, please tell us your your training and
24 experience briefly and where ya work.

25 A. I currently work with the, uh, Spartanburg City Police

JONATHAN LAWSON - DIRECT EXAMINATION BY MR. SPIVEY

1 Department, been at the agency going on 11 years. Um,
2 currently I'm assigned to canine unit, uh, prior to being in
3 the canine unit I was assigned as a narcotic investigator.
4 Through my training and experience have multiple, uh, narcotic
5 classes, uh, canine handling classes, drug detection classes,
6 things a that nature.

7 Q. Okay. Uh, could you tell us what your your job or role
8 was on October 9th of 2012.

9 A. Initially when I arrived on scene, uh, what I usually do
10 when I ---

11 Q. Uh, let me interrupt just a second. Just what what were,
12 what were police doin' on October 9th 2012, go go back up a
13 little bit, give us ---

14 A. Um, there ---

15 Q. --- some background.

16 A. --- there's a execution of a search warrant residence on,
17 uh, believe it was Forest Street I believe is the address.

18 Q. Okay, continue, I'm sorry. What was your role?

19 A. Uh, my role was I just covered the back a the residence
20 from Brawley Street side to make sure no one ran outta the
21 residence into that direction, if so they would be, uh,
22 apprehended.

23 Q. And did you type up a search warrant for a DNA buccal
24 swab on that day?

25 A. That's correct. After the, uh, search warrant was

JONATHAN LAWSON - DIRECT EXAMINATION BY MR. SPIVEY

1 executed, uh, I I did a, uh, search warrant for that report --
2 for that day on, uh, Mr. Lyles.

3 Q. Okay.

4 MR. SPIVEY: Your Honor, may I approach the witness?

5 THE COURT: You certainly may.

6 Q. Hand you this this document. If you will please take a
7 look at that and see if you recognize that document.

8 A. I do. This is the, uh, search warrant that I typed and
9 had signed off on by county magistrate on October 9th 2012.

10 Q. And you're the affiant on that search warrant?

11 A. That be correct.

12 Q. Does it appear to be true and accurate copy of the search
13 warrant?

14 A. Uh, yes, sir, it is.

15 MR. SPIVEY: Okay. Your Honor, this time I'd move it in
16 as State's Exhibit No. 1.

17 THE COURT: Any objection?

18 MR. BEAN: Uh, subject to my motion, Your Honor, but no
19 otherwise.

20 THE COURT: Okay, so it'll be admitted.

21 MR. SPIVEY: Thank Your Honor.

22 THE COURT: Let her mark it, there we go.

23 (Search warrant marked State's Exhibit No. 1 for
24 identification and admitted into evidence.)

25 THE COURT: Alright, you may proceed, Mr. Spivey.

JONATHAN LAWSON - DIRECT EXAMINATION BY MR. SPIVEY

1 MR. SPIVEY: Thank Your Honor.

2 BY MR. SPIVEY:

3 Q. Officer Lawson, please if you will open the search
4 warrant document and if you can just tell us; number one, what
5 was the property sought.

6 A. A buccal swab for DNA from one Isaac Glenard Lyles, black
7 male, date of birth of 1967, uh, with a Social Security
8 number and address as well.

9 Q. Okay. What's the date on the front of the search
10 warrant?

11 A. October 9th 2012.

12 Q. Okay. If you can tell us the, uh, so that that's the
13 description sought, is that signed by the judge down there at
14 the bottom on that I guess what would be the second page minus
15 the cover page?

16 A. Yes, it is, it was signed by a signature by Judge
17 Moore ---

18 Q. Okay.

19 A. --- at 4:17 p.m. on October 9th 2012.

20 Q. Okay. If you can flip to the affidavit.

21 A. Okay.

22 Q. Please read your; number one, the description of property
23 and the description of premises to be searched and then also
24 your reason for affiant's belief that the property sought is
25 the subject's premises.

JONATHAN LAWSON - DIRECT EXAMINATION BY MR. SPIVEY

1 A. Okay, on on description of property sought, there's a
2 buccal swab for DNA from one Isaac Glenard Lyles, black male,
3 date of birth of 67, Social Security Number .
4 As far as the description of premises or per -- persons, place
5 or or things to be searched, uh, those like, once again buccal
6 swab for DNA from one Isaac Lyles, black male, date of birth
7 of 1967 and Social Security Number of and
8 address, uh, which was provided by him was
9 Moore, South Carolina 29369.

10 Q. Okay. What is, what's the reason for the affiant's
11 belief, what's the the reason that you obtained this search
12 warrant?

13 A. Uh, to obtain a swabbing of DNA from Mr. Lyles.

14 Q. Okay. Read read what you've written in the, in the
15 affidavit.

16 A. "On 10/9/2012 at approximately 1359 hours, officers from
17 the Spartanburg Public Safety Department executed a narcotics
18 search warrant on North Forest Street Apartments A and B.
19 Uh, during the search located on the property was a black book
20 bag that contained a quantity of cocaine base, powder cocaine,
21 digital scales and goggles, caffeine cutting agent and
22 marijuana. During the execution of the warrant, Mr. Lyles was
23 located on the property and detained. Your affiant has reason
24 to believe that this bag belongs to Mr. Mr. Isaac Lyles and
25 would contain his DNA. During the investigation no

JONATHAN LAWSON - DIRECT EXAMINATION BY MR. SPIVEY

1 individuals would take ownership of this bag nor its contents.
2 Your aff -- you affiant is respectfully requesting a search
3 warrant on Mr. Lyles to obtain DNA utilizing a buccal swab."

4 Q. Okay. What is a a a buccal swab just just very
5 briefly?

6 A. Basically a buccal swab is nothin' more than a long
7 Q-tip, a wooden handled Q-tip.

8 Q. And how do you obtain DNA using a a buccal swab?

9 A. Usually you would swab the inside of the cheek area of
10 the individual you're tryin' to obtain the DNA from.

11 Q. Are there other more obtrusive means of obtaining DNA
12 from somebody?

13 A. I guess you can obtain blood, uh, urine samples can, DNA
14 can come from urine samples as well.

15 Q. So is this probably the least intrusive means?

16 A. The -- yeah, definitely.

17 Q. Okay. Did you get any sworn testimony to the, to the,
18 uh, magistrate when you obtained the search warrant?

19 A. Just what was on the the search warrant.

20 Q. So other than what was signed you didn't give him any
21 oral communications at all.

22 A. I didn't give any other supplemental testimony.

23 Q. Okay.

24 MR. SPIVEY: Your Honor, at at this time I have no
25 further questions for this witness ---

JONATHAN LAWSON - CROSS-EXAMINATION BY MR. BEAN

1 THE COURT: Alright.

2 MR. SPIVEY: --- for this, for this hearing.

3 THE COURT: Mr. Bean.

4 MR. BEAN: Thank Your Honor.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION BY MR. BEAN:

7 Q. Officer Lawson, I wanna be sure I heard you right that
8 the only thing on your affidavit that went before the judge
9 for the issuance of the search warrant is what was typed on
10 here?

11 A. That's correct.

12 Q. You didn't tell him anything else?

13 A. No, I didn't have any further supplemental testimony no,
14 sir.

15 MR. BEAN: Okay. I have no further questions, Your
16 Honor.

17 THE COURT: Alright, sir, you may step down.

18 THE WITNESS: Yes, sir.

19 (Whereupon, a discussion was held off the record.)

20 (Whereupon, the witness left the stand.)

21 MR. SPIVEY: Your Your Honor, would you like to look at
22 the search warrant?

23 THE COURT: Yes, please, thank you.

24 (Whereupon, counsel handed the document to the Court.)

25 THE COURT: Any other testimony?

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

2 THE COURT: Alright, Mr. Bean.

3 MR. BEAN: Thank Your Honor. Your Honor, at this time we
4 do move to suppress the DNA evidence obtained as a result of
5 this warrant. Uh, as Your Honor can see from the, uh, typed,
6 uh, sworn statement of the officer who just testified, there
7 is, uh, nothing in the warrant that says how or why he had
8 reason to believe that this bag which was found somewhere on
9 the property but not in my client's possession was my client's
10 bag, uh, because of that there would be no probable cause for
11 a warrant to issue to take my client's DNA and we would ask
12 that the, uh, that the evidence as a result, obtained as a
13 result of this warrant, uh, be excluded, be suppressed, I'm
14 sorry.

15 THE COURT: Mr. Spivey.

16 MR. SPIVEY: Yes, Your Honor. There there were some
17 other factors, obviously you can't hear about 'em but, uh,
18 I'll fill the Court in on what occurred. Uh, there were three
19 people who stated that the bag belonged to defendant, in
20 addition, the people who were, who were present and there
21 were, there were numerous people that are present, Your Honor,
22 all of them gave consent to obtain buccal swabs, uh, except
23 for Mr. Lyles and that's sort of the back story for this.

24 Your Honor, in in terms of the document on its face, we
25 do believe it's sufficient. Uh, the defendant was present,

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1 the bag was present, uh, and and the the police and the
2 officer stated that they did have reason to believe that that
3 bag did belong to him, Your Honor.

4 THE COURT: Mr. Bean.

5 MR. BEAN: Well, Your Honor, if if he had put that in his
6 affidavit to the Court, I I might agree with that but that
7 wasn't presented to the Court. There's nothing in the
8 affidavit that connects Mr. Lyles to that bag and therefore I
9 think it's clear that there is, uh, there's no probable cause
10 for the warrant to be issued to take his DNA. He coulda, he
11 coulda put it in there but he didn't.

12 THE COURT: Alright, I'm gonna take a moment to look at
13 the cases, I'll be back. Court'll be in recess.

14 (Whereupon, a recess was taken.)

15 MR. BEAN: Your Honor, can we approach one second?

16 THE COURT: Certainly.

17 (Whereupon, a discussion was held off the record.)

18 (Whereupon, a recess was taken.)

19 THE COURT: Thank you very much, you can be seated.

20 Alright, before me is the question of suppression of the
21 evidence obtained pursuant to the search warrant as contained
22 in State's Exhibit No. 1. In reviewing the question I have
23 reviewed the case of *State vs. Jenkins* involved a similar
24 situation, uh, in that it involved a situation where there was
25 a search warrant obtained to obtain bodily, uh, materials for

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1 DNA analysis, uh, the question was the sufficiency of the
2 affidavit in that particular case, that case is a Court of
3 Appeals case from 2012. Uh, since that's probably the most
4 recent law that I've been presented and have been able to
5 find, uh, it appears the affidavit must set forth facts as to
6 why the police believed the suspect whose DNA sought is the
7 person who committed the crime. First of all, this affidavit
8 indicates, uh, a statement by the officer, uh, that he be --
9 reason, has reason to believe that the bags belonged to Mr.
10 Isaacs -- Isaac Lyles, uh, does not state what that belief is
11 based upon, it does not state anyone who may have informed,
12 uh, the affiant as to that that information, uh, so it doesn't
13 give any particular facts which su -- support that conclusion,
14 simply states that the affiant has reached that conclusion;
15 secondly, the affidavit -- secondly, it's the *Jenkins*
16 requirement states the affidavit must set forth, uh, the
17 source of the facts upon which the belief that a crime has
18 been committed was based. Here the affidavit doesn't even
19 indicate whether or not the affiant participated in the, uh,
20 the location or the finding of the bag in question, uh, it
21 just says that, the aff -- the affidavit says that officers
22 with the Spartanburg Public Safety Department executed a
23 narcotic search and it doesn't indicate how the affiant came
24 to know of those facts, so there's no facts in the affidavit
25 indicating how that information came to the knowledge of the

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1 affiant, so there's no source for the facts alleged in the
2 affidavit. The third requirement under *Jenkins* is that the
3 affidavit should have some statement as to the source of the
4 information and that that source is reliable and again, this
5 affidavit does not indicate the source of the information
6 contained in it, does not s -- contain a statement as to its
7 reliability, uh, and for that reason or those reasons it
8 appears that the affidavit in this case would fall short of
9 the *Jenkins* test, therefore I will suppress the evidence
10 gathered as a result of that affidavit. Anything further?

11 MR. BEAN: No, Your Honor.

12 THE COURT: Anything further, Mr. Spivey?

13 MR. SPIVEY: Just to inquire if there are any more
14 motions that they please be made at this time, Your Honor.
15 Mr. Bean, got anymore motions?

16 MR. BEAN: Uh, no, I do not, I'm sorry, Your Honor.

17 MR. SPIVEY: No, ---

18 THE COURT: Okay.

19 MR. SPIVEY: --- no, sir, Your Honor. I I I think we're
20 now very clear that no more motions and we're ready to
21 proceed, Your Honor.

22 THE COURT: Thank you, let's bring the jury in.

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

24 THE COURT: Alright, at this time the attorneys can go
25 forward with opening statements. Mr. Spivey.

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1 MR. SPIVEY: Thank Your Honor. Ladies and gentlemen, I
2 wanna thank you for your time, uh, I know you've you've had a
3 long week so far, some of you may have served on prior juries
4 but you've had to come back and forth and, uh, we certainly
5 ask ya a lotta questions, many of which are very personal in
6 nature and, uh, they're not questions that that maybe you
7 wanna answer or had to answer or and and for that reason, you
8 know, you sort of gave your answers. Uh, we listen to those
9 answers and the reason we ask those questions and the reason
10 we asks things about your records and your jobs, where
11 your -- what your wife or spouse or whatever might do is we
12 wanna know what kinda person you are, uh, 'cause we believe
13 that your past has shaped, uh, your mental ability to reason.
14 We're here 'cause your job is to reason through the facts, to
15 sift through it and find the truth and I think those
16 experiences you've had in your life will help you and have
17 developed your your common sense and so that that's the reason
18 that that we ask those questions and that's the reason they
19 were very important and I'm I'm sorry that they're that
20 personal in nature but it sorta has to be done and, uh, I
21 think we've got a a very fine jury and I I I want you all to
22 sorta focus now on hearing the evidence, listen to what is
23 said and at the end of it I want you apply your common sense
24 to it 'cause I think at the end of after you hear all of the
25 evidence in this case you'll find that the defendant is guilty

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1 of what is charged.

2 Now let's talk about what is charged and what needs to be
3 proved. There are seven counts or seven different charges
4 that we're seeking to to prove here today, uh, three of them
5 are related simply the possession or possession with intent to
6 distribute drugs. Uh, the the drug cocaine was was found, the
7 drug crack cocaine was found and marijuana was found so there
8 three charges, two of them are trafficking. The crack cocaine
9 amount because it was of over a, over 10 grams, the weight was
10 a found was over 10 grams then we we now can determine that it
11 is in fact trafficking. The statute is set up if it's more
12 than 10 grams and you either possess it or possess with intent
13 to distribute that drug then it is in fact trafficking. One
14 is for possession with intent to distribute, that's the
15 marijuana, uh, that means there there wasn't, it it didn't
16 meet a threshold to to call it trafficking but there was so
17 much there and the other evidence we found shows that and he
18 not only possessed it but he also intended to distribute it,
19 so there's a difference, so the trafficking charges, you only
20 have to show possession, you can also show possession with
21 intent to distribute but really all you need is actual
22 possession of the drugs. Uh, for possession with intent to
23 distribute you've got to not only have that possession but you
24 gotta have some other proof that he wasn't just smoking the
25 marijuana, it wasn't just a personal use, this was something

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1 he intended to distribute.

2 Uh, there's another charge and it's possession of a
3 weapon during the commission of a violent crime and I want you
4 to sort of dispel any myths, excuse me, dispel any myths you
5 might have about what the word "violent" means, uh, because
6 this word "violent" is totally different from what we normally
7 use the word "violent" to mean. Normally we think violence
8 you're thinkin' war or some sort of assault and battery, this
9 is strictly a term defined in a statute and our legislature
10 has decided that trafficking in crack cocaine or trafficking
11 in cocaine are violent crimes, it's as simple as that, uh, and
12 so what you need to determine, what I have to prove is did he
13 have a weapon with him, did he possess a handgun, a firearm
14 during the commission of the violent crime, i.e., he
15 possessed, he was committing the trafficking by possessin' the
16 drugs and he also had the handgun together.

17 There's also three other charges involved and there is a
18 knowledge element that's a little bit unique to these, uh,
19 essentially the possession with intent to distribute within a
20 half mile of a school charge, so essentially what we've said
21 is he had three different drugs and he possessed with intent
22 to distribute each of those drugs and he was within a half
23 mile of a school, park, or playground, in this case it's
24 Cleveland Elementary School, it's up on the, on the north side
25 of town as you head, uh, down Asheville Highway there on the

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1 left, there's a Cleveland Park but before you get to that
2 there's there's the the, uh, Cleveland Elementary School, uh,
3 near the Howard Street area, sort of in there, if you, if you
4 been through that part of town. The location that that this
5 occurred at was North Forest Street in Spartanburg, South
6 Carolina. You're gonna hear some evidence that this did occur
7 within a half mile. Now in terms of the law we have to prove
8 the defendant knew where that school was and that he knew that
9 he was within a half mile of it, okay. In addition to that,
10 we've gotta prove that he intended to distribute those drugs
11 within that area. Now you might be thinkin', Well if I drove
12 this (indicating) way and this (indicating) way I might drive
13 3 miles before I got there even though they they could be just
14 around the block from each other, you might have to go all the
15 way around. This is determined based on "as the crow flies",
16 so if you back out on a map and you took a straight line, it
17 doesn't matter if there houses there, a yard, a river, a lake,
18 if there -- if you drew a straight line between this
19 (indicating) point the house, North Forest Street and the
20 school, Cleveland Elementary School, if that distance was less
21 than a half mile and he knew that that school was there then
22 he's got to be found guilty. Let's talk about -- that that's
23 what he's charged with, so he's got seven charges, three
24 related to possession or possession with intent distribute
25 drugs, one han -- possession of a handgun during the

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1 commission of a violent crime and three half mile charges,
2 okay. Let's talk about the facts and how I'm gonna prove to
3 you that he in fact did possess these drugs, possess 'em with
4 intent to distribute in some cases and he also had a handgun.

5 You're gonna hear that the defendant was at a search
6 warrant, that the Spartanburg City Police on October 9th of
7 2012, so a little over a year ago, went to North Forest
8 Street and the defendant was there. You're gonna hear that as
9 police breached the front door the defendant ran out a side
10 back door. You're gonna hear that he was quickly apprehended
11 'cause there's an officer standing nearby, you're gonna hear
12 that that officer when he detained him found a small amounta
13 drugs in his pocket, you're also gonna hear that he had a gun
14 on him. You're gonna hear that nearby him on the ground
15 directly near where he fell was little over a thousand dollars
16 cash, okay, so he's got little bitta powder cocaine on him,
17 he's got a little bitta marijuana on him at the time in his
18 pocket, that's not what gets us to that weight though,
19 remember I told you there was drugs that that brought this
20 over a threshold so that you could find out, you know,
21 exactly, you know, more than 10 grams, remember, we're gettin'
22 more than 10 grams of crack cocaine and powder cocaine; in
23 addition, the marijuana was found, there was not very much
24 marijuana. There was a much larger amounta a marijuana found
25 nearby, there was a machine large larger amount of crack

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1 cocaine found nearby and there's a lot, much larger amount of
2 cocaine found nearby. You're gonna hear the officers when
3 they searched the rest of the premises within 20 to 50 feet of
4 that back door there's a fence that runs up to the front of
5 the, of the property, runs down the side, there's an abandoned
6 lot next door, you're gonna hear that hangin' on that fence is
7 a black bag, inside that black bag is a lot of cocaine and
8 inside a that black bag is a lot of crack cocaine and inside a
9 that black bag is a large bag a marijuana. You're also gonna
10 hear that there were some goggles found in that bag, you're
11 gonna hear that there was, uh, caffeine powder found in that
12 bag. Ladies and gentlemen, you're also gonna hear that there
13 were digital scales found in that black bag. Finally, you're
14 gonna hear from from a witness that is gonna tell you that
15 that black bag belonged to the defendant Isaac Lyles, that it
16 was his black bag that he stored his drugs in.

17 Ladies and gentlemen, by the time you've heard this case
18 I have no doubt that you will be convinced this defendant is
19 guilty. I think common sense dictates that you'll you'll have
20 to come to that conclusion, that there's no other explanation.
21 These are his drugs, he is a drug dealer, he had a gun on him,
22 he's got cash on him, he's got digital scales so he can weigh
23 out the drugs that he sells. Ladies and gentlemen, there's no
24 other explanation for what occurred except defendant is guilty
25 of all seven counts. I ask that you pay attention very

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1 carefully, thank you for your time and please listen defense
2 attorney. Thank you.

3 THE COURT: Mr. Bean, for the defense.

4 MR. BEAN: Thank Your Honor. Not like TV. Ya'll I'm
5 Bill Bean, I represent Isaac Lyles and Isaac's sittin' over
6 here (indicating) at the defense table with me. Uh, Isaac is
7 46-years-old which is a a lot younger than I am and as you
8 just heard from the solicitor he is charged with some rather
9 serious offenses, very serious offenses as a matter of fact.
10 One of the things that I want to emphasize to you however is
11 that being charged with something doesn't equate to being
12 guilty of that something and the solicitor has the burden of
13 proof, the State, to prove beyond a reasonable doubt that the
14 person charged is in fact guilty of that charge and part of
15 what you'll hear at the end of this case is that you can find
16 that a a person charged with multiple offenses, uh, could be
17 found guilty of some and not of others, it depends on what the
18 evidence is and what the proof is that you hear from up here
19 (indicating) at the witness stand. Keep in mind please though
20 that Isaac doesn't have to prove that he's innocent of
21 anything, he's presumed to be innocent and in order to prove
22 him guilty, again, the State has to prove that beyond a
23 reasonable doubt.

24 I'm not gonna go into a lotta details, you'll hear all
25 that as we go along but I do want you to remember a couple a

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1 things. First of all, in addition to he doesn't have to prove
2 himself innocent, he's presumed to be innocent, this is his
3 day in court, okay, and as His Honor told to you guys, you
4 ladies and gentlemen, are the judges of the facts in this case
5 this is his shot one way or the other however you find. If if
6 you find the wrong way, whatever that way may be, normally
7 that can't be fixed, so when you go back at the end a the case
8 and you talk about this, please keep that in mind and keep in
9 mind also that witnesses who testify, again, may have bias,
10 may have prejudice, may have reasons to say things, uh, that
11 may or may not be true just depending on what that bias or
12 prejudice is. We appreciate your bein' here, as the solicitor
13 said I know it's been a long week, we thank ya'll for
14 participatin' in this case and we'll try to move it along just
15 as best we can. Thank you.

16 THE COURT: State may call its first witness.

17 MR. SPIVEY: Thank Your Honor. State calls Mike Secrest.

18 THE COURT: Step outside and get him, please.

19 MR. SPIVEY: Michael Secrest.

20 THE COURT: Come forward, sir, and be sworn over here
21 (indicating) to my left, please.

22 (Whereupon, the witness came forward.)

23 THE CLERK: You can set your stuff down. If you'll raise
24 your right hand and put your left hand on the Bible.

25 MICHAEL SECREST, having been first

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 duly sworn, testified as follows:

2 THE CLERK: Thank you, you may be seated.

3 THE COURT: State your name please, sir.

4 THE WITNESS: Michael Secrest.

5 THE COURT: Thank you. Your witness, Counselor.

6 MR. SPIVEY: Thank Your Honor.

7 DIRECT EXAMINATION BY MR. SPIVEY:

8 Q. Investigator Secrest, please tell us your your training
9 and experience.

10 A. I've been employed with the Spartanburg City Police
11 Department goin' on, uh, eight years now. I'm currently
12 assigned the narcotics position.

13 Q. Okay. What do you, what do you typically do in in
14 narcotics? What is your, what's your job from a day-to-day
15 basis?

16 A. Uh, you're tasked with, uh, basic use of search warrants,
17 uh, and we file complaint, any complaints we get arrest a
18 narcotics we, uh, tend to handle those.

19 Q. Okay. Uh, let me ask you this: Where is North Forest
20 Street?

21 A. Uh, it's located within the city limits of Spartanburg.

22 Q. Is that in Spartanburg County?

23 A. It is.

24 Q. Is that where you were on October 9th?

25 A. Yes, sir.

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. Okay. If you can just describe the the the location for
2 us.

3 A. And I'm sorry reference to the area?

4 Q. Yes, the the the house. Describe the house, the layout
5 of the house.

6 A. Uh, my recollection of layout a the house is a duplex.
7 You have, uh, the one buildin', the left apartment and a right
8 apartment. Uh, the apartment we went into was the right
9 apartment. Uh, it had a a yard, fence toward the backyard,
10 uh, had a front door and a side right door.

11 MR. SPIVEY: Your Honor, may I approach the witness?

12 THE COURT: You may.

13 Q. Investigator Secrest, do you recognize that what I've
14 just handed you?

15 A. It's a picture of the residence.

16 Q. Okay. Uh, is it -- does it appear to be a true and
17 accurate copy of that residence?

18 A. It is.

19 MR. SPIVEY: Okay. Your Honor, at this time I'd move
20 that photograph as State's Exhibit No., uh, 2, Your Honor.

21 MR. BEAN: No ---

22 THE COURT: Any objection?

23 MR. BEAN: --- objection.

24 THE COURT: Without objection it'll be admitted. Has it
25 been marked?

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 MR. SPIVEY: Uh, Your Honor, has not. I ---

2 THE COURT: Hand it to the court reporter ---

3 MR. SPIVEY: Thank Your Honor.

4 THE COURT: --- for it to be marked. Thank you.

5 (Photograph marked State's Exhibit No. 2 for
6 identification and admitted into evidence.)

7 MR. SPIVEY: Your Honor, may I have permission to publish
8 this document?

9 THE COURT: You may.

10 MR. SPIVEY: Thank Your Honor.

11 (Whereupon, State's Exhibit No. 2 was published to the
12 jury.)

13 BY MR. SPIVEY:

14 Q. Investigator Secrest, I'm gonna -- Your Honor, may I
15 approach and hand him a laser ---

16 THE COURT: You may, ---

17 Q. --- pointer?

18 THE COURT: --- yes, sir.

19 Q. I'm gonna ask if you can again just des -- you describe
20 it a little bit to us, go ahead and sorta show us what this
21 house is, where you were, what all you were, you were there to
22 do that day.

23 A. Uh, my job, uh, I drove the tactical truck for the SWAT
24 team members. Uh, when we arrived on scene, I took position
25 for the parameter around this right side, uh, door right here

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 (indicating) these steps were leadin' up to.

2 Q. Okay. And it's kinda hard to see but you said there's a
3 door?

4 A. There's a door right here (indicating) and there's steps
5 comin' down.

6 Q. Is that towards the back of the residence?

7 A. It is.

8 Q. About how far is it from the fronta the residence to the,
9 to that door?

10 A. Uh, actually maybe 15 feet I guess.

11 Q. Okay. And this is a duplex, ya'll were on the right side
12 of the duplex?

13 A. That is correct, this one right here (indicating).

14 Q. Okay. Where is the fence located?

15 A. Uh, there's a fence that runs along the side here
16 (indicating) and I believe my recollection there's one in the
17 back.

18 Q. Okay. What is to the right of this property?

19 A. Uh, to the fence line here (indicating)?

20 Q. Yes.

21 A. Uh, just a wooded area.

22 Q. Okay. Is it -- is is there a house there?

23 A. Uh, on the other side there is.

24 Q. Okay. How how much space is there between that fence and
25 the next residence?

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 A. I'd estimate 25 feet maybe.

2 Q. Okay.

3 MR. SPIVEY: Your Honor, may I approach the witness?

4 THE COURT: You may.

5 Q. I'm gonna hand you a document, do you recognize that
6 document?

7 A. I do.

8 Q. Are you familiar with the area around North Forest Street
9 the north side of City a Spartanburg?

10 A. I am.

11 Q. You're familiar with Cleveland Elementary School.

12 A. Yes, sir.

13 Q. Okay. It -- does this appear to be a fair and accurate
14 representation of a, of an -- a satellite image of that
15 area?

16 A. Yes.

17 MR. SPIVEY: Your Honor, at this time I'd move State's
18 Exhibit No. 3 into evidence.

19 MR. BEAN: No objection.

20 THE COURT: Without objection it'll be admitted. Please
21 have it marked.

22 MR. SPIVEY: Thank Your Honor.

23 (Satellite photograph marked State's Exhibit No. 3 for
24 identification and admitted into evidence.)

25 BY MR. SPIVEY:

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. Zoom in just a little bit. Investigator Secrest, just
2 tell us what what what we're lookin' at here (indicating).

3 A. Uh, this (indicating) is a general area of a north side
4 of town what we consider the north side a town. Uh, this
5 (indicating) is the residence, uh, North Forest Street.
6 Uh, this here (indicating) is Cleveland Elementary School.
7 Uh, yeah, this line here (indicating) just represents as what
8 we use "as as the crow flies" to determine distance between
9 two points. Uh, this particular residence here (indicating)
10 is approximately, uh, I think it was three-fourth tenths a
11 mile to Cleveland Elementary.

12 Q. Okay. And down there at the bottom it -- this is
13 actually calculated for us, can you read what that total
14 distance is? Let me see if I can zoom in on that.

15 A. Uh, .348.

16 Q. Thank you. Investigator Secrest, uh, tell us what, uh,
17 once you got there and once that you drove the truck there
18 what happened next?

19 (Whereupon, a discussion was held off the record.)

20 A. When I arrived at the residence, like I said, I went to
21 the right side of the residence, uh, secured the parameter.
22 Uh, upon my arrival the tactical team made entry through the
23 front door. As soon as that entry was made, uh, subjects came
24 out the side door, one a those subjects being, uh, Isaac
25 Lyles. Uh, as he came past I, uh, caught

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 Mr. Lyles maybe three or four steps off a the side steps, uh,
2 we fell to the ground. As he fell, uh, money came out of his,
3 uh, I guess one of his pockets somewhere, went onto the
4 ground, we both fell. I noticed his hand kinda went down
5 toward his waistline, uh, this time I looked down, grabbed his
6 hand, detained him, noticed a purple bag on the right pocket.
7 Uh, when I felt that bag, I felt what I know to be a a
8 handgun, a butt of a handgun, I then secured that weapon.

9 Q. Okay. When you arrived what -- who all was present
10 outside of of the residence? Was anybody out there?

11 A. No, sir.

12 Q. Okay. Was anybody in the neighboring property outside?

13 A. Uh, not that I'm remember, recall.

14 Q. Was anybody near that fence?

15 A. Uh, no, sir.

16 Q. Okay. Do you remember who else was present at the
17 residence?

18 A. Uh, I remember there was other people, I can't recall all
19 of them. I can give you a a few maybe off the top a my head.
20 I know one was Edward Wesson and I think a Harvey Rainey and I
21 can't recall anymore than that at this time.

22 Q. Okay, but nobody was near that that that ---

23 A. No, Mis ---

24 Q. --- that area.

25 A. --- Mr. Wesson came out of the side of the residence

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 right before, uh, Mr. Lyles and I think he was stopped near
2 the front corner of the house as I -- Mr., uh, Lyles made it,
3 tried to make it toward the back a the house.

4 Q. What was Mr. Lyles doin' when you, when you apprehended
5 him?

6 A. Uh, like I said, his hand immediately went toward, uh,
7 around his right side which is around his belt line, uh, at
8 that time I grabbed his hands, uh, and detained him. Like I
9 said, that's where I noticed the purple bag and when I felt
10 that bag I knew it to be the butt of a handgun.

11 Q. Why was he runnin'?

12 A. I'm assumin' 'cause of things on his person with the, uh,
13 execution of the search warrant, uh, and him bein' the target
14 of the search warrant.

15 Q. Did, I I wanna get it straight, did ya'll go into the
16 residence and then he ran out or tell us about the time line
17 about how how, about the time when he ran out, did he do it
18 immediately when ya'll arrived or...

19 A. He was, as tact team made it up through as there's a
20 little walkway there's actually get to the door, uh, they, as
21 they approached the door, breached the door, the door was
22 breached and a very, very short time, maybe three seconds he's
23 out the side door and three steps off and that's when I caught
24 him.

25 Q. Okay. You believe he was reachin' for his right pocket.

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 A. I do.

2 Q. And in that pocket you found a gun.

3 A. Correct.

4 (Whereupon, a discussion was held off the record.)

5 MR. SPIVEY: Your Honor, may I approach the witness?

6 THE COURT: You may.

7 BY MR. SPIVEY:

8 Q. I'll hand you a box, if you'd tell us if you recognize
9 what's in that box.

10 A. I do.

11 Q. Okay. What is it?

12 A. It is the handgun and the bag. This (indicating) is the
13 bag that the handgun was in, it was partially wrapped, uh,
14 pretty much coverin' all of the gun. Uh, this (indicating) is
15 what I recovered outta the right side of his pocket with the
16 magazine, I think there were six rounds if I can recall, there
17 were six rounds in the magazine.

18 MR. SPIVEY: Okay, and, uh, Your Honor, at this time I
19 would move the gun, the plastic bag and the -- what what else
20 is in that box?

21 THE WITNESS: The magazine and these, uh, I think was the
22 six rounds.

23 MR. SPIVEY: Your Honor, I'd move all of these items into
24 evidence as State's Exhibit No. 4 I believe.

25 THE COURT: Any objection?

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 MR. BEAN: No objection, Your Honor.

2 THE COURT: Without objection they'll be received into
3 evidence, marked as a group as No. 4. You can have 'em
4 marked.

5 MR. SPIVEY: Thank Your Honor.

6 (Gun, plastic bag, magazine and six rounds marked
7 Defendant's Exhibit No. 4 for identification and admitted into
8 evidence.)

9 BY MR. SPIVEY:

10 Q. What kinda gun is this, Investigator Secrest?

11 A. I think it was a Hi-Point .380 handgun.

12 Q. Okay.

13 MR. SPIVEY: Your Honor, may I approach the witness?

14 THE COURT: You may.

15 MR. SPIVEY: Excuse me, Your Honor, let me approach
16 defense attorney first.

17 (Whereupon, a discussion between the attorneys was held
18 off the record.)

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

20 THE COURT: Yes, you may.

21 BY MR. SPIVEY:

22 Q. If you could take a look at those, just, let's just do
23 'em one at a time. I've handed you a a stack of photographs
24 but if you could take take the first one and see if you can
25 identify that.

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 A. This here, this here's (indicating) Mr. Lyles after he
2 was detained side the residence.

3 Q. Is it a true and accurate copy?

4 A. It is.

5 MR. SPIVEY: Your Honor, I'd move that document in as
6 State's Exhibit No. 5.

7 THE COURT: Any objection?

8 MR. BEAN: No objection.

9 THE COURT: Without objection it'll be admitted.

10 BY MR. SPIVEY:

11 Q. Please take a look at the next photograph, do you
12 recognize it?

13 A. I do. This is the money that, uh, fell from his person.

14 Q. Is it a true and accurate copy?

15 A. It is.

16 MR. SPIVEY: Your Honor, I'd move this as State's Exhibit
17 No. 6.

18 THE COURT: Any objection?

19 MR. BEAN: No objection.

20 THE COURT: Without objection will be admitted as No. 6.

21 BY MR. SPIVEY:

22 Q. Please take a look at the next document, do you recognize
23 it?

24 A. I do.

25 Q. What is it?

MICHAEL SECREST - DIRECT EXAMINATION BY MR. SPIVEY

1 A. Uh, actually this is the photograph, uh, as I didn't
2 recover these items, this is the photograph that I know that
3 that was taken, the items that came out his person.

4 Q. Does that appear to be a true and accurate copy of that
5 photograph?

6 A. Yes.

7 MR. SPIVEY: Your Honor, at this point I'd move this in
8 as State's Exhibit No. 7.

9 THE COURT: Any ---

10 MR. BEAN: No ---

11 THE COURT: --- objection?

12 MR. BEAN: --- objection.

13 THE COURT: Without objection it'll be admitted.

14 BY MR. SPIVEY:

15 Q. And please look, I think there's one more, is it the last
16 one?

17 A. Yes.

18 Q. Do you recognize that?

19 A. Yes.

20 Q. And and and what does that appear to be?

21 A. A green plant material which we, uh, tested to be
22 marijuana in a a glass jar after recovered from his person.

23 Q. Is it a true and accurate copy?

24 A. Yes, it is.

25 MR. SPIVEY: Okay. Your Honor, at this point I'd move

MICHAEL SECREST - CROSS-EXAMINATION BY MR. BEAN

1 this as State's Exhibit No. 8.

2 MR. BEAN: No objection.

3 THE COURT: Without objection it'll be admitted as as
4 proposed.

5 MR. SPIVEY: I'll have those marked, Your Honor.

6 THE COURT: Please do.

7 (Whereupon, a discussion was held off the record.)

8 (Photographs marked State's Exhibit Nos. 5, 6, 7 and 8
9 for identification and admitted into evidence.)

10 THE COURT: You may proceed.

11 MR. SPIVEY: Thank Your Honor. Your Honor, at this
12 time I have no further questions of this witness. Please
13 answer ---

14 THE COURT: Alright, ---

15 MR. SPIVEY: --- any questions ---

16 THE COURT: --- Mr. Bean, your witness.

17 MR. BEAN: Thank you.

18 CROSS-EXAMINATION BY MR. BEAN:

19 Q. Just a few questions, Mi -- is it Mr. Secrest?

20 A. Yes.

21 Q. Uh, I believe you stated a minute ago that, uh, you were
22 on the side door of the house I g -- is that like the driveway
23 side? Excuse me, I'm gonna get outta the way of this light
24 here. Is that the driveway side or would you describe it that
25 way?

MICHAEL SECREST - CROSS-EXAMINATION BY MR. BEAN

1 A. I don't, I don't know if it actually a driveway. I mean,
2 it was a dirt yard. I don't recall there being a a driveway
3 on the side, ---

4 Q. Okay.

5 A. --- just open area.

6 Q. And people came runnin' out of the house out that door?

7 A. Correct.

8 Q. How many people ran out the door?

9 A. Two that I ---

10 Q. Just just ---

11 A. --- recall, ---

12 Q. --- the two that ---

13 A. --- yes.

14 Q. --- you saw? Okay. Now when the team went in the front
15 door, they threw a flash grenade in there, did they not?

16 A. Uh, I I I can believe so, did yes, sir.

17 Q. Okay. And and have seen flash grenades in action or in
18 your training?

19 A. I have as I was a member of the SWAT team before yes,
20 sir.

21 Q. They're they're pretty frightening, aren't they?

22 A. Some people may think so I guess.

23 Q. Well if if you were sittin' in your house and somebody
24 threw a grenade in there and it did like that, wouldn't it
25 scare ya if ya didn't know it was comin'?

MICHAEL SECREST - CROSS-EXAMINATION BY MR. BEAN

1 A. I assume yes.

2 Q. And you might even run out the door, might you?

3 A. Yes.

4 Q. Okay. Now there's a, there's a gun over here and you
5 testified a minute ago that Isaac was reachin' for his pocket,
6 the gun was in a plastic bag, correct?

7 A. Correct.

8 Q. Okay. So he didn't pull the gun out or point it at
9 anybody or shoot at anybody, did he?

10 A. No, he didn't.

11 Q. Okay, just it was in his pocket.

12 A. Correct.

13 Q. (Coughs.) Excuse me. Now you also stated that that
14 there's a fence over there kind of in those bushes that we saw
15 in the picture, is that right?

16 A. Correct, on the right side.

17 Q. Okay, and there was no one near the fence?

18 A. No, sir.

19 Q. Okay, so the two guys who came out, Isaac and Mr., I
20 forget his name, you just ---

21 A. Wesson I believe.

22 Q. Weston [sic], okay. Uh, they -- you stopped them right
23 there.

24 A. I s -- Mr. Wesson as he came out, I allowed him to go
25 past, uh, due to the fact he was not the target of the

MICHAEL SECREST - CROSS-EXAMINATION BY MR. BEAN

1 investigation 'cause immediately right on his heels was
2 Mr. Lyles and Mr. Lyles took a right. I did not turn to see
3 exactly where Mr. Wesson was 'cause I put my focus on
4 Mr. Lyles and that's when I caught Mr. Lyles.

5 Q. So Mr. Weston [sic] was the first one out or ---

6 A. First.

7 Q. --- the second?

8 A. First.

9 Q. First one out.

10 A. Yes.

11 Q. You let him go by.

12 A. Yes.

13 Q. You don't know where he went or what he did.

14 A. He went out, I know he went up toward the fronta the
15 house and I was later informed that he was stopped at the, ---

16 Q. Okay.

17 A. --- at the fronta the house.

18 Q. Alright, thank you. No further questions, Your Honor.

19 THE COURT: Anything on redirect?

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

21 THE COURT: You may step down.

22 (Whereupon, the witness left the stand.)

23 THE COURT: May call your next witness.

24 MR. SPIVEY: Yes, sir, Your Honor. I call Jack -- Josh
25 Bagwell ---

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 THE COURT: Alright.

2 MR. SPIVEY: --- this time.

3 (Whereupon, the witness came forward.)

4 THE CLERK: You can set your stuff down. You'll raise
5 your right hand, put your left hand on the Bible.

6 JOSH BAGWELL, having been first
7 duly sworn, testified as follows:

8 THE CLERK: Thank you, you may be seated.

9 THE COURT: Sir, once seated state your name, please.

10 THE WITNESS: My name is Josh Bagwell.

11 THE COURT: Thank you. Your witness, Counsel.

12 MR. SPIVEY: Thank Your Honor.

13 DIRECT EXAMINATION BY MR. SPIVEY:

14 Q. Investigator Bagwell, please tell us your training and
15 experience.

16 A. Uh, I am a narcotics investigator with the City a
17 Spartanburg. I've been a police officer for little over eight
18 years now.

19 Q. Okay. Uh, what are your training and exper -- what --
20 excuse me, on October 9th 2012, what was your role?

21 A. Uh, my role was the return officer for the search
22 warrant.

23 Q. Okay. What does that, what does that mean?

24 A. The return officer pretty much writes down on a piece a
25 paper everything taken from the residence from a person,

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 anything located at the scene.

2 Q. Okay. And so that was your role on that occasion?

3 A. Yes, sir, it was.

4 Q. When you showed up, what what did you see?

5 Uh, when I rolled up, I was across the street, uh, tactical

6 team made entry. Uh, I observed Secrest or Investigator

7 Secrest running down the side a the house, I assisted him.

8 Uh, Mr. Lyles was the suspect that was running and

9 Investigator Secrest detained him at that point.

10 Q. Anybody else run outta that door?

11 A. Uh, I think there mighta been one other gentleman but I
12 wasn't sure who that was.

13 Q. Okay. Did he go anywhere near that that fence line?

14 A. Uh, the which one?

15 Q. On the property. Let me, let me, let me just say only
16 only show you a photograph. I'm gonna show you what's been
17 marked as State's Exhibit No. 2, please take a look at that.
18 I'm sorry, dim the lights just a little bit. Thank you.

19 Do -- this (indicating) is the house where -- that that you
20 were at, correct?

21 A. Yes, sir.

22 Q. Okay. You were running down the side?

23 A. Yes, sir, I was runnin' down the side.

24 Q. Okay. And another individual and Mr. Lyles came outta
25 the house.

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 A. Came outta the side door ---

2 Q. Okay.

3 A. --- on the side a the residence. Uh, I saw Investigator
4 Secrest givin' chase to a subject so I proceeded to go with
5 him ---

6 Q. Okay.

7 A. --- 'cause he ---

8 Q. Did did the other person who ran out was he also
9 detained?

10 A. I I wasn't sure, I did not detain him. I just went
11 straight to Investigator Secrest 'cause he was givin' chase
12 and that's where I went to.

13 Q. But he was, you said he was running.

14 A. He was running towards the back a the res -- or back of
15 the property towards the wood line, ---

16 Q. Okay.

17 A. --- yes, sir.

18 Q. Alright. Alright, uh, Investigator Bagwell, please tell
19 us what you found, uh, that day.

20 A. Okay, if I can refer to my notes here. Uh, initially
21 Investigator Secrest detained Mr. Lyles, at that point he
22 informed me that a handgun was located. Uh, Investigator
23 Secrest secured the weapon and called me and I came and
24 recovered it. It was a, uh, Hi-Point .380, it was located in
25 a, uh, purple bag in the back or in the right pocket of

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 Mr. Lyles's coveralls and it was loaded with six rounds in the
2 mag, also located was a small clear plastic bag of green plant
3 material in the right pocket of Mr. Isaac Lyles's coveralls,
4 uh, ---

5 Q. Okay, ---

6 A. --- he ---

7 Q. --- hold on, hold on just a second, let me ---

8 A. Okay.

9 Q. --- see if I can hand you somethin'.

10 MR. SPIVEY: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 Q. Gonna hand you somethin', see if you can identify what
13 that is.

14 A. That is the, it's green plant material.

15 Q. Okay. Is that the green plant material that was located
16 on the defendant?

17 A. That is not the way I found it.

18 Q. Okay, please ---

19 A. Uh, ---

20 Q. --- explain how how'd you find it.

21 A. ---- I found the, uh, found a bag, a small bag of green
22 plant material, uh, it weighed approximately 2.0 grams, uh, a
23 glass, I guess like a mason jar, a small bottle jar, had green
24 plant material located in Mr. Lyles's coveralls as well, so
25 that was two separate, uh, amounts of marijuana or green plant

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 material and they were, they were separate so they wasn't in
2 this this (indicating) bag when I found 'em, ---

3 Q. Okay.

4 A. --- this is the evidence technician I believe.

5 Q. Okay. Do you otherwise believe that that was the
6 marijuana that you ---

7 A. Yes.

8 Q. --- submitted to him?

9 A. Yes, sir, it was.

10 Q. Look at the fronta that envelope and make sure that that
11 that is your signature.

12 A. Yes, sir, that's my signature on the front of it
13 submitting it to the evidence technician on, uh, 10/9 of 2012.

14 Q. Okay. And the case number on that does that match the
15 case number for this particular case?

16 A. Yes, sir, it does.

17 Q. Okay.

18 MR. SPIVEY: Your Honor, may I publish these photos to
19 the jury, these State's Exhibits ---

20 THE COURT: You may, yes, sir.

21 MR. SPIVEY: --- 8 and 7.

22 THE COURT: Yes, sir, you may do so.

23 BY MR. SPIVEY:

24 Q. Let's take a look at State's Exhibit 7 first, this may
25 help clear up some a the confusion. What -- tell us what that

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 is.

2 A. Uh, that is a green or bag green plant material, looks
3 like some currency and looks like it's a, uh, bag of either an
4 off white rock substance or a white powder substance located
5 in the coveralls of Mr. Isaac Lyles.

6 Q. Okay, those are your your hands.

7 A. Yes, sir, this -- them are my hands.

8 Q. Okay. I wanna show you what's been marked State's
9 Exhibit No. 8.

10 A. And there is the, uh, bottle jar, the mason jar that was
11 also located in his pocket, ---

12 Q. Okay.

13 A. --- Mr. Lyles's pocket.

14 MR. SPIVEY: Uh, you you you can turn the lights back up
15 for the time bein'.

16 Q. Okay, once you found that marijuana, what did you do with
17 it?

18 A. Uh, once I found that marijuana and the glass jar and
19 everything else that was located in his pocket along with the
20 firearm, I went back to a position I believe in the house and
21 sat down and started write down what was located, where it was
22 located, how much it weighed and put the evidence in the
23 proper packaging that we needed to.

24 Q. Okay. Uh, and you found the, we we saw this (indicating)
25 picture, Your Honor, may may I, uh, publish State's Exhibit

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 No. 6 to the jury?

2 THE COURT: Yes, you may.

3 MR. SPIVEY: Okay.

4 (Whereupon, State's Exhibit No. 6 was published to the
5 jury.)

6 Q. Can you tell us what this (indicating) is.

7 A. Yes, that's a picture of, uh, some currency that was
8 located near the person of Mr. Lyles in the kudzu.

9 Q. How close was it?

10 A. I I'm not sure, say probly within arm distance of where
11 he was lying.

12 Q. Okay. What kinda currency is that? how much is it?

13 A. Uh, let me look at my notes here. The currency that was
14 located right there was in the amount of about twelve hundred
15 and eighty-one dollars, was about one 1, eight 5s, two 10s,
16 twenty-two 20s, one 50 and seven \$100 bills.

17 Q. That's twelve hundred how much?

18 A. Uh, twelve hundred eighty-one dollars.

19 Q. Okay. Alright. Okay.

20 (Whereupon, a discussion was held off the record.)

21 MR. SPIVEY: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 BY MR. SPIVEY:

24 Q. To hand you this, can you identify that (indicating)?

25 A. Yes, sir. This (indicating) is the, uh, the bag of, the

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 white bag that you saw me pulling from Mr. Lyles's coveralls,
2 that is the, uh, bag of off white or white powder substance
3 that was recovered from his pocket.

4 Q. Okay, that was on the -- in the defendant's pocket.

5 A. Yes, sir, it was.

6 Q. Okay. What did you do with that substance once you...

7 A. Again, I took the substance back along with everything
8 else and put it into an evidence envelope which we put into a,
9 uh, a BEST envelope that is sealed and secured, once it's
10 sealed I cannot reopen it without ripping it ---

11 Q. Well ---

12 A. --- and we submit that into evidence to the technicians.

13 Q. --- what is that, is that the BEST envelope you're you're
14 holding?

15 A. No, sir, the outer box or outer package is not the BEST,
16 it is this (indicating) here that's got the, uh, county drug
17 analysis security envelope that we put, uh, this white powder
18 substance in it and we submit that to our evidence technicians
19 which they in turn give it to the county drug analysis when
20 they test it and do what they do with it.

21 Q. Okay, so that was sealed up and the only way to get into
22 it was to cut it.

23 A. Yes.

24 Q. Okay. While the marijuana and that that that amount of
25 cocaine the -- were in your possession, did anyone tamper with

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 it or anybody mess with it at all?

2 A. No, sir. Uh, once something is located they inform me
3 then I'm the one that come and takes it, possession of it and
4 I'm the one responsible for it at that point. Uh, no one,
5 nobody touches that other than me.

6 Q. Okay, until you seal it up.

7 A. Until I seal it up.

8 Q. At the time you sealed it up and submit it in evidence,
9 was it the same or substantially sustain [sic] condition as
10 when you received it?

11 A. Yes, sir, it was.

12 Q. Okay. Let's -- may may I approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 Q. Alright, I wanna move on now, gonna show you some some
16 other photographs. May I approach, Your Honor?

17 THE COURT: You may.

18 Q. Alright. Let's take a look at 'em one at a time. Take a
19 look at the first photograph I've handed you. Do do you
20 recognize it?

21 A. Yes, sir, that's, uh, like a little fence that was along
22 the side a house if I'm not mistaken.

23 Q. And is that photograph a true and accurate copy of of of
24 that fence?

25 A. Yes, it is.

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 MR. SPIVEY: Your Honor, at this time I'd move that in as
2 State's Exhibit, I believe we're at State's Exhibit No. 9,
3 Your Honor.

4 THE COURT: Any objection?

5 MR. BEAN: No objection, Your Honor.

6 THE COURT: Without objection it'll be admitted and be
7 marked.

8 MR. SPIVEY: Thank Your Honor.

9 (Whereupon, a discussion was held off the record.)

10 BY MR. SPIVEY:

11 Q. Take a look at the next photograph.

12 A. Yes.

13 Q. Do you recognize it?

14 A. Yes, sir, that is a, uh, black like a tote back that was
15 on the fence along the side of the residence.

16 Q. Okay, and is it a true and accurate copy?

17 A. Yes, sir, it is.

18 MR. SPIVEY: Your Honor, at this time I'd move that in as
19 State's Exhibit No. 10.

20 MR. BEAN: No objection.

21 THE COURT: Without objection it'll be admitted.

22 BY MR. SPIVEY:

23 Q. Take a look at the next photograph.

24 A. That is the, uh, same black tote bag that was hanging on
25 the fence.

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. Is it a true and accurate copy?

2 A. Yes, sir, it is.

3 MR. SPIVEY: Your Honor, I'd move that into State's
4 Exhibit No. 11.

5 THE COURT: Any objection?

6 MR. BEAN: No objection.

7 THE COURT: Without objection it'll be admitted.

8 BY MR. SPIVEY:

9 Q. Please take a look at the next photograph, do you
10 recognize it?

11 A. Yes, sir. That ---

12 Q. What is it?

13 A. --- that was the, uh, contents, looks like some kinda
14 plant material that was located in the black tote.

15 Q. It is a true and accurate copy of of that, of that
16 picture?

17 A. Yes, sir, it is.

18 Q. Okay.

19 MR. SPIVEY: Your Honor, at this time I'd move in as
20 State's Exhibit No. I think we're at No. 12, Your Honor.

21 MR. BEAN: No objection.

22 THE COURT: Without objection it'll be admitted.

23 BY MR. SPIVEY:

24 Q. And I believe this is the last photograph I handed you,
25 do do you recognize that photograph?

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 A. Yes, sir, that is the, uh, same picture as before of the,
2 uh, plant material along with a set a digital scales and looks
3 like some, uh, off white rock substance and a powder substance
4 along with a, uh, bottle of I believe it was the crystalline
5 or crystalline powder that was inside the black tote.

6 Q. Okay. Is it a true and accurate copy?

7 A. Yes, sir, it is.

8 MR. SPIVEY: Your Honor, at this point I'd move this
9 State's Exhibit No. 13.

10 THE COURT: Any objections?

11 MR. SPIVEY: No objection.

12 THE COURT: Without objections it'll be admitted.

13 MR. SPIVEY: Thank Your Honor. Your Honor, we need to
14 take a break and have have these marked.

15 THE COURT: Go ahead and mark 'em, yes.

16 (Whereupon, a discussion was held off the record.)

17 (Photographs marked State's Exhibit Nos. 9, 10, 11, 12
18 and 13 for identification and admitted into evidence.)

19 MR. SPIVEY: Your Honor, may I publish these exhibits to
20 the jury?

21 THE COURT: You may. Thank Your Honor.

22 BY MR. SPIVEY:

23 Q. Let's take a look first at State's Exhibit No. 9, now
24 that everybody gets to look at it. Tell us, please describe
25 to us what that is we're lookin' at.

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 A. That is the, uh, fence line along the side a the house.

2 Q. Okay. And is this (indicating) where the bag was
3 located?

4 A. Yeah, roughly right right in there (indicating). I
5 believe you can see the bag from from that picture.

6 Q. Okay.

7 MR. SPIVEY: Your Honor, may I approach, hand him laser
8 pointer?

9 THE COURT: Yes, yes, you may.

10 BY MR. SPIVEY:

11 Q. Sorry, I thought it was up there. Point out to us
12 wherever you're talkin' about, I wanna make sure I'm on the
13 same page.

14 A. I'm not mistaken, that looks like the bag on just on just
15 the other side there, right there (indicating).

16 Q. So the bag was was was hangin' off which side was it
17 facin'?

18 A. Uh, on wh -- it was on opposite side a the house. If you
19 got ---

20 Q. Okay.

21 A. --- the house here (indicating), the fence, it was
22 hangin' on the other side.

23 Q. Okay. This may help us, this is State's Exhibit
24 No. 10.

25 A. Yes, that's the, uh, bag hangin' on the fence, the

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 picture was taken on the house side the fence just hangin'
2 over.

3 Q. Okay. Take a look at State's Exhibit No. 11.

4 A. Yes, sir, that's, uh, uh, my -- myself holding the bag
5 that was recovered off the fence.

6 Q. Okay. Take a look at State's Exhibit No. 12.

7 A. Uh, that is also the, uh, plant material that was located
8 inside the black tote bag.

9 Q. Okay. What's that sittin' on, do ya know?

10 A. Uh, I believe that was a trash can sitting right on the
11 corner of the house.

12 Q. Take a look at State's Exhibit No. 13.

13 A. Yes, sir, that's also a set a goggles, digital scales,
14 the same plant material as the picture before and three
15 separate bags of white, an off white rock substance along with
16 that big bottle of, uh, crystalline powder I believe.

17 Q. And where did all that stuff come from?

18 A. That came from the, uh, tote bag that was hangin' over
19 the fence.

20 Q. Okay.

21 MR. SPIVEY: May I approach the witness, Your Honor?

22 THE COURT: You may.

23 (Whereupon, a discussion was held off the record.)

24 Q. Uh, you can, uh, uh, tell us if you re -- if, first of
25 all, what what is it I've just handed you?

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 A. Just handed me a plastic bag with with a evidence
2 envelope in it with description of a black tote bag inside the
3 evidence envelope.

4 Q. Alright, go ahead and open up that bag for us and see.

5 A. You want me to cut it or you just gonna do it right
6 there?

7 THE COURT: Uh, do you have sumtin' to cut it?

8 THE WITNESS: No, sir, I do not.

9 THE COURT: Officer Bishop, we're gonna need your pocket
10 knife.

11 (Whereupon, a discussion was held off the record.)

12 (Whereupon, the officer cut the bag open.)

13 THE WITNESS: Thank you, sir.

14 BY MR. SPIVEY:

15 Q. Alright, what's that you're holdin' now? You've you've
16 taken stuff ---

17 A. That i ---

18 Q. --- outta the big bag, ---

19 A. Yes, that ---

20 Q. --- what's that?

21 A. --- is the, uh, evidence envelope that I placed the black
22 tote bag in it on the date of the search warrant is what we
23 submit to evidence through our evidence technicians.

24 Q. Okay. What's what's inside a there?

25 A. This is not the way it, I packaged it ---

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. Okay.

2 A. --- so...

3 (Whereupon, the witness opened the exhibit.)

4 It is the black tote bag that that was hangin' over the
5 fence that was in the picture that you showed earlier.

6 MR. SPIVEY: Okay, Your Honor, this time I'd move that
7 that that tote bag into evidence as State's Exhibit, uh,
8 No. 14 I believe Your Honor.

9 THE COURT: Any objections?

10 MR. BEAN: Uh, I do object to that, Your Honor. I don't
11 think there's anything that ties that to this case or my
12 client other than the fact that the bag was hanging on the
13 fence. I don't think they've shown enough foundation to get
14 it admitted.

15 THE COURT: Mr. Spivey.

16 MR. SPIVEY: Uh, yes, sir, Your Honor, we'll at at this
17 point we'll we'll we'll we'll move on. Uh, that is --
18 that --- and you're ---

19 THE COURT: Well it's been marked for identification
20 purposes, you can seek its in -- introduction later on.

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

22 (Whereupon, a discussion was held off the record.)

23 BY MR. SPIVEY:

24 Q. Okay, so that is the bag that you found.

25 A. Yes, sir, it is.

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. Okay.

2 MR. SPIVEY: Okay, Your Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 (Whereupon, a discussion was held off the record.)

6 A. Alright, alright, these, uh, where do you want me to lay
7 these down, they got fingerprint dust all over 'em?

8 Q. Uh, just ---

9 A. I can ---

10 Q. --- put it ---

11 A. --- lay ---

12 Q. --- on that seat -- sheet a paper right there so we don't
13 mess up the furniture.

14 A. Alright. There's a pair a goggles, that is the, uh,
15 crystalline powder along with a set of, uh, digital scales.

16 Q. And that those three items were found ---

17 A. In the black tote right there (indicating), was hangin'
18 over the fence.

19 Q. Okay.

20 MR. SPIVEY: Your Honor, I I I I would move into
21 evidence, I'll I'll I'll do it after we establish that the bag
22 was at the appropriate time, Your Honor.

23 THE COURT: That'll be fine.

24 MR. SPIVEY: Your Honor, may I, may I approach the
25 witness again?

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 THE COURT: You may.

2 MR. SPIVEY: Thank Your Honor.

3 BY MR. SPIVEY:

4 Q. I'll gonna switch with ya again. Alright, do you, do you
5 recognize what's in that envelope I've just handed you?

6 A. Yes, sir, this was the items that was in the picture, the
7 three bags, the clear bags right here (indicating), that
8 (indicating) one, that (indicating) one and that (indicating)
9 one.

10 Q. Okay.

11 A. That was the ones that was located in the bag, the black
12 tote.

13 Q. Okay. And what did you do with those items a -- once you
14 collected?

15 A. Once I collected these items along with everything else,
16 again, I went back to my location that I was sitting down
17 logging the information onto the return of the search warrant.
18 I did a, uh, field test using a, uh, field reagent that we
19 have that would test the presence of cocaine and the items and
20 all of 'em tested positive for the, uh, cocaine present in the
21 items.

22 Q. Okay. What did ya do after that?

23 A. I sealed 'em up, we put 'em in the evidence envelope
24 that's marked here, we put 'em in the BEST envelope, the
25 county drug analysis security envelope like we did on the

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 other one and submitted into evidence for our technician to
2 submit it to the county.

3 Q. Okay, and like the substances you found earlier did
4 anybody tamper with these at any time?

5 A. No, sir, I was the one that took possession of the items
6 that I listed on the search warrant and that was in my custody
7 until I dropped 'em off to the evidence technician.

8 Q. And that time were they in s -- the the same or
9 substantially the same condition?

10 A. Yes.

11 Q. Okay. Officer Bagwell, did you locate any other
12 substances that you believe were drugs anywhere else?

13 A. If I can look at my report real quick, I can . . .
14 No, sir, that that was, that's all that was located as
15 narcotics.

16 Q. You remember how many people were there?

17 A. Maybe three. I I believe I remember three males there.

18 Q. And none of them had drugs on them ---

19 A. No, sir.

20 Q. --- or anything you suspected to be drugs ---

21 A. No, sir.

22 Q. --- except for Isaac Lyles.

23 A. Yes.

24 Q. Okay.

25 A. He's the only one that I recovered any narcotics from.

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. What about anywhere else in the residence, inside ---

2 A. No.

3 Q. --- a the residence?

4 A. No, sir, I did not locate or recover any narcotics inside
5 the residence.

6 Q. Okay. You locate any items of of Mr. Lyles' inside the
7 residence?

8 A. I do not recall but if I did they woulda been on my
9 report and I don't remember putting anything down with
10 Mr. Lyles's name on it.

11 Q. Okay.

12 MR. SPIVEY: Your Honor, at this point I've got no
13 further questions for this witness. Uh, oh, excuse me, Your
14 Honor, I I, if I can take that back very quickly, ---

15 THE COURT: You certainly can.

16 MR. SPIVEY: --- I got one more, one item to approach on.
17 I apologize, may I approach him?

18 THE COURT: You may.

19 MR. SPIVEY: Thank Your Honor.

20 BY MR. SPIVEY:

21 Q. I'm gonna switch with ya one last time. Do you -- can
22 you identify that particular item?

23 A. Yes, sir, that item, make sure I'm on the right page
24 here. Yes, that is a, uh, was a large bag containing green
25 plant material located in the black tote that was hanging over

JOSH BAGWELL - DIRECT EXAMINATION BY MR. SPIVEY

1 the, over the fence.

2 Q. Okay. Looking at that picture right there which is
3 State's Exhibit 13, is is that the same substance that was in
4 that Ziploc bag?

5 A. Yes, sir, it was.

6 Q. Okay. Uh, what did you do with the substance outta that
7 Ziploc bag, how how did it get to there?

8 A. Uh, I put, the way the evidence as you see there plastic
9 baggy Ziploc with the green or the plant material in the
10 bottom I put that into the evidence envelope that we would
11 turn over to the, uh, evidence technician, they would, I guess
12 they they would do whatever they need to do with it and put it
13 into a separate sealed, uh, bag.

14 Q. Okay. And did you -- you you said you sealed that up.

15 A. I I put it in this this envelope here (indicating).

16 Q. Okay. And did anybody, uh, tamper with it while it was
17 in your custody or control?

18 A. No, sir, they did not.

19 Q. And it was in the same or substantially same condition as
20 when you retrieved it.

21 A. Yes, sir, that's correct.

22 Q. Okay, thank you.

23 MR. SPIVEY: Your Honor, at this point I have no further
24 questions of this witness.

25 THE COURT: Mr. Bean, your witness.

JOSH BAGWELL - CROSS-EXAMINATION BY MR. BEAN

1 MR. BEAN: Thank Your Honor.

2 MR. SPIVEY: Get some a this stuff.

3 CROSS-EXAMINATION BY MR. BEAN:

4 Q. Officer Bagwell, uh, how far were you from Isaac Lyles
5 when he was detained by the other officer?

6 A. Uh, I -- he detained him before I got to him so I'd
7 probly say no further than you and I are right now.

8 Q. Twenty feet?

9 A. Roughly, yes, sir.

10 Q. Okay. And, uh, so you were right there when they went
11 through, when the other officer went through his pockets and
12 all that, correct?

13 A. Uh, he informed me about the gun and that's when I came
14 and recovered everything else ---

15 Q. Okay. So you were, ---

16 A. --- so...

17 Q. --- you were there the whole time, ---

18 A. Yes.

19 Q. --- from the time he grabbed him until ---

20 A. Yes, yes.

21 Q. --- ya'll were done and he was carted off.

22 A. Yes.

23 Q. Oh, (clears throat) excuse me. Now at what point in this
24 process did you find this bag?

25 A. Which? the black tote?

JOSH BAGWELL - CROSS-EXAMINATION BY MR. BEAN

1 Q. Bag, yeah, ---

2 A. Uh, ---

3 Q. --- hangin' on the fence.

4 A. --- that -- I was informed about the black tote, I was
5 sitting inside the residence doing the return o -- for the
6 search warrant and I'm not sure which officer informed me that
7 there was a tote hangin' over the fence so I went outside and
8 then recovered it, it was while I was doin' the return.

9 Q. Okay. So so you didn't see how the bag got there, is
10 that ---

11 A. Yes.

12 Q. --- right? Don't know how long it been there?

13 A. No, sir.

14 Q. Okay.

15 MR. BEAN: Just one moment, Your Honor.

16 THE COURT: Yes, sir.

17 (Whereupon, a discussion was held off the record.)

18 MR. BEAN: Uh, can I have just a moment, this ---

19 THE COURT: Yes, sir.

20 MR. BEAN: --- this stuff's been re-bagged here, I just,
21 uh, wanna see what I'm lookin' at.

22 BY MR. BEAN:

23 Q. Mr. Bagwell, -- approach the witness, Your Honor?

24 THE COURT: You may.

25 Q. I'm gonna hand you these, I -- this one came outta this

JOSH BAGWELL - CROSS-EXAMINATION BY MR. BEAN

1 bag and I'm not sure which is which but I ---

2 A. Yes.

3 Q. --- presume that you do. Did did you collect that
4 (indicating)?

5 A. Yes, sir, I did.

6 Q. Where'd it come from?

7 A. Uh, this is two separate pieces here. Uh, the first one
8 that's marked 1.86 grams that was the small bag, I -- ya'll
9 were showin' some pictures earlier when when he pulled it out
10 of his pocket.

11 Q. Okay.

12 A. The bottom one 3.85 I believe was in the, uh, bottle jar,
13 the mason jar, that was in the, uh, pocket of Mr. Lyles.

14 Q. Okay, that that was this here (indicating)?

15 A. Yes, sir, that was the, that was bottom one, ---

16 Q. Alright, ---

17 A. --- yes.

18 Q. --- and and then this one over here (indicating) tell me
19 what that is and and where you found that. You you found
20 that here. That was there?

21 A. That was the one I recovered, I -- that was the one that
22 was in the black tote, ---

23 Q. Okay.

24 A. --- yes.

25 Q. Now I don't know anything about marijuana unlike

JOSH BAGWELL - CROSS-EXAMINATION BY MR. BEAN

1 President Clinton and some other folks but how would you
2 compare the, uh, the two, the two there? They don't look the
3 same to me.

4 A. I mean, these it's just green plant material.

5 Q. Okay.

6 A. You got some shake on both of the bottoms that look
7 similar and you got when I say "shake" it's the the grinds,
8 the grounds here (indicating) ---

9 Q. Okay.

10 A. --- you got 'em here (indicating) as well.

11 Q. Well would it be a fair statement though that they don't
12 look the same?

13 A. Uh, the the larger pieces do not but the bu -- or the,
14 uh, shake, I mean, they're they're similar in in ---

15 Q. Right, but ---

16 A. --- shake.

17 Q. --- and as as marijuana is, uh, mashed or ground ---

18 A. Yeah.

19 Q. --- or whatever they do with it ---

20 A. Yes.

21 Q. --- it obviously gets finer and ---

22 A. Yes.

23 Q. --- finer into smaller and smaller ---

24 A. Yeah, ---

25 Q. --- pieces, correct?

1 A. --- it does.

2 Q. Okay, and and those two bags, hold 'em up if you would
3 just, I'm sorry, I ---

4 A. No, you're fine.

5 Q. --- I wanna see them again.

6 A. That's them.

7 Q. Okay. Okay. Alright, thank ya, I just, ---

8 A. Yes, ---

9 Q. --- I just wanted to, ---

10 A. --- you're good ---

11 Q. --- wanted to see those and have you tell me about 'em,
12 I'll give those back to the folks over here. Here you go.

13 Now, uh, Officer Bagwell, you also said I think that you
14 thought there were three people in the house?

15 A. I remember a gentleman that was inside and another
16 gentleman sitting on steps after everything was calmed down
17 and Mr. Lyles was handcuffed so ---

18 Q. Alright, well yeah.

19 A. --- I I remember three guys but I don't know.

20 Q. Okay, but we, now we had two guys run out, ---

21 A. Yes, ---

22 Q. --- remember?

23 A. --- the one guy, Mr. Lyles was the one that run out the
24 side, ---

25 Q. Yeah.

JOSH BAGWELL - CROSS-EXAMINATION BY MR. BEAN

1 A. --- I believe there was another gentleman that ran out
2 but he didn't go really hardly anywhere 'cause there was other
3 officers there, ---

4 Q. Okay.

5 A. --- I believe he just stayed right there near the side a
6 the house.

7 Q. Okay, and then so there was only one other person
8 there?

9 A. Uh, and as far as I remember there was another person
10 inside but I did not realize he was inside till after ---

11 Q. Okay.

12 A. --- everybody was secured.

13 Q. So it's your testimony you believe that there were three
14 people total ---

15 A. Well ---

16 Q. --- in the house not countin', ---

17 A. --- that that I ---

18 Q. --- not countin' ---

19 A. --- could see.

20 Q. --- the police.

21 A. Yes, sir, that I could see.

22 Q. Okay, but would there, would there have been anybody in
23 there that you could not see?

24 A. No, sir.

25 Q. Okay. Thank you, no further questions.

JOSH BAGWELL - REDIRECT EXAMINATION BY MR. SPIVEY

1 THE COURT: Redirect?

2 MR. SPIVEY: Yes, Your Honor, just briefly.

3 REDIRECT EXAMINATION BY MR. SPIVEY:

4 Q. Your your job was to collect the evidence found.

5 A. Correct.

6 Q. So if somebody didn't have any what another officer would
7 consider evidence, you wouldn't have any interaction with that
8 person, would you?

9 A. No, sir, I would not.

10 MR. SPIVEY: No further question, Your Honor.

11 THE COURT: Mr. Bean, anything further from the witness?

12 MR. BEAN: Nothin' further, Your Honor.

13 THE COURT: You may step down, sir.

14 (Whereupon, the witness left the stand.)

15 THE COURT: Alright, ladies and gentlemen of the jury,
16 it's about 5:20 so we're gonna stop for the afternoon, same
17 instructions I'll give ya now that I gave ya when you left
18 earlier, uh, please don't discuss the case with anyone, don't
19 allow anyone to discuss it with you, don't try to gather any
20 information about the case from any other source, listen to,
21 watch or read media reports about the case and if anyone tries
22 to contact you about your service on this jury, please report
23 that as soon as you can. Uh, we'll begin again in the morning
24 at nine o'clock, we'll probly start pretty shortly thereafter
25 so be in the jury room at 9:00, the bailiffs will show ya

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1 where to be, uh, we look forward to seeing you that time.

2 This time your free to go, have a good evening.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Alright, we will be in recess until nine
6 o'clock in the morning, thank you.

7 MR. SPIVEY: Thank Your Honor.

8 (Proceedings December 5, 2013)

9 (Whereupon, a discussion was held off the record.)

10 THE COURT: Alright, you ready to proceed, Mr. Spivey?

11 MR. SPIVEY: Yes, sir, Your Honor. Uh, before we get
12 started I wanna make the the the Court aware and we talked a
13 little bit about this yesterday, uh, I I did a little research
14 on the issue of, uh, Mr. Wesson's record, ---

15 THE COURT: Yes.

16 MR. SPIVEY: --- Mr. Barnette was kind enough to supply
17 me with a case that ---

18 THE COURT: Pass it up.

19 MR. SPIVEY: --- that I'd like to to for you to take a
20 look at, Your Honor.

21 (Whereupon, counsel handed the document to the Court.)

22 MR. SPIVEY: Uh, Your Honor, essentially it's -- this
23 was, now this case was in related to a defendant and not a a
24 witness, uh, but it does talk about having a balancing test
25 and it talks about armed robbery or a, or a burglary being not

MOTIONS AND MATTERS

1 crimes of dishonesty just in and of themselves, there's got to
2 be something more than the actual crime, some other act of
3 deceit.

4 THE COURT: Well that's that's the reason I asked
5 yesterday in chambers if anybody had any information
6 concerning the a -- underlying crime of the armed robbery, how
7 it was, uh, how it came about. I I asked that question, uh,
8 and didn't get any response, I don't ---

9 MR. SPIVEY: Ye ---

10 THE COURT: --- know that I I I got, ever got a response
11 to that.

12 MR. SPIVEY: Yes, sir, I talked with the defendant about
13 that and I'd I'd be willing to put him up and proffer some
14 testimony about that, we could -- he could cross-examine him,
15 we can make that determination if we need to, Your Honor.

16 THE COURT: Mr. Bean.

17 MR. BEAN: Your Honor, I thought this matter was settled,
18 uh, and I apologize that ---

19 THE COURT: Well it hasn't been, it hasn't -- he hasn't
20 been presented for testimony and if there's, ---

21 MR. BEAN: Right.

22 THE COURT: --- if there's somethin' else I need to
23 consider I always do.

24 MR. BEAN: I understand and I certainly don't have a
25 problem with that as long as a course I can cross-examine,

MOTIONS AND MATTERS

1 Your Honor, and ---

2 THE COURT: Uh, sure.

3 MR. BEAN: --- I presume this would be outta the presence
4 of the jury ---

5 (Cross-talk.)

6 THE COURT: Oh, absolutely, it be a proffer. Do you
7 wanna do that -- do you plan to offer him now?

8 MR. SPIVEY: Yes, yes, sir, he's gonna go get him, he's
9 he's sitting ---

10 THE COURT: Well let's ---

11 MR. SPIVEY: --- in my office, ---

12 THE COURT: --- go ahead and, ---

13 MR. SPIVEY: --- uh, ---

14 THE COURT: --- let's go ahead and make a proffer then
15 concerning this issue ---

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

17 THE COURT: --- 'cause as I indicated yesterday the the
18 purpose of offering prior records is to attack credibility,
19 uh, and I was aware of this case that you've given me
20 *Broadnax*, uh, in which they said you had to look into the
21 underlying crime to determine if it involved some type of
22 dishonesty or or, uh, uh, false statements or things of that
23 nature, uh, and so I'll be happy to take a look at.

24 MR. SPIVEY: Yes, sir, ---

25 THE COURT: I asked, ---

MOTIONS AND MATTERS

1 MR. SPIVEY: --- Your Honor.

2 THE COURT: --- I asked the question yesterday, didn't
3 have any information on that.

4 MR. BEAN: Uh, Your Honor, before Mr., what's his name
5 again Wesson?

6 MR. SPIVEY: Wesson.

7 MR. BEAN: Wes -- 'fore he gets here, uh, I haven't been
8 given any information on what the solicitor may have promised
9 him, offered him, threatened him with, uh, any of that so ---

10 THE COURT: Well I'll I'll give you an opportunity to
11 cross-examine him in just a minute when they put him on the
12 stand.

13 MR. BEAN: Okay. And one more bit of, uh, I I I guess
14 I'll call housekeeping. Your Honor, I was going through the
15 exhibits up there and one of the exhibits is the, uh, uh, the
16 DNA search warrant, I wanna be sure that doesn't go to the
17 jury ---

18 THE COURT: Well I always, ---

19 MR. BEAN: --- by mistake.

20 THE COURT: --- I always before the exhibits are given
21 to the jury allow the attorneys to first agree on what goes
22 back ---

23 MR. SPIVEY: I ---

24 THE COURT: --- so I'm sure you'll take a look at that at
25 that time.

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1 MR. SPIVEY: Your Honor, I'll agree that that was entered
2 as exhibit for the purposes of that motion ---

3 THE COURT: That motion ---

4 MR. SPIVEY: --- and ---

5 THE COURT: --- hearing ---

6 MR. SPIVEY: --- and not for ---

7 THE COURT: --- that we ---

8 MR. SPIVEY: --- the purposes of of the trial, ---

9 THE COURT: Well, uh, ---

10 MR. SPIVEY: --- you know, didn't ---

11 THE COURT: --- again, before before anything goes back
12 to the jury I always send the jury out, we agree on what goes
13 back and then bring the jury back, ---

14 MR. BEAN: Yes, thank you.

15 THE COURT: --- that's the reason I do that just to be
16 sure we don't get things back to the jury that shouldn't be
17 there.

18 MR. SPIVEY: Your Honor, while while we're waiting on him
19 to to come down, uh, I also wanna pass up another case and and
20 just for you'll need it in the future I think, Your Honor.

21 THE COURT: Um-hum.

22 MR. SPIVEY: This is *State v. Robinson*. This is a case
23 in which a law enforcement officer based upon his training and
24 experience was qualified as an expert and he was an expert in,
25 uh, things like packaging, sale, cost of drugs, uh, the

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1 typical dosage amounts, uh, essentially he was able to testify
2 because of his training and experience that as a difference
3 between a user and a drug dealer and I I I'm intending today
4 and I I've told Mr. Bean this, I've handed him a copy of this
5 case, to have Investigator Kirby, uh, qualified as an expert
6 in those, uh, those those areas of expertise.

7 THE COURT: We may have to take a proffer on that as well
8 outside of the hearing of the jury.

9 MR. SPIVEY: Yes, sir, Your Honor, I just wanna make
10 you ---

11 THE COURT: Just make me ---

12 MR. SPIVEY: --- aware of that.

13 THE COURT: --- aware when you're ready to present him
14 and then we'll do that.

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

16 THE COURT: Alright.

17 (Pause.)

18 MR. SPIVEY: Your Honor, also will will will tell you,
19 uh, we talked about just this is a point a clarification for
20 Your Honor, ---

21 THE COURT: Yes.

22 MR. SPIVEY: --- we talked about there being an informant
23 that led to information about the search warrant, Mr. Wesson
24 is not that informant. I I know it -- I don't want there
25 being confusion about that. He he he was the a person who

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1 gave information but he gave information after the fact, ---

2 THE COURT: I understand.

3 MR. SPIVEY: --- uh, and I I didn't want you to think
4 they're the same person, ---

5 THE COURT: Now ---

6 MR. SPIVEY: --- Your Honor.

7 THE COURT: --- he was one of the individuals who was at
8 the home?

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

10 THE COURT: Is this (indicating) the gentleman?

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

12 THE COURT: Sir, come forward please to my left and be
13 sworn. C'mon up, ---

14 THE WITNESS: Okay.

15 THE COURT: --- right over here to my left. Thank you,
16 sir.

17 (Whereupon, the witness came forward.)

18 EDWARD WESSON, having been first
19 duly sworn, testified as follows:

20 THE CLERK: Thank you, you may be seated.

21 THE COURT: Have a seat, sir. Once you're seated please
22 state your name for the record.

23 THE WITNESS: Edward Wesson.

24 THE COURT: Thank you. Have a seat, sir. Your witness,
25 uh, Mr. Spivey.

EDWARD WESSON - DIRECT EXAMINATION BY MR. SPIVEY

1 MR. SPIVEY: Thank Your Honor.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION BY MR. SPIVEY:

4 Q. Mr. Wesson, I just want, this is a a hearing just solely
5 wanna talk about your record just for the moment, wanna do it
6 outside the presence of the jury. Uh, can you tell us and in
7 in 19, was it '95 or '96 you were convicted of armed robbery,
8 correct?

9 A. Yes.

10 Q. Okay. Tell us about the facts and circumstances about
11 that.

12 A. Yeah, it had a lot to do with drugs.

13 Q. Okay. Did -- tell me about how you actually committed
14 the armed robbery.

15 A. It was with, well there was a gun, we had a gun and I I
16 don't know exactly know 'cause that was a long time ago.

17 Q. Okay. Did you -- it hap -- you you had -- where did it
18 happen?

19 A. Uh, at that time it was well, uh, it used to be a abo --
20 above I forget the name of the place, it was a, it was a a
21 grocery store anyway as I remember.

22 Q. What part a town was that in?

23 A. It's over there where a Bank America's over there I know
24 now.

25 Q. Okay, and, uh, who did you rob?

EDWARD WESSON - DIRECT EXAMINATION BY MR. SPIVEY

1 A. It was a old woman, I don't remember her name or
2 nothin'.

3 Q. What did you take from her?

4 A. Money.

5 Q. Did she have it in her purse? in her pocket? where was
6 the money?

7 A. In her wallet.

8 Q. In her wallet?

9 A. In her purse.

10 Q. In her purse. How did you, how did you do it? Did you
11 walk up to her?

12 A. Yes.

13 Q. And then what did you do then?

14 A. I just asked her for the money.

15 Q. Did you ask her anything else? You try to trick her in
16 any way or...

17 A. (Nodded in the negative.)

18 Q. Did you show her your gun?

19 A. Yes.

20 Q. Okay.

21 MR. SPIVEY: Your Honor, I've I've I've got no further
22 questions at this time.

23 Q. Well let me ask you about the burglary, the --- in 2006
24 you were convicted of burglary, uh, third degree.

25 A. Yeah, that was on a, it was on a construction site.

1 Q. Okay, where was the construction site?

2 A. On E -- on East Main.

3 Q. Okay, uh, well tell me about what you did there.

4 A. Well I was just tryin', really at that time I was just
5 find, tryin' to find me a place to sleep.

6 Q. Okay. Where -- uh, was anybody there?

7 A. No.

8 Q. How did you get caught?

9 A. Somebody, uh, they said a taxi it was right from, uh,
10 right across from a where a a Yellow Cab used to be and they
11 said that they called 'em.

12 Q. Did you lie to anybody?

13 A. (Nodded in the negative.)

14 Q. You talk to anybody at all?

15 A. No.

16 Q. You were just tryin' to find a place to sleep?

17 A. Yeah.

18 Q. Okay. Uh, you pled guilty to both of those crimes,
19 didn't you?

20 A. Yes.

21 Q. You were guilty and and you pled because you were guilty.

22 A. Yes.

23 Q. Okay, uh, please answer any questions the defense
24 attorney has.

25 THE COURT: Mr. Bean.

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 CROSS-EXAMINATION BY MR. BEAN:

2 Q. Mr. Wesson, when you robbed this lady, what had you been
3 doin' before you went over there?

4 A. Exactly I don't -- what are you sayin', I'm just ---

5 Q. Were ---

6 A. --- in a ---

7 Q. --- you at home?

8 A. No, no, I didn't ---

9 Q. Okay, where were ya before you went over there and robbed
10 her?

11 A. I was just walkin' around.

12 Q. With a gun in your pocket.

13 A. (Nodded in the affirmative.)

14 Q. Okay, and what ---

15 THE COURT: You have to answer verbally, sir.

16 THE WITNESS: Okay.

17 THE COURT: Is that a yes?

18 THE WITNESS: Yes.

19 THE COURT: Thank you.

20 BY MR. BEAN:

21 Q. Alright. With a gun in your pocket you're just walkin'
22 around and so you come up to this lady just on the street or
23 did you go to the store there directly to do what you did?

24 A. She she came in the parkin' lot.

25 Q. How'd she get there?

1 A. In a car.

2 Q. Where were you?

3 A. I was in the parkin' lot.

4 Q. Were you in a car?

5 A. Nah.

6 Q. Were you standin' around hidin', ---

7 A. Yes.

8 Q. --- what were you doin'?

9 A. Walkin', yeah.

10 Q. Just walkin', okay. What were ya thinkin' about?

11 A. When robbin her'.

12 Q. You're thinkin' about robbin'.

13 A. Uh, yeah.

14 Q. Okay, so that's why you went there?

15 A. Yeah.

16 Q. And and you knew if you did that that that be wrong, that
17 that would be a crime, didn't ya?

18 A. Yeah.

19 Q. But even though you thought about it you went and did it
20 anyway.

21 A. Yes.

22 Q. You have ---

23 A. Yes.

24 Q. Yes? Is that a yes?

25 A. Yes.

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 Q. Okay. And wha'd you do after you got the money from her,
2 after you pointed the gun at her and took her wallet?

3 A. Took off runnin'.

4 Q. Okay. Now on this burglary at East Main you said it was
5 a construction site?

6 A. Yes.

7 Q. What were they buildin' there?

8 A. I, uh, it's a bank, there's a bank now.

9 Q. It's a bank now?

10 A. It wasn't nothin' then but that's what ---

11 Q. Well ---

12 A. --- they were buildin' though a bank.

13 Q. --- what did it look like then?

14 A. A mess (laughs).

15 Q. Okay. Was it a building?

16 A. It wasn't a, uh, buildin' had been been up yet, ---

17 Q. So ---

18 A. --- they still workin'.

19 Q. --- so it was just construction materials?

20 A. Yeah.

21 Q. There was no building there?

22 A. Nah.

23 Q. Why'd you go there?

24 A. For I didn't have no -- see, I'm livin' on the street,
25 uh, see if I try to find me a place to live.

1 Q. So you were gonna live in a construction site where there
2 was no building, is that what you're tellin' me?

3 A. Yes.

4 Q. How were you gonna live there?

5 A. It was I was there, I was just for a night to sleep,
6 somewhere to sleep.

7 Q. But there was no buildin', you were gonna sleep outside,
8 weren't ya?

9 A. Yeah.

10 Q. Just just out there under the stars on the concrete?

11 A. Yeah, it wouldn't a been the first time.

12 Q. And you knew that was wrong too, didn't ya? You weren't
13 supposed to be there, were ya?

14 A. Yes.

15 Q. You were supposed to be there.

16 A. No, no.

17 Q. You were not?

18 A. No.

19 Q. Okay. But you went anyway and you -- where were you when
20 they came, when the police came?

21 A. I was on, I was inside i -- on the property.

22 Q. Well you weren't inside the buildin', was there a
23 fence?

24 A. Yeah, there was a fence around it, yes.

25 Q. Okay, so you decided to climb the fence or did you --

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 how'd you get in?

2 A. It was a a ga -- a gape in the, a gap in the gate and I
3 just walked in.

4 Q. Okay. And so you want us to believe that you were going
5 in there to sleep.

6 A. Yes.

7 Q. You weren't goin' in there to take anything.

8 A. (Nodded in the affirmative.)

9 Q. Did you think about takin' anything?

10 A. That didn't cross my mind. Like I said, I went there to
11 sleep, I wasn't even thinkin' about stealin' nothing'.

12 Q. So there's a buildin' there or there's no buildin' there,
13 there's just materials and you didn't go there to take
14 anything, you went there to sleep out in the open?

15 A. No -- yes.

16 MR. BEAN: No further questions, Your Honor.

17 THE COURT: Mr. Bean, did you wanna ask him about a prior
18 arrangement of some kind?

19 MR. BEAN: Oh, I'm sorry, I ---

20 THE COURT: I told ya I'd let ya go into that at
21 this ---

22 MR. BEAN: Yes, ---

23 THE COURT: --- time if ---

24 MR. BEAN: --- thank ---

25 THE COURT: --- you wished to do so.

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 BY MR. BEAN:

2 Q. Mr. Wesson, when when the police came to your residence
3 on was it Farley Street on October the 9th of 2012, do you
4 remember that?

5 A. Yes, I do.

6 Q. Okay. And you remember them comin' in?

7 A. Yes.

8 Q. Okay. And, uh, do you remember that you were, uh, you
9 were runnin' out the door ---

10 A. Yes.

11 Q. --- when they came in? Now were you arrested?

12 A. No, no.

13 Q. Okay. Do you know why you were not arrested?

14 A. No, other than I -- they told me I wasn't the one that
15 they was after when they came, yes, sir.

16 Q. Okay. Did they, did they promise you anything to get you
17 to come here today to testify?

18 A. No.

19 Q. Okay. Did you go to jail right after that incident?

20 A. Yes, it was for somethin' else though.

21 Q. What was it for?

22 A. Trespassin'.

23 Q. Trespassin'?

24 A. Yes.

25 Q. What else?

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 A. You, what are you sayin' now?

2 Q. Well you had, you had some bench warrants, didn't you?

3 A. Yeah, yeah.

4 Q. Okay. What were those bench warrants for?

5 A. Trespassin', I didn't go to court.

6 Q. Both of 'em were trespass?

7 A. Yeah.

8 Q. Okay. And did the police let you, uh, get you out of
9 those things after you went to jail?

10 A. No, I did the time.

11 Q. How much time did you do?

12 A. They gave me 30 days.

13 Q. Thirty days, okay. So you did your 30 days?

14 A. Yes.

15 Q. Alright. Now what did they tell you when they asked you
16 to come here today and talk about that incident on October the
17 9th of last year?

18 A. They just told me to tell ya'll everything that happened
19 and then, you know, 'cause I I don't remember it, you know.

20 Q. Okay. So they didn't offer you anything to get you to
21 come?

22 A. No.

23 Q. Did they promise ya anything?

24 A. No.

25 Q. Did they threaten you in any way?

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 A. No.

2 Q. So you just here of your own free will, is that right?

3 A. Yes.

4 Q. And you're just doin' the right thing.

5 A. Yes.

6 Q. Alright.

7 MR. BEAN: No further questions, thank Your Honor.

8 THE COURT: Alright, sir, you may step down.

9 (Whereupon, the witness left the stand.)

10 THE COURT: Alright, is the State's motion to exclude
11 what, uh, the convictions for both burglary and armed
12 robbery?

13 MR. SPIVEY: Yes, sir. At this point, Your Honor, we
14 don't believe there's, other than the crimes themselves
15 there's no act of deceit or dishonesty involved in those
16 crimes and the the *Broadnax* case states there's got to be
17 something other than the crime, some other element of deceit
18 or misleading or dishonest behavior.

19 THE COURT: Now there were convictions on his record for
20 for bad check.

21 MR. SPIVEY: Fraudulent check.

22 THE COURT: Fraudulent checks.

23 MR. SPIVEY: Case law has been settled on those
24 particular crimes, Your Honor, that's ---

25 THE COURT: Alright.

MOTIONS AND MATTERS

1 MR. SPIVEY: --- we agree there -- they shouldn't be used
2 for impeachment purposes.

3 THE COURT: I understand. Mr. Bean.

4 MR. BEAN: Your Honor, as to the armed robbery
5 particularly, he he just said he went there to to rob somebody
6 and he and he took advantage of doin' that and I think, I
7 think you can argue deceit or non-deceit or dishonesty or not
8 but it just seems clear to me that this is a a crime that
9 clearly involves dishonesty when you're plannin' to go up
10 there to steal somethin' and in this case to use a gun to to
11 take it away from, uh, the person who's lawfully entitled to
12 have it, the lady who had the the money in her wallet. I
13 think it's clear that it is a crime of of, uh, that involves
14 dishonesty and I think it oughta be included and, uh, that the
15 jury oughta know about it because I think it clearly affects
16 his credibility.

17 THE COURT: Well in looking at the the *Broadnax* case they
18 talk in terms of crimes which involve dishonesty, uh, or false
19 statements, uh, then it specifically says, "a conviction for
20 robbery, burglary, theft, drug possession, beyond the basic
21 crime itself, is not probative of truthfulness", uh, and it
22 says the Court must determine whether the crime involved any
23 false statements or acts of deceit beyond the basic crime
24 itself. Uh, here he says he's went to a parking lot, he, uh,
25 uh, robbed a lady that pulled up in a car. Uh, I didn't hear

MOTIONS AND MATTERS

1 any indication that he in any way tricked her or deceived her,
2 uh, and put her in a position to be robbed as a result of
3 that, uh, and in the case of the burglary he simply said he
4 went there for a place to sleep for the night and was on, uh,
5 in a place he shouldn't a been so I am gonna rule that there's
6 not sufficient evidence to, uh, have those crimes declared
7 crimes of dishonesty or false statement and I'll exclude them.

8 MR. BEAN: Thank Your Honor.

9 MR. SPIVEY: Thank Your Honor.

10 THE COURT: Anything else we need to take up before we
11 bring the jury in from the State's perspective, Mr. Spivey?

12 MR. SPIVEY: Uh, no, sir, Your Honor.

13 THE COURT: Defense wish to take up anything before I
14 bring the jury in?

15 MR. BEAN: No, Your Honor, thank ---

16 THE COURT: Alright, let's bring the jury in.

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

18 THE COURT: Alright, the record will reflect the jury's
19 return to the courtroom, I hope everyone had a good evening.
20 Any of you had any difficulty in complying with my
21 instructions of yesterday afternoon concerning your behavior
22 away from the courthouse, please stand.

23 (No response.)

24 THE COURT: The record then will reflect that all jurors
25 have been able to comply with my instructions, uh, appreciate

MOTIONS AND MATTERS

1 your being here on time, we were here on time too. We had
2 some issues that would've required you to leave the courtroom
3 and go back and forth so we took care a those before you came
4 in and so I've made a a a couple of rulings on some matters,
5 uh, in that regard so I again, I apologize for making you wait
6 but maybe we've sped up the overall proceedings by getting
7 some things taken care of.

8 This time the State is in the process of presenting its
9 evidence, you may call your next witness.

10 MR. SPIVEY: Thank Your Honor. Your Honor, the State
11 calls Edward Wesson.

12 THE COURT: Sir, come forward. Come over here
13 (indicating), meet the clerk to be sworn, please.

14 (Whereupon, the witness came forward.)

15 THE CLERK: Raise your right hand, put your left hand on
16 the Bible.

17 EDWARD WESSON, having been first
18 duly sworn, testified as follows:

19 THE COURT: Have a seat in the witness stand, sir. State
20 your name.

21 THE WITNESS: Edward Wesson.

22 THE COURT: Thank you, Mr. Wesson, have a seat, please.

23 (Whereupon, the witness complied.)

24 THE COURT: Spivey, your witness.

25 MR. SPIVEY: Thank Your Honor.

EDWARD WESSON - DIRECT EXAMINATION BY MR. SPIVEY

1 DIRECT EXAMINATION BY MR. SPIVEY:

2 Q. Mr. Wesson, where did you live in October of 2009?

3 A. Uh, on I remember it was, uh, Forest Street, I forget the
4 address.

5 Q. Okay. Was it North Forest Street?

6 A. Yes.

7 Q. That's near Cleveland Elementary School.

8 A. Yes.

9 Q. Okay. Uh, uh, Mr. Wesson, have you ever been convicted
10 of fraudulent check?

11 A. Yes, I have.

12 Q. Okay, when was that?

13 A. Was sometime last year.

14 Q. Was it, did it stem out of something that occurred in
15 2006?

16 A. No, no.

17 Q. Okay. Did you, did you plead guilty to those
18 convictions?

19 A. Yes, I did.

20 Q. And there were five of 'em?

21 A. Yes.

22 Q. Okay. Uh, Mr. Wesson, how do you know the defendant?

23 A. Uh, he came to me and asked me to, uh, use my apartment,
24 other than I didn't know him before then.

25 Q. Okay. How long had you lived in that that, it was a

EDWARD WESSON - DIRECT EXAMINATION BY MR. SPIVEY

1 duplex?

2 A. Yes.

3 Q. How long had you lived there?

4 A. The day I met him I was movin' in.

5 Q. Okay. When was that?

6 A. In s -- it was in the, in the summertime.

7 Q. Okay, of 2012?

8 A. Yes.

9 Q. Okay. And so you knew him from the summertime 2012 up
10 until this day, a couple months?

11 A. Yeah.

12 Q. How often would you see, uh, the defendant?

13 A. Pretty much every day after that.

14 Q. Okay. Why did you see him every day?

15 A. He just came to my apartment.

16 Q. Okay. What what what what did he talk to you about when
17 you first met him?

18 A. Well I I met him through somebody else and, uh, she had
19 told me that he wanted to use my apartment to use to sell
20 drugs.

21 MR. BEAN: Objection to what she might have told him,
22 Your Honor.

23 THE COURT: I'll sustain the objection as to what she --
24 he he might have been told by a third party, it it would be
25 hearsay. You may proceed.

EDWARD WESSON - DIRECT EXAMINATION BY MR. SPIVEY

1 MR. SPIVEY: Yes, Your Honor.

2 BY MR. SPIVEY:

3 Q. Just tell me about what the defendant said. Once you met
4 him what did he tell you?

5 A. He, uh, just asked me if he could, uh, sell my -- use my
6 apartment to sell drugs out of it.

7 Q. Okay. And during the time from that summer from when you
8 moved in until October 9th, he would do that?

9 A. Yes.

10 Q. And he would -- how often would he do that?

11 A. Every day.

12 Q. Okay. What did he always carry with him?

13 A. Uh, a black bag.

14 Q. Okay.

15 (Whereupon, a discussion was held off the record.)

16 MR. SPIVEY: Your Honor, may I approach?

17 THE COURT: You may.

18 BY MR. SPIVEY:

19 Q. I'll hand you sumtin', Mr. Wesson. If you could open
20 that envelope up for me, please.

21 A. Want me to ask you what this is?

22 Q. Yes, sir, just just set that aside, they -- what is that
23 you're holdin' in your hand?

24 A. It's a back bag, I mean, a like it's it's it's a bag
25 that, like a backpack.

EDWARD WESSON - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. Okay. Is that what the defendant always had with him?

2 A. Yeah.

3 Q. Okay.

4 MR. SPIVEY: Your Honor, at this point I'd move and I've
5 I've, excuse me, Your Honor, may I approach to get ---

6 THE COURT: Yes, I ---

7 MR. SPIVEY: --- the exhibit number?

8 THE COURT: --- it's been marked for identification I
9 believe.

10 MR. SPIVEY: Yes, sir, Your Honor. This was State's
11 Exhibit 14. Your Honor, this time I'd move State's Exhibit 14
12 into evidence.

13 THE COURT: Any objections?

14 MR. BEAN: Uh, I do object, Your Honor. I think the fact
15 that he testified that perhaps that was my client's back --
16 black bag does not make it so and doesn't give him a
17 foundation to get it in as evidence that its my client's
18 property.

19 THE COURT: Well that along with the other testimony when
20 it was identified I will admit it into evidence. Overrule the
21 objection, it'll be admitted as marked.

22 (Black bag marked State's Exhibit No. 14 for
23 identification and admitted into evidence.)

24 MR. SPIVEY: Yes, sir, Your Honor. Your Honor, I'd also
25 move that the items other than the items that were, uh, that

EDWARD WESSON - DIRECT EXAMINATION BY MR. SPIVEY

1 are alleged to be drugs I move those items into evidence as
2 well, they are the the black pair of goggles, the caffeine
3 powder and the set of digital scales that were inside the bag,
4 I would move those items into evidence as well, Your Honor.

5 MR. BEAN: Your Honor, there there's been no testimony
6 from this witness there was anything in the bag. I I don't
7 think there's a foundation for that.

8 MR. SPIVEY: You you ---

9 THE COURT: The foundation for those items there?

10 MR. SPIVEY: Yes, Your Your Honor. The other officers
11 testified that those items were found in the bag. This this
12 witness has said that black bag belonged to the defendant,
13 therefore everything belonged ---

14 THE COURT: I see. I'll overrule the objection, they'll
15 be admitted as marked.

16 MR. SPIVEY: Thank Your Honor. They actually need to be
17 marked. I'll I'll have them marked as one exhibit.

18 THE COURT: Okay, let's let's mark 'em then as one
19 exhibit.

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

21 (Goggles, caffeine powder and scales marked State's
22 Exhibit No. 15 for identification and admitted into evidence.)

23 MR. SPIVEY: That's State's Exhibit 15, Your Honor.

24 THE COURT: Thank you, sir, you may proceed.

25 BY MR.. SPIVEY:

EDWARD WESSON - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. Mr. Wesson, what did the defendant drive?

2 A. At the time a moped.

3 Q. Okay. Did he ever wear any goggles?

4 A. Yes.

5 Q. Okay.

6 MR. SPIVEY: Your Honor, may I approach the witness?

7 THE COURT: You may.

8 (Whereupon, a discussion was held off the record.)

9 BY MR. SPIVEY:

10 Q. Can you take a look at State's Exhibit 15 for me.

11 A. That had -- that stuff there I know it came outta the
12 bag.

13 Q. Yes, sir. Just talkin' about those goggles right there
14 (indicating), do you recognize those goggles?

15 A. Yeah, the go -- goggles, yeah.

16 Q. And whose goggles are those?

17 A. He, uh, defendant. His (indicating).

18 Q. Who?

19 A. His (indicating).

20 Q. Okay, you you're pointing to the defendant.

21 A. Yes, far ---

22 Q. Okay.

23 A. --- as all that I don't, I remember him takin' it outta
24 the bag but there was so much stuff in that bag I don't
25 remember. I was sittin' on the porch at the time when ---

1 Q. Yes, sir.

2 A. --- he took all the stuff outta the bag, I couldn't tell
3 ya exactly what all came out that bag.

4 Q. Yes, sir, but you had seen the defendant with those
5 goggles before that day.

6 A. Yeah, with 'em on, I mean.

7 Q. Okay. Mr. Wesson, why were you letting the defendant
8 sell drugs out of your apartment?

9 A. Well I was, uh, at time I was on drugs real bad and I was
10 just lettin' him do it because, you know, he he, that's when
11 he was helpin', uh, payin' me to, uh, turn, to use my
12 apartment.

13 Q. What did he pay you with?

14 A. Rock, crack.

15 Q. So he would give you crack cocaine?

16 A. Yeah.

17 Q. And in exchange you let him use your apartment.

18 A. Yes.

19 Q. Mr. Wesson, you ever touch the the black bag, this
20 (indicating) black bag, the book ---

21 A. Yeah.

22 Q. --- bag? You did? Why did you touch it?

23 A. He'd usually ask me to get it for him, we, you know, did
24 a sale.

25 Q. So someone would come and ask him for drugs and he would

EDWARD WESSON - DIRECT EXAMINATION BY MR. SPIVEY

1 ask you to go retrieve the the bag for him?

2 A. Yeah.

3 Q. And you did that?

4 A. Yes.

5 Q. Did you ever see him get any drugs out of that bag?

6 A. When he, when he would sell it, yes.

7 Q. Okay, so you knew he had drugs in that bag.

8 A. Yeah, I just didn't know how much until that day.

9 Q. What kinda drugs did he have in that bag?

10 A. More than that. I seen all kinds a stuff come outta that
11 bag (laughs).

12 Q. Now other than what you saw, what what what kinda drugs
13 did he ---

14 A. Crack.

15 Q. He gave ya crack? Did he give you marijuana?

16 A. He smoked it with me, yeah.

17 Q. Okay. He ever give ya any powder cocaine?

18 A. Nah.

19 Q. You don't use powder cocaine?

20 A. I'm scared of it.

21 Q. Okay.

22 A. (Laughs.)

23 Q. Mr. Wesson, where would you get that bag from when he
24 asked you to get it?

25 A. It was on a f -- it was hangin' from a fe, uh, uh, see

1 that property's got a fence up on the side of it and that's
2 where it was at, on the other side of the fence.

3 Q. Would he always keep that bag there?

4 A. Uh, most the time, yes.

5 Q. Why would he keep that bag there?

6 A. I have no no idea, have to ask him that.

7 Q. Okay. Uh, did he ever let anybody else touch that bag
8 besides you?

9 A. No.

10 Q. Why not?

11 A. I guess 'cause he didn't trust nobody else.

12 Q. Mr. Wesson, anybody tell you what to say today?

13 A. No.

14 Q. Anybody promise you anything?

15 A. No.

16 Q. Are you tellin' the truth?

17 A. Yes.

18 Q. Why are you tes -- testifyin' today, Mr. Wesson?

19 A. 'cause it's the rest -- the right thing to do.

20 Q. Mr. Wesson, one more time, whose black bag is that
21 (indicating)?

22 A. The, uh, defendant's.

23 Q. How many times did you see the defendant with that black
24 bag?

25 A. Uh, every day he come over there.

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 Q. And he came over there just about every day durin' that
2 summer ---

3 A. Yeah, pretty mu ---

4 Q. --- up until October 9th?

5 A. Yeah.

6 MR. SPIVEY: Your Honor, at this point I've got no
7 further question for this witness.

8 THE COURT: Mr. Bean.

9 MR. BEAN: Uh, one moment, Your Honor, please.

10 (Whereupon, a discussion was held off the record.)

11 MR. BEAN: Approach the witness, Your Honor?

12 THE COURT: You may.

13 CROSS-EXAMINATION BY MR. BEAN:

14 Q. Mr. Wesson, I'm going to hand you a piece of paper here
15 and ask you if you can identify that (indicating).

16 A. Yeah.

17 Q. What what is that, Mr. Wesson?

18 A. My, uh, statement.

19 Q. Your statement and and to whom did you give that
20 statement?

21 A. I, Officey, uh, I forget, I forget his name.

22 Q. You -- did did you give it to the police?

23 A. Yes, yes.

24 Q. Okay. And did you write that statement?

25 A. Well he wrote it but it was in in my words.

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 Q. So you didn't write it, you told him what to say and he
2 wrote down what you told ---

3 A. Yes.

4 Q. --- him to say, okay.

5 MR. BEAN: Your Honor, I'd like to mark this for
6 identification before I go any further.

7 THE COURT: You can mark it for identification purposes.

8 MR. SPIVEY: Ju -- Your Honor, I -- we'll let him go on a
9 little further, Your Honor.

10 THE COURT: Okay, alright.

11 (Voluntary statement of Mr. Wesson marked Defendant's
12 Exhibit No. 1 for identification.)

13 BY MR. BEAN:

14 Q. Mr. Wesson, would you mind please reading the statement
15 that you gave to the officer.

16 MR. SPIVEY: Your Honor, I I just object and and ---
17 (Indiscernible cross-talk.)

18 MR. SPIVEY: --- my understanding ---

19 THE COURT: Just one second, sir, don't say saying.

20 MR. SPIVEY: Your Honor, may we approach?

21 THE COURT: You certainly may.

22 (Whereupon, a discussion was held off the record.)

23 BY MR. BEAN:

24 Q. Mr. Wesson, ---

25 A. Yes.

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 Q. --- did, uh, did the officer who wrote that for you write
2 down everything that you told him?

3 A. Yes.

4 Q. Okay. A -- did -- have you read it today?

5 A. I, uh, I read it yesterday.

6 Q. Uh, well a -- take just a minute, go ahead and read it
7 over, refresh your memory.

8 A. I can't see it.

9 Q. Can't see?

10 A. These aren't my readin' glasses (laughs).

11 Q. Oh.

12 A. This, I can see it but it's blurry (laughs).

13 THE COURT: Do you have your reading glasses in the
14 courthouse with you today?

15 THE WITNESS: No, they're at home.

16 THE COURT: Okay, sir.

17 MR. BEAN: Your Honor, may I read it to the witness then?

18 I ---

19 THE COURT: Ladies and gentlemen of the jury, I'll ask
20 that you step back to the jury room, don't begin any
21 discussions until such time as I've asked you to do so. You
22 may retire to the jury room.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Mr. Bean, the, uh, I'll I'll let you read it

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 to him if you'd like, I'm not gonna let you do it in fronta
2 the jury because my understanding of the rule is that, uh, if
3 he, if you're trying to impeach him with a prior statement
4 that he's made, he's entitled to be aware of the statement,
5 when it was made and what the statement says, so I'll let you
6 do that but you don't have, you can't publish that statement
7 to the jury, uh, and if I allowed you to read it in fronta the
8 jury you would be doing that, uh, so I'll let you read it to
9 him at this point in time but, uh, you know, the only purpose
10 for the -- of of the prior statement is if he acknowledges
11 having made a prior inconsistent statement, that's the end a
12 the inquiry, he's admitted he gave a prior inconsistent
13 statement, so you don't get to introduce the entire statement.
14 You can point out if he's made a prior inconsistent statement,
15 so in the interest of him being aware of what it says since he
16 says he can't read it, I'll let you read it to him now out of
17 the presence of the jury and then perhaps we can get down to
18 what might be inconsistent or not not inconsistent.

19 MR. BEAN: Yes, thank ---

20 THE COURT: Alright, you may proceed with reading ---

21 MR. BEAN: Yes.

22 THE COURT: --- his statement to him.

23 BY MR. BEAN:

24 Q. Mr. Wesson, your statement as I read it says, "I moved
25 here two months ago. When I moved here, Booeey told me he

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 would give me dope if I would let him sell out my house. I
2 use drugs, I have been using drugs for several years. I told
3 him yes and he started selling out my house. He sells outside
4 sometimes 2. Today he got here at 6 a.m., he started selling
5 about 9 a.m. He sells crack and powder. He just gives it to
6 me and we smoke weed together. I've seen him with the black
7 bag before. Uh, he left and came back before the police came
8 today." I believe that's the statement as I read it.

9 A. Yes.

10 THE COURT: Alright.

11 MR. BEAN: My my intention is to cross-examine the
12 witness about the sta -- the things he said today most of
13 which were not in the statement that he gave to the police at
14 the time which was inconsistent in my judgment and I think the
15 jury needs to know ---

16 THE COURT: No, an inconsistent statement means that he
17 had to make an affirmative statement pri -- previously that he
18 now has changed or is somehow making a different statement on
19 that point, that's what a prior inconsistent statement is.
20 You have the right to cross-examine him about the fact that
21 things he testified today were not in that statement, you can
22 ask him was that in your prior statement, but you can't
23 introduce the statement itself.

24 MR. BEAN: Ri -- yes, sir, I -- okay. Alright.

25 MR. SPIVEY: Your Honor, he wants to introduce the

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 sta -- we'll ---

2 THE COURT: I thought, ---

3 MR. SPIVEY: --- we'll waive our objection.

4 THE COURT: --- I thought ---

5 MR. SPIVEY: Well I ---

6 THE COURT: --- you were objecting, sir.

7 MR. SPIVEY: --- I didn't know where he was goin' with
8 it. Now that he's explained where he's goin' with ---

9 MR. BEAN: Well and and I ---

10 MR. SPIVEY: --- I don't see really any harm in it. He's
11 explained what he wrote in his statement, that's all he's
12 done.

13 MR. BEAN: Well and honestly I'm not introducing, I'm not
14 asking to introduce the statement, I just wanted to get on the
15 record that he had made a statement and I ---

16 (Cross-talk.)

17 THE COURT: Well that's on the record in front a the jury
18 now. You have the right to ask him whether or not the things
19 he said today are in that previous statement, ---

20 MR. BEAN: Right.

21 THE COURT: --- you certainly can ask that, and I assume
22 he's gonna say, No, some of the things weren't, and I think
23 then you've made your point. You can certainly argue to the
24 jury that he's made a more complete statement today than he
25 did in the past.

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 MR. SPIVEY: We we would consent to allowing it in, Your
2 Honor.

3 THE COURT: Well I'll let Mr. Bean decide whether he
4 wants to do that. Since you've withdrawn your objection
5 there's nothing for me to rule on so however you gentlemen
6 wanna handle that'll be fine with me at this point.

7 MR. SPIVEY: I think we'll speed it up, Your Honor.

8 THE COURT: Let's bring the jury in.

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

10 THE COURT: Alright, the record will reflect the jury's
11 returned to the courtroom. Uh, in the process of our
12 discussions, the State has decided to withdraw its objection.
13 You may proceed, Mr. Bean.

14 MR. BEAN: Thank Your Honor.

15 BY MR. BEAN:

16 Q. Mr. Wesson, is it, is it your testimony that the day you
17 were moving into the house where this incident took place that
18 Mr. Lyles showed up and asked you if he could sell drugs out
19 of your house?

20 A. Yes.

21 Q. That's your statement?

22 A. Yes.

23 Q. And you saw him every day.

24 A. Yes.

25 Q. And he sold drugs out of your house every day.

1 A. Yes.

2 Q. And he had a black bag.

3 A. Yes.

4 Q. Now when he came to your house that day in the summer
5 when he asked you, just showed up and said, I'd like to sell
6 drugs outta your house, how'd he get there?

7 A. He was already there.

8 Q. He was there waitin' on you?

9 A. No, he, nah, he wasn't exactly, I don't need it, but he
10 he was on a porch next door.

11 Q. Next door.

12 A. Yes.

13 Q. And he just came over, didn't know ---

14 A. Just ---

15 Q. --- ya and said, Hey, I wanna sell drugs outta your
16 house?

17 A. --- just like I said before somebody else had told him I
18 was movin' in there and they told me or took, brought, uh,
19 took me to him, said that's what he wanted to do outta my
20 house.

21 Q. And you agreed to let him sell the drugs you ---

22 A. Yes.

23 Q. --- described ---

24 A. Yes.

25 Q. --- outta your house, is that right?

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 A. Yes.

2 Q. You -- do you use drugs now, Mr. Wesson?

3 A. No.

4 Q. You got clean?

5 A. Been clear for for almost a year now.

6 Q. Now you testified I believe that there was a bag that he
7 had and you identified a black bag, is that right?

8 A. Yes.

9 Q. Okay. And I believe you testified a few minutes ago that
10 the bag hung on the fence, is that correct?

11 A. Yes.

12 Q. Okay, and how often did it hang on the fence?

13 A. As far as I know every day that he came with it.

14 Q. Okay. Now, Mr. Wesson, we discussed a few minutes you
15 you gave a statement to the police when this incident
16 occurred, is that right, you wrote it or you had an officer
17 write it down.

18 A. Yes.

19 Q. Okay. And you have that statement there with you,
20 correct?

21 A. Yes.

22 Q. And you know what's in the statement, is that correct?

23 A. Yes.

24 Q. And there isn't anything in that statement about the
25 black bag hangin' on the fence, is there?

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 MR. SPIVEY: Your Honor, I I would ask the defense
2 attorney to move the statement into evidence before we discuss
3 it. We don't object to it comin' in evidence but it needs to
4 move it into evidence before we discuss it, Your Honor.

5 THE COURT: Well he he's in cross-examination, I'll let
6 him decide how he wishes to proceed. You certainly on, uh,
7 redirect may take that position, I don't know, we'll see how
8 that works out. I'll allow Mr. present -- Bean proceed with
9 his cross-examination as he sees fits. You ---

10 MR. BEAN: Thank ---

11 THE COURT: --- may proceed, ---

12 MR. BEAN: --- Your Honor.

13 THE COURT: --- Mr. Bean.

14 BY MR. BEAN:

15 Q. You you didn't put anything in your statement about the
16 bag hangin' on the fence, did you, Mr. Wesson?

17 A. No.

18 Q. You -- didn't you think that was important?

19 A. Yes, I guess. I'm not a lawyer so I could tell ya.

20 Q. Well if you thought it was im ---

21 A. They asked me, they asked me about it and I told 'em, you
22 know, yeah.

23 Q. But you didn't, you didn't think it was important enough
24 to put that in the statement, did you?

25 A. (Nodded in the negative.)

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 Q. No? Is that a no?

2 A. No.

3 Q. And you said that you had, you testified a few minutes
4 ago that you had gotten things outta the bag, isn't that
5 correct?

6 A. That's wrong.

7 Q. Now am I wrong about that?

8 A. Yeah.

9 Q. Okay. So are you saying you never ---

10 A. No.

11 Q. --- got anything outta the bag?

12 A. No.

13 Q. But there were, there were drugs in the bag, right?

14 A. I know that, yes.

15 Q. How do you know there were drugs in the bag?

16 A. 'cause he well every time some -- like I said, is when he
17 come, somebody come there, he gave drug, he sell 'em drugs and
18 get me outta bed to get the bag and go get the drugs out of
19 it.

20 Q. Oh so you would go get the bag?

21 A. Yes.

22 Q. Okay. Now when you gave that statement to the police
23 that you're lookin at there, it doesn't say anything about you
24 gettin' the bag and getting drugs outta there, does it?

25 A. No.

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 Q. Did did you think that was important to to tell the
2 police about what happened?

3 A. They didn't ask me about it.

4 Q. They didn't ask you about it?

5 A. No.

6 Q. So you didn't think it was important enough to tell 'em
7 about that but you're tellin' us about it now, is that
8 correct?

9 A. N -- and again, I'm not a police officer.

10 Q. No, sir, I I know you're not. What kinda drugs did you
11 keep in your house, Mr. Wesson?

12 A. Other than what I u-- take that's it.

13 Q. And what did you use?

14 A. What you mean what ---

15 Q. What drugs did you take?

16 A. Mine is for, mine is for mind, my mind.

17 Q. I I'm sorry?

18 A. Nuttin' else.

19 Q. I'm sorry, I didn't understand that.

20 A. Know what I'm sayin', that my my drugs are for for
21 mental, my ment -- my mental health problems.

22 Q. I'm talkin' about back at when ---

23 A. Yes.

24 Q. --- this happened.

25 A. I didn't have anything in there that wasn't illegal.

EDWARD WESSON - CROSS-EXAMINATION BY MR. BEAN

1 Q. Wasn't, so so the crack and the marijuana wasn't
2 illegal?

3 A. They didn't never catch it there 'cause I used it.

4 Q. I see, so you used it up when you had it.

5 A. Yeah.

6 Q. Okay. DO you ever look in that bag?

7 A. No.

8 Q. Never looked in there?

9 A. No.

10 Q. So you'd go get it, bring it back but you didn't never
11 look in inside.

12 A. No.

13 Q. Did you ever get any drugs outta there for yourself?

14 A. I -- no.

15 Q. Well, now how do you know that the things that you said
16 were in the bag were in there if you didn't never look in the
17 bag?

18 A. I just told you.

19 Q. Okay.

20 A. When they, when they they found the bag on the fra --
21 fence, they took it all out, that's when I knew what what was,
22 I didn't know I -- well, I knew it was drugs but I didn't know
23 how much or...

24 Q. You don't know how much now do ya, Mr. Wesson?

25 A. Not really, no.

EDWARD WESSON - REDIRECT EXAMINATION BY MR. SPIVEY

1 Q. And you don't know who else might have touched that bag,
2 do ya?

3 A. No.

4 Q. And you don't know how long it been hangin' on that
5 fence, do you?

6 A. No.

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

8 THE COURT: Mr. Spivey, you may redirect.

9 MR. SPIVEY: Thank Your Honor.

10 THE COURT: Yes, sir.

11 MR. SPIVEY: Uh, Your Honor, at this time I'd move
12 defense sta, uh, excuse me, the witness's statement into into
13 evidence.

14 THE COURT: Objection, Mr. Bean?

15 MR. BEAN: Your Honor, I do object. I think he's, uh,
16 he's made his statement today and he's clarified what he said
17 and so I don't think that, uh, it's a appropriate for it to be
18 entered at this time, uh, so I object on that basis.

19 THE COURT: I'll sustain the objection.

20 MR. SPIVEY: Thank Your Honor.

21 REDIRECT EXAMINATION BY MR. SPIVEY:

22 Q. Uh, I wanna just clarify a few things. You said you
23 would go get the bag ---

24 A. Yes.

25 Q. --- and you did not go into the bag ever. Why didn't you

EDWARD WESSON - REDIRECT EXAMINATION BY MR. SPIVEY

1 go in the bag?

2 A. Didn't have no reason to.

3 Q. Okay. You said you knew there were drugs in it before
4 the police pulled the stuff out, how did you know that?

5 A. Because that like I said, he, everyca -- everytime
6 somebody wanna buy some drugs he he'd have me to go get and
7 get through the dru -- get the drugs out then and sell it
8 to ---

9 Q. So you saw, ---

10 A. --- whoever he wanted.

11 Q. --- you saw the defendant get the drugs outta there.

12 A. Yes.

13 Q. And you saw him get cocaine or crack cocaine or marijuana
14 outta there.

15 A. M -- m -- crack.

16 Q. Crack, you saw him get crack cocaine outta there, so you
17 knew there was crack cocaine in there.

18 A. Yes.

19 Q. Okay. In terms a your statement and and in talkin' about
20 if he had had that bag with him before and why you didn't put
21 that in your statement, do you think that stuff's important?

22 A. Like I said, they never, they never asked me about it so
23 it never came my mind that to tell 'em about it.

24 Q. But you've been asked about it now, ---

25 A. Correct.

EDWARD WESSON - REDIRECT EXAMINATION BY MR. SPIVEY

1 Q. --- right?

2 A. Yes.

3 Q. And he did have that bag with him every day ---

4 A. Yes.

5 Q. --- and it was his bag.

6 A. I guess it was his, he had it with him.

7 Q. You didn't see -- did you ever see, this was, this was
8 where you were livin', did you ever see anybody else with that
9 bag other than defendant?

10 A. No.

11 MR. SPIVEY: Your Honor, I got no further questions.

12 THE COURT: Mr. Bean. Mr. Bean?

13 MR. BEAN: Nothing further, Your Honor.

14 THE COURT: Sir, you may step down. You wish to excuse
15 the witness?

16 (Whereupon, the witness left the stand.)

17 MR. SPIVEY: Yes, Your Honor, if if he may.

18 THE COURT: Any objection, Mr. Bean, to the witness being
19 excused?

20 MR. BEAN: Uh, Your Honor, I might ask that he be subject
21 to recall, ---

22 THE COURT: Alright.

23 MR. BEAN: --- I I'm not sure that I'll need that but I
24 may.

25 THE COURT: Since since we're under a sequestration

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 order, he'll need to have a seat out in the lobby.

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

3 THE COURT: Make him aware a that. Tell him to wait out
4 there and we'll let him know if we need him.

5 MR. SPIVEY: Your Honor, I'm gonna send him up to my
6 office.

7 THE COURT: That'll be fine as long as he's available.
8 Thank you. You may call your next witness, Mr. Spivey.

9 MR. SPIVEY: Thank Your Honor. Your Honor, I call Jeff
10 Kirby this time.

11 THE COURT: Sir, come forward, be sworn to my left.

12 (Whereupon, the witness came forward.)

13 THE CLERK: Raise your right hand, put your left hand on
14 the Bible.

15 JEFF KIRBY, having been first
16 duly sworn, testified as follow:

17 THE CLERK: Thank you, you may be seated.

18 THE COURT: Once you're seated, sir, state your name for
19 me.

20 THE WITNESS: Thank you, Your Honor. Uh, my name is Jeff
21 Kirby.

22 THE COURT: Thank you, sir. Mr. Spivey, you witness.

23 MR. SPIVEY: Thank you.

24 DIRECT EXAMINATION BY MR. SPIVEY:

25 Q. Investigator Kirby, please tell us your your your

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 occupation, your training and experience.

2 A. Uh, I am currently assigned to the Narcotics Division
3 with the Spartanburg City Police Department where I've been
4 assigned to that unit for approximately 9 1/2 years, been
5 employed there 11 1/2 years.

6 Q. Okay. What's your day-to-day activity like?

7 A. Uh, to disrupt the drug activity within the city limits
8 of Spartanburg.

9 Q. You try to stop it?

10 A. Yes, sir.

11 Q. Yes, sir. Uh, what kinda training do you get as
12 narcotics officer?

13 A. Uh, it's it's fairly extensive and with without my
14 trainin' record, I mean, over the past nine years I've been to
15 quite a number of, uh, drug classes, search warrant classes,
16 uh, execution search warrant classes, I mean, just numerous
17 drug recognition.

18 Q. In in 2012 how many classes did you attend?

19 A. Oh, a fair statement for that year would probably
20 somewhere in the neighborhood of 7 to 10 classes.

21 Q. Okay, how how how many hours are each class?

22 A. Usually they vary. Some of 'ems 8 week or 8 hours, some
23 of 'ems 40 hours.

24 Q. Okay. Uh, what other training and experience are you
25 required to get as just a law enforcement officer ---

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 A. Uh, ---

2 Q. --- non-narcotics based?

3 A. --- uh, basically we have, uh, 40 hours of required
4 training every year that we have to complete to keep our
5 certification which includes driving, firearms certification,
6 uh, some other legals.

7 Q. Okay. In your narcotics training, what type of training
8 are you getting? What what is it -- what is the, what's the
9 substance of those classes?

10 A. Well basically, uh, to to detect and identify drug
11 dealers, uh, drug weights, drug amounts, uh, sales, personal
12 use, uh, paraphernalia, items such as that to to bet -- be
13 able to better identify the the drugs that are affecting our
14 area.

15 Q. Okay, so you you talk about the types a drugs that are
16 used?

17 A. Yes, sir.

18 Q. Uh, you talk about the street values and the re -- the
19 the the wholesale val -- value and the street value of
20 drugs?

21 A. Yes, sir, we do.

22 Q. Do you talk about typical drug dealer behaviors?

23 A. Yes.

24 Q. The types of items they use to sell drugs, ---

25 A. That's correct.

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. --- the tactics they might use.

2 A. Yes, sir.

3 Q. Okay. Do you talk about, uh, the packaging of drugs?

4 A. Yes.

5 Q. Do you talk about any evasive tactics they might use?

6 A. Yes.

7 Q. Do you talk about the, uh, let's talk about users. Do
8 you talk about the tys -- typical, uh, habits of a drug
9 user?

10 A. Yes, sir, we do.

11 Q. You talk about how much drug of each drug amount a user
12 might have on or might take at each time?

13 A. Yes, that's correct.

14 Q. Okay. Uh, how many times you participated in narcotics
15 investigations, just I know that's a a a crazy question, just
16 give us an estimate.

17 A. About -- on the low end, I average just me personally I
18 average 80 cases a year. Uh, there's four other investigators
19 in our office that are probly around the same number so 320,
20 400 cases a year at approximately 9 years, so quite a few.

21 Q. And 80 of 'em you're the the chief investigator ---

22 A. The lead ---

23 Q. --- on ---

24 A. --- investigator on yes, sir.

25 Q. --- and the others you you're more of a support role.

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 A. That's correct.

2 Q. Okay. Uh, what about narcotics arrests?

3 A. Oh, yeah, I mean, substantial 'cause usually we we take
4 our cases from start to finish meaning from initiation to
5 surveillance to search warrants to arrests to prosecution,
6 we're involved in the whole thing.

7 Q. In your interaction with these cases that you worked on
8 your your own experience, have you, have you dealt with drug
9 dealers?

10 A. Yes.

11 Q. Have you dealt with drug users?

12 A. Yes, I have.

13 Q. Have you noticed any difference between the two?

14 A. Oh, yes, absolutely.

15 Q. Describe some a that for us, please.

16 A. Uh, usually your your drug user will will have when you
17 deal with them, they'll have paraphernalia on them to ingest
18 illegal narcotics and if they do have narcotics on 'em it's
19 usually minimal small amounts for personal consumption 'cause
20 they typically don't have the money to purchase drugs to keep
21 them goin' for the whole week so they will purchase a one time
22 use and then they try to score enough money to get their next
23 use.

24 Your drug dealers will typically keep large amounts of
25 drugs on or near them, uh, currency on them, usually weapons

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 on them to protect their currency and their drugs because the
2 whole thing of what the streets call the "stick up boys", uh,
3 where ---

4 Q. Explain that.

5 A. Well people just basically know that drug dealers are an
6 easy target for drugs and money and two or three guys will
7 roll up on a drug deal and stick a gun in your face and say,
8 Give it to me, and, mean, you don't have much choice at that
9 time, you know, and they just scored, you know, 2 or \$3,000
10 cash and couple thousand dollars wortha dope.

11 Q. How often do you speak with the people that you're
12 arresting or the people that you're interacting with in these
13 investigations?

14 A. Uh, every day, every day.

15 Q. Okay. Do you talk to them about their their their habits
16 and tactics and all that stuff?

17 A. Yes, I do.

18 Q. Okay. You you talk about how much drugs cost, ---

19 A. Yep.

20 Q. --- where they buy 'em from, ---

21 A. Yes, sir.

22 Q. --- the the type a packaging they might use, ---

23 A. That's correct.

24 Q. --- whether or not they use scales?

25 A. Yes, sir.

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. Okay. You also make a -- any undercover purchases as a,
2 as a unit?

3 A. Yes, sir, we do.

4 Q. Okay. Just briefly describe kinda what you all do on an
5 undercover purchase.

6 A. Well basically, I mean, we we make contact with a drug
7 dealer, uh, we have to know the price of what it is we're
8 purchasing because of course we don't wanna get ripped off,
9 uh, you know, and if if the drug dealer agrees to a fair
10 price, we will meet the drug dealer where we're equipped with
11 audio and video and make that exchange.

12 Q. And so you're watchin' these videos after all these drug
13 deals.

14 A. Yes, I am.

15 Q. Okay. How many times have you, have you testified in
16 court relating to narcotics?

17 A. It's substantial. I mean, I I don't have a number 'cause
18 I've testified in state court, I've testified in federal
19 court. Uh, ---

20 Q. Give me an estimate on how many times a year.

21 A. Five to ten maybe.

22 Q. And that's in general sessions and federal court.

23 A. Yes, sir.

24 Q. Do you ever testify in in a magistrate court or city
25 court?

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 A. Yes, I do.

2 Q. How often you testify there?

3 A. Uh, five to seven times a month.

4 Q. A month, okay.

5 A. Yes, sir.

6 Q. Okay. Uh, have you ever been qualified as an expert?

7 A. Uh, no, sir, not to my recollection.

8 Q. Okay. Uh, a -- just just as an overview of your training
9 and experience, do you believe that that experience and
10 training gives you special knowledge to the value of the
11 narcotics on the street as well as at wholesale values, the
12 manner in which narcotics are packaged and sold, the typical
13 intoxicating dosages?

14 A. Yes, I do.

15 Q. Okay. Tell me about the the difference between cocaine
16 or does your experience and training give you any any
17 expertise in the difference between cocaine and crack
18 cocaine?

19 A. Well, yeah, I mean, I aint gonna say expertise but, I
20 mean, we do talk to drug dealers, drug users who provide us
21 with great incite on how the drug business works, uh, you
22 know, from convertin' powder cocaine into a smokable form
23 which is called "crack cocaine", uh, you know, it has to be
24 cooked up, microwaved and whipped, ingredients added and, uh,
25 so yes, I mean, we we typically talk to these people on a

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 daily basis.

2 Q. Okay.

3 MR. SPIVEY: Your Honor, Your Honor, at this time I would
4 move that the, that the the witness Investigator Kirby be
5 qualified as an expert, particularly an expert in the value of
6 street value narcotics, how na -- narcotics are packaged,
7 sold, typical intoxicating dosages, the different habits
8 between the addict, the user, or the dr -- or or a drug
9 dealer, Your Honor, and I do that based on *State v. Robinson*.

10 THE COURT: Mr. Bean, uh, you have the right to object or
11 you you also have the right to cross-examine him concerning
12 his qualifications.

13 MR. BEAN: Ought to ---

14 THE COURT: You wish to do so at this time?

15 MR. BEAN: Your Honor, I don't wish to cross-examine
16 him at this time, I do wish to object to his qualfi --
17 qualification as an expert, uh, and ---

18 THE COURT: Yes.

19 MR. BEAN: --- I think in conjunction with that there a
20 couple things I need to take up with the Court before we go
21 forward ---

22 THE COURT: Alright, ---

23 MR. BEAN: --- with any further ---

24 THE COURT: --- ladies and gentlemen ---

25 MR. BEAN: --- discussion ---

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 THE COURT: --- of the jury, I'll ask you step back to
2 the jury room, don't begin any discussions until I've had an
3 opportunity to tell you to do so, you may retire at this time.

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

6 THE COURT: Yes, Mr. Bean.

7 MR. BEAN: First of all, Your Honor, I object to his
8 qualification as an expert. I don't think despite his rather
9 lengthy experience in law enforcement and obvious work with
10 narcotics over a number of years he's certainly more
11 knowledgeable than perhaps others on, those on the jury,
12 myself, uh, maybe maybe most of the people in the courtroom;
13 however, that in my opinion does not qualify him, uh, as an
14 expert to testify about anything related to drugs beyond what
15 his experience may have shown in which he could testify to as
16 a police officer and a narcotics investigator.

17 Your Honor, it's my understanding that if qualified as an
18 expert that, uh, the witness is then able to offer expert
19 opinion and the reason I asked to address the Court with that
20 out of the presence of the jury is I wanna be sure that we're
21 not moving in the direction of him saying that my client based
22 on his experience and all that is a drug dealer and I think
23 that's, it appears to me anyway, that that's kind of where
24 we're goin' and I wanna be sure we don't get there ---

25 THE COURT: Well, ---

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 MR. BEAN: --- and I'm afraid ---

2 THE COURT: --- first of all, Mr. Spivey, specifically
3 state the areas in which you say -- state this gentleman
4 should be qualified as an expert.

5 MR. SPIVEY: Yes, sir, Your Honor. Your Honor, the the
6 first is the the the, uh, the value of the drugs as well as
7 the typical habits of a, of a drug dealer to include
8 paraphernalia they might use, uh, the typical habits of a drug
9 user and to include the amounts they a -- excuse, me the
10 amounts they might carry as well as a drug dealer and a drug
11 user so the differences between those two, uh, in terms of the
12 paraphernalia they might have, the amount of drugs they might
13 have on 'em, uh, the way the drugs are, those drugs are
14 packaged and what else they might have on 'em such as cash and
15 bills in small denominations, weapons, uh, that sort of thing
16 and that's, I I thought I did a a a fair job talkin' about his
17 experience and and layin' that foundation.

18 THE COURT: Well I didn't say you didn't, I just wanna be
19 sure I understand what areas in which you think he ought to be
20 able to give an opinion, so right now I've gotten that the
21 value of the drugs on the street, uh, habits or propensities
22 of a, either a user or a dealer, anything else?

23 MR. SPIVEY: Yes, sir, Your Honor, the the the way that
24 narcotics are packaged and the way they're typically sold, uh,
25 the the typical intoxicating dosage or a, uh, such as how much

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 a a a drug dealer might sell to an an individual, uh, how much
2 a user might use at any one time.

3 THE COURT: In other words i -- if you were gonna high
4 how much crack would you ingest as opposed to, uh, ingest too
5 much I guess it could be fatal so you need to know how much to
6 ingest.

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

8 THE COURT: Uh, go ahead.

9 MR. SPIVEY: Uh, ---

10 THE COURT: The typical dosages, what else?

11 MR. SPIVEY: And, Your Honor, sort of the the habits and
12 evasive maneuvers or or the the tactics a drug dealer might
13 use not, presumably not to get caught. How do they, how do
14 they do it, how are they avoiding stopping what he's trying to
15 do which is put 'em in jail, uh, and and they use various
16 methods for doin' that such as, you know, like use somebody
17 else as a a combination party or or hide those drugs on
18 someone else's fence and sell outta their house so that when
19 the search warrant's done, they're not the person who owns the
20 property.

21 THE COURT: Alright, Mr. Bean.

22 MR. BEAN: Your Honor, I I think there are probably as
23 many atypical uses and other things as the solicitor has just
24 described as there are typical and I don't think there's any
25 way that this gentleman although I know and respect him can be

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 qualified to give an opinion on how that might work or how
2 someone might do somethin' without pointing to my client and
3 saying ---

4 THE COURT: Well I'm not ---

5 MR. BEAN: --- it was him.

6 THE COURT: --- sure it will take an expert to testify
7 that drug dealers do everything they can to avoid detection
8 and prosecution, that's not an area outside of most ---

9 MR. SPIVEY: It ---

10 THE COURT: --- people's knowledge.

11 MR. SPIVEY: --- but the tactics, Your Honor, that they
12 use might be outside of the ---

13 THE COURT: Well is there a I'll let ya develop it
14 further, I didn't -- I don't know that there are typical
15 tactics, there's all -- I've heard a lotta different ones
16 since I've been sittin' up here, there's a lotta different
17 ways to hide drugs or try to avoid prosecution and I'm not
18 sure there is any, a manual on it or anything of that nature,
19 of course, you can, you can become an expert through practical
20 knowledge and experience, you don't have to have read a
21 book.

22 MR. SPIVEY: Yes, sir, Your Honor, and I'll, and I'll say
23 I've learned a lot, obviously I think I have a little bit more
24 training and experience because of I prosecute nothin' but
25 drugs crimes so I see some a these things but I'm I'm not sure

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 my wife would understand any of it, uh, she has no experience
2 with it and and the standard here is not what you -- I ---

3 THE COURT: Well, ---

4 MR. SPIVEY: --- might know ---

5 THE COURT: --- it's whether or not he has knowledge
6 about a subject that would assist a jury in resolving a
7 factual issue which is beyond the scope of the jury's common
8 knowledge or good judgment, ---

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

10 THE COURT: --- that's the test.

11 MR. BEAN: And, Your Honor, in that regard I don't think
12 there's any question that based on the evidence presented in
13 this case so far that the jury can reasonably understand and
14 reach whatever conclusions they feel, uh, the evidence
15 warrants, I don't think this gentleman can share anything with
16 them beyond what he's already testified to.

17 THE COURT: How many years di -- did the gentleman say
18 he'd been doin' this, I didn't catch that?

19 MR. SPIVEY: He's got 9 years in narcotics experience, I
20 believe it's 11 ---

21 THE WITNESS: Eleven, yes..

22 MR. SPIVEY: --- as a, as a police ---

23 THE WITNESS: Eleven and a half.

24 MR. SPIVEY: --- officer with the city.

25 THE COURT: I see, okay. Anything else, Mr. Bean?

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 MR. BEAN: Uh, no, Your Honor.

2 THE COURT: Alright. I will allow him to be qualified as
3 an expert concerning the street value of drugs, uh, typical
4 habits of a drug user as opposed to a dealer, uh, the
5 packaging a -- the normal means of packaging and selling of
6 certain drugs or drugs, uh, I'll also let him testify
7 concerning what are typical dosages, uh, that he might find on
8 the street and I realize these dosages may be different than
9 you get from a doctor, uh, so street dosages, uh, and I'm not
10 sure I'm going to allow him to give opinions concerning
11 avoidance meth -- methods, certainly from his experience he
12 can state what avoidance methods he may have observed in the
13 past, ---

14 MR. SPIVEY: Yes, sir.

15 THE COURT: --- so I'll allow him to do that as well.

16 MR. SPIVEY: Yes, sir. Thank Your Honor.

17 THE COURT: I'll -- I will, however, Mr. Bean, tell the
18 jury that because he's been qualified as an expert his, uh,
19 testimony should be given no greater weight than any other
20 testimony as a result of that, I will instruct them
21 specifically on the fact that as finders of facts they have
22 the right to accept any, all, or none of what he might say
23 about these things ---

24 MR. BEAN: Thank Your Honor.

25 THE COURT: --- so, I'll instruct them concerning that,

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 uh, that both not not right now but during my charge but I
2 will go over with them what we're doing at this point.

3 MR. BEAN: Thank Your Honor.

4 THE COURT: Alright, bring the jury in. I've made a list
5 of those things, Mr. Spivey, don't stray from the farm,
6 please.

7 MR. SPIVEY: Yes, sir, I've I've I've got that list typed
8 out here as well.

9 THE COURT: Alright.

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

11 THE COURT: Alright, the record will reflect the jury's
12 returned to the courtroom. Ladies and gentlemen, let me
13 explain to you a little bit about what we're doing right now
14 that that we're going through in the Court so maybe you'll
15 understand, uh, a little more about what's happening. Uh,
16 un -- I I mentioned to ya earlier that it's my responsibility
17 to see that evidence is presented to you under the Rules of
18 Evidence that govern those particular things, uh, and that
19 generally under the Rules of Evidence lay witnesses, uh, that
20 is average individuals who are testifying in court are not
21 allowed to give their opinions about matters, they're required
22 to testify concerning facts that are with -- that they claim
23 to be within their knowledge or observation, things of that
24 nature, uh, there's an exception to that rule and that's
25 a -- that exception is is given to witnesses who because of

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 either their education or because of their practical
2 background and experience are deemed to have some special
3 knowledge within a field or profession or calling, uh, that
4 would assist the jury, uh, in determining certain facts that
5 may not be within the normal knowledge or experience of an
6 average juror, uh, those witnesses we refer to as as "expert
7 witnesses". Now an expert witness once someone's designated
8 as that they are allowed to state opinions about matters
9 within the areas of their expertise and also state the reasons
10 why they have those opinions. Uh, this (indicating)
11 gentleman's been offered as a, as an expert within certain
12 fields of his his profession, uh, and I am going to qualify
13 him as such. I have, uh, determined that he can testify, uh,
14 as an expert concerning the street value of drugs, the, uh,
15 habits of drug users and/or dealers on the street, uh, the
16 packaging and sale of drugs on the street, uh, dosages
17 typically used on the street for certain drugs and can testify
18 from his experience concerning certain avoidance methods that
19 he may have experienced by people involved in that type of
20 activity.

21 Now, uh, I will te -- tell you that later on during my
22 charge on the law I will give you a charge concerning how you
23 can consider the evidence given by all witnesses, including
24 expert witnesses in this case but suffice it to say that I
25 have qualified, uh, based on this witness's experience, uh,

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1 and practical experience in his profession, uh, as an expert
2 within certain areas that a juror may not have particular
3 knowledge in, uh, to testify concerning those matters and
4 again, I'll instruct you further on that during my charge on
5 the law. You may proceed, Mr. Spivey.

6 MR. BEAN: Your Honor, I'm sorry, ---

7 THE COURT: Mr. Bean.

8 MR. BEAN: --- may may we approach for one moment?

9 THE COURT: Certainly.

10 (Whereupon, a bench conference was held off the record.)

11 THE COURT: As a clarification I will put on the record
12 that concerning avoidance methods it was my ruling that he can
13 testify concerning avoidance methods that he has experienced
14 himself, uh, I will not allow him to speculate as to possible
15 avoidance methods.

16 MR. SPIVEY: Your Honor, I I apologize, may we approach
17 one more time?

18 THE COURT: Certainly.

19 (Whereupon, a bench conference was held off the record.)

20 THE COURT: Alright, you may proceed, Mr. Spivey.

21 MR. SPIVEY: Thank Your Honor.

22 THE COURT: Yes, sir.

23 MR. SPIVEY: Investigator Kirby, uh, well, Your Honor,
24 i -- you you have qualified as an expert?

25 THE COURT: Yes, within the areas that I -- there were

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 four specific areas, I'll go over 'em again.

2 MR. SPIVEY: No, sir, Your Honor, I I've got 'em, I ---

3 THE COURT: You've got 'em ---

4 MR. SPIVEY: --- just wanna make sure ---

5 THE COURT: --- written down?

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

7 THE COURT: Very good. Let's let's stay within those
8 areas. Thank you.

9 MR. SPIVEY: Yes, sir.

10 BY MR. SPIVEY:

11 Q. Uh, Investigator Kirby, uh, what -- in in October 2009,
12 how much did cocaine cost?

13 A. Uh, roughly between nine hundred and eleven dol --
14 hundred dollars an ounce.

15 Q. Okay. How much is an ounce?

16 A. Uh, twenty-eight grams.

17 Q. So 25.87 grams of cocaine plus 1.06 a gram co -- of
18 cocaine that's about 26, 27 grams, about an ounce that ---

19 A. Roughly, yes, sir.

20 Q. How, so in your opinion how much does that cost?

21 A. Um, a median a thousand dollars.

22 Q. Okay. Uh, how do you -- how does, how does the dealing
23 cocaine typically work? Tell me, tell me what a drug dealer
24 would do with cocaine once they purchase it.

25 A. Well basically cocaine of course comes in powder form,

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1 uh, all cocaine is purchased, uh, from a dealer. Uh, they
2 will take that cocaine, some portion of it, they will add
3 water and they will add a cutting agent whether it be baking
4 soda, uh, caffeine powder, uh, B12 powder, somethin' to take
5 that initial weight up and then once they get that weight up
6 they will cook it, they called it "whippin'", uh, there's
7 several other terms for it, they're basically turnin' that
8 powder cocaine into a crack form which is a smokeable form of
9 powder cocaine called "crack".

10 Q. Okay.

11 MR. SPIVEY: Your Honor, may I approach the witness?

12 THE COURT: You may.

13 BY MR. SPIVEY:

14 Q. Show you what's been pre-marked as State's Exhibit or,
15 excuse me, it is State's Exhibit 15 in evidence. You can take
16 a look in that bag and, uh, tell me what's in that bottle.

17 A. It's, the bottle's labeled as a di -- dietary supplement,
18 uh, caffeine powder that is a typical cutting agent for
19 cocaine.

20 Q. Okay. Uh, tell me what else a drug dealer typically has
21 on them.

22 A. Uh, usually they will have scales to to weigh their
23 product because what they'll do is they will typically take,
24 and this is just a number, they'll take say 14 grams of
25 cocaine, powder cocaine, they may add 7, 8, 10 grams of a

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1 cutting agent, takin' that up to 24 grams, uh, cook it, get it
2 into a crack form and once it's into that crack form that 14
3 grams once it is cooked, cooled and dried may come back at 28
4 grams depending on the cook and the method that they use.

5 Q. Okay so typically you can take 14 ounces of pure, ---

6 A. Grams.

7 Q. --- 14 grams of pure cocaine and turn it into about an
8 ounce of crack cocaine.

9 A. Yeah, on on a -- if you've got someone that's very
10 knowledgeable with the process and depending on their cutting
11 agent and and what method they use to cook it, yes, that's not
12 far-fetched.

13 Q. Okay. And what is the value of that crack cocaine when
14 sold?

15 A. Typically on an ounce a cocaine most dealers if they're
16 sellin' street, street level usage, uh, to to users and not to
17 other dealers you probably gonna profit 7 to \$900 off a that
18 ounce of cocaine.

19 Q. Okay. H -- what's the typical you -- amount that they
20 sell on the street?

21 A. Usually for most of your users they're gonna buy what
22 they call a 10 or a \$20 rock, it's gonna be either one-tenth
23 or two-tenths of a gram. Uh, it's a single use rock that they
24 will smoke, they will get high off a that rock and that high
25 may last them anywhere from 15 minutes to 3 hours just

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1 depending, once they come off a that high they'll go get
2 another one.

3 Q. Why won't they buy more than that?

4 A. 'cause they typically don't have the money.

5 Q. Okay, so how often are they buyin'?

6 A. Uh, some of 'em that I have spoken with, I mean, up, you
7 know, 7, 10, 12 times a day to support their habit.

8 Q. Typically when you find a user and you've encountered
9 them on the street, how much have they had on 'em?

10 A. One-tenth or two-tenths of a gram, usually no more than
11 that and they'll have some some means to to ingest that crack
12 cocaine what we classify as a crack pipe, push rod, push pipe.
13 Uh, they'll take makeshift pill bottles, make 'em into pipes,
14 they'll use, uh, soda cans to ingest crack cocaine, I mean,
15 there's, there's innumerable items that they will use to ingest
16 that crack cocaine.

17 Q. So you you can't, you can't snort crack cocaine?

18 A. No, sir.

19 Q. You can't, uh, you basically gotta -- how do you use
20 it?

21 A. Uh, it's it's a smokeable form. Basically they they take
22 it in a pipe, light it and it it don't really burn, it more or
23 less melts and they absorb or inhale the smoke from that
24 melting cocaine and that's where the high comes from.

25 Q. Okay. Uh, and so you said you typically find some sort a

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 pipe, a lighter?

2 A. Yeah, usually, I mean, and there's there's like I say,
3 there's several items used in the the ingestion side of of
4 co -- crack cocaine. Uh, you know, uh, they'll use brillo
5 pads as as filters, uh, and then to provide detail on that
6 basically they'll take a glass pipe, put brillo in one end of
7 it, wrap the other end with some tape, lay the rock down on
8 top a the brillo pad inside the pipe and just hold the lighter
9 to the pipe to the, where cracks at and they will hold the the
10 taped end and let that rock melt and they'll just puff on that
11 pipe to ingest that smoke.

12 Q. Okay. Uh, you were there when this search warrant took
13 place, ---

14 A. Yes, sir, I was.

15 Q. --- you've -- a -- what did Mr. Lyles have on his
16 person?

17 A. Uh, Mr. Lyles, uh, memory serves me correctly had a, uh,
18 a gun, a bag a cocaine, a bag a weed and what we consider a
19 large sum of currency.

20 Q. Have a lighter?

21 A. Uh, I don't remember, I don't think so.

22 Q. Okay. Did he have a a, any kind of other para ---

23 A. No, sir, ---

24 Q. --- brillo pad, ---

25 A. --- he had no no, nothin' ---

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. --- glass ---

2 A. --- was on ---

3 Q. --- tubing?

4 A. --- him for ingestion.

5 Q. And no tape.

6 A. No, sir.

7 Q. No crack pipe.

8 A. No, sir.

9 Q. Okay. Uh, tell me about what what other paraphernalia a
10 drug dealer might have on them.

11 A. Uh, usually a a drug dealer of course they will have
12 their scales 'cause they want their weights, you know, 'cause
13 they're in it for the money and they owe somebody money,
14 excuse me, so they will have scales, uh, sometimes they'll
15 have baggies for packagin' to when they make individual sales,
16 uh, you know, they'll they'll have a the cutting powder, uh,
17 and and that for for the most part that's it, ---

18 Q. Okay.

19 A. --- that's the main things that a drug dealer needs to do
20 their job. Now wherever their so-called, what they classify
21 as their their stash house or crack house, they will have
22 other paraphernalia to turn that powder form of cocaine into
23 crack being, uh, Pyrex measurin' cups, forks, whips, a
24 microwave or whether they use a a boilin' method on the stove
25 so, I mean, you know, there there's other paraphernalia

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 definitely associated with what we call "drug traffickers" as
2 opposed to "drug users".

3 Q. Okay. In Mr. Wesson's house did you find any evidence
4 that anybody was whipping up or cooking crack cocaine in in
5 that kitchen ---

6 A. Uh, no, sir, I ---

7 Q. --- or anywhere in the house?

8 A. No, sir, I don't believe there was, uh, and I don't
9 remember any items being recovered from the residence that
10 would have been indicative of that house being used as a a
11 stash house.

12 Q. Tell me about marijuana. There's been talk about cocaine
13 to this point, let's talk about marijuana. How is it
14 typically sold?

15 A. Uh, well I mean it, marijuana is sold and in several
16 different different ways, I mean, you know, uh, some a the the
17 high strains or or what they call "high grade" marijuana now
18 some a those are sold as a a single blunt and and those prices
19 on the street are basically, I mean, they could go up to 20,
20 \$25 for a single blunt. Uh, most personal use mid-grade, low-
21 grade marijuana is gonna be sold in, you know, 3, 5, 10 gram
22 increments, uh, somethin' that will make one or two joints to
23 ingest, uh, and then, you know, mean, it can go up from there
24 depending on the the person who's buyin' it. You know if if
25 four or five people get together and say, Hey, you know, look,

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 we all got \$10 then, you know, we might can get 14 grams of
2 marijuana and stretch our money but a single person usually
3 will will purchase, you know, 3, 5, 7 grams.

4 Q. Okay. Uh, and and that varies in price? What's the
5 range on that price?

6 A. Well, I mean, and it depends on the grades.

7 Q. Assume it's low-grade.

8 A. Low-grade you're probably lookin' at, I don't know, 10
9 bucks for a gram, 5 ---

10 Q. And ---

11 A. --- bucks for a gram.

12 Q. --- what if it's high-grade?

13 A. Uh, 20, 25 bucks a gram.

14 Q. So so 10 to to \$25, somewhere in there ---

15 A. Yeah, somewhere in that neighborhood.

16 Q. --- for for 1 gram.

17 A. One gram, yes.

18 Q. Okay. Uh, tell me about the, how much marijuana it takes
19 to get, to get high off of it, to get intoxicated.

20 A. Well basically, I mean, one joint, I mean, you know, 3 3
21 grams depending on your threshold. You know for someone that
22 has has consumed marijuana all their life, you know, it may
23 take a little more but for a a an intermittent smoker, you
24 know, 3 to 5 grams will will probably do the trick for ya.

25 Q. Okay. Uh, what kind of a -- do they also use scales to

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 to sell marijuana?

2 A. Oh, absolutely, yes.

3 Q. Okay. Uh, what else might you find in the sales of
4 marijuana?

5 A. Uh, a again, the same, basically the same thing except
6 for the cutting agents, you know, you'll find the baggies, the
7 scales, of course there's no cookin' process involved so you
8 won't find none a that.

9 Q. What kinda paraphernalia do you need to to ingest
10 marijuana?

11 A. Either rollin' papers or, uh, pipes, water pipes, water
12 bongs, glass pipes, uh, somethin' of that nature.

13 Q. Okay. And Isaac Lyles, the defendant, did he have any
14 paraphernalia for for marijuana use?

15 A. No, sir.

16 Q. Okay. Uh, talk to me about about the the the ki -- do
17 drug dealers typically carry money?

18 A. Yes.

19 Q. Well what kind of form is the money in?

20 A. It's, I mean, it depends, I mean, on on what part of the
21 day they're in. I mean, you know, if if it's first thing in
22 the mornin's, uh, when they're first startin' out, uh, you
23 know, it may be small denominations: fives, tens, dependin' on
24 I guess on on their desire to make money. I mean, I've seen
25 drug dealers sell everything from a a \$5 rock and some of 'em

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 won't sell nothin' less than a \$20 rock so, I mean, you know,
2 it's gonna be, you know, fives, tens, twenties, uh, depending
3 on what they're they're selling.

4 Q. Why aren't they usin' a bank?

5 A. 'cause they have no legal means of makin' currency and
6 that money once they they make it and they sell that product
7 they will take that money and turn right around and use it to
8 buy more product.

9 Q. So they -- it's typically always in cash form.

10 A. Yes, sir.

11 Q. Okay. Talk to me about a, uh, is it typical for a, for
12 someone to sell drugs out of their own house or other
13 peoples's houses, where do they sell drugs?

14 A. Usually you you will see that most of the time a drug
15 dealer will not use their residence especially where their
16 wife or their kids live because they don't want, uh, for the
17 lack of a better term, they don't want "crack heads" knowin'
18 where they live because a typical drug user when they want
19 that drug or need that drug they're gonna find that drug and
20 if they know where you live it don't matter if it's 2 p.m. or
21 2 a.m. they will come to your house, uh, so many times drug
22 dealers will move to another location and set up at that
23 location for a certain period of time until either they sell
24 outta product or until they decide to move on and go home and
25 and be with the family. Uh, most a these guys that do it

JEFF KIRBY - DIRECT EXAMINATION BY MR. SPIVEY

1 typically will tell you that they run the drug business as a a
2 business. They've got people that some of 'em will have
3 people that work, you know, seven in the mornin' to seven at
4 night and some of 'em work from seven at night to seven in the
5 mornin' and some of 'em will tell ya never on Sunday so, I
6 mean, you know it it definitely varies with with the
7 individual drug dealer.

8 Q. Investigator Kirby, in your opinion was the the the
9 amount of drugs found on the defendant's person was that to be
10 sold or was that for personal use?

11 A. That was ---

12 MR. BEAN: Your Honor, I object to that question. I
13 don't think the, uh, qualification that he was, uh, given
14 encompasses an opinion of that nature and so I object.

15 THE COURT: I'll sustain the objection in the form that
16 the question was asked.

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

18 BY MR. SPIVEY:

19 Q. I -- if if if someone had 1.06 grams of powder cocaine on
20 them, no paraphernalia for use, \$1200 cash on them and a gun
21 on them, in your opinion are they a user or a drug dealer?

22 A. We would classify that as a drug dealer and that would,
23 uh, be because, I mean, you know, you've got over a gram of
24 cocaine, that's more than what a single person would have for
25 personal use, uh, and especially with, you know, the scales

JEFF KIRBY - CROSS-EXAMINATION BY MR. BEAN

1 and stuff and and, you know, a a typical user if they've got
2 product on them it's because they just purchases -- purchased
3 it 'cause most a the time soon as they purchase it they're
4 gonna use it right then, right there, it don't matter where
5 they at.

6 Q. Please answer any questions defense attorney has.

7 A. Thank you.

8 THE COURT: Mr. Bean, your witness.

9 MR. BEAN: Thank Your Honor.

10 CROSS-EXAMINATION BY MR. BEAN:

11 Q. Mr. Kirby, what would an atypical user have on him?

12 A. Could you define atypical.

13 Q. Well no, sir, I'm askin' you. Do you know what an
14 atypical user is?

15 A. Yeah, the every day user is a person that uses crack
16 cocaine or powder cocaine on a daily basis more than once a
17 day.

18 Q. I'm sorry, that, wouldn't that be a typical user?

19 A. Yeah.

20 Q. Okay. So th -- are there other kinds of users?

21 A. I'm I'm sure there is yes, sir.

22 Q. Okay. Now if somebody had cocaine on them whether it be
23 a a a large amount and again, I'm not sure when you're talkin'
24 about grams and ounces, I have a problem quantifyin' that in
25 my mind, but anyway let's say we've got somebody who's got a

JEFF KIRBY - CROSS-EXAMINATION BY MR. BEAN

1 little more than you would describe as a typical user, that
2 doesn't automatically make him dealer, does it?

3 A. Well, I I mean, I ain't gonna say it it does, I mean, but
4 the law clearly says that we can seek warrants for possession
5 with intent to distribute that product based on the amount of
6 drugs that are recovered.

7 Q. Oh sure, well I understand that but but my question is
8 just because somebody has more than what you describe as a
9 typical user in their possession, that doesn't automatically
10 make 'em a dealer in in practical terms, does it?

11 A. Well, I mean, it for for our practical purposes yes, sir.
12 I mean, ---

13 Q. So everybody ---

14 A. --- I'm sure that that yes, your your social economical
15 status could dictate that. You know if if you've got \$5,000
16 to spend on cocaine 'cause you got a bad cocaine habit and you
17 want to buy enough cocaine to last you two or three weeks then
18 yes, absolutely ---

19 Q. Okay.

20 A. --- but, you know, if if you don't have that kinda money
21 to buy that then you gonna buy what your budget will allow.

22 Q. Alright. So if someone has more than what typical user
23 would have, it might be logical that they would, uh, perhaps
24 carry a firearm to protect themselves, wouldn't they?

25 A. No, sir, that's not common, not for ---

1 Q. Well ---

2 A. --- a user.

3 Q. --- it's not?

4 A. No, sir.

5 Q. Could it, could it be possible?

6 A. Well, I mean, anything's possible.

7 Q. Sure, but I I'm not askin' for somethin' that's out of
8 the realm of reason, I mean, ---

9 A. Well ---

10 Q. --- it's certainly possible, isn't it?

11 A. --- it it's out of the realm of of reason for what we
12 deal with.

13 Q. I see.

14 A. Uh, I mean, you know, typically you will not find a drug
15 user with large amounts a currency and a a weapon on them.

16 Q. You ever heard a one?

17 A. I'm sure they're out there.

18 Q. Okay. And just because somebody has a quantity that
19 exceeds what you describe as a, quote, typical user, that
20 doesn't automatically make them more than a user, does it?

21 A. Yeah, I mean, it does. I mean, you've got personal use
22 and then you've got use for sales.

23 Q. And there's not any in between.

24 A. I don't, I don't know what the in between is, sir.

25 Q. Well that's ---

JEFF KIRBY - CROSS-EXAMINATION BY MR. BEAN

1 A. Mean, ---

2 Q. --- that's was my question to you.

3 A. --- is there, is there a difference in a, in a user and a
4 drug dealer, yes there's definitely a huge difference.

5 Q. But quantity by itself doesn't automatically make that
6 difference, does it?

7 A. No, sir.

8 Q. And the fact that somebody has what you describe as more
9 than a typical user quantity who also happens to have some
10 money doesn't automatically make them a dealer, does it?

11 A. In certain cases yeah.

12 Q. Is it, is it in every case?

13 A. Well no ---

14 Q. It's ---

15 A. --- because, I mean, you've got cases such as today
16 where, I mean, you know, your defendant is is a drug dealer
17 and yes because he had a a small amount, what you classify as
18 a small amount of drugs in his possession, just because he had
19 that on him that necessarily don't make him a drug user.

20 Q. But it makes him a drug dealer in your, in your
21 opinion, ---

22 A. A ---

23 Q. --- is that right?

24 A. --- yes, sir, yes, sir.

25 Q. Okay. So he couldn't have had anything on him for for

JEFF KIRBY - CROSS-EXAMINATION BY MR. BEAN

1 just personal use then.

2 A. No, I mean, I'm sure he could have if he had a had, you
3 know, two-tenths, three-tenths, four-tenths of a gram.

4 Q. So you don't know what he was doin' with it, do ya?

5 A. In my experience I'd say he was gonna offer it for sale.

6 Q. Well I'm not askin' your experience, ---

7 A. Okay.

8 Q. --- I'm askin' if you knew what he was gonna do.

9 A. No, sir, he didn't tell me what he was gonna do with
10 it.

11 Q. And you don't know, do ya?

12 A. No, sir.

13 Q. Now I believe you said that sometimes dealers are maybe
14 typically sell in places other than their residence and I
15 think your explanation for that seemed to make sense, is that
16 always true?

17 A. No, sir, it's not.

18 Q. Some of 'em sell from their residence?

19 A. Yeah, some of 'em do ---

20 Q. Okay.

21 A. --- 'cause they're money-driven.

22 Q. Right, it's, but if you're sellin' it's about the money,
23 right?

24 A. That's exactly right.

25 Q. Sure. Now tell me again, I I'm not sure I understood,

JEFF KIRBY - CROSS-EXAMINATION BY MR. BEAN

1 how much does cocaine cost when you acquire it illegally
2 obviously and you just pay for a an an ounce let's say?

3 A. An ounce median thousand dollars.

4 Q. Okay. And by cutting it as you described ---

5 A. That's ---

6 Q. --- you can make more money?

7 A. Yes, sir.

8 Q. Okay.

9 A. Well you can, yeah, of course because you gonna, you
10 gonna take that 28 grams of cocaine and possibly potentially
11 turn it into almost 56 grams of crack.

12 Q. Alright, but again just because you have an amount or
13 quantity or money doesn't make you a dealer, does it?

14 A. That quantity yes, sir.

15 Q. In every case?

16 A. Yes, sir. There's there is no, no reason a dealer or a
17 user would have that quantity of drugs because that they would
18 consume every bit of it and end up either in the hospital or
19 worse off dead.

20 Q. Why would they consume it?

21 A. Because that's what they do, I mean, they're they're
22 addicts, they're addicted to this stiff.

23 Q. So you you couldn't consume it over a period of days or
24 weeks like you just said?

25 A. Yeah, I mean, I'm sure they could but ---

JEFF KIRBY - REDIRECT EXAMINATION BY MR. SPIVEY

1 Q. Okay.

2 A. --- it -- if if you're a a true crack cocaine addict that
3 has a bad habit, yeah, I mean, they could, you know, 3, 4,
4 \$500 wortha cocaine a day.

5 Q. Okay, and that doesn't, that wouldn't make 'em a dealer,
6 would it?

7 A. No, sir.

8 Q. Okay.

9 MR. BEAN: No further questions, thank Your Honor.

10 REDIRECT EXAMINATION BY MR. SPIVEY:

11 Q. Investigator Kirby, ---

12 THE COURT: Redirect.

13 Q. --- you said you do about 400 cases a year, about 80 a
14 those are your cases and the rest are ones you assist with in
15 your office, ---

16 A. Yes, sir.

17 Q. --- in those, in the nine years you've been doin' that
18 it's a couple, uh, thousand, two thousand, couple thousand
19 cases, ---

20 A. Yes, sir.

21 Q. --- okay, how many a those cases have you had, have you
22 found a user who had 25.87 grams a cocaine, 1.06 grams of of
23 of c -- of c -- of crack or cocaine, 5.8 grams of marijuana,
24 18.04 grams of crack, 6.27 grams of crack and 63 grams of
25 marijuana all in separate bags with digital scales, goggles,

JEFF KIRBY - REDIRECT EXAMINATION BY MR. SPIVEY

1 caffeine powder and baggies, how many times in out of those
2 thousand cases have ya ever found that person be a user?

3 A. None.

4 Q. Okay.

5 MR. SPIVEY: Your Honor, I have no further questions.

6 THE COURT: Mr. Bean.

7 MR. BEAN: No re-cross, Your Honor, thank you.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you, Your Honor.

10 (Whereupon, the witness left the stand.)

11 THE COURT: State may call its next witness.

12 MR. SPIVEY: Thank Your Honor, I call Mylnor Beach to the
13 stand and I'll ---

14 THE COURT: Step outside ---

15 MR. SPIVEY: --- step outside and grab him.

16 THE COURT: --- and maybe get him.

17 (Whereupon, the solicitor complied.)

18 THE COURT: Come forward to be sworn please, sir.

19 (Whereupon, the witness came forward.)

20 THE CLERK: You set your stuff down. If you'll raise
21 your right hand, put your left hand on the Bible.

22 MYLNOR BEACH, having been first
23 duly sworn, testified as follows:

24 THE CLERK: Thank you, you may be seated.

25 THE COURT: Have a seat please, once you're seated state

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 your name, please.

2 THE WITNESS: My name is Mylnor Beach.

3 THE COURT: Thank you. Your witness, Counsel.

4 MR. SPIVEY: Thank Your Honor.

5 DIRECT EXAMINATION BY MR. SPIVEY:

6 Q. Mr. Beach, please tell us what what your job is.

7 A. Uh, I am an evidence technician with the Spartanburg
8 Police Department, uh, under the City of Spartanburg.

9 Q. Okay. What's your title there?

10 A. Property and Evidence Technician.

11 Q. Okay. And, uh, how long have you been doin' that job?

12 A. Seven and a half years.

13 Q. Okay. Tell me what what a Property and Evidence
14 Technician does a daily basis.

15 A. We receive any and all property and evidence that the
16 officers, uh, may acquire out in the field and they turn in,
17 they they establish the the case number. Uh, we receive it,
18 uh, each mornin', uh, Monday through Friday, uh, sometimes we
19 will receive some during the day also but the the mornin' is
20 the main period of time. Uh, we have to, uh, sign for it, we
21 have to assign a location to it and then it's our job to
22 maintain the integrity of that evidence.

23 Q. Okay. You ever, uh, do do you also analyze marijuana?

24 A. Yes, sir, I do.

25 Q. Tell me about your training and experience analyzin'

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 marijuana.

2 A. I've been certified as marijuana analysis though SLED
3 which is South Carolina Law Enforcement Division and I've been
4 re-certified on two separate occasions.

5 Q. How long you been doin' that?

6 A. Seven years.

7 Q. Okay. How many times you testified in relation to of the
8 analysis of marijuana?

9 A. General sessions or all told? I mean, ---

10 Q. All told.

11 A. --- it it would strictly be an estimate. Uh, ---

12 Q. How 'bout this year?

13 A. This year I've testified think about seven, eight
14 different cases.

15 Q. Okay. Is is that a typical year or atypical year, is
16 that ---

17 A. Uh, it it's been down some this year but a lot ---

18 Q. Okay.

19 A. --- of I I do, uh, I've testified in federal, testified
20 in general sessions, we testify a good bit in municipal but it
21 depends on the judge and their procedures.

22 Q. And you've been, each a those cases you were certified as
23 an expert in the chemical analysis a marijuana?

24 A. Uh, not every one but I've been certified as an expert
25 analysis.

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. Okay.

2 MR. SPIVEY: Uh, alright, Your Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 BY MR. SPIVEY:

6 Q. I'll hand you two items, they've not been pre-marked.
7 Take a look at the first one, see if you can describe that for
8 us, can you identify that first of all.

9 A. Uh, yes, sir. This is a, is what we call an "evidence
10 envelope", uh, it's our Case Number 10024012, it was logged
11 into our computer system by Investigator Josh Bagwell and it's
12 listed as, uh, marijuana bag a green plant material at
13 estimated 2.0 grams.

14 Q. Okay. Uh, whose -- what's that case number associated
15 with?

16 A. The suspect's name on this particular evidence label is
17 Isaac Lyles.

18 Q. Does it, does that indicate a date on, uh, for the
19 case?

20 A. Yes, sir, the date received on the evidence label which
21 is what the Investigator Bagwell would have logged into the
22 computer is October the 9th 2012. He also signed the chain as
23 October the 9th 2012 at I -- it looks like 1727 hours, I'm
24 not ---

25 Q. Okay.

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 A. --- sure about one numeral there, uh, which would be 5:27
2 p.m. ---

3 Q. Okay.

4 A. --- and then I received it the following morning October
5 the 10th 2012 at seven o'clock a.m.

6 Q. Okay. Take a look inside a there and see if you you you
7 recognize that particular item.

8 A. Uh, yes, sir, this has my, uh, signature on it. Uh,
9 there were two sections of a green plant material, one net
10 weight is 3.85 grams, the other one is 1.86 grams. Uh, I
11 tested this on October the 10th 2012, marked it as Item
12 Number 1 and the marijuana after I test it was heat sealed in
13 this (indicating) plastic bag and also in this envelope was my
14 analysis form. Uh, due to the information that was provided
15 on the evidence envelope we're showing the suspect as Isaac
16 Lyles, turned in by Josh Bagwell and, uh, it did test
17 positive, uh, for marijuana, technically the chemical name for
18 that is tetrahydrocannabinol and it was positive.

19 Q. Okay. Uh, when you received that, was it sealed?

20 A. No, sir.

21 Q. Okay. Was there any evidence of tampering at all?

22 A. It wouldn't be for me to say. It was in the envelope,
23 uh, we took it out. Uh, as our normal procedure upon testing,
24 uh, we weigh it and that's why you have a net weight that's
25 what we go by and that's what, you know, goes on the analysis

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 form.

2 Q. Okay. Where did you retrieve that from?

3 A. Uh, this would have come out our drop box ---

4 Q. Okay.

5 A. --- which is a mailbox, uh, like a big metal mailbox that
6 stays locked. Uh, the only person besides myself that has
7 regular access to that would be my partner David Reeves who is
8 also a Property and Evidence Technician, uh, our supervisor
9 Major Lamb has a key but he does not carry that on him, it
10 stays locked up.

11 MR. SPIVEY: Okay. Your Honor, at this point I'd I'd
12 move that marijuana into, uh, evidence as State's Exhibit and
13 I I apologize, Your Honor, I'm not sure exactly what number
14 we're at, we're at 16 or 17 I believe.

15 THE COURT: Any objection?

16 MR. BEAN: Uh, no objection.

17 THE COURT: Without objection it'll be received and
18 marked. You wanna have that done?

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

20 (Marijuana marked State's Exhibit No. 16 for
21 identification and admitted into evidence.)

22 (Whereupon, a discussion was held off the record.)

23 BY MR. SPIVEY:

24 Q. If you can, uh, Officer Beach, please take a look at at
25 the the other item I handed you.

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 A. Uh, this was logged in under the same Case Number
2 10024012 by Investigator Bagwell, it, uh, shows the suspect on
3 the evidence label as Isaac Lyles, uh, they listed it at 60 --
4 63.0 grams. Uh, Officer Bagwell signed this in at 1727 hours
5 which would be 5:27 p.m. on the 9th of October 2012. I
6 retrieved it from their drop box, signed for it October the
7 10th 2012, of course that was at seven o'clock in the mornin'.

8 Q. Okay. Does it -- you state the case number on there?

9 A. Yes, sir, 10024012.

10 Q. And that matches the case related to the defendant?

11 A. The one I just had yes, sir.

12 Q. Yes, sir. Alright, if you can take out what's inside a
13 there and see if you can identify it.

14 A. Net weight of 52.73 grams of marijuana, uh, I have it
15 marked with the previous case number I just mentioned:
16 10024012. I received it on October the 10th 2012, Item
17 Number 2, and I have initialed it, uh, and the analysis form
18 showed that it did test positive for marijuana.

19 MR. SPIVEY: Okay. Your Honor, at this point I would
20 move this in as State's Exhibit No. 17.

21 THE COURT: Objections?

22 MR. BEAN: No objection.

23 THE COURT: Without objection it will admitted, you may
24 have it marked.

25 (Marijuana marked State's Exhibit No. 17 for

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 identification and admitted into evidence.)

2 MR. SPIVEY: Thank Your Honor and, Your Honor, I would
3 also at this time move the the the the witness as an expert in
4 chemical analysis, I've not done so earlier, I don't believe
5 that that I actually made that step. I would move that he be
6 declared expert in analysis a marijuana.

7 THE COURT: Any objection?

8 MR. BEAN: I I apologize, I'm not sure I understood that,
9 would would you mind restating.

10 MR. SPIVEY: He a, uh, Your Honor, I I ---

11 THE COURT: He has not had him qualified as an expert for
12 the purposes of ana -- analyzing marijuana and offering
13 opinion as to its, what it is, a substance.

14 MR. BEAN: Okay, so that's that's the proffer then I I do
15 not have objection to that, ---

16 THE COURT: Okay, ---

17 MR. BEAN: --- Your Honor.

18 THE COURT: --- no no objection. He'll be so qualified
19 and I've explained to the jury what that means.

20 MR. SPIVEY: Thank Your Honor.

21 THE COURT: You may proceed.

22 BY MR. SPIVEY:

23 Q. And so that, in your expert opinion is that marijuana?

24 A. Yes, sir, it pass the test.

25 Q. How much marijuana is that?

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 A. 52.73 grams.

2 Q. Okay. Alright. Mr. Beach, uh, I'm gonna hand you two
3 other items. May I approach the witness, Your Honor?

4 THE COURT: You may.

5 BY MR. SPIVEY:

6 Q. Alright, just take the first one you've got there and see
7 if you can identify it.

8 A. Same Case Number 10024012 which is the city case number,
9 uh, it is, it is marked as cocaine and we have a BEST envelope
10 number of S162582, uh, that was turned in by Investigator
11 Bagwell, here again on the 9th of October 2012 at 5:27 p.m. I
12 received it the following morning October the 10th 2012 at
13 seven o'clock in the morning, uh, you want me to go inside
14 it, ---

15 Q. Yes, sir.

16 A. --- please. Any time we get any type of drugs other than
17 marijuana, they have to be placed in what is called a "BEST
18 Envelope". This (indicating) is the BEST envelope we receive
19 from Spartanburg County Sheriff's Department, okay. My
20 partner and I have no access to the drugs that are inside this
21 envelope. Once we receive this, this envelope has been, uh,
22 filled out and completed by the officer that's turnin', uh,
23 the item in, it is sealed, we have no access to it, we can't
24 touch it, the only thing we do is verify that they have filled
25 out the County Drug Analysis Form properly and that we have

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 what's called a "Form B" and/or a "Form C", uh, document, uh,
2 that they have to fill out. If all a that is correct then we
3 receive it in, me bein' the, uh, technician that received it I
4 had to fill out a Form C, uh, which states that I received it
5 from Investigator Bagwell, that I got it from a drop box, I I
6 have to put a case number on there, I have to put the control
7 number with or our our, uh, S number and then, uh, I have to
8 sign off on that.

9 Q. Okay, thank you. When you received this, it was sealed
10 up?

11 A. Yes, sir, we will not receive it if it's not sealed
12 properly.

13 Q. Okay. And that bag is is tamper-evident, what does, what
14 does tamper-evident mean?

15 A. Well it like I said, when they, when the officer places
16 the drugs, this is the, this (indicating) is evidence, uh, bag
17 if you will or BEST envelope and up here (indicating) you you
18 can see that this red tape that's what actually seals it,
19 that's the last thing he does before he puts it in this, uh,
20 evidence envelope. When we take it out to check things, if
21 this (indicating) is not sealed properly, we have to call them
22 back in because the lab at the county will not accept it if
23 it's not done properly so this one was, you know, not held or
24 anything, it was turned in properly.

25 Q. Okay. What did you do with that bag once you received

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 it?

2 A. Well when when we get it in course I have to sign off on
3 it, assign a location to it, uh, drugs are kept in there in a
4 separate room inside the evidence, uh, department, uh, due to
5 colleague a CALEA standards it has to be the most secure area
6 of property and evidence. Uh, basically you gotta go thr --
7 to through a chained and locked, uh, gate and then through two
8 locked doors to get into the drug room itself where the drugs
9 are stored, ---

10 Q. Who's got key ---

11 A. --- it's Da ---

12 Q. --- keys to those rooms?

13 A. Pardon?

14 Q. Who's got the keys to those rooms, those ---

15 A. David ---

16 Q. --- locks?

17 A. .--- David Reeves and myself. Major Lamb has a set bein'
18 our supervisor but they stay under that they're locked up
19 somewhere else.

20 Q. Okay. Uh, what did you do with 'em after that?

21 A. After we accumulate, uh, so many BEST envelopes we'll
22 call over to the county lab and set up an appointment, uh, to
23 bring these over. Uh, course we, you know, we check 'em out
24 of evidence to ourselves and, uh, we take 'em over to
25 Spartanburg County Sheriff's Department where their lab is

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 located. Uh, they have two chemists over there that do the
2 testing for us and, uh, that they they sign the sheets, they
3 receive it and that's all I can tell you that I I I know
4 what's done but I can't testify to what they do ---

5 Q. No, no, ---

6 A. --- after that.

7 Q. --- just tell me what you did. That point you dropped it
8 off with the ---

9 A. They ---

10 Q. --- county ---

11 A. --- they they received the drugs from myself or or my
12 partner and, uh, then they, when they get 'em all done they
13 either call us or the next trip we'll pick up the drugs that
14 have have been tested.

15 Q. When you dropped them off, were they in the same
16 condition as when you received 'em?

17 A. Yes, sir.

18 Q. Okay. Uh, take a look at, if you'll put that in -- Your
19 Honor, I would like to mark this as State's Exhibit 18 just
20 for identification purposes only.

21 THE COURT: You may do so.

22 (Cocaine marked State's Exhibit No. 18 for
23 identification.)

24 MR. SPIVEY: May I approach, Your Honor?

25 THE COURT: You may.

MYLNOR BEACH - DIRECT EXAMINATION BY MR. SPIVEY

1 BY MR. SPIVEY:

2 Q. Alright, take a look at the next item there.

3 A. Case Number 10024012, same number we've been discussin',
4 Item Number 6, uh, entered by Investigator Bagwell, turned in
5 on October the 9th 2012 at 5:27, received by myself October
6 the 10th the following morning at seven o'clock.

7 Q. Okay, open it up and see what's in there.

8 A. Another BEST envelope, uh, S156558.

9 Q. Okay. And and ---

10 A. And once again this area here (indicating) is the BEST
11 envelope, this is the county's outer sealed envelope.

12 Q. Okay. Uh, when you received that that bag was sealed?

13 A. Yes, sir, it was.

14 Q. Okay, what did you do with it then?

15 A. Received it into evidence, assigned a location to it, put
16 it in the drug room, secured and kept it until it was taken
17 over for testing.

18 Q. And when was it taken over?

19 A. Uh, let's see. Hold on just one minute, let me get to
20 this sheet. I took it to the sheriff's department, signed it
21 out on October 31st.

22 Q. Okay, so the same day you took the other BEST bag.

23 A. Yes.

24 Q. Okay. And when you dropped it off with the sheriff's
25 office, was it in the same condition as when you received

MYLNOR BEACH - CROSS-EXAMINATION BY MR. BEAN

1 it?

2 A. Yes, sir.

3 MR. SPIVEY: Okay. Your Honor, I'd like to have this
4 this, uh, evidence marked for identification purposes only as
5 State's Exhibit 18, oh, excuse me, 19.

6 THE COURT: Alright, you may do so.

7 MR. SPIVEY: Thank Your Honor, may I approach?

8 THE COURT: Yes.

9 (Cocaine and crack marked State's Exhibit No. 19 for
10 identification.)

11 MR. SPIVEY: And, Your Honor, at this point I have no
12 further questions of of this witness.

13 THE COURT: You may cross-examine, Mr. Bean.

14 MR. BEAN: Thank Your Honor, just a few questions.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION BY MR. BEAN:

17 Q. Mr. Beach, ---

18 A. Yes, sir.

19 Q. --- good morning.

20 A. Good morning to you, sir.

21 Q. Uh, you indicated in your testimony just now that you I
22 think had two separate, uh, groups or or quantities of
23 marijuana from this case, is that right?

24 A. Um, yes, sir, there we -- there were two envelopes turned
25 in.

MYLNOR BEACH - CROSS-EXAMINATION BY MR. BEAN

1 Q. Okay. And do you know which envelope came from my client
2 and which one came from somewhere else?

3 A. No, sir, I have no way of knowing that.

4 Q. Okay. How much marijuana was was in the smaller, uh,
5 quantity in the bag? You you weighed it correct?

6 A. Yes, sir, I weighed it, I'd have to see the analysis
7 form ---

8 Q. Oh, ---

9 A. --- to ---

10 Q. --- I'm sorry.

11 A. I'm sorry.

12 MR. BEAN: A -- approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. BEAN:

15 Q. I'll hand it to you.

16 A. You're wanting the the first one here?

17 Q. Well the smaller one, the smaller ---

18 A. Yes.

19 Q. --- quantity.

20 A. Uh, it was a total of 5 -- 5.71 grams I believe is what
21 we got, uh, weighed it out at. Yes, sir, 5.71 grams and that
22 was net weight of the green leafy substance.

23 Q. Now I'm not good with math, never was, uh, how many
24 ounces is that?

25 A. That small amount we don't break that down to ounces with

MYLNOR BEACH - CROSS-EXAMINATION BY MR. BEAN

1 it bein', you know, uh, uh, grams, course it's, uh, 28 -- 28
2 grams of, you know, to get up to the, I mean, yeah, 28 grams
3 for an ounce but this is only 5.71 so ---

4 Q. Oh, I see so ---

5 A. --- yeah, this is a very small, what what I would
6 consider a small amount.

7 Q. I see. Now what about the second bag?

8 A. Second bag was, uh, 52.73 grams and that came out, uh, as
9 1.859 ounces.

10 Q. Alright, sir, thank you.

11 (Whereupon, a discussion was held off the record.)

12 Q. Mr. Beach, uh, your your only knowledge about this other
13 than the fact that you received it in the course of your
14 normal duties and analyzed it and determined it to be
15 marijuana is the fact that you got it and did that, is that
16 correct?

17 A. Yes, sir, I received it from Investigator Bagwell with
18 the assigned case number already on it and that's all, ---

19 Q. Yes.

20 A. --- that's all my knowledge of it.

21 Q. Thank you.

22 MR. BEAN: No further questions, Your Honor.

23 THE COURT: Anything further, Mr. Spivey?

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

25 THE COURT: Alright, sir, you may step down. You wish to

MYLNOR BEACH - CROSS-EXAMINATION BY MR. BEAN

1 excuse the witness?

2 MR. SPIVEY: Yes, Your Honor, if we may.

3 THE COURT: Any objections?

4 MR. BEAN: No objection.

5 THE COURT: You're free to go.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you, sir.

8 (Whereupon, the witness left the stand.)

9 THE COURT: We're gonna take a short break at this point
10 in time.

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

12 THE COURT: Ladies and gentlemen, I'll allow you to step
13 back in the jury room, allow the court personnel to take a
14 break. While you're in the jury room I'm gonna ask you not to
15 begin any discussions about this case until I've asked you to
16 begin deliberations. You may retire, thank you very much.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: Alright, court'll be in recess briefly.

20 MR. SPIVEY: Yes, sir, Your Honor, thank you.

21 (Whereupon, a recess was taken.)

22 THE COURT: Mr. Spivey, State ready to go forward?

23 MR. SPIVEY: Yes, sir, Your Honor, we just have one
24 further witness Ms. Beth Stuart.

25 THE COURT: Alright.

MARY ELIZABETH STUART - DIRECT EXAMINATION BY MR. SPIVEY

1 MR. BEAN: We're ready.

2 THE COURT: Defense ready?

3 MR. BEAN: Yes, sir.

4 THE COURT: Alright, bring the jury in.

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

6 THE COURT: Alright, the record will reflect the jury's
7 returned to the courtroom. You may call your next witness,
8 Mr. Spivey.

9 MR. SPIVEY: Thank you, Your Honor. Your Honor, State
10 calls Beth Stuart.

11 THE COURT: Come forward, ma'am, to my left and be sworn,
12 please.

13 THE CLERK: Raise your right hand, put your left hand on
14 the Bible.

15 MARY ELIZABETH STUART, having been
16 first duly sworn, testified as follows:

17 THE CLERK: Thank you, you may be seated.

18 MR. SPIVEY: Have a seat, once seated state your name,
19 please.

20 THE WITNESS: Yes. Mary Elizabeth Stuart, everybody
21 calls me Beth.

22 THE COURT: Mr. Spivey, your witness.

23 MR. SPIVEY: Thank Your Honor.

24 DIRECT EXAMINATION BY MR. SPIVEY:

25 Q. Ms. Stuart, please tell us your training and experience.

MARY ELIZABETH STUART - DIRECT EXAMINATION BY MR. SPIVEY

1 A. Um, yes, I have a bachelor's of science in chemistry, a
2 bachelor's of science in bio-chemistry both from the College
3 of Charleston. I have a master's degree in chemistry from the
4 University of South Carolina. Um, I've been trained in drug
5 analysis, fire debris analysis, uh, meth labs and poison
6 analysis. Um, I am certified by the American Board of
7 Criminalistics in all areas of forensic science. I've been to
8 the DEA Forensic Chemist School and the DEA Clandestine Lab
9 School and had 40 hours of continuing a -- continuing
10 education for the last 11 years.

11 Q. Okay. Uh, you ever been, uh, certified as an expert in
12 in court, have you ever testified as an expert in court?

13 A. Yes, I have, um, I think it's about 36 times in
14 Spartanburg County.

15 Q. Okay, and wha'd you testify to or ---

16 A. Uh, ---

17 Q. --- wha'd you testify as as an expert?

18 A. It's been different things: drug analysis, fire debris
19 analysis, uh, fingerprinting.

20 Q. Okay. In reference to drug analysis, you've been then
21 qualified as an expert drug analysis?

22 A. Yes.

23 Q. Okay, that's the chemical analysis of controlled
24 substances.

25 A. Yes, sir, it is.

MARY ELIZABETH STUART - DIRECT EXAMINATION BY MR. SPIVEY

1 Q. Okay, that controlled substance includes crack and and
2 powder cocaine?

3 A. Yes, sir, it does.

4 Q. Okay.

5 MR. SPIVEY: Your Honor, at this point I'd move to to
6 have the witness qualified as an expert in the chemical
7 analysis of of cocaine and powder coc -- and crack cocaine.

8 THE COURT: Is there an -- any any objection?

9 MR. BEAN: No objection.

10 THE COURT: Without objection she'll be qualified as such
11 and I've explained to the jury that designation. You may
12 proceed.

13 MR. SPIVEY: Thank Your Honor. Uh, Your Honor, may I
14 approach the witness?

15 THE COURT: You may.

16 BY MR. SPIVEY:

17 Q. I'm gonna hand you what's been pre-marked as State's
18 Exhibit 18, if you can open that envelope for me and and take
19 a look inside, tell me if you can identify that.

20 A. Yes, it's controlled substance marked Lab Number L121552
21 with my initials on it and the date.

22 Q. Okay. Does it have a a Spartanburg City case ---

23 A. Yeah.

24 Q. --- number on it?

25 A. Yes, the paperwork does.

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1 Q. Okay. Wha -- and what was the case number?

2 A. 10-0240-12.

3 Q. Okay. Uh, when you received this item, uh, who did you
4 receive it from?

5 A. Uh, from Mylnor Beach.

6 Q. Okay. And when you received it was it sealed?

7 A. It was. Inside, there's a bag inside this (indicating)
8 outer envelope called a BEST bag, it was sealed in it. We
9 won't accept evidence if it's not sealed.

10 Q. Okay. Was there any avs -- evidence that it had been
11 tampered with in any way or altered?

12 A. We wouldn't have taken it ---

13 Q. Okay.

14 A. --- at all, it woulda been sent back with him if any of
15 the seals had been tampered with.

16 Q. Tell me about that that, the BEST bag, uh, ---

17 A. Sure. Uh, inside this the blue it's called, what we call
18 a "BEST bag" which is just an acronym. BEST stands for Best
19 Evidence Sample Testing and we accept evidence from a lotta
20 agencies, not just the city but the county and every other
21 city within Spartanburg County and any federal agency that
22 works in Spartanburg County so there needed to be a uniform
23 way for everyone to submit their evidence to us and that's
24 where the BEST bag comes in. It's not a tamper-proof bag, you
25 can get into it if you want to, you can cut it open, uh, or

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1 any of that but it is tamper-evident which means if someone
2 cut it of course we'd know or if they tried to tear it these
3 (indicating) lines would distort. Once it's sealed at the top
4 which is the pink is the glue then it would be extremely
5 evident if someone tried to get into it.

6 Q. Okay. Did you perform any analysis on that, the
7 substances inside a there?

8 A. Uh, I know I did but I think you must have removed the
9 report from this bag.

10 Q. Okay. Let's see if I can find a a copy of that.

11 (Whereupon, a discussion was held off the record.)

12 MR. SPIVEY: May I approach the witness, Your Honor?

13 THE COURT: You may.

14 BY MR. SPIVEY:

15 Q. That's, uh, there two of 'em there. Uh, I've handed you
16 two documents, I'm not sure which bag that that matches, uh,
17 please look at ---

18 A. Sure.

19 Q. --- the one that matches that particular bag and ---

20 A. It's no ---

21 Q. --- tell me what ---

22 A. --- problem, it's easy for me to establish. Once I test
23 a drug I reseal it into this (indicating) outer envelope that
24 you see and in the, in the seal I write my initials, the date
25 I sealed it and a lab number, also there's a lab number on the

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1 original BEST bag, that's a lab number I assign to it in the
2 lab, that lab number also shows up on our report and it's
3 L121552 which corresponds to all the lab numbers I have
4 written so it's easy to coincide them.

5 Q. Okay. What analysis did you perform on that particular
6 bag?

7 A. Um, I do a presumptive and a confirmatory analysis on
8 white powder substance. The presumptive is like a color
9 change test and then the confirmatory test is an instrumental
10 test, I now perform both of them.

11 Q. Okay. What, uh, what what did you determine after
12 performing that analysis?

13 A. Sure. The white powder substance in this case was
14 cocaine found at 1.06 grams.

15 MR. SPIVEY: Okay. Your Honor, at this point I'd move
16 what's, what was pre-marked as State's Exhibit 18 into
17 evidence as State's Exhibit 18.

18 THE COURT: Is there an objection?

19 MR. BEAN: No objection.

20 THE COURT: Without objection it'll now be made an
21 exhibit same number, you may proceed.

22 (State's Exhibit No. 18, cocaine, admitted into
23 evidence.)

24 MR. SPIVEY: Thank you, Your Honor. May I approach the
25 witness and ---

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1 THE COURT: You may.

2 MR. SPIVEY: --- and swap with her?

3 (Whereupon, a discussion was held off the record.)

4 BY MR. SPIVEY:

5 Q. Please please, uh, open that up and see if you can
6 identify it.

7 A. It's the same procedure every time. Once again it has my
8 initials, the date, the lab number and the seal, my initials,
9 the date and the letters O-K-A-Y which tells me it was sealed
10 before I opened it on the actual BEST bag inside and the
11 report L121556 corresponds with all the lab numbers I have
12 written on all the paperwork.

13 Q. Okay. Uh, what analysis you perform on that?

14 A. Uh, this was not only a white powder substance but also
15 what we call an "off white rock substance", so the white
16 powder substance woulda been the same, a spot color test and
17 then also and instrumental test. The off white rock substance
18 in order to differentiate it between, uh, whether it's cocaine
19 or crack we also perform a solubility test on it.

20 Q. Okay. Did you perform those those tests on these
21 substances?

22 A. I did.

23 Q. Okay, what do you determine?

24 A. Sure, the white powder substance labeled Item Number 6
25 was cocaine found at 25.87 grams. The off white rock

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1 substance labeled Item Number 7 was cocaine base, commonly
2 called "crack" at 18.04 grams and the off white rock substance
3 labeled Item Number 8 was cocaine base, commonly called
4 "crack" at 6.27 grams.

5 Q. Okay. In terms of the weights on State's -- oh, Your
6 Honor, at this time I'd move State's Exhibit 19 into evidence.

7 THE COURT: Any objection?

8 MR. BEAN: Without objection.

9 THE COURT: Without objection it'll be marked as such,
10 it'll be entered at the same number. You may proceed.

11 MR. SPIVEY: Thank Your Honor.

12 (State's Exhibit No. 19, cocaine and crack, admitted into
13 evidence.)

14 BY MR. SPIVEY:

15 Q. In terms of these two items, State's Exhibit 18 and
16 State's Exhibit 19, how do you get those weights?

17 A. Within the lab we have what's called an "analytical
18 balance", uh, basically it's calibrated once a month in-house
19 by us and then once a year it's calibrated by an outside
20 agency. Uh, it has to be correct to the thousandth degree so
21 will be .000 but we only, we truncate at the hundredths degree
22 to be even more fair. Also, what we do before we weigh any
23 substance any sample that we're using for testing gets removed
24 from it before we weigh it so that what we put back into the
25 bag is what we actually weigh and it's not weighed with any

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1 packaging or bags or any such, it's removed completely and
2 weighed.

3 Q. Okay, so by the time you've done all that you're certain
4 that that is the actual analytical weight.

5 A. Yes, sir.

6 Q. Okay. You're certain that those drugs both in 18 and 19
7 were powder cocaine and crack cocaine.

8 A. Yes.

9 MR. SPIVEY: Okay, I have no further witnesses, uh, fu --
10 no further questions for this witness at this time, Your
11 Honor.

12 THE COURT: Mr. Bean.

13 CROSS-EXAMINATION BY MR. BEAN:

14 Q. Just briefly, Ms. Stuart, ---

15 A. Yes, sir.

16 Q. --- uh, good morning, ---

17 A. Good morning.

18 Q. --- it's still morning. Now I I just wanna be clear on
19 one thing: I understand analysis and all, you really don't
20 know anything about the facts of the case or how this was
21 obtained, do ya?

22 A. No, sir, I do not.

23 Q. Okay. All you really know is you analyzed this and those
24 are your finding?

25 A. Yes, sir.

MARY ELIZABETH STUART - CROSS-EXAMINATION BY MR. BEAN

1 Q. Thank you.

2 MR. BEAN: No further questions, Your Honor.

3 THE COURT: Anything further?

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

5 THE COURT: Alright, ma'am, you may step down, thank you
6 very much.

7 (Whereupon, the witness left the stand.)

8 MR. SPIVEY: Your Honor, may she be excused?

9 THE COURT: Any objection?

10 MR. BEAN: No objection.

11 THE COURT: You're free to go, ma'am, thank you. State
12 may call its next witness.

13 MR. SPIVEY: Your Honor, the State rests its case at this
14 point.

15 THE COURT: Alright, ladies and gentlemen of the jury, at
16 this point in time the State has completed the presentation of
17 evidence that it intends to present, there's some things I
18 have to take up with the attorneys at this time out of your
19 presence so I'll ask you to step back to the jury room, not to
20 begin discussions about this matter 'till I've asked you to do
21 so, you may retire to the jury room.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Motions by the defense?

25 MR. BEAN: Your Honor, at this time the defense would

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1 move for a, uh, dismissal or directed verdict as the case may
2 be on the charges that stem from the drugs that were found,
3 uh, in the bag which was off of the premises where this
4 incident took place. Uh, there is, uh, no, uh, credible
5 evidence that my client had anything to do with that, uh, and
6 on that basis we would move that those, uh, items or that that
7 those charges be dismissed.

8 THE COURT: Spivey.

9 MR. SPIVEY: Yes, sir, Your Honor. Your Honor, we did
10 hear credible evidence from Edward Wesson that the bag
11 belonged to defendant and, uh, he was able to to establish
12 very very clearly that he seen him with that bag multiple
13 occasions, in fact, probably every day for that entire summer,
14 uh, I believe that is enough evidence to present the case to
15 the jury, ---

16 THE COURT: Well ---

17 MR. SPIVEY: --- Your Honor.

18 THE COURT: --- well the issue's not whether it's
19 credible evidence it's whether exists evidence upon which a
20 jury might make a decision and in this case the motion will be
21 denied. I find there is sufficient evidence justify the case
22 going forward to the jury. Uh, any other motions, Mr. Bean?

23 MR. BEAN: Uh, not at this moment, Your Honor. Uh,
24 before we proceed, uh, I would need a little bit a time to
25 confer with my client, Your Honor, we've had some discussions

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1 but, uh, uh, we'll need to talk a little bit further ---

2 (Cross-talk.)

3 THE COURT: Let me go over some things with him so
4 he's been advised of certain things before he has those
5 discussions. Uh, sir, if you would please stand, madam clerk,
6 please swear the defendant for me.

7 THE CLERK: Yes, sir. Please raise your right hand.

8 (Whereupon, the defendant was sworn.)

9 THE CLERK: Thank you.

10 THE COURT: You can be seated, Mr. Lyles.

11 (Whereupon, the defendant complied.)

12 THE COURT: Mr. Lyles, at this time I'm going to explain
13 certain of your constitutional rights to you, uh, I will tell
14 you that when I finish if you do not understand what I've gone
15 over with you, please let me know, uh, I'll be glad to answer
16 any questions that you might have concerning these matters, do
17 you understand that I'm doing now?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Uh, we've reached the stage of the
20 proceedings where you have the right to present your defense.
21 Now as part of that defense you have the right to testify in
22 this case, you also have the right to claim the protections
23 that are given to you under the Fifth Amendment to the
24 Constitution of the United States, that Amendment reads in
25 part that no person can be compelled in any criminal case to

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1 be a witness against himself. While I've advised you that you
2 have the right to testify, y -- that that Consti -- that
3 provision in the Constitution gives you the right not to
4 testify, that means you cannot be required to testify in this
5 case, uh, no one can make you testify in this case. The right
6 to remain silent of the case -- in this case is a personal
7 right, no one can give or waive up that -- waive that right
8 except yourself.

9 Now if you decide to testify I will advise you that
10 you'll be subject to the same rules that govern the testimony
11 of any other witness, what that means is that you would be
12 examined by your lawyer and you'd be cross-examined by the
13 State's attorney and I will tell you that in addition to the
14 cross-examine by -- xamination by the State's attorney, should
15 you have convictions on your record that involve dishonesty or
16 false statements or convictions for crimes punishable by
17 imprisonment for more than one year and this court makes a
18 determination that the probative value of those convictions as
19 to your credibility outweighs the prejudicial effect that they
20 might have on you, uh, then in that case if the Sta -- if the
21 Court made that determination, the solicitor, uh, would be
22 able to introduce those convictions in an effort to attack
23 your credibility.

24 Now if you decide to testify, the decision on your part
25 must be made freely and voluntarily by you, must be made

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1 intelligently with knowledge of the protections given to you
2 under the Fifth Amendment to the Constitution and any
3 consequences that you might suffer as a result of your
4 decision to testify. I will tell you that if you decide not
5 to testify that I will instruct the jury that they cannot give
6 the fact that you did not testify in any consideration
7 whatsoever in reaching a verdict; in other words, there's to
8 be absolutely no prejudice to you because you did not testify;
9 in fact, I will instruct them that they could not even discuss
10 that factor during their deliberations. Now the decision as
11 to whether or not to testify is entirely left up to you. You
12 have the right to consult with your attorney, family, friends
13 or anyone else you'd like to discuss the decision with but the
14 decision finally and ultimately is your decision. Now do you
15 understand the rights that I've explained to ya?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions about that right?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you had an opportunity to discuss this
20 with your attorney?

21 THE DEFENDANT: No, sir.

22 THE COURT: Alright, well do you wish more time in which
23 to do that?

24 THE DEFENDANT: Yes.

25 THE COURT: Alright, well what I'm going to do since

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1 we're this close to lunch I'll go ahead and break for lunch,
2 that'll give you over the lunch hour to consider that
3 question, uh, and then once we return, uh, I'll be asking you
4 about this decision, you understand that, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Alright. Is there anything else before we
7 take our break?

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

9 MR. BEAN: No, ---

10 THE COURT: Mr. Bean?

11 MR. BEAN: --- Your Honor.

12 THE COURT: Alright, let's bring the jury in.

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

14 THE COURT: Alright, the record will reflect that the
15 jury has returned to the courtroom. Uh, ladies and gentlemen,
16 I told you we completed the presentation of evidence by the
17 State, uh, and at this stage of the proceedings the defense
18 has the right to call any witnesses the defense chooses to
19 call, uh, but I do note that we're about fifteen minutes from
20 noon and what we're going to do is we're going to break for
21 lunch and then I'll ask you to come back and we should be in a
22 position to resume the case at that point in time. Uh, I will
23 ask you to be back in the jury room by one o'clock this
24 afternoon, we should be in a position to start back shortly
25 thereafter.

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1 Now as always when you leave the courthouse I'll give you
2 the same instructions I've given before, that is, not to
3 attempt to gather information about the case on your own,
4 don't discuss the case with anyone and don't allow anyone to
5 discuss it with you. Should anyone attempt to contact you
6 about your service on this jury please report that fact and
7 I'll take the appropriate action, so at this point in time the
8 bailiff will take you back and release you for lunch, be back
9 in that jury room by one o'clock this afternoon. Thank you
10 very much.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: Alright, we'll be in recess until one
14 o'clock. Thank you very much.

15 (Whereupon, a recess was taken.)

16 THE COURT: We're on the record in the case the State vs.
17 Lyles. Mr. Lyles, when we broke earlier, uh, I had gone over
18 with you your right, uh, to remain silent and your rights
19 under the Fifth Amendment, have you had an opportunity to
20 discuss your decision with your attorney?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you had an opportunity to discuss it
23 with anyone else that you chose to discuss it with?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you come to a decision as to whether or

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1 not you wish to testify in this case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you intend to testify?

4 THE DEFENDANT: No, sir.

5 THE COURT: Alright, Mr. Bean, does the defense have any
6 other witnesses you wish to call?

7 MR. BEAN: We do not, Your Honor.

8 THE COURT: Alright, so I assume you'll be resting.

9 MR. BEAN: Defense rests.

10 THE COURT: I I do not think that the defense introduced
11 any evidence in the case, is that correct?

12 MR. BEAN: That is correct.

13 THE COURT: That means you'll ---

14 MR. SPIVEY: Despite my best effort, Your Honor, he did
15 not enter any any ---

16 (Cross-talk.)

17 THE COURT: That means you'll be going first with your
18 closing statement, are you ready to proceed?

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

20 THE COURT: Alright, let's bring the jury in. I will ask
21 you about your witnesses on the record in front of the jury
22 and then we'll ---

23 MR. BEAN: Yes.

24 THE COURT: --- proceed.

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

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1 THE COURT: Alright, the record will reflect the jury has
2 returned to the courtroom, I hope everyone had a good lunch
3 and, uh, returned ready to continue with the case. If anybody
4 had any difficulty in complying with my instructions
5 concerning your behavior in your absence from the courthouse,
6 please stand.

7 (No response.)

8 THE COURT: It appears that all jurors have been able to
9 comply with my instructions thus far. Uh, when we broke
10 earlier the State had completed the presentation of its
11 evidence in this case and at this time the defense has the
12 right to present evidence. Does defense wish to call any
13 witnesses?

14 MR. BEAN: Uh, we do not, Your Honor, the defense rests.

15 THE COURT: Alright, the defense then has rested in the
16 case so that completes the pres -- presentation of evidence in
17 this matter so at this time we will go to the stage of the
18 trial where the attorneys will be given an opportunity to
19 again address you and summing up the case making their closing
20 argument so at this time, Mr. Spivey, you may proceed for the
21 State.

22 MR. SPIVEY: Thank Your Honor. Ladies and gentlemen, I
23 thank you for your patience, uh, this has been a little bit of
24 a a long trial and you've heard from a lotta witnesses and I I
25 I'm glad that you paid attention to each of the witnesses. We

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1 were, we were watchin' and and and we tried to make it as
2 entertaining as we could although this is not supposed to be
3 entertaining, uh, but but you all paid attention very well
4 and, uh, you heard what they had to say and, uh, and I I
5 appreciate that and I I know the defendant does as well, this
6 is important for him, uh, he's got a constitutional right to a
7 trial and you are supposed to make a determination of what the
8 evidence means, what actually happened in this case, that's
9 your job: termine the the truth of what factually occurred, so
10 let's talk a little minute and we'll get to to to some of
11 those issues in a minute.

12 First, I wanna refresh you on what is actually charged in
13 this and what I have to prove, uh, 'cause that's, that's where
14 we need to start with this analysis of whether or not you
15 think the facts fit the charges that I've brought. He's
16 charged with two counts of trafficking, one in cocaine and one
17 in crack cocaine and basically that means he was either in
18 possession of it, if he's in possession of it alone more than
19 10 grams then he is guilty of trafficking cocaine or he could
20 be in possession with intent to distribute. Today and
21 yesterday we have argued to ya and through the testimony that
22 there is no doubt anybody in possession of that quantity with
23 the other el -- uh, evidence that was there: the gun and the
24 money and the way it's bagged and the digital scales and the
25 lack of paraphernalia, we have argued that he did possess with

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1 intent to distribute those two drugs, okay, and it's more than
2 10 grams, okay, those are two charges. Remember I said that
3 whether or not you think it's violent or not, throw your
4 definition of violent out the window because our state has
5 decided that violent in this sense means something totally
6 different and and basically they have said that trafficking in
7 either of those drugs is a violent crime and there's there's
8 really nothin' left to discuss in in terms of that, uh, so if
9 he's guilty a that, he's a -- he's guilty of a violent crime.
10 Uh, he has to knowingly possess those items, uh, we think
11 we've presented evidence a that, I'll get into that in a
12 minute but let's let's keep goin' through the charges.

13 He's also charged with possession with intent to
14 distribute marijuana and that's based in fact upon the scales,
15 the amount of marijuana and, uh, the lack of any evidence that
16 he intended to smoke the marijuana. Where are the rolling
17 papers? Where's the marijuana pipe? How do ya ingest this
18 stuff if if you don't have those things? There's no lighter,
19 so we're, again, we're basing this intent to distribute, it's
20 rare that somebody actually comes out and says, Those are my
21 drugs and I was gonna sell 'em, so we gotta look at what's
22 called the "circumstantial evidence" to prove those but
23 essentially the crime all we have to do is that he possessed
24 'em knowingly and he did so with an intent to distribute it,
25 okay. There's several other charges and they're all related,

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1 member the violent crimes. Because he had a weapon he's
2 charged with possession of a firearm during the commission of
3 a violent crime and remember the violent crimes already
4 defined for us so if he's guilty of trafficking and he had
5 that weapon on him then he's gu -- also has to be found guilty
6 of possession of a weapon during the commission of a violent
7 crime, okay. There's also three other charges and those
8 charges relate to the school that's nearby: Cleveland
9 Elementary school, .348 miles away, less than .5 which would
10 be a half mile "as the crow flies". We heard testimony from,
11 uh, one a the officers about that about how far away it was
12 and we also heard testimony from Mr. Wesson, the owner of the
13 property, about how close it was in in proximity that
14 residence was to Cleveland Elementary School, so there's no
15 doubt everybody knew this house within a half mile of that
16 property, okay, so we're all on the same page he possessed
17 with intent to distribute these drugs and he did it within a
18 half mile a that school and he did it knowingly, that's what
19 he's charged with and that's what we're trying to prove,
20 that's what we've heard evidence about.

21 I wanna talk a minute about what is really not an issue
22 in this case. Let's talk about, you know, the the evidence
23 that came in that exists but really it doesn't appear at least
24 by the questions that were asked to have been, uh, challenged
25 at all. The drug weights, okay. There's no doubt that

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1 cocaine, crack cocaine and marijuana were found, nobody
2 disputes that. Now I think they dispute that it was his but
3 and we say it was his and they are basically are sayin' it
4 wasn't his but there's no doubt it was cocaine, it was crack
5 cocaine and it was marijuana. There's no doubt about the
6 weights. The weights a those drug what what's found in hi --
7 in his pocket 1.06 grams of cocaine. What's found in his
8 pocket, 5.8 grams a marijuana. What else is found in the bag?
9 25.87 grams of cocaine, 18.04 grams of crack, 6.27 grams of
10 crack and 63 grams of marijuana, okay, so that's what was
11 found, that's sorta where we are, uh, nobody disputes that
12 those drugs were found in that bag and in his pocket and that
13 they were in fact drugs and they did in fact weigh that much.
14 The the questions were there, they were asked, that's what it
15 is. This case comes down to whether or not he possessed with
16 intent to distribute those ba -- those drugs found in that
17 bag, okay, that's kind of the key issue here. Once we've
18 wrapped our mind around that I think let's talk about what
19 evidence we heard that it was his, okay.

20 Edward Wesson lived at North Forest Street and he
21 moved in the summer of 2012. He's introduced to the
22 defendant, the defendant solely wants to meet him so that he
23 can sell drugs out of this residence, it's a way, it's a place
24 for him to sell drugs not at his house, okay. This is a a
25 essentially him openin' up a little franchise over on the

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1 north side of of Spartanburg so he can peddle his drugs. He's
2 sellin' crack primarily, he's sellin' marijuana, you heard it
3 from Mr. Wesson, okay.

4 Mr. Wesson he's not, he's not totally innocent in this, I
5 don't want you to think that because what is he getting out of
6 all this? he's a drug user, he's a hopeless addict, he gets
7 drugs out of it. Out of his own mouth it's a fact, there's no
8 hiding it, there's, you know, it is what it is. Is he, is he
9 completely innocent, no, absolutely not, well I -- we hope
10 he's clean but in this case he was usin' drugs and he was
11 gettin' 'em for free from the defendant (indicating). He was
12 distributing drugs to him in exchange for letting him sell
13 drugs outta the house, that's what happened, you heard it out
14 of his mouth. Did -- does the defendant drive a moped? yes.
15 What's found in that black bag? the goggles that he wears when
16 he drives his moped. You got that in evidence, look at it.
17 What does he bring with him every day that he sells his drugs?
18 the black bag. How many days does he come over there? uh,
19 just about every day since the begin -- since that time they
20 met in the summer. How many times did he see him with that
21 black bag? a lotta times: 30, 60, 90 days, 30, 60, 90 times he
22 sees him with the black bag, the same black book bag, there's
23 no doubt in his mind that bag belonged to him. Now he says he
24 knows what was in there because he saw the police take the
25 stuff outta there but I said, Woah, let's back up. Did you

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1 know what was in that bag before the police emptied in front
2 of ya because he not looked in it based on his testimony. He
3 would get it for him occasionally but he wouldn't look at it
4 and he says, I knew there was crack in it because I had seen
5 him deal crack outta that black bag before, so there's no
6 doubt he knew there was crack but he didn't realize the powder
7 cocaine was in there and I'm not sure he realized that the
8 marijuana, the scales or the goggles were in there but I think
9 that kinda came as surprise to him when the police dropped it
10 on the trash can and see what was in there and the quantities
11 a what was in there, that was a surprise to him and I think
12 that came through in his testimony, you know, I knew there
13 were drugs in it but I didn't really know how much or what
14 kind, I knew there was crack but other than that I didn't know
15 very much so him admitting to that that he knew there were
16 drugs in there he could have implicated himself, he coulda
17 possibly been charged with some a this stuff except for the
18 fact that he's tellin' the truth and it is the defendant's bag
19 and so he doesn't have to testify to ya. He told you today he
20 testified because; number one, he's tellin' the truth, that
21 truth is consistent with what he told the police the first
22 time. Sure they didn't ask him follow-up questions that I
23 did. Uh, I ask, you know, I ask him look to explain his
24 statement a little bit further: how many times did you see him
25 with the black bag, that sort of stuff, and the police didn't

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1 ask him that but he did tell 'em that bag belongs to the
2 defendant and I had seen him with it before. He told 'em
3 that. He told 'em that he came over and then he told 'em that
4 he used drugs and that exchange for usin' drugs he would allow
5 the defendant to sell, that's what he said. The defendant was
6 there, Mr. Isaac Lyles, he dealt drugs outta that black bag
7 and he did it at my house, that's what Mr. Wesson said.

8 Now let's go into a minute I I wanna, I wanna just
9 briefly state nobody else at this house was found any drugs.
10 You heard testimony from the officer only person with drugs on
11 their person was the defendant. There's no paraphernalia,
12 there's no drugs, there's no big wads a cash on anybody else,
13 nobody has a gun, the only person there with any connection to
14 any drugs was Isaac Lyles. Mr. Wesson used drugs, he admits
15 that. He didn't have any on him and you know what that's
16 consistent with, it's consistent with Officer Kirby's
17 testimony 'cause he says an addict can't help but smoke it as
18 soon as they get it, that's his experience and training. He's
19 been doin' it nine years, 3, 400 cases a year for nine years,
20 he's never really run into an addict who has a stash because
21 they smoke it all, because they're hopeless addicts. None a
22 those people there have drugs on 'em. Mr. Wesson is a user.
23 Does he have any drugs on him? no. Does he store any in his
24 house? no, none are found. None are found on him, none are
25 found in his cabinets, none are found under his couch, in the

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1 bedrooms, nothin'. The only drugs found were in that bag that
2 belonged Mr. Lyles in Mr. Lyles' pocket, you know why? 'cause
3 Mr. Lyles aint a drug user, he's a drug dealer. He's a drug
4 dealer.

5 Let's talk a little bit about what Investigator Kirby
6 says. Typical dosage unit the most you really would ever
7 smoke at one time in terms a crack cocaine is .1 grams. Let's
8 look at just, let's take for a minute just what's found in his
9 pocket. If he took the 1 gram of powder cocaine he had and
10 it's turned into crack cocaine, he'd roughly get 50 percent
11 more, gram and a half a crack based on what officer Kirby
12 testified about cutting and cooking and how that process
13 works, it works into a little bit more than gram and a half.
14 Let's call it a gram and a half just to be safe, okay. We got
15 a gram and a half a crack. By the way, it's in powder form,
16 it's not in crack form, so it's it's not been through that
17 step yet but he's got to convert it to crack to be able to
18 smoke it. Got nothin' to smoke it with, he's got no lighter,
19 he's got no crack pipe, how does he use it? Well let's assume
20 for a second that he's got that. He has got basically fifteen
21 times the amount of a typical user, that's fifteen dosages.
22 You heard him. A user won't have fifteen dosages on him.
23 This isn't ketchup that you use a little bit, you stick it in
24 the fridge because guess what, nobody's addicted to ketchup
25 but people are addicted to crack and people are addicted to

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1 cocaine and as soon as you get it if you're a junkie, if
2 you're a user, ya use it, so we got years of experience
3 tellin' us that. I've talked about the paraphernalia that
4 wasn't there, what's not there: no rollin' papers for
5 marijuana, no crack pipe, no lighter. How do ya use the drugs
6 that are there? ya don't. Mr. Lyles never intended to use
7 those drugs. He never intended to use those drugs, he only
8 intended to sell 'em.

9 Let's talk about the paraphernalia that is there. What's
10 in that bag? What's in his pocket? handgun, Hi-Point .380
11 loaded. When the officer goes to arrest him, he's reachin'
12 for his pocket. What's in there? handgun. Who else has a gun
13 there? nobody. The police do. Drug dealers carry guns, where
14 are the other drug dealers there? Won't they have a gun?
15 Where are the other guns?

16 Let's talk about the cash. Only cash you heard about,
17 the only evidence of any cash found in this case that you
18 heard about was the cash found on defendant: \$1200,
19 specifically one \$1 bill, eight \$5 bills, five \$10 bills and
20 twenty-two \$20 bills. What's the most common drug deal? Once
21 you sell your crack when you're sellin' it what's the most
22 common unit of sale do ya have? it's \$20 price for I want a
23 \$20 rock. Why does he have so many \$20 bills? 'cause he sold
24 a bunch a crack, sold a bunch a crack. Who keeps \$1200 in
25 their pocket? people who have just sold somethin'. What did

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1 he sell? crack. Why isn't it in a bank? because he has no
2 job, no legitimate source of income to prove that that money
3 is there, that's just a way for the police to catch him if
4 it's found in a bank so he keeps it in cash. It's gotta be
5 liquid, he's gotta have access to it, he's gotta have small
6 bills to make change and he's got enough small bills to make
7 change. He's got some fives, he's got some tens, he's got a
8 one but really he's just got \$20 bills 'cause that's what he
9 sold: \$20s \$20 rocks, give me a \$20 rock, give me a \$20 rock,
10 that's what he sold, that's why he's got it.

11 Let's talk about the scales. Would a drug user have a
12 set of digital scales? no. The drug dealer has the scales,
13 they weigh it out in front of the client and then they say, You
14 want, you want a \$20 rock, well here's a tenth of a gram, give
15 me \$20 and the transaction's done. Digital scales are used to
16 weigh it out so you don't give them more than what they just
17 paid for, that's what it's used for. You don't just walk
18 around with digital scales if you're a user, it doesn't
19 happen. We've heard that from Investigator Kirby.

20 Ladies and gentlemen, end of the day if you took only
21 what's found on his person: this gun, the fifteen times the
22 amount of a, of a dosage unit of crack, the two different bags
23 worth a marijuana ready to be sold to somebody lookin' for a
24 joint and you've you you take what's not found on his person
25 plus the gun and the cash, that's what's found on his person

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1 plus what's not found on his person at the very least we've
2 proved that he's possessed with intent to distribute cocaine
3 and marijuana at the very least. Even if you took everything
4 Mr. Wesson said and balled it up, threw it in the trash,
5 possession with intent distribute cocaine, possession with
6 intent distribute marijuana, possession with intent distribute
7 marijuana within a half mile of a school, possession with
8 intent distribute cocaine within half mile of a school, that's
9 if you, if you don't believe anything but what was found by
10 the police officers who said, I found this stuff on the
11 defendant, I saw him drop money on the ground when he was
12 arrested and I found, I saw him reachin' for a gun in his
13 pocket and also in that pocket was a 1.06 grams a cocaine and
14 'bout 5 somethin' grams of marijuana in two separate little
15 baggies, that's what we heard from the police, that's what was
16 found on him, we got pictures of the stuff, so even if you
17 just believe that, I've proved possession with intent to
18 distribute and possession with intent to distribute within a
19 half mile of a school on cocaine and marijuana
20 but, ladies and gentlemen, that's not the only thing I proved,
21 I proved way more than that because I proved that defendant
22 always carried that bag around with him. Every day in that
23 summer he had that bag and every day that summer who knows how
24 much crack was in it but every time the defendant gave drugs
25 or sold drugs that Mr. Wesson saw, it came outta that black

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1 bag, that crack that he dealt came outta that black bag.
2 Ladies and gentlemen, his his moped goggles are in the bag,
3 the back [sic] bag he always carries with him, he usually puts
4 it on the fence, that's where it was that day and why didn't
5 he carry it around with him? because when the police come
6 knockin' on that door and do that search warrant if it's in
7 his hand there ain't no doubt about it, so that's why ya only
8 have a little bit on ya, ya keep your stash separate so they
9 can't, they can't put it on ya 'cause if he's seen droppin'
10 that bag or throwin' that bag, it's over, there's nothin' to
11 talk about, there's nothing' to talk about.

12 Ladies and gentlemen, thank you for listenin', uh, I
13 really appreciate your attentiveness in this and I think at
14 the end a the day you're gonna apply your common sense and
15 you're gonna see that there's really only one way to interpret
16 m -- what was found and what wasn't found. Where's the usage
17 paraphernalia? Where are the, where are the utensils used to
18 use this stuff? there aren't any. Wouldn't a user have the
19 pipe on him? Wouldn't he have a lighter? Wouldn't he have
20 some rollin' papers? it's not there. Ladies and gentlemen, at
21 the end a the day I I appreciate your service, you've been
22 very attentive, you've been very attentive to me, I hope you
23 pay the same attention as the defense attorney as you did to
24 me and and and and I appreciate your service in this and and
25 at the end a the day after you deliberate we'll send all this

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1 evidence back to ya, take a look at it, go through the
2 pictures carefully, hold 'em up look at 'em, see what's there,
3 see what isn't there and at the end a the day I believe you'll
4 find the defendant guilty of all seven counts. Thank you.

5 THE COURT: Mr. Bean.

6 MR. BEAN: Thank Your Honor, may it please the Court.

7 THE COURT: Yes, sir.

8 MR. BEAN: Ladies and gentlemen, I wanna thank you as
9 well for spending your time doing this because as we talked,
10 uh, about to start with this is Isaac Lyles' day in court and
11 regardless of what you decide when you go back to deliberate
12 this is it for Mr. Lyles. If you get it wrong, whatever wrong
13 happens to be, he doesn't have a remedy. There appeals and
14 things like that but if a jury just makes a mistake and later
15 decides, somebody decides, you know, maybe I wasn't right
16 about that, can't do anything, so this is really important and
17 it's critically important for Mr. Lyles. Ya'll excuse me I I
18 make notes because when ya get old ya can't always remember
19 the things you're tryin' to, tryin' to say so forgive me for
20 lookin' down but let's just talk a minute.

21 First of all, I mentioned when we started about
22 reasonable doubt and and there a whole lot of convoluted
23 legal, uh, statements or descriptions or definitions of
24 reasonable doubt but basically reasonable doubt is just
25 something that would give a reasonable person a minute, uh, or

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1 a moment to hesitate, to say, Well, this but wait, maybe not
2 or not that but wait maybe so and and if in this case or on
3 any of the charges that Mr. Lyles is facing because there a
4 number of them if you have that moment of hesitation called
5 "reasonable doubt" then His Honor's gonna tell you that that
6 has to be resolved in favor of the defendant.

7 Now there are some things that are not in dispute
8 obviously and my friend alluded to some of 'em: Isaac was
9 arrested, we don't dispute that, Isaac had drugs and a gun on
10 him, we don't dispute that either, that's a fact. Isaac is
11 not here to say, I didn't have those things, but he is
12 absolutely not here to take the blame for something that is
13 not his that wasn't on him and of course what I'm talking
14 about there is the black bag.

15 Now think about what the State has has proven that that's
16 really without question. They arrested him, he and Mr. Wesson
17 ran outta the house. Now Mr. Wesson a course says he's not
18 guilty of anything so you wonder why he would bolt right out
19 the door, uh, when the police came in unless he had somethin'
20 to hide, we don't know what, but somethin', so he runs out,
21 Isaac runs out, ya notice that no police officer said along
22 the way when Isaac came out the door that he had a bag, there
23 wasn't, there wasn't anything about the bag. We know what he
24 had on him, we don't dispute that but there there was no
25 discussion or mention of a bag, they didn't even know about

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1 the bag because it was hangin' over the fence on the other
2 side of of, uh, those, uh, bushes as you saw in the picture.

3 Now you may remember that one of the police officers
4 said, pardon me one second, let me see if I can find it here,
5 here we go, that this is one of the things found in the bag, I
6 don't remember what it was and he said, Oh, I'm sorry this is
7 a mess 'cause there's fingerprint dust all over it. Well you
8 can bet that they did not find Isaac's fingerprints on
9 anything because you'd you'd a heard about it, somebody woulda
10 sat up here in the witness stand said, Oh, yeah, we dusted for
11 fingerprints, we found Mr. Lyles' fingerprints all over all
12 that stuff in the bag, wasn't any testimony about that, no
13 fingerprints at all, so now we've got Detective Kirby who is
14 is I think from everything I know a good officer and I think
15 he has opinions based on what he does and and what he's
16 learned and he says, Oh, there all kinds of things that drug
17 users and drug dealers do and don't do, typical things but not
18 all always, not always. For example, you could have drugs on
19 your person that you intended to consume and maybe you were
20 going to smoke marijuana sometime, not right then, maybe you
21 wouldn't have, uh, the paper that you roll it in or maybe you
22 wouldn't have a cigarette lighter or a book a matches unless
23 you were gonna use it right then but that doesn't mean you
24 weren't gonna use it, it doesn't mean you were gonna sell it
25 because A doesn't necessarily lead to B.

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1 Now they never said anything about, none of the police
2 did, about Isaac having possession of anything other than what
3 they found on him which obviously is is there, we don't
4 dispute that, so we're left with Mr. Wesson. Now some
5 witnesses are believable, some are not and your job as jurors
6 of course is to decide who or what they say is believable or
7 not, so thi -- think about Mr. Wesson just a minute. He he's
8 an admitted drug addict, okay, and and and he says, Oh yeah, I
9 I use drugs, I use drugs every day, I'm clean now but boy back
10 then I was, I was usin' drugs and and, you know, I I got 'em
11 from Isaac and I got 'em from, don't know where else he got
12 'em, but he got 'em and, uh, and then he says, I made a
13 statement to the police, ya'll heard that, and he said, Isaac
14 came over, asked if he could sell drugs at my house and and
15 and he did and and that's basically all he sa -- Oh, no, and
16 he did say, I I saw Isaac with a black bag. He didn't say, I
17 saw Isaac with drugs in a black bag, he didn't say, Isaac
18 brought drugs -- bought drugs and sold 'em every day, he
19 didn't say any a those things until he got in here today and
20 all of a sudden his memory got a whole lot better. Imagine
21 that. He hangs the bag on the fence. He keeps drugs in it.
22 I've seen 'em, I've used 'em, I've picked up the bag when he
23 send me out there to get it. I never looked, never reached in
24 there now, never looked but oh, yeah, I went and got the bag.
25 Nobody else came up to testify, none of the other people who

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1 were there, none of the police officers that he had this bag a
2 drugs, nobody did, nobody did. I'd go get the bag for him he
3 said and then he says, I thought this was really great, the
4 the the day that I moved in Mr. Lyles and some girl came over
5 and and she introduced him and he said, Hey, how 'bout let me
6 sell drugs outta your house. I'm sorry, I I just, I found
7 that a little bit incredible, how 'bout let me sell drugs
8 outta your house? Okay. And where's the girl? Then he said
9 Isaac talked to him, uh, at the s -- the same incident
10 although when he described it later the girl wasn't mentioned,
11 so maybe there was a girl, maybe there wasn't, maybe Isaac
12 made that comment to him but maybe he didn't. His testimony
13 is just basically not believable and its just as likely,
14 ladies and gentlemen, that that bag a drugs belonged to
15 Mr. Wesson if you wanna know the truth. I think those were
16 his drugs and he's tryin' to put it off on somebody else
17 that's what I think, now you make that decision obviously, not
18 me, but that's what I think, so reasonable doubt on some
19 things there's not any doubt, on some things there's a lotta
20 doubt and one a the things you can do because these are
21 charges you consider each one and you find what you think is
22 the truth on each charge, they can be different, that's
23 perfectly okay and perfectly fine and that's the way the
24 system works. You can believe what a witness says or if you
25 find it unbelievable you don't have to believe it, Mr. Wesson

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1 I think would fall into that category, or you can believe part
2 of what a witness says and you can disbelieve part of what he
3 says. I'm not sayin' that any of the police officers were
4 here told a story of any kind that wasn't true because I don't
5 think they would do that, Mr. Wesson however is a, is another
6 matter entirely, so what we are asking again is for you to
7 consider what doubt there might be on whether or not this bag
8 and these drugs belong to Mr. Lyles. If you think there's a
9 reasonable question that maybe not then he's not guilty a that
10 charge. The things he had on him you don't dispute those, if
11 you think those are, those are true as they certainly appear
12 to be then he's guilty a those charges but again, please
13 remember this is his only day in court, he can't come back if
14 ya'll get it wrong, there's nothin' that can be done, he's
15 he's gonna suffer the consequences. I appreciate ya'lls time,
16 thank you for listenin' and please listen to what His Honor
17 has to say, thank you.

18 THE COURT: Ladies and gentlemen of the jury, that
19 completes the arguments by the attorneys, uh, it next will be
20 my responsibility to charge you concerning the law. As you've
21 learned I have some things I have to go over with the
22 attorneys before I give that charge and so we'll take a short
23 break, you'll be allowed to go back to the jury room and as
24 always I'll instruct you don't discuss anything about this
25 case until I've asked you to do so. You may retire to the

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1 jury room.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Alright, concerning the charge I need to go
5 over some matters with the attorneys before we -- I give the
6 charge. Uh, as to the indictments for trafficking in cocaine
7 base and trafficking in cocaine, is the defense asking that I
8 charge lesser-included on those charges?

9 MR. BEAN: We are, Your Honor.

10 THE COURT: Alright, which lesser-includeds are you
11 asking for charge on? Possession with intent to distribute I
12 think would be the next lesser-included.

13 MR. BEAN: Yes. Uh, I think that would be the next
14 lesser-included on both if I'm not mistaken.

15 THE COURT: Is that what you're askin' me to ---

16 MR. BEAN: Yes.

17 THE COURT: --- charge on those?

18 MR. BEAN: Yes.

19 THE COURT: State have any objection to my charging on
20 those ---

21 MR. SPIVEY: No ---

22 THE COURT: --- the lesser-includeds?

23 MR. SPIVEY: --- no, sir, Your Honor.

24 THE COURT: Uh, as to possession with intent to
25 distribute marijuana, is there any lesser-included that the

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1 S -- defense is asking for a charge on?

2 MR. BEAN: Your Honor, I think, uh, we we are, yes, sir.
3 I think it would be possession, simple possession. I believe
4 that's the ---

5 THE COURT: Is there -- I'll ask to hear from the State
6 on that.

7 MR. SPIVEY: Yes, sir. Your Honor, I don't believe there
8 there's been really any testimony at all that this was just a
9 simple possession case. I think the majority, the
10 overwhelming of the evidence was that he distributed these
11 drugs regularly and all the paraphernalia that existed ---

12 THE COURT: Well I I'm mainly concerned with and and I
13 don't, one thing I don't have information on is the amount of
14 marijuana that was on his person.

15 MR. SPIVEY: Your Honor, that was in two bags, the total
16 amount was 5.8 grams a marijuana.

17 THE COURT: So that would exceed the presumption.

18 MR. SPIVEY: Your Honor, I'd say less than presumption.

19 THE COURT: Okay, so then if the jury were to determine
20 that the bag was not his ---

21 MR. SPIVEY: On his person? That it wa ---

22 THE COURT: The bag hanging on the fence was ---

23 MR. SPIVEY: Oh, ---

24 THE COURT: --- not his.

25 MR. SPIVEY: --- Your Honor, that amount a marijuana was

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1 63 grams of marijuana which was about two times the
2 presumptive amount.

3 THE COURT: I understand that but what I'm saying is the
4 jury could determine that the bag was not his ---

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

6 THE COURT: --- so what was on him would arise to simple
7 possession.

8 MR. SPIVEY: It -- I guess it could be, we would just ---

9 THE COURT: That Mr. Bean didn't dispute what was on him,
10 he admitted to the jury that that that that ---

11 MR. BEAN: That's correct, Your Honor, and ---

12 MR. SPIVEY: Yes, sir, just but but even though the
13 weight is less than presumptive amount we still believe it's
14 possession with intent to distribute. He's got nothin' to to
15 to ingest the marijuana with.

16 THE COURT: That's what he's charged with.

17 MR. SPIVEY: Yes, sir.

18 THE COURT: Well I will charge the lesser-included of
19 simple possession on the marijuana.

20 THE DEFENDANT: And ---

21 THE COURT: Alright, now that so you're asking for a
22 possession with intent to distribute charge on the cocaine
23 base and and cocaine and a simple possession charge on the
24 marijuana, is that right, Mr. Bean?

25 MR. BEAN: Yes, sir, ---

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1 THE COURT: Be sure ---

2 MR. BEAN: --- I ---

3 THE COURT: --- I've got that right.

4 MR. BEAN: Uh, I I'm sorry, I -- my client's telling me
5 somethin'.

6 THE COURT: Oh, you go ahead and do that then it was ---
7 (Attorney/client discussion held off the record.)

8 MR. BEAN: Uh, thank Your Honor, and, uh, -- well, go
9 ahead, I don't mean to jump the gun, I was just ---

10 THE COURT: Well, no, you didn't jump the gun, I'm just
11 tryin' to be sure I'm charging the lesser-includes that
12 you're requesting ---

13 MR. BEAN: Yes, sir, you are.

14 THE COURT: --- and and so my understanding was you are
15 requesting on the cocaine, crack cocaine a charge from
16 trafficking to possession with intent to distribute ---

17 MR. BEAN: Yes.

18 THE COURT: --- and on the trafficking in cocaine you're
19 asking for a lesser-included charge on possession with intent
20 to distribute.

21 MR. BEAN: Right.

22 THE COURT: And as to the marijuana you're asking for
23 simple possession.

24 MR. BEAN: Correct.

25 THE COURT: Okay. I'll I'll, I will charge those lesser-

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1 includeds. Alright.

2 (Whereupon, a discussion was held off the record.)

3 MR. BEAN: Your Honor, one other matter. Uh, the, I'm
4 not sure how you would wanna handle the, uh, the weapon since
5 it goes along with ---

6 THE COURT: We'll we put an instruction on the verdict
7 form that she's working on right now, uh, that would indicate
8 that if he were to be found guilty of the, the only one of the
9 crimes that involves a crime of violence is the trafficking
10 cocaine base ---

11 MR. BEAN: Right.

12 THE COURT: --- so it would require a guilty verdict on
13 that before you will even make that decision.

14 MR. BEAN: Right.

15 THE COURT: If there's no guilty verdict on that then we
16 instruct them not to, not to answer that question.

17 MR. BEAN: Thank Your Honor.

18 THE COURT: You'll you'll have a chance to look at the
19 verdict form before we submit it, she's she's completing that
20 as we speak since I I just added some lesser-includeds,
21 alright. Alright, bring the jury in. Just just one second
22 before we do that. I think possession with intent to
23 distribute the presumptive amounts on that on the ca -- in the
24 case of, uh, crack cocaine is 1 or more grams ---

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

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1 THE COURT: --- and, uh, in the case of, uh, ---

2 MR. SPIVEY: I believe it's ---

3 THE COURT: --- cocaine is 10 grains of cocaine?

4 MR. SPIVEY: No, s -- I believe it was 1 gram of cocaine,
5 1 gram of crack cocaine and 28 grams of marijuana but I I
6 could be wrong and ---

7 THE COURT: My my charge has 10 grains of cocaine, 1 gram
8 of crack cocaine and 28 grams or more of marijuana. You wanna
9 look that up just to be sure?

10 MR. SPIVEY: Yes, sir, Your Honor, I've got a ---

11 THE COURT: Wanna be sure we got that right, that's the
12 reason I brought it up.

13 (Pause.)

14 MR. SPIVEY: Your Honor, I I I do show it as 10 grains
15 although I I guess I was wrong 'bout that. This is gonna be
16 interestin', we didn't discuss what a grain was at all so ---

17 THE COURT: Well I s -- I I I noticed that we didn't
18 mention that but I do see that that's what the charge ---

19 MR. SPIVEY: I ---

20 THE COURT: --- defines it ---

21 (Cross-talk.)

22 MR. SPIVEY: --- see that, I I I'm checkin' it and I I I
23 think I'm wrong on the statute, that is correct, Your Honor.

24 THE COURT: Alright.

25 MR. BEAN: How how do we deal with that?

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1 THE COURT: Well I can, that's that's not a matter of
2 proof, that's a matter of science, that's a fact that we just,
3 it's, uh, I guess you gentlemen could stipulate at this point
4 in time as to what a grain is, ---

5 MR. SPIVEY: Your Honor, I I would ask ---

6 THE COURT: --- what 10 grains would constitute and, uh,
7 I'll be glad to charge the jury what your stipulation is or
8 the Court could make a finding of a, uh, judicial notice, ---

9 MR. SPIVEY: Yes, sir, ---

10 THE COURT: --- take ---

11 MR. SPIVEY: --- Your Honor.

12 THE COURT: --- judicial notice of of what a 10 grain
13 amount is.

14 MR. SPIVEY: Your Honor, ---

15 THE COURT: I'm not sure I know so maybe you oughta tell
16 me.

17 MR. SPIVEY: One grain ---

18 MR. BEAN: I don't know either.

19 MR. SPIVEY: --- is .0648 grams, so 10 of those would be
20 .648 grams.

21 THE COURT: You wanna, do you wanna check on that?

22 MR. SPIVEY: I have my chart, you're welcome to use it,
23 Google or whatever, Wikipedia or whatever we use these days
24 to ---

25 THE COURT: But again, it's -- that's a scientific

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1 matter, it's not somethin' that's subject to proof.

2 MR. SPIVEY: I don't wanna make him stipulate, I would
3 ask the judge if you will, Your Honor, respectfully please
4 take judicial notice of that fact. I I ---

5 THE COURT: Well as long as you gentlemen agree that I
6 can if it -- let's let's ---

7 MR. BEAN: We ---

8 THE COURT: --- let's look at it and if anybody wants to
9 get a computer and Google it, please do.

10 MR. BEAN: Your Honor, I I would, uh, ask that the Court
11 make that a a ---

12 THE COURT: Alright, s ---

13 MR. BEAN: --- finding and ---

14 THE COURT: --- do you agree that it is point whatever it
15 was 6, what whatever number you said.

16 MR. SPIVEY: Well it's 1 grain is .0648 and so I multiply
17 times 10 which would just be remove that that 1 0 ---

18 THE COURT: 6 ---

19 MR. SPIVEY: --- to tenth place.

20 THE COURT: --- 048?

21 MR. SPIVEY: 0648 is one grain, you multiply that times
22 10 should be .648.

23 MR. BEAN: Well ---

24 MR. SPIVEY: It's been a long time since I did any math
25 and I I ---

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1 MR. BEAN: --- so .648 ---

2 POLICE OFFICER: That's half ---

3 MR. BEAN: --- one grain, ---

4 POLICE OFFICER: --- half gram.

5 MR. BEAN: --- correct?

6 THE COURT: That's right .648 grams?

7 POLICE OFFICER: And below, right?

8 MR. SPIVEY: .648 grams is the way ---

9 MR. BEAN: Yeah, ---

10 MR. SPIVEY: --- I calculate it.

11 THE COURT: You ---

12 MR. SPIVEY: You ---

13 MR. BEAN: --- that's that's correct.

14 MR. SPIVEY: --- you move that zero.

15 MR. BEAN: Yeah, you just move ---

16 THE COURT: Do you -- so I'll I'll charge it as 10 grains
17 or .648.

18 MR. SPIVEY: 648 grams, ---

19 THE COURT: Alright.

20 MR. SPIVEY: --- yes, Your Honor. Thank Your Honor.

21 THE COURT: I noticed in my charge it dealt with grains
22 and I think that's what the statute says and I didn't hear
23 anything about grains to and it's in my head so, alright,
24 that's the reason I brought that up. Alright, bring the jury
25 in.

JURY CHARGE

1 (Whereupon, a discussion was held off the record.)

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

3 THE COURT: Alright, the record will reflect that the
4 jury has returned to the courtroom. Ladies and gentlemen, as
5 I told you it becomes my responsibility at this point in time
6 to charge you concerning the law to be applied in this case.
7 Uh, at the beginning of the case, I went over with you briefly
8 the indictments that are involved in this matter, I'm going to
9 go over with you again those indictments. Now the original
10 indictments will be given to you and you will be allowed to
11 take those into the jury room during your deliberation so that
12 you can review them specifically as to what the charges are
13 that have been brought in this case and for that reason I'm
14 I'm going to go over the indictments but I'm not going to read
15 them to you word-for-word, again you have the right to review
16 them at your leisure during your deliberations.

17 The first indictment I will discuss with you is the
18 indictment in Case Number 2013-4575, that indictment has two
19 counts or two allegations in it, the first count or allegation
20 is for trafficking in cocaine base. Now when I refer to
21 cocaine base in these indictments, I will tell you that, uh,
22 that's the legal word for what's commonly called "crack
23 cocaine" as opposed to powder cocaine. Now this indictment
24 states that Isaac Glenard Lyles did in Spartanburg County on
25 or about October 9 of 2012 knowingly sell, manufacturer,

JURY CHARGE

1 deliver, purchase or bring into the state or did provide
2 financial assistance or did otherwise aid, abet attempt or
3 conspire to sell, manufacturer, deliver, purchase or bring
4 into the state or did knowingly, actually or constructively
5 possess or did knowingly attempt to become in actual or
6 constructive possession of more than 10 grams of cocaine base,
7 a Schedule II controlled substance, in violation of Section
8 44-53-375 of the Code of Laws of South Carolina 1976 as
9 amended. Now that's the the allegation contained in Count One
10 of that indictment. Count Two states that Isaac Glenard Lyles
11 did in Spartanburg County on or about October 9 of 2012
12 possess or visibly display a firearm or visibly display a
13 knife during the commission or the attempted commission of a
14 violent crime, to wit, trafficking in cocaine base in
15 violation of Section 16-23-490 of the Code of Laws of South
16 Carolina 1976 as amended against the piece and dignity of the
17 state and contrary to the statute in such case made and
18 provided. Now I will tell you that under the statutes of this
19 state, uh, the offense of trafficking in cocaine base is
20 classified as what's called a "violent crime" so by law that
21 that particular offense is considered to be a violent crime.
22 The allegation in this second count alleges that Mr. Lyles did
23 either display or visibly display or possess a firearm in the
24 commission of a violent crime so that's the first indictment,
25 the two counts that are contained in that indictment.

JURY CHARGE

1 The next indictment we'll discuss is, excuse me, Case
2 Number 2013-GS-42-4574, that is for trafficking in cocaine,
3 uh, and again I, the distinction here is cocaine base is crack
4 cocaine, simple -- when it says simply cocaine that would be
5 cocaine in its powder form. This particular indictment states
6 that Isaac Glenard Lyles did in Spartanburg County on or about
7 October 9 of 2012, and it goes through the same language as
8 contained in the other indictment, that he knowingly sold,
9 manufacture, cultivate, deliver, purchased or brought into the
10 state or provided financial service or did otherwise aid,
11 abet, attempt or conspire to sell, manufacturer, cultivate,
12 deliver, purchase or bring into the state or did knowingly,
13 actually or constructively possess or did knowingly attempt to
14 become in actual or constructive possession of more than 10
15 grams of cocaine, a Schedule II controlled substance, in
16 violation of Section 44-53-370 of the Code of Laws of South
17 Carolina, 1976 as amended against the piece and dignity of the
18 state and contrary to the statute in such case made and
19 provided so that's the second indictment that I'll go over
20 with you.

21 The third indictment, this is Case Number
22 2013-GS-42-4573, this is possession with the intent to
23 distribute, uh, and in this case that particular indictment is
24 referring to the drug of marijuana. This indictment again
25 uses the same language as the others and I won't go over all

JURY CHARGE

1 that language about possessing and intending to possess,
2 you'll you'll be able to read that, but this refers to a
3 quantity of marijuana, a Schedule I control substance, in
4 violation of Section 44-53-370 of the Code of Laws of South
5 Carolina 1976 as amended, such distribution having not been
6 authorized by law against the peace and dignity of the state
7 and contrary to the statute in cu -- such case made and
8 provided. Those are the three indictments that are before the
9 Court, uh, that allege the either trafficking of cocaine base
10 or cocaine or the possession with intent to distribute
11 marijuana.

12 The other indictments, and there are three other
13 indictments, all have to do with possession with intent to
14 distribute a drug within one-half mile of a s -- public
15 school, uh, and in this particular case and I'm not going to
16 to read each of them, there is one indictment which is
17 Indictment Number 13-GS-42-4570, this indictment has to do
18 with an allegation that, uh, Mr. Lyles did on October 9th of
19 2012 distribute, sell, purchase, manufacturer or unlawfully
20 possess with the intent to distribute, this is a co --
21 quantity of cocaine and it alleges that was, it was within a
22 one-half mile of the grounds of a public or private
23 elementary, middle, secondary school, public playground and it
24 goes on with the language, that's what that indictment
25 alleges, then the next indictment is Case Number 2013-4571 and

JURY CHARGE

1 this alleges again possession with the intent to distribute
2 and in this case marijuana within a one-half mile radius of a
3 public school, uh, among other public ent -- entities. And
4 the last one of these three 2013-GS-42-4572, this alleges the
5 possession with intent to distribute cocaine base or crack
6 cocaine within a one-half mile, uh, radius of a public school
7 and in each case they allege Cleveland Elementary School as
8 the school involved, so those are those three indictments, now
9 that covers all of the indictments in this case, the the
10 formal indictments that have been issued, and I remind you the
11 fact that a defendant has been arrested, charged and even
12 indicted in a case, uh, is not evidence in the case and cannot
13 be considered by you as evidence of guilt in the case nor does
14 the fact that indictments have been issued create any
15 inference of guilt, uh, the documents are simply the formal
16 documents that inform the defendant of the charges lodged
17 against him, it informs this court of the charges that are to
18 be tried in this case.

19 Now each indictment charges a separate and distinct
20 offense against the defendant and each indictment must be
21 decided by you by a separate verdict as to each indictment and
22 you should consider each indictment and the evidence in the
23 case concerning each indictment separately from the others; in
24 other words, a defendant can either be acquitted or convicted
25 on any or all of these indictments, uh, you'll be required to

JURY CHARGE

1 s -- again, write a separate verdict as to each indictment
2 that's been presented to you in the case.

3 The defendant has pled not guilty to each of those
4 indictments, that plea under the laws in the Constitution of
5 this state puts the burden of proof in this case upon the
6 State. A person charged with the commission of a crime no
7 matter how serious that crime might be is always presumed to
8 be innocent of the crime. It's an important rule of law that
9 a defendant in a criminal case will always be presumed
10 innocent of the crime for which an indictment has been issued
11 until and unless proof has been presented to you that
12 convinces you of its truth and of the defendant's guilt beyond
13 a reasonable doubt. The presumption of innocence doesn't end
14 when you begin your deliberations. People describe the
15 presumption of innocence that defendants have in this
16 courtroom somewhat like the robe that I wear into the
17 courtroom; in other words, that presumption of innocence is
18 about the defendant's shoulders at the beginning of the trial,
19 it remains about the defendant's shoulders throughout the
20 trial, it accompanies the defendant into the verdict, uh, to
21 the jury room as you go to seek your verdict in the case, it
22 remains about the defendant's shoulders until such time as it
23 has been stripped from him by proof that satisfies you of the
24 defendant's guilt beyond a reasonable doubt.

25 Now the presumption of innocence is not just a legal

JURY CHARGE

1 theory and it's not just a legal phrase, it's a substantial
2 right that every defendant is entitled to until and unless
3 you, the jury, are satisfied from the evidence of the
4 defendant's guilt beyond a reasonable doubt. Now you may ask
5 yourself, Well what do ya mean, Judge, by that phrase "proof
6 beyond a reasonable doubt"? What do you mean is a, what is a
7 reasonable doubt you may ask yourself. I'll tell ya that
8 under the law a reasonable doubt has been defined as that kind
9 of doubt that would cause a reasonable person to hesitate to
10 act and the State has the burden of proving the defendant's
11 guilt beyond a reasonable doubt.

12 Now I wanna clear up one thing for ya so you can maybe
13 put this out of your mind 'cause it is confusing to people
14 that don't deal with this all the time, uh, if this were a
15 civil case where someone was seeking monetary damages either
16 for breach of contract or failure to pay a debt or somebody
17 had gotten injured at someone else's hand, somethin' like that
18 where they're seekin' monetary damages, when you've got a
19 civil case where somebody's seeking monetary damages, the
20 standard of proof in those cases is proof by the greater
21 weight of the evidence, sometimes it's referred to as the
22 "preponderance of the evidence" and all that means is that in
23 civil cases if the scales of justice tilt ever so slightly in
24 favor of the plaintiff or ever so slightly in favor of the
25 defendant, the side to which those scales tilt is entitled to

JURY CHARGE

1 a verdict, that's not the standard of proof in a criminal
2 case. The standard of proof in a criminal case is more
3 powerful than that in a civil case, again, it is proof beyond
4 a reasonable doubt.

5 Now there's not many things that go on in human life that
6 can be proven beyond any doubt whatsoever and the State does
7 not have to prove its case beyond any possible doubt. What
8 I'll tell you is after you've considered all of the evidence
9 in the case and you've weighed all the evidence in this case
10 if you are firmly convinced of the defendant's guilt beyond a
11 reasonable doubt, you must find the defendant guilty, however
12 on the other hand, if you think there's a real possibility
13 that the defendant is not guilty then you must give the
14 defendant the benefit of the doubt and find the defendant not
15 guilty.

16 Now I remind you during the trial we've had different
17 duties to perform, certain duties to perform, and it's been my
18 responsibility to preside over the trial and I've made some
19 rulings concerning some issues on evidence and questions that
20 were being asked, I will caution you again don't take from
21 anything that I do in the discharge of my duties to somehow
22 indicate to you that I have a preference or an opinion as to
23 how you determine the facts in this case, I'm not allowed an
24 opinion on the facts and I don't have an opinion as to how you
25 determine the facts in this matter and I hope you realize that

JURY CHARGE

1 in doing my job sometimes I've had to comment on certain
2 things in the trial but it's not my intention and I sh --
3 don't take from those facts to show that I have an opinion as
4 to how you determine the facts in this case. I have the
5 additional duty of charging you on the law and I told you at
6 the beginning of the law -- cour -- case the same law that
7 makes you the sole judges of the facts, that same law makes me
8 the sole judge of the law in this case. The law as I give it
9 to ya now is the law that, the only law that you should use in
10 making a decision in this case and again, if you have notions
11 as to what the law is or what it ought to be, leave those
12 notions outside of the jury room, take the law as I give it to
13 you and then apply it to the facts as you decide those facts
14 to be, that should put you in a position to be able to render
15 a a verdict in this matter.

16 Now you're the sole and exclusive judges of the facts in
17 this case as I've told you, uh, and so again, please don't
18 take, uh, anything from what I do even during this charge to
19 indicate that I have an opinion, you see, as jurors it's your
20 duty to evaluate the evidence, determine the effect of it, the
21 value, the weight and the truth of the evidence that you've
22 heard in the case, that is your responsibility in this matter.
23 Now in doing that you have the right to consider two types of
24 evidence and let me explain to ya what we mean by two types of
25 evidence. Uh, first of all, we have what is called "direct

JURY CHARGE

1 evidence". Now direct evidence under the law is evidence
2 given by a witness, testifying witness, who claims to have
3 direct knowledge of the facts about which that witness is
4 testifying, that's somebody who claims to have actually
5 experienced, seen it, watched it, heard it, somehow has direct
6 knowledge of the fact that's thought to be proven, that's
7 someone tell -- testifies directly on the issue, uh, that's
8 before you to decide, that's what we mean by direct evidence.

9 Now the other kind of evidence is what we call
10 "circumstantial evidence" and you have a right to consider
11 both types of evidence in reaching your verdict.
12 Circumstantial evidence is proof of a chain of facts or
13 circumstances that indicates the existence of some other fact,
14 it's been described under the law as proof of collateral facts
15 from which a main fact could be reasonably inferred. Now
16 that's some pretty fancy lawyer language and I like to use a
17 very simple example of what, uh, we might mean by proof of a
18 fact by circumstantial evidence or by s -- collateral facts.
19 Uh, let's say last night before you went to bed you walked
20 over to the window in your bedroom and you looked outside,
21 stars were shining, it was a pretty night outside, you went to
22 bed, you slept well all night, didn't wake up at all. The
23 next morning you got up and you walked over to the same
24 window, you looked outside, now the sun may have come up, it
25 may -- sun mighta been shinin' but when ya looked a little

JURY CHARGE

1 closer you noticed that there's water dripping from all the
2 trees, you notice the grass in front of your home is wet or
3 the road in front of your home is wet, the, uh, there's
4 puddles in the driveway or in the road out there that weren't
5 there the night before. Now you slept well all night, you
6 didn't wake up so you didn't hear it rain, you didn't see it
7 rain so you can't te -- te, uh, speak directly as to whether
8 it rained or not but from the facts that ya know to be true:
9 the wet trees, the dripping, the puddles, from those facts,
10 those collateral facts you could infer that at some time
11 during the night it in fact rained, so that's what we mean by
12 proof of a fact by inference or b -- from collateral facts
13 where you infer some other main fact.

14 Now the law doesn't make any distinction between the
15 weight or the value that you, the jury, can give to either
16 direct or circumstantial evidence and it doesn't require a
17 greater degree of certainty for circumstantial evidence than
18 that of great, uh, direct. I will tell you that you, the
19 jury, should weigh all of the evidence in the case, you give
20 it the weight you think it deserves and after you dec -- weigh
21 the evidence if you are firmly convinced of the defendant's
22 guilt beyond a reasonable doubt, you must find the defendant
23 guilty; on the other hand, if you think there's a real
24 possibility that the defendant is not guilty, you must give
25 the defendant the benefit of that doubt and find the defendant

JURY CHARGE

1 not guilty.

2 Doing your job as the finder of fact will require that
3 you determine the credibility or the believability of the
4 witnesses you've heard in this case or the testimony you've
5 heard and that's what credibility means, it means
6 believability. I told you to use your good common sense at
7 the beginning of the trial in making that determination and
8 I'll urge you to do that again. Use your good common sense in
9 deciding the credibility or the believability of the testimony
10 that you've heard.

11 In determining the believability of witnesses whose
12 testified, as the sole judges of the facts you have the right
13 to believe all of, part of or none of what a witness may may
14 have said, you have the right to believe one against all the
15 others or all the others against one, you're the sole judges
16 of the facts, therefore, you're the sole judge of the
17 credibility or believability of what you heard. Usin' your
18 common sense you can make such, uh, determinations as whether
19 or not a witness, uh, has a stake in the outcome of the case
20 or whether the witness may have had a bias or prejudice one
21 way or the other in testifying, uh, you have the right to
22 determine whether the witness actually had the ability to know
23 the facts about which the witness testified and you observed
24 the witnesses as they spoke, as they delivered their
25 testimony, use any a those factors I mentioned, again, use

JURY CHARGE

1 your good common sense and make a decision or a determination
2 as to the credibility of the witnesses and the weight you
3 choose to give to the testimony given by each of the
4 witnesses.

5 Now during the trial we had a couple a witnesses who were
6 qualified as experts and I told you when we did the first one
7 that I'd talk to you a little bit more about that when I
8 charged you on the law and I told you at that time the rules
9 that govern evidence and the introduction of evidence
10 ordinarily do not permit witnesses to state opinions from the
11 witness stands or or draw conclusions from from, uh, their
12 testimony. An exception to that rule is made for what, uh,
13 witnesses that we call "experts" (coughs), excuse me, that's a
14 witness who because of their education or experience, uh, has
15 become an expert in some art, science, field or profession,
16 uh, and as to those witnesses they're allowed under the rules
17 to state an opinion, uh, as to relevant and material matters
18 which were -- are within the area of their expertise, they
19 also have the right to state their reasons for their opinions.
20 You, the jury, should consider expert testimony received in
21 evidence in this case just like any other testimony or
22 evidence you've heard in the case, you give it the weight you
23 think it ought to re -- ought to receive. If you decide that
24 the opinion of an expert is not based on sufficient education
25 or experience or if you just conclude that the reason given by

JURY CHARGE

1 an expert in support of his opinions or her opinions are not
2 sound or if you decide that the opinion is outweighed by other
3 evidence, you may disregard an opinion by an expert in its
4 entirety; in fact, you're not required to to accept an
5 expert's opinion even though it might not be contradicted by
6 other evidence in the case. As the sole judges of the facts,
7 you should, uh, give the statements or testimony of all
8 witnesses including experts the weight you think that
9 testimony deserves.

10 Now I'm going to instruct you and emphasize to ya another
11 fact and that fact is that the the fact that the defendant did
12 not testify in this case is not a factor to be considered by
13 you, the jury, in any way in your deliberations and your
14 consideration of the question of guilt or innocence in this
15 case, it should not be considered by you in any manner
16 whatsoever. A defendant has a constitutional right to remain
17 silent. The assertion of one's right to remain silent must
18 not be considered by you in your deliberations. I repeat,
19 under your oath as jurors you are to draw no conclusion
20 whatsoever from the fact that the defendant did not testify.
21 The fact that the defendant did not testify should not even be
22 discussed by you in your deliberations. I told you earlier
23 and it remains true that the burden of proof in this case is
24 solely upon the State. A defendant is not required to prove
25 himself innocent in this matter and the burden of proof

JURY CHARGE

1 remains with the State to prove the defendant guilty beyond a
2 reasonable doubt throughout the trial.

3 Now in a few minutes I'm going to start going over the
4 law that has to do specifically with these charges, up to this
5 point in time I've been telling you a lotta general principles
6 under the laws and things of that nature. I'm going to go
7 over one other general principle under the law but I also want
8 to make you aware that when I go over the charges, the actual
9 issues that are, that are to be decided by guilt or innocence,
10 uh, you should be listening to those particular charges for
11 the elements, the things that are necessary to be proven for
12 the, for the State to prove its case. One of those elements
13 in all all crimes, almost all crimes, but you'll hear it as I
14 go over it, is the element of intent, criminal intent, and I
15 will tell you that in order to establish criminal liability,
16 criminal intent of some kind is required; for example, that's
17 the mental state required to be proven in order for the State
18 to prove a particular offense has occurred and when I talk
19 about mental state it's the mental state of the defendant at
20 the time the events occurred. Criminal intent must be proven
21 by the State again by beyond a reasonable doubt and criminal
22 intent is always a matter however that must be determined by a
23 jury from the facts and circumstances surrounding the event
24 and the reason I say that is there's no way that we can be
25 present when an event occurs and open up someone's head and

JURY CHARGE

1 look at their brain and be able to tell exactly what they
2 intended to do when the events occurred, that's not
3 scientifically or reasonably possible, so for that reason
4 criminal intent is always a matter that must be determined by
5 a jury from the facts and circumstances surrounding the
6 situation, so therefore it should b -- always be a matter that
7 is determined by inference, that's how you make a
8 determination as to whether or not an element in a crime
9 requiring intent was present, so therefore it's not necessary
10 for the State to establish by direct or positive evidence what
11 the intent was. Intent may be established for by inference,
12 the same way as any other fact, taking into consideration the
13 acts of the parties and all the facts and circumstances of the
14 case. Now I will tell you that criminal intent is a mental
15 state, it's a conscious wrongdoing, it's up to you to
16 determine what the defendant intended to do based on the
17 circumstances that have been shown to you to have existed at
18 the time of the alleged event.

19 Now the first, uh, thing I'll go over with you is the
20 offense of trafficking. There are two indictments that allege
21 trafficking in this case. The defendant is charged with
22 trafficking in cocaine base and in cocaine. The State must
23 prove beyond a reasonable doubt that the defendant knowingly
24 sold, manufactured, cultivate and deliver, purchased, brought
25 into the state, provided financial assistance or otherwise

JURY CHARGE

1 aided, abetted, attempted or conspired to sell, manufacturer,
2 cultivate, deliver, purchase or bring into the state or was in
3 actual or constructive possession knowingly a -- or knowingly
4 attempt to become in actual or constructive possession of
5 cocaine base and cocaine. The State must also prove beyond a
6 reasonable doubt that the amount of, uh, cocaine, uh, crack
7 cocaine was 10 grams or more but less than 28 grams, that's in
8 the case of crack cocaine, it must be 10 grams or more but
9 less than 28 grams. In the case of cocaine, the State must
10 also prove beyond a reasonable doubt that the cocaine or any
11 mixture containing cocaine was 10 grams or more but less than
12 28 grams.

13 Now I'm going to go over another charge at this point in
14 time that's included in that indictment that I went over with
15 you concerning trafficking in crack cocaine and that is the
16 possession of a firearm during the commission of a violent
17 crime because I've told you that the offense of trafficking in
18 crack cocaine is classified under the law as a violent crime,
19 excuse me. The State in that case must prove beyond a
20 reasonable doubt that the defendant was in possession of a
21 firearm or visibly displayed what appeared to be a firearm
22 during the commission of a violent crime and is -- and the
23 defendant is convicted of committing the violent crime as
24 defined under Code Section 16-160 and I will instruct you as a
25 matter of law that trafficking in cocaine base or crack

JURY CHARGE

1 cocaine is defined as a violent crime under Code Section
2 16-160 of the Code of Laws of South Carolina. Now the term
3 "firearm" means any gun, automatic rifle, revolver, pistol or
4 any weapon which will or is designed to or may be readily
5 converted to expel a projectile, so that's the definition of a
6 firearm in in that statute.

7 Now the defendant is also charged with possession with
8 intent to distribute marijuana and I will tell you that also
9 and that this is, let me be sure I try to make this clear, in
10 the case of the two trafficking cases, if you find that the
11 State did not prove trafficking in those drugs, you will have
12 the right and on the verdict form to consider whether or not
13 the State improved what is called a "lesser-included offense"
14 under those charges. Under the law there are main offenses
15 and then there can be other offenses included in that but
16 lesser and I'm going to give you the option if you find the
17 defendant not guilty of trafficking or finding the defendant
18 guilty of possession with intent to distribute both crack
19 cocaine and powder cocaine, so if you determine that the State
20 has not proven trafficking, uh, in crack cocaine or cocaine
21 beyond a reasonable doubt then you should consider whether the
22 State has proven beyond a reasonable doubt that the defendant
23 is guilty of possession with intent to distribute those drugs.
24 Possession with intent to distribute contains all of the
25 elements of trafficking except the amount of drug involved is

JURY CHARGE

1 different; in addition, the State must prove beyond a
2 reasonable doubt that the defendant had the intent to
3 distribute those drugs.

4 Now dis -- distribute means to deliver other than by
5 means of administering or dispensing a drug. Intent may be
6 shown by acts and conduct of the defendant and other
7 circumstances from which you could reasonably infer intent.
8 In determining whether the defendant had the intent to
9 distribute the drug, you may consider the circumstances
10 surrounding the possession, you may consider the amount of the
11 substance alleged to have been possessed, the manner in which
12 it was allegedly po -- possessed, the place where it was
13 allegedly possessed and any other factors which you consider
14 to be infor -- important, you must find that the defendant did
15 not intend to have the drugs in this case solely for his own
16 use.

17 Now possession of, uh, 28 grams or more, uh, uh, 28 grams
18 or one ounce of marijuana or 10 grains which is .6048 grams of
19 cocaine or 1 or more grams of crack cocaine creates an
20 inference that the defendant possessed those drugs with the
21 intent to distribute it. This inference does not relieve the
22 State from proving beyond a reasonable doubt that the
23 defendant had the intent to distribute, it simply is an
24 evidentiary fact to be taken into consideration by you along
25 with the other evidence in this case and be given the weight

JURY CHARGE

1 you decide that it should have.

2 Now the defendant is also charged in the three other
3 indictments with, uh, distribution of drugs that in this case
4 the cocaine, cocaine base and marijuana, that is, possession
5 with intent to distribute within a one-half mile of a school
6 or park. The State must prove in those cases beyond a
7 reasonable doubt that the defendant distributed, sold,
8 purchased, manufactured or unlawfully possessed with the
9 intent to distribute cocaine base, marijuana and cocaine while
10 in, on, or within one-half mile of the grounds of a public or
11 private elementary, middle or secondary school, in this case
12 the allegations allege that school in the indictment to be
13 Cleveland Elementary School. The person must have knowledge
14 that he is, he or she is in, uh, on, or within one-half mile
15 of the grounds of a public or private, elementary, middle or
16 secondary school, uh, at the time of the alleged event.

17 Now, ladies and gentlemen, as to each matter that I'm
18 going to present to you, there are going to be two possible
19 verdicts, that is, either not guilty or guilty and I will go
20 over with the foreperson of the jury that form once I I have
21 have finished my charge and let's see, I'm gonna inform
22 Mr. Summers you're going to be the foreperson of the jury,
23 that means you'll be the person who will be responsible to see
24 that the jury conducts its deliberations. If during the
25 deliberations the jury has any questions, you will be

JURY CHARGE

1 responsible to write that question or those questions on a
2 piece of paper, knock on the door, give it to the bailiff and
3 submit it to me, you'll also have the responsibility of
4 completing the verdict form once verdicts have been reached on
5 the questions that I will present to you, uh, and you'll
6 record those verdicts on the form as I direct and then you'll
7 sign it once the verdict form has been completed, once that's
8 done you'll inform the bailiff that a verdict's been reached,
9 you'll be returned to the courtroom in order for us to receive
10 a verdict.

11 Now as to questions by the jury I will tell you I can't
12 answer every question you might have during deliberations, I
13 can't get involved in your decisions on the facts, I've told
14 you that. I can answer questions concerning the charge that I
15 given you on the law, I can also answer questions, certain
16 questions about the procedure that we followed and some
17 questions, limited questions about the evidence.
18 Mr. Foreman, don't edit any question the jury has, you submit
19 whatever question the jury has to me, I'll decide what the
20 appropriate answer ought to be to that question if I can
21 answer it at all.

22 Now your verdict has to be unanimous, each and every one
23 of you must agree upon the verdict and that as -- is as to
24 each question that I pose to you on the verdict form, so that
25 means all of you must agree upon the verdict before it becomes

JURY CHARGE

1 the verdict of the jury, only then will the foreman record the
2 verdict and inform the Court that a verdict has been reached.

3 I've gone over a lotta things with ya, I wanna be sure I
4 haven't misspoken, you have a right to have the exhibits in
5 the jury room with you and so I'm going to be sure that we
6 have an agreement as to what's in the record and so that only
7 properly admitted exhibits go back for your consideration, so
8 I've got some housecleaning -- keeping matters to go over with
9 the attorneys one more time, so I'm gonna instruct the foreman
10 do not allow discussions to begin at this point in time, I'm
11 gonna ask you to retire to the jury room one last time, I'll
12 bring you back for final instructions shortly. You may retire
13 to the jury room.

14 (The following takes place outside the presence of the
15 jury.)

16 (Whereupon, a discussion was held off the record.)

17 THE COURT: Alright, any objection to the charge from the
18 State?

19 MR. SPIVEY: Your Honor, I I I -- it may just be it it
20 been a long two days, I I wanna make sure it's correct though,
21 the conversion that you read to them, did -- was it .648? I
22 thought there was 0 in there and I wanna make sure ---

23 THE COURT: What what is on ---

24 MR. SPIVEY: --- that we get ---

25 THE COURT: --- my ---

MOTIONS AND MATTERS

1 MR. SPIVEY: --- it correct.

2 THE COURT: --- form is .648 -- 6408. Let me, let me
3 find it in here, just a second. It was .6048 is what I read
4 to them, I thought I read to 'em.

5 MR. SPIVEY: I, Your Your Honor, I think it's .648.

6 THE COURT: So there is no 0, it's .648.

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

8 THE COURT: I'll make that correction.

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

10 THE COURT: Any objection, Mr. Bean?

11 MR. BEAN: No, Your Honor, I I think that's correct, we
12 just, we got into so many numbers, ---

13 THE COURT: That that ---

14 MR. BEAN: --- I wrote ---

15 THE COURT: --- I wrote it do -- I wrote it down wrong
16 when we talked about it earlier 'cause I I read what was
17 there. I'll make that correction. Alright, anything else?

18 MR. SPIVEY: No object -- no objection, Your Honor.

19 THE COURT: Any objection from the ---

20 MR. BEAN: No, Your Honor.

21 THE COURT: --- defense? Alright, I'll ask you to come
22 up and let's segregate the exhibits, be sure we only have
23 properly admitted exhibits. Uh, we're about to print the
24 final verdict form, I'll let you take a look at that.

25 (Whereupon, a discussion was held off the record.)

JURY CHARGE

1 THE COURT: Verdict form's fairly complicated so' when we
2 get it I want you to look over it careful.

3 MR. SPIVEY: Yes, sir.

4 (Whereupon, a discussion was held off the record.)

5 THE COURT: Alright, gentlemen, c'mon up, let's take a
6 look at verdict form.

7 (Whereupon, a bench conference was held off the record.)

8 THE COURT: Alright, let's bring the jury in, please.

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

10 THE COURT: Alright, the record will reflect that the
11 jury has returned to the courtroom. Uh, one thing that I did
12 not go over with you when I talked to you about lesser-
13 included offenses, I explained to you the charge, the charges
14 in the indictments are trafficking in cocaine base or crack
15 cocaine and trafficking in cocaine and I also will give you
16 the alternative if you find the defendant not guilty of those
17 offenses to consider whether or not the defendant would be
18 guilty of the lesser-included offense and that is possession
19 with intent to distribute those two drugs, as to marijuana the
20 indictment is possession with the intent to distribute
21 marijuana. I'm going to give you an option there if you find
22 him not guilty of possession with the intent to distribute
23 marijuana to decide whether or not he is guilty of the
24 lesser-included offense of what's called "simple possession"
25 or possession of marijuana, so that will be the lesser

JURY CHARGE

1 included offense there.

2 Now possession of of marijuana simply means that the
3 defendant was in possession of an amount of marijuana, uh, the
4 substance marijuana. Now let me mention one thing to ya when
5 we talk about possession of a drug. Possession of a drug can
6 be either actual or constructive possession under the law and
7 let me explain to ya what that means and possession in all a
8 these cases and each of the charges has to be proven, there
9 has to be possession of a drug, there are different amounts
10 involved in the different drug, different charges, but
11 possession is an element of all of the crime. To prove
12 possession the State must prove beyond a reasonable doubt that
13 the defendant had both the power and the intent to control the
14 disposition or use of the drug and possession again can be
15 actual or constructive. Now actual possession means that the
16 drug was in the actual physical custody of the defendant.
17 Constructive possession means that the defendant had dominion
18 and control over the drug or the right to exercise dominion
19 and control ever -- either over the drug itself or over the
20 property on which the drug was found.

21 Now mere presence at a scene where drugs are found is not
22 enough to prove possession. Actual knowledge of the presence
23 of a drug is strong evidence that the defendant had somehow
24 intended control of its disposition or use. A defendant's
25 [sic] knowledge and possession can, again can be inferred from

JURY CHARGE

1 the facts and circumstances that were shown, uh, at the time
2 of the incidents, uh, and it can be inferred when a substance
3 is found on property under the defendant's control; however,
4 this inference is simply an evidentiary fact to be taken into
5 consideration by you along with the other evidence in the
6 case, you give it the weight that you think it deserves and I
7 will tell you that under the law two or more persons can have
8 joint possession of a drug at a time and a course the State
9 must prove beyond a reasonable doubt again, uh, the element of
10 possession where it's required in these charges.

11 There was one other thing that I need to mention to ya,
12 let me go back over, uh, these amounts because I wanna be sure
13 that, uh, I haven't confused, it'll take me just a second to
14 get to the right locations. Under the charge of trafficking
15 the drugs I will tell you that in the case of crack cocaine or
16 cocaine base one of the elements that the State has to prove
17 in trafficking is that the amount of the drug was 10 grams or
18 more but less than 28 grams. In the case of cocaine, the
19 amount must be 10 grams or more but less than 28 grams, that's
20 trafficking in cocaine.

21 Now possession with the intent to distribute the amounts
22 of drugs that, uh, are involved in that, uh, would be, uh, in
23 the case of cocaine it's 10 grains and that translates to .648
24 grams of cocaine. In the case of crack cocaine, uh, 1 or more
25 grams of crack cocaine creates an inference that the defendant

JURY CHARGE

1 possessed the drug with the intent to distribute and a course
2 that's an inference that you can consider along with all the
3 other evidence, you give it the weight you think it deserves
4 in reaching a decision in this this case, so those are the
5 weights that we're talking about. In the case of marijuana,
6 uh, in order to possess with the intent to distribute, the
7 amount there must be 28 grams or 1 ounce of marijuana, so
8 those are the amounts of the drugs that we're talking about
9 for trafficking, for possession with intent to distribute and
10 then of course in simple possession it's simply an amount of
11 marijuana, it doesn't require any particular amount.

12 Now I'm gonna pass over to the foreperson the verdict
13 form and, sir, let me go over this with ya so that I'm sure
14 you understand it, it's pretty, it's little complicated so I
15 wanna be sure we got it. At the top you'll see the state and
16 county where we're located and the court that we're in, the
17 caption states it's the State of South Carolina against
18 Mr. Isaac Lyles. Uh, there are several indictments so there's
19 several questions. Question Number 1 that's for the
20 indictment for possession with intent to distribute marijuana
21 and again the fact that I put the choices for the verdict in
22 any order on this form shouldn't be taken by you to indicate
23 that I have a preference as to either verdict guilty or not
24 guilty, this is the order that I put 'em on every form I
25 prepare, I've been doin' it about ten years so they've all be

JURY CHARGE

1 the same, so that indicates no preference in this case, so if
2 you find the defendant guilty of that charge, that would
3 answer that question, below that it explains, however, if you
4 find the defendant not guilty of possession with intent to
5 distribute then you should consider the lesser-included charge
6 which is the simple possession of marijuana and that would be
7 guilty or not guilty on that charge.

8 Now we'll go to the next one Number 2 and this is the
9 indictment for trafficking in cocaine and again, you have a
10 choice of either finding the defendant not guilty or guilty of
11 the main indictment. Under that Subsection (a) tells you if
12 you find the defendant not guilty of trafficking in cocaine
13 then you should consider the lesser included charge of
14 possession with intent to distribute. Now if you find him
15 guilty then you would have answered the question as to that
16 indictment. You understand what I'm saying?

17 JURY FOREPERSON: Yes.

18 THE COURT: Alright. Now the next case, uh, is and again
19 the choice on possession with intent to distribute is guilty
20 or not guilty. The next one is the indictment on trafficking
21 in cocaine base or crack cocaine, again, the choices on the
22 main indictment are not guilty or guilty. If you find the
23 defendant guilty of that charge in Subparagraph (a), you will
24 see that you need to go on and consider verdict on, the
25 verdict on Question Number 4, turn the page and you'll see

JURY CHARGE

1 that Verdict Number 4 has to do with the possession of a
2 firearm during the commission of what's defined as a violent
3 crime. If you find the defendant not guilty of trafficking in
4 Question 3 then you cannot issue a verdict in Number 4 because
5 you did not find him guilty of the violent crime. You
6 understand that distinction?

7 JURY FOREPERSON: Yes.

8 THE COURT: Now if you find him not guilty, you also,
9 well even though you can't consider the possession of a
10 firearm, you should consider the lesser-included offense of
11 possession with intent to distribute and that's the Question C
12 at the top a the next page.

13 Now Question Number 5 that's possession with intent to
14 distribute cocaine within a half mile of a school or or a
15 public building, again, and there's then 5, 6 and 7 are the
16 three questions concerning the proximity charges is what
17 they're referred to, the charges of of just di -- possession
18 with intent to distribute within a half mile of a school.

19 Now once you've answered all of the questions you would
20 sign the form at the end, knock on the door and let the ju --
21 ver -- uh, bailiff know you've completed the verdict. Do you
22 understand the verdict?

23 JURY FOREPERSON: Yes, sir, I ---

24 THE COURT: Okay. Now I'm gonna ask you at this time to
25 to retire to begin your deliberations. We're going to give

JURY CHARGE

1 you the evidence, I'll ask you not to attempt to open any of
2 the evidence as far as the drugs and that sorta thing are
3 concerned. The weapon has been opened, it has a safety, uh,
4 bar through it, don't attempt to remove that, uh, I hate to
5 tell this but about 15, 20 years ago we had a judge here who
6 was messing with some evidence and a gun went off, there's
7 still a hole in the wall back there, it shot a hole in the
8 wall, so don't play with the gun, don't try to take it apart,
9 uh, we had judge learn the hard way here, wasn't me, another
10 judge, but but be careful with those things, they deserve
11 respect and let's don't, let's not mess with those things.

12 Now we're gonna send that back to, uh, to -- with you,
13 uh, to the jury room so you'll begin deliberations. Now,
14 ma'am, you're the alternate, I'm gonna ask you to remain
15 seated while the jury retires. Sir, you can retire, begin
16 your deliberations.

17 (The following takes place outside the presence of the
18 jury.)

19 (Whereupon, the alternate juror was released.)

20 MR. SPIVEY: Your Honor, we we need to approach.

21 THE COURT: Oh, c'mon up.

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

23 (Whereupon, a discussion was held off the record.)

24 (Whereupon, a bench conference was held off the record.)

25 THE COURT: Let's bring the jury back in the courtroom,

JURY CHARGE

1 please.

2 MR. SPIVEY: I'm so sorry.

3 (The following takes place in the presence of the jury at
4 2:48 p.m.)

5 THE COURT: Alright, ladies and gentlemen of the jury,
6 the the attorneys have pointed something out to me and, uh,
7 from time to time the law changes on drugs concerning the
8 amounts involved, uh, one number has changed in what I gave
9 you but I'm gonna go through all of 'em again so I'm sure that
10 I've I've, uh, gone over them with you properly. Uh, for the
11 offense of trafficking in crack cocaine, the presumptive
12 amount is that the amount must be at least 10 grams but less
13 than 28 grams for trafficking in crack cocaine. For
14 trafficking in cocaine, the amount, uh, again is 10 grams, uh,
15 at least 10 grams but less than 28 grams. Now in the case of
16 possession with the intent to distribute in the case of
17 marijuana it's 28 grams or 1 ounce of marijuana, in the case
18 of cocaine it is 1 gram, I had given you amount of grains but
19 it's been changed to 1 gram and that's the same amount for
20 crack cocaine, 1 gram or more, so, uh, we're looking at that's
21 for possession with intent to distribute and again, the
22 question of simple possession is an amount, so I corrected one
23 figure in there, the the amounts, uh, are now as I gave it to
24 you and those are the presumptive amounts necessary for the
25 different levels of offenses. You may retire and begin your

JURY CHARGE

1 deliberation.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Alright, have we got the exhibits?

5 MR. SPIVEY: These ready to go?

6 THE CLERK: Yes.

7 THE COURT: The exhibits go back along with the
8 indictment. Thank you.

9 (Whereupon, the jury began deliberations at 2:48 p.m.)

10 THE COURT: Now is there any objection to the charge as I
11 finally gave it?

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

13 THE COURT: Any from the defense?

14 MR. BEAN: No, Your Honor.

15 THE COURT: Alright, thank you very much. We'll be in
16 recess until a verdict's reached.

17 MR. SPIVEY: Thank Your Honor.

18 THE COURT: Thank you.

19 (Whereupon, a recess was taken.)

20 (Whereupon, a verdict was reached at 3:20 p.m.)

21 THE COURT: Alright, I have been informed by the bailiffs
22 that a verdict has just been reached, is the State ready to
23 receive the verdict?

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

25 THE COURT: Defense ready to receive the verdict?

VERDICT

1 MR. BEAN: Yes, Your Honor.

2 THE COURT: Alright, I'll caution those present in the
3 courtroom if, uh, you have any trouble in controlling your
4 emotions, uh, at times like this, please leave the courtroom,
5 uh, emotional outbursts will not be tolerated. Bring the jury
6 in.

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

8 THE COURT: Mr. Foreman, has a verdict been reached in
9 this matter?

10 JURY FOREMAN: Yes, sir.

11 THE COURT: Pass the form to the bailiff, please. Thank
12 you, sir.

13 (Whereupon, the jury foreman complied.)

14 THE COURT: Madam clerk, you can publish the verdict.

15 THE CLERK: Yes, sir. The State vs. I -- Isaac Glenard
16 Lyles possession with the intent to distribute marijuana on
17 Case Number 2013-GS-42-4573 guilty; as to the indictment of
18 trafficking in cocaine the Indictment Number 2013-GS-42-4574
19 the verdict is guilty; trafficking in cocaine base on
20 Indictment Number 2013-GS-42-4575 Count One the verdict is
21 guilty; possession of a firearm or knife during the commission
22 of an attempt -- commission of or attempt to commit a violent
23 crime Indictment Number 2013-GS-42-4575 Count Two the verdict
24 is guilty; possession with intent to distribute cocaine within
25 one-half mile Indictment Number 2012, excuse me,

VERDICT

1 2013-GS-42-4570 the verdict is guilty; possession with intent
2 to distribute marijuana within one-half of a mile on
3 Indictment Number 2013-GS-42-4575 the verdict is guilty;
4 possession with the intent to distribute cocaine base within
5 one-half mile on Indictment Number 2013-GS-42-4572 the verdict
6 is guilty, signed by the foreperson, dated December the 5th of
7 2013. Ladies and gentlemen of the jury, is this your verdict
8 and still your verdict, if so please raise your right hands.

9 (Whereupon, the jury raised their hands.)

10 THE CLERK: So say you all.

11 THE COURT: Anything further from the State before I
12 release the jury?

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

14 THE COURT: Anything further from the defense?

15 MR. BEAN: No thank Your Honor.

16 THE COURT: Alright, ladies and gentlemen of the jury,
17 this completes your responsibilities in this case and I'm
18 happy to inform you that we're not gonna start another jury
19 trial this week, we've got some non-jury matters to handle
20 tomorrow so this will end your service on jury for the week, I
21 wanna thank your for your attention to your duties and
22 responsibilities. I've told you throughout the trial not to
23 discuss the case with anyone, I will advise you that you now
24 have the right to do so, you also have the right not to do so.
25 A citizen owes no one an explanation for their service on a

MOTIONS AND MATTERS

1 jury, you're not required to discuss anything about this case
2 unless you choose to do that. Should anyone harass you or
3 bother you concerning your service on the jury, please contact
4 the clerk's office as soon as possible, we'll take the
5 appropriate action.

6 Now as you're leaving today the clerk will be happy to
7 provide you with a letter from the, uh, from their office
8 indicating, uh, your excuse from work if you need that.
9 You'll get a voucher in the mail, uh, probably next week for
10 your juror jury pay, I can assure you it'll be a disappointing
11 check, uh, it's the most the law allows and it's not enough
12 for your time but, uh, we wanna thank you for your services at
13 any rate.

14 Uh, now you're free to go at this time, sentencing in
15 this case will take place shortly. If you would like to be
16 present in the courtroom during that time, you have a right to
17 do that, you also are not required to do that, so that will be
18 up to you as to whether you wish to do that.

19 Now Mr. Foreman, you're gonna need to meet with the clerk
20 briefly, there's some matters you have to make notations on
21 the indictments for her so before you leave see her but at
22 this time you're free to step back to the jury room and the
23 bailiffs will check you out. Thank you very much for your
24 service.

25 MR. SPIVEY: Your Honor, if I may be excused, I need to

MOTIONS AND MATTERS

1 go get some paperwork.

2 THE COURT: That be fine, yes.

3 (Whereupon, the jury exited the courtroom.)

4 (Whereupon, the solicitor exited the courtroom.)

5 (Pause.)

6 (Whereupon, discussions were held off the record.)

7 (Whereupon, the solicitor returned to the courtroom.)

8 MR. SPIVEY: Excuse me, Your Honor, I'm sorry it took so
9 long.

10 (Pause.)

11 MR. SPIVEY: Your Honor, I'll pass up the the the
12 sentencing sheets which have been signed the defendant, his
13 attorney, also gonna pass up, Your Honor, I have two, uh,
14 affidavit of services, these are for the motion that we served
15 with a notice of intent to seek a life sentence, Your Honor,
16 uh, they were essentially prudent, we served on the defendant
17 and his attorney Mr. Bean.

18 THE COURT: Any objection to those documents?

19 MR. BEAN: No, Your Honor.

20 THE COURT: Alright, they'll be marked as Court's
21 Exhibits for purposes of the hearing if you'll pass that over
22 to the to ---

23 MR. SPIVEY: Thank Your Honor.

24 THE COURT: --- court reporter.

25 (Whereupon, counsel complied.)

MOTIONS AND MATTERS

1 (Affidavits of service marked Court's Exhibit Nos. 2 and
2 3 for identification.)

3 THE COURT: Alright, if you'll please, you can stand at
4 the table there please, Mr. Lyles, Mr. Bean. Mr. Lyles, you
5 have been found guilty by a jury of your peers of the offense
6 of possession with the intent to distribute a controlled
7 substance near a school, there are three convictions for that
8 offense on different indictments. There is a conviction for
9 trafficking in cocaine 10 grams or more but less than 28
10 grams, there's a conviction for possession of a weapon during
11 the commission of a violent crime, uh, possession with the
12 intent to distribute marijuana second offense and trafficking
13 in crack cocaine, this time I'll hear from your attorney
14 concerning any issues concerning sentencing, then I'll be
15 happy to hear from you, thereafter I'll hear from the State.
16 Mr. Bean.

17 MR. BEAN: Your Honor, may it please the Court. Uh, I
18 was served and have in my hand here the, uh, State's notice of
19 intention to seek a life sentence. In these cases if
20 Mr. Lyles were convicted which he has been, uh, it is my
21 understanding that this is not something that the Court has
22 discretion in and, uh, I will point out to Your Honor although
23 without discretion I don't guess it, uh, matters, uh, that the
24 prior offenses which are documented in here which we've looked
25 at, uh, occurred 20 years ago so there there isn't anything

MOTIONS AND MATTERS

1 recent and I think, uh, I I'm not making any excuses for my
2 client but, uh, it's been an awful long time since these
3 things happened and and I think it's, uh, it's most
4 unfortunate that he's facing what he's facing but he and I
5 both understand how we got here.

6 THE COURT: Mr. Lyles, anything you'd like to say to the
7 Court?

8 MR. BEAN: I just, I'd ask for mercy from the Court.

9 THE COURT: I'll hear from you, Mr. Spivey.

10 MR. SPIVEY: Yes, sir, Your Honor. I was looking for a
11 copy of defendant's record. I just ---

12 THE COURT: I have your your notice, it has sentence
13 records attached to it if you'd like to see that.

14 MR. SPIVEY: Yes, sir, I I've got that and I've -- I --
15 he obviously has a a a few more convictions I just wanna make
16 the Court aware of.

17 THE COURT: I I would, I would like for you to go ahead
18 and make me aware of whatever you think I need to know before
19 I pass sentence.

20 MR. SPIVEY: Yes, sir, Your Honor. In 1986 was petty
21 larceny; '88 possession a cocaine, 1988 carrying a pistol;
22 1990 possession a crack second offense, possession a crack
23 third offense; 1990 resisting arrest; 1993 possession a
24 marijuana, 1993 driving under the influence, 1993 assault and
25 battery and 1993 possession a marijuana and finally in 1993 he

SENTENCE

1 got three convictions which two of which were considered most
2 serious and one was serious. Your Honor, he has a possession
3 with intent distribute crack cocaine third offense, Your
4 Honor, which he got 25-year sentence on and a burglary first
5 which he got a 25-year sentence on and a voluntary
6 manslaughter which pled down from murder which he got a a
7 25-year sentence on. Your Honor, it's my understanding he got
8 out of the -- on those sentences about 2008 and that's,
9 essentially that's his criminal history, Your Honor.

10 THE COURT: Alright. I do note that this, uh, and it's
11 been made an exhibit, uh, Court's Exhibit No. 1, uh, I have
12 received and have taken notice of the notice of intention to
13 seek life sentence, uh, filed by the, uh, State along with
14 supporting documents and that today we received proof of
15 service. If you'll give me a moment in order to prepare
16 sentencing.

17 (Pause.)

18 THE COURT: Alright, Mr. Lyles, having reviewed the, uh,
19 information that has been presented to me, the Court passes
20 the following sentences: As to the Case Number 2013-4575A
21 possession of a weapon during the commission of a violent
22 crime, the sentence is that you be confined to the State
23 Department of Corrections for a period of 5 years, I've run
24 that concurrent with your other sentences and given credit for
25 any time served. In Case Number 2013-GS-42-4573 which is

SENTENCE

1 possession with intent to distribute marijuana second, that
2 carries a 10-year sentence in the Department of Corrections
3 run concurrently with other sentences and given credit for
4 time served. Now as to the three charges of of possession
5 with intent to distribute a controlled substance, uh, at a
6 school, those -- that's Cases Numbers 2013-GS-42-4570, 4571
7 and 4572 and as to Case Number 2013-4575, uh, trafficking in
8 crack cocaine and as to Case Number 2013-4574, uh, trafficking
9 in cocaine, uh, given the information provided to this court
10 the sentence of this court is that you be confined to the
11 State Department of Corrections for and during the term of
12 your natural life without the possibility of parole. Good
13 luck to you, sir, all sentences run concurrently.

14 MR. SPIVEY: Thank Your Honor.

15 THE COURT: Court is adjourned.
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25

1 CERTIFICATE OF REPORTER
2

3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on December 4 and 5, 2013 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 6 through 304, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel
10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 May 11, 2014
14

15 Margaret A. Woods

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
18
19
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25

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Spartanburg)

Isaac Glenard Iyles, #2000033)

Full name and prison number (if any) of Applicant.)

2016-CP-42-1479

v.)

APPLICATION FOR

State of South Carolina)

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 S.C. Department of Corr. at Perry Corr. Inst.
2. Name and location of Court which imposed sentence General Sessions Court
for Spartanburg County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Life Without Parole pursuant to §17-25-45 and §17-25-50.
 - (b) Five years concurrent for poss. of weapon during commission of
violent crime.
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) December 4, 2013
"" "" ""
 - (b) _____

Revised 3/2003

- (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. S.C. Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL WAS DENIED. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) T/A _____
- (b) "" _____
- (c) "" _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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(a) See attached memorandum of law

(b) " " "

(c) " " "

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See attached memorandum of law

(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? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

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- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- 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:

They are exclusive PCR grounds. They are exclusive PCR grounds.

- (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? Yes

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. William Sean
- ii. Carmen V. Ganjehsani
- iii. Laura Baer

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Direct Appeal
- iii.

19. State clearly the relief you seek in filing this application:

Reversal and Vacation of his conviction and sentences.

20. Are you now under sentence from any other court that you have not challenged?

No

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STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

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.

Isaac H. Lyle ✓

SWORN to and subscribed before me this 7th
day of April, 2016.

Nancy C. Marshall (L.S.)
Notary Public

My Commission Expires: 1-23-2023

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Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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.

Joan S. Lyles ✓
Applicant

SWORN or affirmed to and subscribed before me this

21st day of April, 2016.

Nancy C. Merchant
Notary Public

My Commission Expires: 1-23-2027

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Issaac G. Iyles,)
SCDC No. 209983,)
Applicant,)
v.)
The State,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR SPARTANBURG COUNTY

**MEMORANDUM OF LAW IN
SUPPORT OF APPLICATION
FOR POST-CONVICTION
RELIEF**

COMES NOW, the applicant presents the Memorandum of Law in support of his Application for Post-Conviction Relief and would show the following to the Honorable Court.

STATEMENT OF THE CASE

The applicant was indicted by the Spartanburg County grand jury during the September 2013 term of General Sessions Court for possession with intent to distribute marijuana (13-GS-42-4573), PWID marijuana within one half mile of a school (13-GS-42-4571); PWID cocaine within one half mile of a school (13-GS-42-4570; trafficking in cocaine base (13-GS-42-4575); PWID cocaine base within one half mile of school (13-GS-42-4572); possession of a firearm during commission of violent crime (13-GS-42-4575)(count two); trafficking in cocaine (13-GS-42-4574).

The applicant was represented at trial by William S. Bean, Esq., and the state was represented by Scott Daniel Spivey, Solicitor. On December 4-5, 2013, the applicant went to trial before the Honorable Roger I. Couch, Judge and Jury. The jury found the applicant guilty on all charges, and Judge Couch sentenced him to life without possibility of parole pursuant to the state's notice to seek that sentence, and a concurrent sentence of five (5) years on the weapon charge to run concurrent with the life sentence. A timely appeal was filed on behalf of the applicant.

The applicant was represented on appeal by Carmen V. Gandjebsani of the S.C. Appellant Defense office. On February 27, 2016, the S.C. Court of Appeals denied the appeal in Op.

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No. 2016-Up-045.

ARGUMENTS

- (1) THE TRIAL COURT LACKED SUBJECT-MATTER JURISDICTION TO TRY AND CONVICT THE APPLICANT FOR UNINDICTED DRUG OFFENSES.

As a threshold matter, the S.C. Constitution and Statutory laws mandate that "no person may be held to answer for any crime except upon a presentment of an indictment by a grand jury in the county where the crime took place". S.C. Const., Art. I, §11; S.C. Code Ann. §17-19-10.

For evidence in support of his claim, the applicant submits that his indictments indicate that the Spartanburg County General Sessions Court began on October 7, 2013. However, the "Action of the Grand Jury" section indicates that the grand jury "True Billed" the applicant's indictment on "September 27, 2013, which was nine (9) days prior to the beginning of the term of General Sessions Court in Spartanburg County.

Having shown there was no "September 27, 2013" term of General Sessions Court for presentment of his indictments, the applicant directs the court's inquiry as to whether the presentment of his indictment's outside of a term of general sessions court could have deprived the general sessions court of its subject-matter jurisdiction to convict and sentence him. This question was resolved by the U.S. Supreme Court's decision in U.S. v. Cotton, 122 S.Ct. 1781 (2002), which guided the S.C. Supreme Court's ruling in State v. Gentry, 610 S.E.2d 494 (2005). In both Cotton and Gentry, the court's held that the term "subject-matter jurisdiction" means the trial court's constitutional and statutory power to adjudicate (try) cases.

Here, a review of the S.C. Constitutional and Statutory show that "no person may be held to answer for any crime's except upon the presentment of an indictment by a grand jury. S.C. Const., Art. I, §11; S.C. Code §17-19-10. In conjunction with the S.C. Statutory Laws mandate that the grand jury must meet with the general sessions court at each of its terms "to receive bills of indictments to grand jury. §14-9-170; and that

¹ The S.C. Court Administration's Court Calendar provided to the applicant shows that the "October 2013 term" of General Sessions Court for Spartanburg County began on this date. See, calendar attached hereto as Exhibit A.

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County Solicitor shall submit bills of indictments to the grand jury during a term of General Sessions Court. S.C. Code §14-9-210.

Accordingly, from reviewing the above Constitutional and Statutory laws, it is clear that no indictment may be presented, or true billed, by a grand jury outside of a term of general sessions court since the grand jury's jurisdiction is coextensive (must be together) with the criminal jurisdiction of the general sessions court in which it is convened and for which it is to make inquiry on bills of indictments. See, State v. McClure, 289 S.E.2d 158 (1982).

Finally, in keeping with the mandatory provisions of S.C. Constitutional Statutory Laws, the Spartanburg County Solicitor could not have lawfully submitted applicant's indictments to a grand jury to be "true billed" on September 27, 2013, nine (9) days prior to the beginning of the Spartanburg General Sessions Court term on October 7, 2013. Therefore, the applicant submits that his trial court lacked subject-matter jurisdiction to convict him upon all of his indictment's that were allegedly "True Billed" and presented on September 27, 2013, outside of a term of General Sessions Court.

- (2) THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY COUNSEL'S FAILURE TO MOVE FOR SUPPRESSION OF, AND/OR TO OBJECT TO, THE STATE'S DRUG EVIDENCE THAT WAS SEIZED IN VIOLATION OF FOURTH AMENDMENT REQUIREMENTS.

When an applicant alleges that trial counsel's failure to articulate a Fourth Amendment claim on motion to suppress was ineffective assistance of counsel, he must show that such claim is meritorious and that verdict/outcome at trial would have been different absent the evidence that should have been excluded. See, e.g., Sikes v. State, 448 S.E.2d 560 (1994), accord Kimmelman v. Morrison, 106 S.Ct. 2574 (1986).

For the Court's review of the applicant's claim, he that the police allegedly utilized a "Confidential Reliable Informant (CRI)" to make a control drug (crack cocaine) by from him at 533 North Forest Street in Spartanburg County. See, search warrant attached hereto as Exhibit B 1-3. As

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result of the control drug buy setforth in the policies "Search Warrant and Affidavit", the magistrate issued the search warrant for the search of the above address. During the execution of the search warrant, applicant was arrested and drugs were found. Nevertheless, even though the state had failed to disclose the existence of any Confidential Reliable Informant (CRI) to support probable cause for the introduction of any drug evidence against the applicant, his trial counsel did not only fail to move for suppression of the state's drug evidence against him, but did instead inform the court of his following decision:

Counsel: Your honor...We're not contesting the search warrant...which began this case...and we're asking that any testimony by any of the witnesses for the state that speak to the acquisition of the warrant or what they were told by an informant "or anybody else" be excluded because it'd be hearsay, "since the case as I say actually starts with the execution of the search warrant and the subsequent arrest of my client (applicant)."

The court asked the Solicitor for his position on the defense counsel's decision? The solicitor responded as follows:

Solicitor: Your Honor, that's how we intend to present our case. We will not talk about any informant information that led to the search warrant or anything about obtaining a search warrant itself.

Tr.p.40, I. 20-p.41, I.10

Here, as shown by the above decisions of both the applicant's counsel and the solicitor, the record in applicant's case was devoid of any "Confidential Reliable Informant (CRI)" to show that police had probable cause to seize the drug evidence presented at his trial. Although the arresting officer Michael Secrest, did testify at trial that drugs were seized pursuant to applicant's arrest, it was not established that the police had probable cause for his arrest and search, and nor did the state present any recognized exception to the

² This was defense counsel's Motion in Limine.

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warrant requirement under the Fourth Amendment for admission of its drug evidence against the applicant.

The applicant also submits that since the state had failed to produce its informant prior to, and during, his trial to establish probable cause for the admission of its drug evidence against him, his counsel's acquiescence and failure to move for suppression of the state's drug evidence against him was ineffective assistance of counsel; and as the drug evidence was the only evidence against him, there would have been a different outcome at trial absent the state's drug evidence. Accord Sikes, supra, Morrison, supra; see, especially State v. Gamble, 747 S.E.2d 784 (S.C. 2013).

- (3) THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY COUNSEL'S FAILURE TO OBJECT TO THE STATE'S ADMISSION OF ITS DRUG EVIDENCE AGAINST HIM THAT WAS SEIZED IN VIOLATION OF FOURTH AMENDMENT REQUIREMENTS.

As a threshold matter, the record in this case shows that the police utilized information from unknown complainant to execute an illegal search and seizure of applicant at 533 North Forest Street in Spartanburg County. In support of this claim, the applicant directs the Court's review of the solicitor's proffer of testimony by the state's narcotic officer, Michael Secrest, to establish probable cause for his arrest and search of the applicant on October 9, 2012, as follows:

Q: Investigator Secrest, please tell us your training and experience?

A: I've been employed with the Spartanburg City Police Department...eight years. I'm currently assigned to the narcotics position.

Q: Okay, what do you typically do in narcotics?

A: You're task with basic use of search warrants and we file "complaints," any "complaints" we get arrest. We tends to handle those.

Q: Okay. Let me ask you this: Where is 533 North Forest Street?

A: It's located within the City limits of Spartanburg.

Q: Is that where you were on October 9th (2012);

A: Yes.

Tr.p. 77, l. 8-25.

Q: Once you got there, what happen next?

A: As soon as entry was made...Iyles (applicant) ran out and was tackled, (seized), searched, and drugs and a weapon was found on his person.

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Also, other drugs were located on the property that was charged to applicant.

Tr. p. 82, l.19 - p. 83, l.10; p.115, l. 4-8.

Here, contrary to the Fourth Amendment requirements, the state's proffer of Sgt. Secrest's testimony shows that the police executed a search of the 533 N. Forrest Street residence based solely upon an uncorroborated tip from an unknown "complainant". The proffer of Sgt. Secrest's testimony further shows that the police threw a flash grenade into the residence upon their arrival; and when the applicant and the residence owner, Edward Wesson, ran out, the applicant was tackled (arrested) by Sgt. Secrest and drugs and a weapon were found on his person and subsequently on the surrounding property that was also charged to him. Tr.p. 82, l. 20-p. 83, l.10; a tote bag with drugs in it hanging over the fence, Tr.p. 115, l. 4-8.

In support of his claimed Fourth Amendment violation of the search conducted in this instance, the U.S. Supreme Court has held, in essence, that the police cannot establish probable cause for a search of a residence based upon information by a tipster, or an informant, that is uncorroborated by any investigation or a controlled drug buy to support probable cause to execute a search or seizure. See, Ill. v. Gates, 462 U.S. 213, 238 (1983); See also, U.S. v. Wilhelm, 80 F.3d 116-20 (4th Cir. 1996) holding there was no probable cause for search warrant when police relied on information from an unnamed informant, had no indication of informant's truthfulness or reliability, and little or no corroboration to support any probable cause to support any search or seizure.

Turning to the standards of judicial review, the applicant contends that in support of his claimed Fourth Amendment violations, the above testimony proffered by the solicitor shows that the police executed a search of the 533 North Forest Street residence based solely upon information from a "complaint" that was uncorroborated by any investigation controlled drug buy from him to support any probable cause for his seizure or search by the police.

An accessment of applicant's claimed Fourth Amendment

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violations shows that the U.S. Supreme Court has consistently held that "an anonymous tip, standing alone, lacks the necessary indicia of reliability to conduct a search or seizure since it provides virtually nothing from which one might conclude that caller is honest or his information reliable and gives no indication of the basis for his knowledge. See, Alabama v. White, 110 S.Ct. 2412 (1990); Gates, supra.

Furthermore, the proffer of Sgt. Secrest's testimony shows that upon arrival at the above residence the police threw a flash grenade into the residence; and when the applicant and the residence's owner ran out, the applicant was "tackled" (arrested) by Sgt. Seacrest and drugs and a weapon were found on his person and subsequently on the property that was also charged to him. In U.S. v. Mendenhall, 446 U.S. 544 (1980), the court determined that a person has been seized when the technique used by police overcomes the detainee's freewill.

The applicant likewise contends that under the purview of the Supreme Court's decisions in Gates, *infra*, White, *infra*, and Mendenhall, *infra*, Sgt. Secrest's tackle and search of his person, as well as any subsequent search attributed to him, was executed with out probable cause to justify the admission of any drug evidence discovered thereafter in violation of Fourth Amendment requirements.

The applicant also contends that the state's seizure of drug evidence against him at trial did not only show that the police executed an unlawful search of the residence where he was a guest, but did also show that he was unlawfully seized in violation of the Exclusionary Rule of the Fourth Amendment. The Court has held that under the Exclusionary Rule evidence obtained by police in violation of Fourth Amendment requirements may not be introduced at trial as evidence to support a defendant's guilt based on police misconduct. See, U.S. v. Leon, 468 U.S. 397, 915 (1984).

Finally, the applicant contends that he was denied the right to effective assistance of trial counsel by counsel's failure to object to the admission of the state's drug evidence against him; and since the drug evidence was the only evidence against him, there was a reasonable probability of a different

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outcome at trial absent the state's drug evidence against him. See, Sikes, supra, Morrison, supra. See also, esp. State v. Gamble, 747 S.E.2d 784 (S.C. 2013).

(4) THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY COUNSEL'S FAILURE TO OBJECT TO THE COURT'S INTERPRETATION OF S.C. CODES 17-25-45 AND 17-25-50.

50. To establish a claim of ineffective assistance of counsel a PCR applicant must show that counsel's assistance fell below an objective standard of reasonableness and that, but for counsel's error, there was a reasonable probability that the results at trial would have been different; a reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Edmond v. State, 534 S.E.2d 682 (S.C. 2000).

Accordingly, in this case, the applicant was convicted of multiple drug offenses which took place at 533 North Forest Street in Spartanburg County. Consequently, prior to his current convictions, the solicitor served him a "notice to seek life without parole" based on his March 21, 1994, convictions for burglary first; manslaughter; and PWID crack cocaine.

Nevertheless, with regard to his prior convictions set forth in the solicitor's "Notice", the applicant submits that a simple research/investigation of his prior convictions by counsel would have shown that his burglary, first; and manslaughter offenses occurred at the same place and time; and that on March 21, 1994, he pled guilty to the burglary first, manslaughter, and PWID crack cocaine offenses, and the Judge sentenced him to concurrent sentences for all the offenses. Also, as a threshold matter, the applicant submits that PWID crack cocaine is not listed under 17-25-45 and should not have been listed by the solicitor to enhance his current sentence.

In accessing the adequacy of applicants claim, he submits that a review of the Court's decision in Bryant v. State, 68 S.E.2d 280 (2009), lends support to applicant's claimed violation by the judges imposition of his life sentence, as follows:

In sum...(1) Section 17-25-45 operates to trigger a life without parole sentence under

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respective "two and three strikes" provisions, (2) subsection (F) of section 17-25-45 set forth a straightforward timing feature for identifying "a prior conviction"; and (3) Section 17-25-50 is intended to serve as a legislative sanctioned safeguard to ensure that a life without parole sentence is not imposed in cases where the multiple section 17-25-45 offenses are "so closely connected in point of time that they may be considered as one offense", which we construe to mean the offenses are inextricably connected and share an immediate temporal proximity. In essence, what may be charged as two, three or more strikes under section 17-25-45 must be deemed "one strike" for sentencing purposes under section 17-25-50 and, as a result, preclude a life without parole sentence...

Finally, given the court's decision in Bryant, infra, and given the fact that PWID crack cocaine is not listed under section 17-25-45, the applicant contends that inasmuch as the record showed that his burglary first and manslaughter offenses took place at the same time and place, his counsel's failure to object to the trial Judge's construction of 17-25-45 in conjunction with 17-25-50 was ineffective assistance of trial counsel, and was prejudiced by the Judge's imposition of his unlawful sentence.

- (5) THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY COUNSEL'S FAILURE TO IMPEACH THE STATE'S STAR WITNESS WITH HIS PRIOR CONVICTION'S FOR ARMED ROBBERY AND THIRD DEGREE BURGLARY OFFENSES.

To establish claim of ineffective assistance of counsel, an applicant for PCR must prove that counsel's performance was deficient and that deficient performance prejudiced the applicant's case. Satterwhite v. State, 481 S.E.2d 709 (S.C. 1997).

The applicant submits that during the execution of a search where he was a guess, the police found a black tote bag hanging on the fence outside of the apartment. The state could not present any physical evidence, such as DNA or fingerprints, linking him to the black tote; therefore, the testimony by Edward Wesson, the apartment owner, linking him to the tote bag was crucial to the state's case to prove that the large

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quantity of drugs found inside the bag belonged to him.

While the trial court did admit Wessons's convictions for fraudulent check, it excluded his prior convictions for armed robbery and third degree burglary convictions, ruling that per the courts holding in State v. Broadnax, 736 S.E.2d 668 (Ct. App. 2013), armed robbery and burglary, third degree convictions were not crimes of dishonesty or false statement and were thus inadmissible under Rule 609, SCRE. Tr. p. 139, I. 17-140, I. 7.

Here the applicant submits that the trial court erred in ruling solely upon Rule 609(a)(2) and Broadnax in excluding Wesson's armed robbery and third degree burglary convictions. Accordingly, Rule 609(a)(1) provides "evidence that a witness other than an excused has been convicted of a crime shall be admitted. Subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under law which the witness was convicted". This provision allows for the admission of any type of crime not just crimes of dishonesty or false statements.

Furthermore, Rule 609(a)(2) provides that prior convictions for dishonesty and false statement shall be admitted regardless of the punishment. So, for crimes which involves dishonesty and false statement, they can be admitted even if the punishment was not by death or imprisonment in excess of one year. However, Rule 609(a)(1) makes it clear that a prior conviction does not have to involve a crime of dishonesty or false statement to be admissible if the punishment was death or imprisonment in excess of one year. The difference is that the Court should perform a Rule 403 analysis before admitting the impeachment evidence which did not occur in the applicant's case due to his trial court's erroneous application of Rule 609.

Here, as tested by Rule 609(a)(1), Wesson's armed robbery and third degree burglary convictions were punishable by imprisonment in excess of one year. S.C. Code Ann. §16-11-313; 16-11-330. Thus, the crimes were as a matter of law admissible under Rule 609(a)(1) to attack Wesson's credibility. Finally, the applicant submits that counsel's failure to argue the application of Rule 609(a)(1), SCRE, to impeach Wesson's

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credibility was ineffective assistance of counsel; and insofar as the state's case against the applicant depended entirely upon Wesson's testimony to prove that the drugs found in the black tote bag belonged to the applicant, he was prejudiced by counsel's error.

(6) THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY COUNSEL'S FAILURE TO OBJECT TO THE SOLICITOR'S VOUCHING FOR THE CREDIBILITY OF A STATE WITNESS.

To prove that counsel was ineffective, the applicant must show that counsel's performance was deficient and that there is a reasonable probability that, but for counsel's errors, the results of the trial would have been different; a reasonable probability is one that is sufficient to undermine confidence in the outcome of the trial. Dawson v. State, 572 S.E.2d 445 (S.C. 2002).

In this case, during the execution of a search of 533 North Forest Street, a residence owned by Edward Wesson, the police found a black tote bag containing a large quantity of drugs that was hanging on a fence which ran along the side of the residence. Tr. p. 101-102. To prove that the tote bag belonged to applicant, the solicitor proffered the following testimony by Wesson:

Q: So he (applicant) would give you crack?

A: Yeah

Q: And in exchange you let him use your apartment?

A: Yes.

Q: Mr. Wesson, you ever touch the black bag...?

A: Yeah.

Q: Why did you touch it?

A: He'd usually ask me to get it for him... when he did a sale

Q: So someone would come and ask him for drugs and he would ask you to retrieve the bag for him?

A: Yeah.

Q: Did you ever see him get any drugs out of that bag?

A: When he would sell it, yes.

Q: Okay, so you knew he had drugs in that bag?

A: Yeah, I just didn't know how much until that day.

Tr. p. 148, L. 15-149, L. 8.

During closing arguments, the solicitor told the Jury

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that Wesson's admission that he knew there were drugs in the tote bag could have implicated him (Wesson); that Wesson could have possibly been charged with some of the drugs "except for the fact that he's telling-the-truth," and it is the defendant's bag, and so he (defendant) doesn't have to testify to you (Jury). He (Wesson) told you today, he (Wesson) testified because, number one, he's (Wesson) "telling the truth," "that truth is consistent with what he told the police the first time". Tr. p. 243, l. 12-22.

With regard to the solicitor's closing argument whereby he vouched for Wesson's credibility, the Court has held that a solicitor may argue the credibility of a state witness if the argument is based on the record and its reasonable inferences, but a solicitor may not vouch for the credibility of a state witness based on personal knowledge or other information outside the record.

The court has further held that it is inappropriate for the solicitor to assure the jury of a witness' credibility, because the jury is charged with assessing the credibility of witnesses based on evidence in the record. Thus, the solicitor's argument in this instance led the Jury to believe the government corroborated Wesson's testimony before trial and found it credible. Consequently, the solicitor did not support this vouching with anything within the record, such as corroboration by other witnesses or physical evidence, which amounted to improper vouching for Wesson's credibility. See, e.g., Matthew v. State, 565 S.E.2d 766 (S.C. 2012); See, also State v. Kelly, 540 S.E.2d 851 (S.C. 2001).

Turning to the standard of Judicial review, the applicant contends that since there was no other evidence beyond Wesson's testimony connecting him to the state's drug evidence, his counsel's failure to object to the solicitor's vouching was ineffective assistance of counsel, and since the drug evidence was the only evidence against him, counsel's failure to object to solicitor's vouching prejudiced his right to a fair trial to entitle him to a reversal of his convictions. Dawson,

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(7) THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY COUNSEL'S FAILURE TO OBJECT TO THE TRIAL JUDGE'S JURY CHARGE ON THE FACTS

In this case, the police executed a search of Edward Wesson's residence where the applicant was a house guest and where the police found a large amount of drugs. As a result, the applicant was charged with the drugs found at the residence. Consequently, during instructions to the Jury, the trial Judge charged the Jury on applicant's possession and control of the drugs, as follows:

Court: To prove possession the state must prove beyond a reasonable doubt that the defendant had both the power and the intent to control the disposition or use of the drugs ... "Now actual possession means that the drugs was in actual physical custody of the defendant. Constructive possession means that the defendant had dominion and control over the drugs or right to exercise dominion and control—either over the drug itself or over the property on which the drugs was found..."

Tr. p. 289, l. 11-20.

In reviewing the Judge's charge, the applicant submits there is no case law in South Carolina which has ever recognized, or held, that knowledge and possession of drugs may be inferred at to a person who is not the owner of the house or building where drugs are found. Therefore, the Jury charge by the Court in this instance was in essence a charge on the facts in violation of Article V, §22 of the S.C. Constitution; of particular note; no Court would charge a Jury the inverse of this charge--you may infer the defendant does not have dominion and control over the drugs "if he does not have control over the premises but is merely present".

Thus, the applicant contends that counsel's failure to object to the Judge's unconstitutional Jury charge was ineffective assistance of counsel that was per se prejudicial as it deprived him of a fundamental right to a fair trial by an impartial Judge. When a case has been submitted to Jury on erroneous Jury instructions, prejudice to defendant, should be reversed. State v. Ramsey, 430 S.E.2d 511 (S.C. 1992).

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 APR 18 PM 12:01
M. HOPE BRACKLEY

CONCLUSION

WHEREFORE, for the foregoing reasons, the Honorable Court should Reverse and Vacate the applicant's unjust convictions.

Respectfully Submitted,

Isaac G. Lyles
Isaac G. Lyles, #209983
Perry Corr. Institution
430 Oaklawn Road
Pelzer, S.C. 29669

This 2nd Day of April 2016,
at Pelzer, South Carolina.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 APR 18 PM 12:01
M. HOPE BLACKLEY

EXHIBIT B

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 APR 18 PM 12:01
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

County of SPARTANBURG, SC

COPY

SEARCH WARRANT

DATE: October 05, 2012

OFFICER: J Kirby

Exhibit B-1

COUNTY OF SPARTANBURG, SC)

AFFIDAVIT

COPY

Personally appeared before me, one J Kirby

Who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this county:

DESCRIPTION OF PROPERTY SOUGHT

A quantity of cocaine base commonly referred to as "crack cocaine", a schedule II controlled substance as defined under 44-53-370 of The South Carolina Code of Laws as amended in 1976. To include any and all paraphernalia, scales, baggies, sifters, ledgers, monies, photographs, cellular phones and documents used to associate subjects with areas where illegal narcotics are located. Also other devices used to facilitate the distribution and or consumption of cocaine base.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

533 N Forest Street, a single story duplex with red wood siding, two front doors facing N Forest Street and the numbers 533 are clearly visible on the front of said residence. The two doors on the front of this dwelling are not clearly labeled with a letter or number to designate them as two separate units. If you enter the door on the right side, if facing the front of the residence from N Forest Street this is the side of the duplex to be searched. To include the curtilage, outbuildings, vehicles and cellular phones associated with subjects inside this dwelling. Isaac Glenard Lyles, a b/m with a DOB of 04/14/1967. If leaving city hall located at 145 W Broad Street, travel towards Daniel Morgan Avenue. Once you reach Daniel Morgan Avenue, turn right and travel Daniel Morgan Avenue until you reach St. John Street. Turn right onto St. John Street and travel until you reach N Forest Street. Turn right onto N Forest Street and travel until you reach 533 N Forest Street on the right. Once at this location you will enter the door on the right side if facing the residence from the roadway.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

With the past 72 hours of 10/05/2012, your affiant utilized a confidential reliable informant (cri) to make a controlled drug buy from Isaac Lyles at 533 N Forest Street. The CRI's and vehicle were searched prior to going to the buy location and no contraband or weapons were located. The CRI was issued city funds and equipped with a covert listening device to monitor conversations. The CRI responded to the buy location with surveillance maintained and no stops made prior to arriving. Once at the location, the CRI entered the door on the right and met with Isaac Lyles for a brief period and exchanged the city funds for a quantity of crack cocaine. The CRI then left the buy location and responded back to our original meeting location, with surveillance maintained and no stops made prior to arriving. Once back at our meeting location, I recovered a quantity of off white rock like substance from the CRI. The off white rock substance field tested positive for cocaine using a field test reagent. The CRI's and vehicle were then searched again and no contraband or weapons were located. Isaac Lyles has arrest and convictions for weapon law violations as well as crimes associated with violence, based on these facts your affiant respectfully request a "no knock and announce" search warrant.

Sworn to and Subscribed before me

This 5 day of October, 2012.

Signature of Judge

1:29 PM

Jeff Kirby

Address: 145 W Broad St
Spartanburg, SC 29306
Phone: 864-508-2015

COUNTY OF SPARTANBURG, SC

SEARCH WARRANT

COPY

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF SPARTANBURG COUNTY, SC

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

533 N Forest Street, a single story duplex with red wood siding, two front doors facing N Forest Street and the numbers 533 are clearly visible on the front of said residence. The two doors on the front of this dwelling are not clearly labeled with a letter or number to designate them as two separate units. If you enter the door on the right side, if facing the front of the residence from N Forest Street this is the side of the duplex to be searched. To include the curtilage, outbuildings, vehicles and cellular phones associated with subjects inside this dwelling. Isaac Glenard Lyles, a b/m with a DOB of 04/14/1967. If leaving city hall located at 145 W Broad Street, travel towards Daniel Morgan Avenue. Once you reach Daniel Morgan Avenue, turn right and travel Daniel Morgan Avenue until you reach St. John Street. Turn right onto St. John Street and travel until you reach N Forest Street. Turn right onto N Forest Street and travel until you reach 533 N Forest Street on the right. Once at this location you will enter the door on the right side if facing the residence from the roadway.

Now, therefore, you are hereby authorized to search premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

A quantity of cocaine base commonly referred to as "crack cocaine", a schedule II controlled substance as defined under 44-53-370 of The South Carolina Code of Laws as amended in 1976. To include any and all paraphernalia, scales, baggies, sifters, ledgers, monies, photographs, cellular phones and documents used to associate subjects with areas where illegal narcotics are located. Also other devices used to facilitate the distribution and or consumption of cocaine base.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

ANY SPARTANBURG COUNTY MAGISTRATE

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable: in the event the identity of such person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Spartanburg
October 5

, SC

, 20 12

[Signature]

(5)

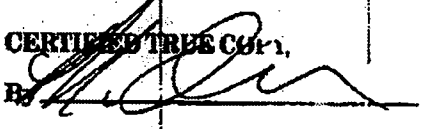
EXHIBIT A

Terms of Circuit and Family Court September 2013

**Holiday:
Mon Sep 02, Labor Day**

Circuit Number	9/2/2013	9/9/2013	9/16/2013	9/23/2013	9/30/2013
7	Common Pleas/Common Pleas Nonjury Spartanburg Kelly, R. GREEN General Sessions Non-Jury Couch, Roger HUDGINS General Sessions Cherokee Hayes, J. Mark FAUCETTE 3 WATTS 4, 5, 6 General Sessions Non-Jury 3, 4, 5, 6 Kelly, R. GREEN 3, 4, 5, 6	General Sessions Spartanburg Kelly, R. FAUCETTE General Sessions Spartanburg Addy, Frank WATTS Common Pleas/Common Pleas Nonjury Spartanburg Couch, Roger GREEN 9 am GREEN 10, 11, 12, 13 Common Pleas Non-Jury Hayes, J. Mark JENKINS 9 WOODS 10 am, 11, 12 am WOODS 13 Common Pleas Non-Jury 13 Addy, Frank	General Sessions Spartanburg Kelly, R. WATTS 16 pm WATTS 17, 18 GREEN 19, 20 Common Pleas/Common Pleas Nonjury Spartanburg Cole, J. MOFFITT 16, 17, 18, 19 NO CR NEEDED 20 General Sessions Spartanburg Stilwell, Robin WOODS 16, 17, 18, 19 am WOODS 20 Common Pleas/Common Pleas Nonjury Cherokee Hayes, J. Mark WATTS 16 am NO CR NEEDED 17, 18 WATTS 19 NO CR NEEDED 20		General Sessions Cherokee Kelly, R. WATTS Common Pleas Non-Jury/PCR Cole, J. MOFFITT Common Pleas Non-Jury Couch, Roger BUTLER Common Pleas/Common Pleas Nonjury Spartanburg Hayes, J. Mark WOODS 30, 1, 2 NO CR NEEDED 3, 4

CERTIFIED TRUE COPY

By 
South Carolina Court Administrator for

Terms of Circuit and Family Court October 2013

Circuit Number	10/7/2013	10/14/2013	10/21/2013	10/28/2013
7	General Sessions Spartanburg Addy, Frank	Common Pleas/Common Pleas Nonjury Spartanburg Cole, J.	General Sessions Spartanburg Kelly, R.	Common Pleas/Common Pleas Nonjury Spartanburg Kelly, R.
	SCOTT		HUDGINS	
	Administrative Week Couch, Roger	MOFFITT	Common Pleas/Common Pleas Nonjury Spartanburg Cole, J.	NO CR NEEDED
	General Sessions Spartanburg Hayes, J. Mark	Common Pleas/Common Pleas Nonjury Spartanburg Couch, Roger	MOFFITT 21, 22 NO CR NEEDED 23, 24 MOFFITT 25	Common Pleas Non- Jury Cole, J.
	GREEN	FAUCETTE 14, 15, 16 NO CR NEEDED 17, 18		MOFFITT
		General Sessions Cherokee Hayes, J. Mark	Common Pleas/Common Pleas Nonjury Spartanburg Couch, Roger	General Sessions Non-Jury Hayes, J. Mark
		WATTS 14, 15, 16 NO CR NEEDED 17 WATTS 18		WATTS 28, 29 NO CR NEEDED 30, 31 WATTS 1
			GREEN	Common Pleas/Common Pleas Nonjury Spartanburg Stilwell, Robin
			General Sessions Spartanburg Macaulay, Alexander	NO CR NEEDED
			WATTS 21, 22, 23, 24 am NO CR NEEDED 25	General Sessions Non-Jury 30, 31, 1 Kelly, R.
	CERTIFIED TRUE COPY, By  South Carolina Court Administrator			WATTS 30, 31 NO CR NEEDED 1
				General Sessions Non-Jury 1 Spartanburg Cooper, Gordon G.
				FAUCETTE 1

Isaac G. Iyles, #209983
Perry Correctional
Institution Q4 A108
430 Oaklawn Road
Pelzer, S.C. 29669

April 7th, 2016

Honorable Hope Blackley
Clerk of Court
Spartanburg County
P.O. Box 3483
Spartanburg, S.C. 29304-83

RE: POST-CONVICTION RELIEF APPLICATION
AND MEMORANDUM OF LAW

Honorable Blackley:

Enclosed, please find my original PCR Application and
Memorandum of Law in Support of same for filing with your
office.

I have also enclosed a self-addressed envelope for your
return to me, clocked-stamped copies of these documents for
my records.

Thank you in advance for your invaluable time and service
in regard to this matter.

Sincerely,

Isaac G. Iyles
Isaac G. Iyles, #209983
Perry Corr. Institution
430 Oaklawn Road
Pelzer, S.C. 29669

cc: Applicant's file

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 APR 18 PM 12:00
M. HOPE BLACKLEY
RECEIVED
APR 14 2016
PCI Mailroom

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
Isaac Glenard Lyles, #209983,	)	Case No.: 2015-CP-42-1479
	)	
Applicant,	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed on April 18, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. Applicant was indicted by the October 2013 term of the Spartanburg County Grand Jury for possession with intent to distribute ("PWID") cocaine within one-half mile of a school or park (2013-GS-42-4570), PWID marijuana within one-half mile of a school or park (2013-GS-42-4571), PWID cocaine base within one-half mile of a school or park (2013-GS-42-4572), PWID marijuana, 2nd offense (2013-GS-42-4573), trafficking cocaine, 10-28 grams, 3rd or subsequent offense (2013-GS-42-4574), trafficking in cocaine base (2013-GS-42-4575, count 1), and possession of a firearm or knife during the commission or attempt to commit a violent crime (2013-GS-42-4575, count 2). William S. Bean, IV, Esquire, represented him. On December 4-5, 2013, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted on all charges. The Honorable Roger L. Couch sentenced Applicant to five concurrent terms of imprisonment for life without parole for the two trafficking charges and the three proximity charges. Judge Couch sentenced Applicant to ten (10) years for possession with intent to

distribute marijuana and five (5) years for possession of a firearm or knife during the commission or attempt to commit a violent crime. All sentences are set to run concurrently.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented by Laura Baer, Esquire, of the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Lyles, 2016-UP-045 (filed on January 27, 2016). The Remittitur was issued on April 26, 2016.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "The trial court lacked subject-matter jurisdiction to try and convict the Applicant for unindicted drug offenses"
 - a. "For evidence in support of his claim, the applicant submits that his indictments indicate that the Spartanburg County General Sessions Court began on October 7, 2013. However, the "Action of the Grand Jury" section indicates that the grand jury "True Billed" the applicant's indictment on "September 27, 2013," which was nine (9) days prior to the beginning of the term of General Sessions Court in Spartanburg County."
2. Ineffective Assistance of Counsel, in that:
 - a. Counsel failed to move for suppression of, or to object to, the State's drug evidence that was seized in violation of Fourth Amendment
 - i. "During the execution of the search warrant, applicant was arrested and drugs were found. Nevertheless, even though the state had failed to disclose the existence of any Confidential Reliable Informant (CRI) to support probable cause for the introduction of any drug evidence against the applicant, his trial counsel did not only fail to move for suppression of the state's drug evidence against him
 - ii. The record in applicant's case was devoid of any CRI to show that police had probable cause to seize the drug evidence
 - iii. The police executed a search of the North Forest Street residence based solely upon information from a "complaint" that was uncorroborated by any investigation of controlled drug buy from him to support any probable cause for his seizure or search by the police."

- iv. "The Applicant also contends that the state's seizure of drug evidence against him at trial did not only show that the police executed an unlawful search of the residence where he was a guest, but did also show that he was unlawfully seized in violation of the Exclusionary Rule of the Amendment
- v. Because the State failed to produce its informant prior to or during trial to establish probable cause for the admission of the drug evidence, Counsel's failure to move to suppress the evidence was ineffective because the drug evidence was the only evidence against Applicant
- b. Counsel failed to object to the court's interpretation of S.C. Code §§ 17-25-45 and 17-25-50."
 - i. ...given the fact that the PWID crack cocaine is not listed under section 17-25-45, the applicant contends that inasmuch as the record showed that his burglary first and manslaughter offenses took place at the same time and place, his counsel's failure to object to the trial judge's construction of 17-25-45 in conjunction with 17-25-50 was ineffective assistance of trial counsel, and was prejudiced by the Judge's imposition of his unlawful sentence." [sic]
- c. Counsel failed to impeach the state's star witness with his prior convictions for armed robbery and third degree burglary offenses."
 - i. Wesson's armed robbery and third degree burglary convictions were punishable by imprisonment in excess of one year. S.C. Code 16-11-313; 16-11-330. Thus, the crimes were as a matter of law admissible under Rule 609(a)(1) to attack Wesson's credibility. Counsel's failure to argue the application of Rule 609(a)(1), SCRE, to impeach Wesson's credibility was ineffective assistance of counsel..."
- d. "Counsel failed to object to the solicitor's vouching for the credibility of a state witness."
 - i. There was no other evidence beyond Wesson's testimony connecting Applicant to the state's drug evidence
- e. Counsel failed "to object to the trial judge's jury charge on the facts."
 - i. "Therefore, the Jury charge by the Court in this instance was in essence a charge on the facts in violation of Article V, [Section] 22 of the S.C. Constitution; of particular note; no Court would charge a Jury the inverse of this charge—you may infer the defendant does not have dominion and control over the drugs "if he does not have control over the premises but is merely present."

For the purpose of this Return, Respondent incorporates the application, the Clerk of Court records pertaining to the subject convictions, Applicant's records from the South Carolina

Department of Corrections, the trial transcript, Applicant's appellate records, and the records of this action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges the trial court lacked subject matter jurisdiction based on defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. 93, 610 S.E.2d 494, 499 (2005); See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

V.

Each and every allegation contained within the application not expressly admitted,

qualified, or explained above is denied.

VI.

WHEREFORE, Respondent requests an evidentiary hearing solely on the allegations of ineffective assistance of trial counsel.

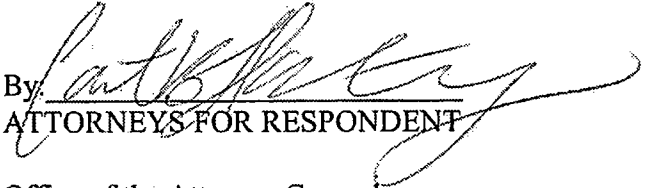
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

CAITLIN B. HASTINGS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

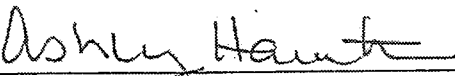
February 16th, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2016-CP-42-1479
ISAAC GLENDARD LYLES, #209983,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

DATED this 16th day of February, 2017.


 Ashley Haworth, Paralegal
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

ISAAC GLENARD LYLES,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)
)
)

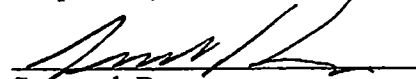
) SUPPLEMENTAL APPLICATION
)
)
)

) CASE # 2016-CP-42-1479
)
)

This matter comes before the Court by way of application of post conviction relief filed April 18, 2016, alleging ineffective assistance of trial counsel. A Return was made on February 16, 2017, requesting a hearing on the allegation of ineffective assistance of counsel. This application is intended to incorporate the application and with the additions of the following allegations:

1. Ineffective assistance of appellate counsel for failing to brief issues of :
 - (a) error in Judge's sentence of life without parole pursuant to § 17-25-45.
2. Denial of due process when Judge sentences of life without parole pursuant to § 17-25-45.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 21 day of June, 2017

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)
)

ISAAC GLENARD LYLES,
APPLICANT.

) AFFADAVIT OF SERVICE BY MAIL
)
)

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2016-CP-42-1479
)
)
)

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Reply to Conditional Order of Dismissal** in the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of Attorney General Alan Wilson
P.O. Box 11549
Columbia, SC 29211


Attorney for Defendant

Greenville, South Carolina

This 21 day of January, 2017.

ROSS & ENDERLIN, PA
ATTORNEYS AT LAW

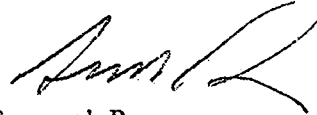
June 20, 2017

Ms. Hope Blackley
Spartanburg Clerk of Court
PO Box 3483
Spartanburg, SC 29304

To Whom It May Concern:

Please find for filing the enclosed Supplemental Applications. Please return a clocked copy to me by e-mail or post and I will forward them to the Judge and Attorney General's office. If you have any questions or concerns, please let me know.

Sincerely,



Susannah Ross
Attorney at Law

enclosure

✓ cc: Valerie G. Giovanoli

330 E. COFFEE ST., GREENVILLE SC 29601
PHONE: (864) 242-0029
E-MAIL: SUSANNAH@ROSSENDERLIN.COM

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) 2016-CP-42-179
)
)
)
ISAAC GLENARD LYLES)
 APPLICANT)
 vs.) TRANSCRIPT OF RECORD
)
THE STATE OF SOUTH CAROLINA)
 RESPONDENT)

June 28, 2017
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

SUSANNAH ROSS, ESQ.
Attorney for the Applicant

VALERIE G. GIOVANOLI, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

ISAAC LYLES

Direct By Ms. Ross 10

Cross By Ms. Giovanoli 29

WILLIAM BEAN

Direct By Ms. Giovanoli 35

Cross By Ms. Ross 47

Redirect By Ms. Giovanoli 53

» > o < «

Certificate of Reporter 67

1 Affidavit 15 15

2 Court Schedule 19 22

3 Photograph 23 23

4 Notice to Seek Life Without
Parole 24 24

1 THE COURT: I've been handed the application,
2 case law and statutory law and an affidavit.

3 You seen those, ma'am?

4 MS. GIOVANOLI: I did not see the case law but I
5 did see statutory law, the amendment she provided to
6 me Thursday at 5:00 p.m.

7 THE COURT: Okay. The State vs. Anderson?

8 MS. ROSS: Yes.

9 MS. GIOVANOLI: Okay, I thought you meant in the
10 amendment. Yes, State vs. Anderson.

11 THE COURT: Yes, ma'am, you have that?

12 MS. GIOVANOLI: I've been provided with that
13 this morning.

14 THE COURT: Okay.

15 MS. GIOVANOLI: And the supplemental
16 application, I know your position on that, but I
17 would like for the record to reflect that we are
18 opposing that amendment. I received this on
19 Thursday, June 22nd at 5:00 p.m. on obviously an
20 allegation against appellate counsel. I did not have
21 the opportunity to subpoena appellate counsel that
22 late in time. Pursuant to Rule 15(a), requiring that
23 any party amending the pleading, one is a matter of
24 course any time before or within 30 days after
25 responsive pleadings, otherwise accordingly amend his

1 pleading only by leave of court. Which Ms. Ross has
2 now sought leave of court.

3 We actually also informed Ms. Ross, via letter,
4 that any amendment that is received after Monday,
5 June 19th, 2017, that The State would oppose.
6 Obviously, we can't have appellate counsel here. I
7 believe that the issue in the sentence in life
8 without parole will resolve itself through his claim
9 of ineffective assistance of trial counsel.

10 THE COURT: Yes, ma'am.

11 MS. GIOVANOLI: And I don't want to be forced
12 into a corner to request a continuance on this case
13 because I don't have the witness; and therefore, we
14 would move to strike that allegation.

15 THE COURT: Well, I'll suggest something to
16 Ms. Ross and I'll let you weigh in. What I'll do is
17 I'll listen to it. And if I think that's it's
18 appropriate to allow the amendment based on the
19 evidence that's offered into the record, then I'll
20 allow the amendment. And then I'll bifurcate the
21 proceeding and allow there to be a bifurcated hearing
22 at a later date and time which bears only upon the
23 issue of appellate ineffective assistance of counsel.
24 But I'll make that after having heard the testimony.

25 MS. GIOVANOLI: All right.

1 MS. ROSS: Thank you, Judge. And I apologize
2 for that, it's a situation where in light of Supreme
3 Court recent rulings, I feel like I needed to go over
4 and beyond protecting the record.

5 THE COURT: Yes, ma'am.

6 MS. ROSS: And that was the basis of the
7 amendment, of me sort of realizing this could
8 possibly be an issue down the line. And that's why I
9 made it at a late date.

10 THE COURT: No apologize necessary, I recognize
11 you're an advocate. And I don't hold it against you.

12 MS. GIOVANOLI: And nor do I, just for the
13 record.

14 MS. ROSS: Okay.

15 MS. GIOVANOLI: Okay, I'll just go ahead and
16 call the case, Isaac Glenard Lyles vs. The State of
17 South Carolina. Case 2015-CP-42-1479. We're before
18 the Court on a Application for Post-Conviction Relief
19 filed on April 18th, 2016. Applicant is presently
20 incarcerated. He was indicted on October 2013 for
21 possession with intent to distribute cocaine within
22 one half mile of a school or park. Possession with
23 intent to distribute marijuana within one half mile
24 of a school or park. Possession with intent to
25 distribute cocaine base within one half mile of a

1 school or park. Possession with intent to distribute
2 marijuana, second offense, trafficking cocaine, ten
3 to 28 grams, third or subsequent offense, trafficking
4 in cocaine base, count one and possession of a
5 firearm or knife during the commission or attempt to
6 commit a violent crime. That was count two.

7 William Bean the fifth -- the fourth, excuse me,
8 represented the Applicant on December 4th through to
9 5th, 2013. Applicant proceeded to a jury trial
10 pursuant to which he was found guilty as indicted on
11 all charges. The Honorable Roger L. Couch sentenced
12 the Applicant to five concurrent terms of
13 imprisonment of life without parole for the two
14 trafficking charges and the three proximity charges.

15 Judge Couch also sentenced Applicant to 10 years
16 for possession of intent to distribute marijuana and
17 five years for possession of a firearm or knife
18 during the commission or attempt to commit a violent
19 crime. All sentences were sent to one concurrently.
20 Applicant filed a notice of appeal. That appeal was
21 perfected by Laura Bear of the Office of Appellate
22 Defense. And The South Carolina Court of Appeals
23 affirmed Applicant's conviction and sentences in an
24 unpublished opinion.

25 The State is present and ready to proceed. The

1 Applicant is also present and he is represented by
2 Ms. Susannah Ross, to whom I will hand it over.

3 THE COURT: Ms. Ross.

4 MS. ROSS: Thank you, Your Honor, may it please
5 the Court. Again, we make a motion for summary
6 judgment pursuant the 17-27-70. The reply was not --
7 was put approximately 10 months after the
8 application.

9 Do you have any prejudice or -- with the delay
10 in the reply?

11 MR. LYLES: Of the indictment?

12 MS. ROSS: The reply, the application?

13 I don't believe that we can state any prejudice
14 though, Your Honor.

15 THE COURT: All right, without any articulated
16 prejudice, I will respectfully deny that motion.

17 MS. ROSS: He is alleging ineffective assistance
18 of trial and appellate counsel and we can -- I'll go
19 through it with him one by one. But we object to
20 failure of move to quash the indictment based on Rule
21 3 and the indictment process itself and he'll
22 address that. There's also a failure to move to
23 suppress the drugs. There was no challenge to a
24 search warrant in this case. Pursuant to France v.
25 Delaware. There was no challenge to moving the drugs

1 into evidence.

2 There was no argument against The State seeking
3 life without parole pursuant to 17-25-45. And 50.
4 He failed -- his attorney failed to argue, and this
5 is outlined in the Appellate opinion, South Carolina
6 Rule of Evidence 609(a)(1), in order to impeach The
7 State's main witness who had a armed robbery and a
8 burglary third on his record, they got into a Lyle
9 reasoning whether -- well, not Lyle, but they got
10 into a reasoning that did not go into the fact that
11 these were charges that carried over a year within
12 the past 10 years and should have come in to impeach
13 that witness. And due to failing to properly
14 articulate that in -- in the trial, those -- that
15 impeachment was not allowed.

16 There was failure to object to vouching on Page
17 243, Line 17 of the transcript in closing. And the
18 rest we'll leave to Mr. Lyles to present from the
19 stand. At this point we call Mr. Lyles to the stand.

20 THE COURT: All right, Mr. Lyles, if you'd come
21 up, sir. Mr. Lyles, place your left hand on the
22 Bible to the extent that you can, raise your right
23 hand.

24 ISAAC LYLES, after being duly sworn,
25 testified as follows:

ISAAC LYLES-DIRECT BY MS. ROSS

1 THE COURT: Okay, sir, you may take your seat
2 and state your full name for the record.

3 THE WITNESS: Isaac Lyles.

4 DIRECT EXAMINATION

5 BY MS. ROSS:

6 Q Hi there, Mr. Lyles.

7 A Hello.

8 Q Now, let's give a little history about this
9 case. What kind of sentence are you serving?

10 A A natural life sentence.

11 Q All right. And that was following a trial; is
12 that correct?

13 A Yes, ma'am.

14 Q Now, tell me about the history with your lawyer,
15 how did you come -- how did Mr. Bean come to represent
16 you?

17 A I was informed through a friend. And my family
18 went to talk to him and end up representing -- getting him
19 to represent me in the trial.

20 Q All right. Have you had any other lawyers
21 representing you prior to Mr. Bean?

22 A Well, I had got a lawyer take my preliminary
23 hearing, to preliminary hearing, bond hearing.

24 Q But not too far into the preparation of trial?

25 A No, ma'am.

ISAAC LYLES-DIRECT BY MS. ROSS

1 Q Okay. Did he meet with you as many times as you
2 wanted and reviewed discovery with you?

3 A I ain't going to as many times as I wanted him
4 to, but he did come meet with me several times.

5 Q Okay. And he gave you a copy of discovery as
6 well, didn't he?

7 A Yes, ma'am.

8 Q Okay. And first I just want to talk about some
9 of that discovery. Some of it included -- well, I'm going
10 to show you these four sheets of paper. Do you recognize
11 them?

12 A Yes, ma'am.

13 Q And how do you recognize them? What are they?

14 A Affidavit to a search warrant.

15 Q Okay. Now, how was that applicable to you?
16 What was the search warrant?

17 A It lead -- it basically was leading up to my
18 arrest.

19 Q Okay. And you made that Exhibit 2 in your
20 Application for Post-Conviction Relief; is that correct?

21 A Yes, ma'am.

22 Q Okay. So, that was the search warrant that led
23 to the search of the house where drugs were found and used
24 against you in this trial?

25 A Yes, ma'am.

ISAAC LYLES-DIRECT BY MS. ROSS

1 Q Okay. Now, what's the next sheet?

2 A Copy of the investigative case activity summary.

3 Q All right. And does that apply to these
4 charges, they're two warrants?

5 A Yes, ma'am. Distribution and school zone.
6 Alleging from a controlled drug buy.

7 Q Okay. Were you convicted of these two warrants?

8 A No, ma'am.

9 Q So, those were dismissed?

10 A Yes, ma'am.

11 Q And what is this?

12 A A copy of The State's witness list.

13 Q All right. Now --

14 A Excuse me.

15 Q Go ahead.

16 A And it don't have the informants name or nothing
17 on there. Which that's part of the -- of the basis for my
18 arrest.

19 Q Okay, I was going to have it marked but let's go
20 ahead and talk about the meaning all of this.

21 A Yes, ma'am.

22 Q Why it's relevant to your case. Did your lawyer
23 challenge the search warrant that lead to your arrest and
24 the drugs being found in your case?

25 A No, ma'am.

ISAAC LYLES-DIRECT BY MS. ROSS

1 Q Okay. Was the confidential informant whose
2 word, I guess, was relied on to get the search warrant,
3 ever brought into court?

4 A No, ma'am.

5 Q Were you able to ever cross-examine or question
6 that confidential informant?

7 A No, ma'am.

8 Q And like you said, the charges that came out of
9 his bond were never brought against you?

10 A No, ma'am.

11 Q So, as of now you've never seen who this
12 confidential inform man was?

13 A No, ma'am.

14 Q Now -- and you've already said he wasn't listed
15 as a witness in your trial that you had?

16 A No, ma'am.

17 Q Now, what does it say in the affidavit of you
18 search warrant that you have issue with?

19 A It contains a false statement alleging that I
20 sold crack cocaine to a confidential reliable informant
21 from the residence of North Forrest Street.

22 Q Okay.

23 A Which--

24 Q And why does this second sheet showing the times
25 of this particular buy?

ISAAC LYLES-DIRECT BY MS. ROSS

1 A Yes, ma'am.

2 Q Is this the buy that led to the search warrant?

3 A Yes, ma'am.

4 Q Okay. And the search warrant's dated what date?

5 A 10-5-2012.

6 Q And it's saying within 72 hours there was a buy.

7 And what's the date on the times listed in the summary?

8 A 10-3-2012.

9 Q Within 72 hours?

10 A Yes, ma'am.

11 Q Okay. Now, what they said -- what does it that
12 he say specifically that you think is disputed by the
13 summary sheet?

14 A They said that the CI left the buy location and
15 responded back to them. There original location with
16 surveillance maintained and no stops made prior to
17 arrival.

18 Q Okay. And how long did it take for the CI to
19 get from where the vehicle was searched to the incident
20 location?

21 A Eight minutes.

22 Q All right. How long did it take from the time
23 of leaving the incident location to get back to the
24 meeting location?

25 A Approximately two hours and two minutes.

ISAAC LYLES-DIRECT BY MS. ROSS

1 Q All right. Do you think that sheet might have
2 been helpful in arguing to suppress your search warrant?

3 A Yes, ma'am.

4 Q What do you believe it shows?

5 A That the information was not reliable.

6 Q All right. What do you think it shows about the
7 truth of the statement that the CI immediately came back
8 to the meeting location after the buy?

9 A It's not true.

10 Q All right.

11 I'd ask that this to be marked and entered
12 into evidence as Applicant's Exhibit 1.

13 THE COURT: Objection?

14 MS. GIOVANOLI: No objection.

15 THE COURT: All right, without objection, the
16 same is to be marked and admitted.

17 (WHEREUPON, Applicant's Exhibit No. 1 was marked
18 for identification and received into evidence.)

19 BY MS. ROSS:

20 Q Mr. Lyles, now that we're just talking about
21 that search warrant in general, you had a case that you
22 wanted to mention to the Judge that goes to how -- since
23 no CI was brought into this case, what motions could have
24 been made on your behalf at trial? Do you have that case?

25 A Yes, ma'am.

ISAAC LYLES-DIRECT BY MS. ROSS

1 Q State v. Gambell.

2 A State vs. Gambell.

3 Q Have we discussed that case?

4 A Yes, ma'am.

5 Q Can you tell the Judge the site for case or?

6 A It's 747 SC2d, 747 SC2d--

7 THE COURT: Got it.

8 THE WITNESS: 784.

9 THE COURT: 784, got it. Thank you.

10 THE WITNESS: Uh-huh.

11 BY MS. ROSS:

12 Q All right, and in moving on as well, you also
13 handed me some terms of court that you wanted me to put
14 into evidence, can you explain to me what those are?

15 A Excuse me --

16 (WHEREUPON, an off the record discussion was
17 held between Mr. Lyles and Mrs. Ross.)

18 BY MS. ROSS:

19 Q Well, what happened, what did you want to put on
20 the record?

21 A I just want to show how my lawyer was
22 ineffective and show how it prejudiced me.

23 Q Okay. You can go ahead and put that on the
24 record right now.

25 A All right, my counsel -- my trial counsel was

ISAAC LYLES-DIRECT BY MS. ROSS

1 ineffective for failing to suppress and object to The
2 State's illegal seized evidence based on The State failed
3 to produce reply prior to trial to demonstrate probable
4 cause for my arrest and search. And also for the search
5 of the surrounding premises.

6 THE COURT: Okay.

7 THE WITNESS: And prejudice because I was not
8 entitled to a fundamental fair trial.

9 THE COURT: Okay.

10 BY MS. ROSS:

11 Q Now, go ahead. Now, these are the terms of
12 court, correct?

13 A Yes, ma'am.

14 Q And how did you get those?

15 A I had wrote the South Carolina Court
16 Administration.

17 Q And how is it pertinent to the validity of your
18 indictments?

19 A Well, my indictments alleged that I was indicted
20 on September the 27th of 2014.

21 Q 2013?

22 A Thirteen, sorry about that, '13.

23 MS. GIOVANOLI: Your Honor, I'm going to object
24 to this line of questioning as it pertains to an
25 allegation that he was improperly indicted. No such

ISAAC LYLES-DIRECT BY MS. ROSS

1 allegations have been made in this case. But I will
2 defer to counsel if this is one of the allegations
3 actually made.

4 THE COURT: Okay, I'll respectfully overrule the
5 objection. Primarily because Mr. Lyles is here for
6 his day in court and I'm going to let him fully vet
7 his grievances.

8 MS. GIOVANOLI: Thank you.

9 THE COURT: Yes, ma'am.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 MS. ROSS: Okay. Just to be clear, I believe
13 The Court has copies of the indictments in this case
14 as part of the Attorney General's package; is that
15 correct?

16 MS. GIOVANOLI: That's correct.

17 MS. ROSS: All right.

18 BY MS. ROSS:

19 Q And what was the problem with the -- what's your
20 argument about the indictment dates?

21 A Well, the indictment alleged that I was indicted
22 on, like I say, September the 27th, 2013. And the court
23 calendar shows that there was no court, no term of court
24 on that week. Of that me be actually indicted.

25 Q And what does the statute say about that?

ISAAC LYLES-DIRECT BY MS. ROSS

1 A That the prosecutor must present indictments
2 that each term of General Sessions Court to be returned
3 true bill or no bill by the Grand Jury.

4 Q All right.

5 I move this into evidence as Applicant's
6 Exhibit No. 2.

7 (WHEREUPON, Applicant's Exhibit No. 2 was marked
8 for identification only.)

9 BY MS. ROSS:

10 Q And you also had an argument about Rule 3, the
11 indictment being made within 90 days; what was that
12 argument?

13 A Where they failed to return an indictment at
14 reasonable time.

15 Q All right. And you're alleging because the
16 indictment was improper based on the rules and Rule 3, the
17 case 0the indictment lacked subject matter jurisdiction,
18 is that your argument?

19 A Yes, ma'am.

20 Q All right. Now, going back to the search
21 warrant issue, was the video ever brought in of the CI
22 buy?

23 A I would like to explain how the counsel was
24 ineffective.

25 Q Okay.

ISAAC LYLES-DIRECT BY MS. ROSS

1 A For--

2 Q Okay, briefly do that?

3 A Quash the indictment.

4 Q All right.

5 A My trial counsel was ineffective for failing to
6 squash the indictments because the state lacked subject
7 matter jurisdiction to convict me on the drug offenses
8 because the solicitor could not have presented the
9 indictments at the term of General Sessions Court to be
10 returned true bill or no bill by the Grand Jury. And
11 therefore, I was -- I was not entitled to a fundamental
12 fair trial.

13 THE COURT: Okay.

14 BY MS. ROSS:

15 Q Okay. Now, did your attorney object to the
16 admission of the drugs into evidence?

17 A No, ma'am.

18 Q How do you think that effected your case?

19 A It effected my case because trial counsel was
20 ineffective for failing to move -- object because The
21 State illegally seize drug evidence because The State
22 failed to produce information from this arresting officer
23 to justify probable cause for my arrest and search.

24 Q Okay. So he failed to object or moved to
25 dismiss the drugs based on the search warrant being bad,

ISAAC LYLES-DIRECT BY MS. ROSS

1 correct?

2 A Yes, ma'am.

3 Q And then we've discussed that a little bit but
4 then moving on there's a whole second issue. Where were
5 the drugs found?

6 A Well, first of all, I was prejudiced by counsel
7 failure to object to the drug evidence because I was not
8 entitled to a fundamental fair trial.

9 Q Okay. I'm going to show you a picture that was
10 admitted in the trial against you. Do you recognize this
11 picture?

12 A Yes, ma'am.

13 Q All right. What is it?

14 A It's a black tote bag.

15 Q Okay. And this picture was put into evidence in
16 the trial against you, correct?

17 A Yes, ma'am.

18 Q At the trial, where did they say that bag was
19 located; do you recall?

20 A Off the premises of the search warrant.

21 Q Okay. It was on the other side of the fence,
22 correct?

23 A Yes, ma'am.

24 Q All right.

25 I move this as Applicant's Exhibit No. 3.

ISAAC LYLES-DIRECT BY MS. ROSS

1 THE COURT: Objection, ma'am?

2 MS. GIOVANOLI: You're moving it into evidence
3 as Applicant's what?

4 MS. ROSS: It's exhibit No. 3.

5 MS. GIOVANOLI: Okay, so, if we go back to
6 Applicant's No. 2, I heard you had it marked but not
7 admitted, so.

8 MS. ROSS: Oh, I apologize. I move that to be
9 admitted as well.

10 THE COURT: Any objections?

11 MS. ROSS: Then I do object to that to the
12 extent that both my prior objections regarding the
13 indictments--

14 THE COURT: I understand.

15 Okay, over objections, I'll allow into evidence
16 and admitted. And I think I said that number two was
17 admitted into evidence as well. I may have just
18 mumbled it. But all of The Applicant's Exhibits are
19 admitted into event at this point.

20 One, two, three, am I right? Okay.

21 You need to mark it?

22 THE COURT REPORTER: Yes, sir.

23 (WHEREUPON, Applicant's Exhibit No. 2 was
24 admitted into evidence.)
25

ISAAC LYLES-DIRECT BY MS. ROSS

1 (WHEREUPON, Applicant's Exhibit No. 3 was marked
2 for identification and received into evidence.)

3 BY MS. ROSS:

4 Q I want to show you -- is there anything you'd
5 like to say about--

6 A Yes, I'd just like to explain my issue dealing
7 with the scope of the search warrant. My trial counsel
8 was ineffective for failing to move to suppress The
9 State's illegally seized drug evidence based on they
10 exceeded the scope of the search, the search warrant. And
11 it prejudiced me because I was not entitled to a fund
12 mental fair trial.

13 Q Okay. What is this I'm showing you?

14 A A copy of The State's notice to intend to seek
15 live without parole.

16 Q And what does it include as attachments? Can
17 you see?

18 A Indictment on -- Exhibit A, indictment. Exhibit
19 B, indictment. And Exhibit C, indictment.

20 Q All right.

21 I move to have this marked and entered into
22 evidence as Applicant's Exhibit 4.

23 MS. GIOVANOLI: No objection.

24 THE COURT: All right, without objection, the
25 same is admitted into evidence.

ISAAC LYLES-DIRECT BY MS. ROSS

1 BY MS. ROSS:

2 Q All right, what is your issue--

3 THE COURT: Hold on.

4 You need to mark it?

5 THE COURT REPORTER: Yes, sir.

6 THE COURT: Okay, give her a minute to mark it.

7 (WHEREUPON, Applicant's Exhibit No. 4 was marked
8 for identification and received into evidence.)

9 BY MS. ROSS:

10 Q What is the problem -- you were sentenced to
11 life without parole, why do you believe that was a
12 improper sentence, Mr. Lyles?

13 A The -- of the notice has charges that shouldn't
14 be listed -- one charge that shouldn't have been listed as
15 a serious offense. Because it's not listed in the body of
16 Section 17-25-45 of 17-25-45-50. It's a PWID crack
17 cocaine charge and it's not within proximity of a school
18 zone. And the statute of proximity of a school zone,
19 along with the present charge make it a serious offense.

20 Q All right.

21 A Mine is without school zone.

22 Q Okay. And there were two -- there were two most
23 serious charges as well?

24 A Yes, ma'am.

25 Q What was the conviction date on all three of

ISAAC LYLES-DIRECT BY MS. ROSS

1 those priors that were used to trigger life without parole
2 against you; do you recall?

3 A I think it was March the -- March the --

4 Q If you can't--

5 A March the 21st--

6 Q You do all they were the same day?

7 A Yes, ma'am.

8 Q They were the same day, all those three
9 convictions?

10 A All there charges were adjudicated on March the
11 21st, 1994.

12 Q So, almost 25 years ago. Yeah, a long time ago?

13 A Yes, ma'am.

14 Q And what did you think 17-25-50 says about that?
15 You're well versed in this. But what does it say later in
16 that statute about using prior convictions?

17 A It's not up under 17-25-50, it's up under
18 17-25-45(f).

19 Q Okay.

20 A Where it states that Any charges that were
21 adjudicated at one term of court up under that statute
22 should be considered as one prior conviction.

23 Q And instead they considered it separately --

24 A Yes, ma'am --

25 Q -- to use against you here.

ISAAC LYLES-DIRECT BY MS. ROSS

1 A Yes, ma'am.

2 Q Okay. I'm going to move on and talk about --
3 have you read your Appellate Court Opinion? Oh, go ahead.

4 A Your Honor, my trial counsel was ineffective for
5 failing to move to suppress -- I mean, for, excuse me, my
6 trial counsel was ineffective for failing to object to
7 Judge's interpretation of 17-25-45 and 17-25-50 and
8 sentencing me to a natural life sentence. When the basis
9 of the notice don't constitute notice to seek life without
10 parole. And it prejudiced me because I was not entitled
11 to a fundamental fair trial.

12 Q Did your Appellate Court brief -- did the
13 Appellate Court brief at issue?

14 A No, ma'am.

15 Q All right. Now, moving on to what the Appellate
16 Couple did brief, they did brief the issue of your -- your
17 main witness had a prior record, correct?

18 A Yes, ma'am.

19 Q And do you recall what that prior record was?

20 A He had a charge of third offense -- third
21 offense burglary.

22 Q Third degree?

23 A Third degree burglary and armed robbery.

24 Q All right. Now, do you recall what the
25 Appellate Court said about the issue of -- your lawyer

ISAAC LYLES-DIRECT BY MS. ROSS

1 wanted to bring -- wanted to impeach on that prior record
2 a trial?

3 A Yes, ma'am.

4 Q And he tried to and what did the Court of
5 Appeals say about what he put on the record during your
6 trial?

7 A That he didn't properly preserve it. He made
8 the wrong argument. And he should have -- he said that --
9 that it was a crime of dishonesty and it wasn't a crime of
10 dishonesty. He should have impeached him based on
11 609(a)(1). Which the charges carry a year or more.

12 Q And because he didn't make that argument, the
13 Court of Appeals said that issue wasn't preserved?

14 A Yes, ma'am.

15 Q And because that was argued incorrectly, the
16 main witness against you was not impeached?

17 A No, ma'am.

18 Q And you feel that prejudiced you?

19 A Yes, ma'am. He was ineffective for failing to
20 object -- I mean, failing to impeach him under 609(a)(1).
21 And it prejudiced me because his -- The State star witness
22 testimony was the only testimony -- evidence they had
23 linking me to the drugs. Therefore, I was prejudiced.
24 Because I was not entitled to fundamental fair trial.

25 Q Okay. Do you wish to add anything further on

ISAAC LYLES-DIRECT BY MS. ROSS

1 that argument?

2 A No.

3 Q Okay. I'm moving on to -- you alleged your
4 lawyer failed to object to the Solicitor vouching for that
5 witness. So not only did he not -- was not allowed to
6 impeach the witness, but the solicitor then moved on to
7 vouch for that witness. And I refer you Page 243, Line
8 17. What did -- how did he vouch for that witness?

9 A He -- he vouched by stating that the witness was
10 telling the truth about his testimony.

11 Q Did your lawyer object when that happened?

12 A No, ma'am.

13 Q And you feel that failure to object further
14 prejudiced your case?

15 A Yes, ma'am.

16 Q And effected the outcome?

17 A Yes, ma'am.

18 Q Okay. And finally, I think that's all I had.
19 Is there anything else that you would like to put on the
20 record pertaining to your argument? I believe I covered
21 what was in your application but is there anything else
22 that you'd like to tell the Judge at this time?

23 A Based on, I think, my second issue dealing with
24 the informant.

25 Q Yes.

ISAAC LYLES-CROSS BY MS. GIOVANOLI

1 A I might have said it but I have should have been
2 given a right to face my accuser who alleged I committed a
3 crime leading up to the search and my arrest.

4 Q Okay.

5 A That's it.

6 MS. ROSS: All right, then I have no further
7 questions. If you can answer any questions that the
8 Attorney General has.

9 CROSS-EXAMINATION

10 BY MS. GIOVANOLI:

11 Q Good morning.

12 A Good morning.

13 Q You're now trying to challenge the sufficiency
14 of the probable cause for figure search warrant, right?

15 A Yes, ma'am.

16 Q And you said that was the basis leading up to
17 your arrest?

18 A Yes, ma'am.

19 Q Okay. So, wasn't the drug buys where you sold
20 drugs to a confidential informant from that house, was the
21 basis of the probable cause to get a search warrant on
22 that house?

23 A No, ma'am, I never sold any drugs.

24 Q Okay. So, your challenging the facts put forth
25 in the probable cause affidavit?

ISAAC LYLES-CROSS BY MS. GIOVANOLI

1 A The validity.

2 Q The confidential information was?

3 A Yes, the validity of the search warrant, yes,
4 ma'am.

5 Q Okay. I just wanted to clear that up. Okay.
6 You also feel that your counsel was ineffective for
7 failing to object to the drugs being entered into
8 evidence. Isn't it true that your defense at trial is
9 that the drugs weren't yours?

10 A Yes, ma'am.

11 Q Okay. You seem pretty aware of the statutory
12 law on the LWOP notice, are you familiar with Section
13 17-25-45(c)(2)(a)? There's a section that actually
14 numerates each offense that's concerned serious. But
15 (c)(2)(a), are you aware that that also included offenses
16 that are punishable by up to 30 years or more?

17 A Yes, ma'am.

18 Q Okay. And whenever you pled guilty back in
19 May -- I mean, excuse me, that was March 21st, 1994; is
20 that correct?

21 A Yes, ma'am.

22 Q Okay. All right. And you pled to possession
23 with intent to distribute crack, proximity. And that was
24 third or subsequent; correct?

25 A Yes, ma'am.

ISAAC LYLES-CROSS BY MS. GIOVANOLI

1 Q Okay. And you're aware that that carries up to
2 30 years?

3 A Yes, ma'am.

4 Q Okay. And the other basis for the life without
5 parole notice was a murder and a burglary; is that
6 correct?

7 A Yes, ma'am.

8 Q And those occurred at the same time?

9 A Yes, ma'am.

10 Q And so, your contention is that that's
11 considered one strike for the purposes of the LWOP notice?

12 A Yes, ma'am because they was committed at the
13 same time. Same place, same location.

14 Q Yes, the murder and the burglary, right?

15 A Yes, ma'am.

16 Q But the possession with intent to distribute
17 crack was -- occurred at a different time?

18 A Yes, ma'am.

19 Q Okay. But you pled to all three at the same
20 time?

21 A I was adjudicated one term of court.

22 Q Okay.

23 A Yes, ma'am.

24 Q But the date of offenses were different for the
25 murder and burglary and the possession with intent to

ISAAC LYLES-CROSS BY MS. GIOVANOLI

1 distribute?

2 A Yes, ma'am.

3 Q Okay. Are you aware that in trial counsel was
4 trying to argue, in order to impeach The State's witness
5 based on the crime of dishonesty. Do you recall that
6 argument?

7 A Yes, ma'am.

8 Q Okay. And that was that pursuant to 609(a)(2).
9 Which was referenced in the brief and you guys discussed
10 it on district; do you remember that?

11 A Yes, ma'am.

12 Q Okay. Are you familiar with the Rule of
13 Evidence 609(a)(1), as well as (b), that it requires that
14 the convictions be within ten years?

15 A No, I can't recall.

16 Q Okay. Are you aware that the burglary and armed
17 robbery, that the witness had been convicted of was
18 outside that ten year window?

19 A No, ma'am.

20 Q Okay. And you're also complaining that you
21 weren't given the opportunity to confront your accuser,
22 which was the confidential informant; correct?

23 A Yes, ma'am.

24 Q But isn't it true that you weren't actually,
25 indicted or charged for the buys -- those buys?

ISAAC LYLES-CROSS BY MS. GIOVANOLI

1 A No, ma'am. But still the informant was what led
2 to my arrest, basically?

3 Q Sure. But you weren't prosecuted for the actual
4 sell of drugs to the confidential informant?

5 A No, ma'am. So, I never committed the crime.

6 Q Okay.

7 All right, I have no further questions,
8 thank you.

9 THE WITNESS: All right, you're welcome.

10 THE COURT: Redirect, ma'am?

11 MS. ROSS: No Your Honor.

12 THE COURT: Okay.

13 All right, Mr. Lyles, you can step down, thank
14 you, I appreciate it.

15 Anything further from the Applicant?

16 MS. ROSS: No, Your Honor.

17 THE COURT: Okay.

18 Let's take just a brief break before The State
19 calls its witness. We'll be in recess for about five
20 minutes.

21 (WHEREUPON, a short break was taken.)

22 THE COURT: Yes, ma'am.

23 MS. GIOVANOLI: Your Honor, I would make a
24 motion for direct verdict just to one allegation.

25 THE COURT: Yes, ma'am.

1 MS. GIOVANOLI: There was no evidence presented,
2 that was failure to object to a jury charge. He
3 actually quoted it in his application.

4 THE COURT: Yes, ma'am.

5 MS. GIOVANOLI: And there was no evidence
6 presented that it was improper and The State would
7 further submit that it was not improper. There's no
8 case law to support that it was an improper closing.
9 And reason for trial counsel to have objected. So,
10 that's the basis for the directed verdict motion,
11 Your Honor.

12 THE COURT: Okay.

13 Ms. Ross?

14 MS. ROSS: Judge, I think anything he puts in
15 his application is part of the record. You have a
16 copy of that application.

17 THE COURT: Yes, ma'am.

18 MS. ROSS: That's part of the record. He made
19 the allegation that it was improper in his
20 application and I believe that it should stand on
21 that issue. Though, I didn't attempt to highlight it
22 in this hearing, it certainly is an issue I believe
23 that has been preserved for review.

24 THE COURT: Okay. All right. I'll consider
25 that issue in my full review of the record. I don't

1 think leaving that outstanding at this point is going
2 to effect the way we move forward in the case.

3 MS. GIOVANOLI: Now, The State will call
4 Mr. William Bean to the stand.

5 THE COURT: Mr. Bean, place your left hand on
6 the Bible, raise your right.

7 WILLIAM BEAN, after being duly sworn,
8 testified as follows:

9 THE COURT: Have a seat, sir, state your name
10 for the record.

11 THE WITNESS: My name is William S. Bean.
12 B-E-A-N, like a string bean.

13 DIRECT EXAMINATION

14 BY MS. GIOVANOLI:

15 Q Good morning, Mr. Bean.

16 A Good morning.

17 Q How long have you been practicing law?

18 A Since 1974.

19 Q And in that time, how much has been criminal
20 law?

21 A I've done criminal law off and on the entire
22 time. Most of my criminal practice has been in the last
23 15 years.

24 Q Okay. So, the last 15 years has your practice
25 been exclusively criminal law?

WILLIAM BEAN-DIRECT BY MS. GIOVANOLI

1 A No, probably about 50 percent.

2 Q 50 percent. Okay. Do you recall how you came
3 to represent Mr. Lyles in this case?

4 A I believe I was contacted by someone in his
5 family. Went to see him. He was in the Spartanburg
6 County jail. And I was retained to handle his charges.

7 Q Okay. And so, you first met with him in the
8 jail. Do you recall how many meetings you had with
9 Mr. Lyles?

10 A Not specifically. I know there were several but
11 I don't have an exact number.

12 Q Did he ever receive bond in this case?

13 A I don't think so.

14 Q Okay. And so, you always met with him at the
15 jail?

16 A That's my recollection.

17 Q Okay. Did you make a motion for discovery in
18 this case?

19 A I did.

20 Q Okay. Did you receive all that discovery?

21 A Yes, I did.

22 Q Did you review it with Mr. Lyles?

23 A I did. And I believe we provided him with a
24 copy of it.

25 Q Okay. And as far as you're concerned that he

WILLIAM BEAN-DIRECT BY MS. GIOVANOLI

1 understood all of the evidence against him and all the
2 discovery in this case?

3 A I believe so.

4 Q Okay. Let's just briefly address, did you
5 discuss with him his constitutional rights in this case?

6 A Yes.

7 Q Okay. Did you discuss the Applicant's version
8 of the facts in some of your meetings?

9 A We did.

10 Q Okay. And what was that?

11 A His -- his statements to me were that he was not
12 selling drugs and the drugs were not his. He maintained
13 his innocence during our conversations.

14 Q Okay. And did he ever request that you
15 negotiate a plea offer for him?

16 A He did.

17 Q Okay. And did you receive a plea offer?

18 A Yes. We were given a notice that the solicitor
19 was seeking life without parole. However, they -- they
20 indicated to me that if he would agree to plead guilty to
21 a negotiated sentence of 18 years, that they would go
22 forward on that basis.

23 Q Okay. Did the Applicant request that you seek
24 an offer from The State prior to the notice of life
25 without parole?

WILLIAM BEAN-DIRECT BY MS. GIOVANOLI

1 A I can't remember if it was prior or not. But
2 that's how it happened. I can't remember the exact
3 sequence.

4 Q Okay. And can you briefly describe the evidence
5 in this case? The discovery of the materials that you
6 reviewed?

7 A I reviewed my file, I'm not sure that I
8 accurately remember everything in there. There's quite a
9 lot. But basically there was an alleged buy of drugs.
10 Drugs that had been seen at the house. He was known as a
11 quote Drug dealer, supposedly. And ultimately his arrest
12 resulted in a seizure of a fair amount of cocaine, as I
13 recall.

14 Q Okay. And where was that cocaine found?

15 A It was in a bag or satchel of some kind. And I
16 believe it was hanging on a fence on the side of the
17 house.

18 Q And that fence was on the property of that home,
19 correct?

20 A I believe that is was a fence that went with the
21 house. And I think that the bag was actually hanging on
22 the outside of the fence rather than the house side.

23 Q Okay. And let's just address that issue while
24 we're talking about it. It's hanging on the fence but on
25 the other side, not on the same side of the property that

WILLIAM BEAN-DIRECT BY MS. GIOVANOLI

1 was being searched?

2 A That's my recollection, yes.

3 Q Okay. And in your opinion, was that bag in the
4 curtilage of the property that was being searched?

5 A I felt that it was, yes.

6 Q Okay. Do you know any case law that would say
7 otherwise?

8 A Not off the top of my head I do not.

9 Q Are you aware of The State vs. Anderson case
10 that's been handed up to the Court?

11 A I've seen it, I don't recall specifically what
12 it says.

13 Q Okay. Okay. So, going back to these drug buys
14 that occurred, those were the basis -- part of the basis
15 for the search warrant; is that correct?

16 A Yes.

17 Q Did you have any reason to file a motion to
18 suppress these drugs based on the lack of probable cause?

19 A I felt that probable cause was there so I didn't
20 feel that a motion to that effect would have been
21 productive at all. That why I didn't make it.

22 Q Okay. And typically in these cases, is the
23 confidential informant's identity given to you all in
24 you're trial preparations.

25 A No. It's only given to you if you actually go

WILLIAM BEAN-DIRECT BY MS. GIOVANOLI

1 to trial. And Mr. Lyles and I had several discussions
2 prior to trial about whether or not he was going to plead
3 to the charges. I mentioned the 18 years. I met several
4 times with the solicitor's office and the assistant who
5 was going to prosecute the case and solicitor himself,
6 Mr. Barnett, to try to get them to make a -- an offer of
7 less than 18 years because Mr. Lyles had indicated to me
8 that he wanted to do that. I think I recall that he said
9 he would agree to 10 years. I'm not sure about that. But
10 anyway, I discussed that with the solicitor and try to get
11 them to come off the 18 and they declined and said no that
12 was it. Take it or leave it.

13 Q But as memory serves you there was pretty
14 extensive discussions about a plea offer?

15 A There was a good bit of back and forth, yes.

16 Q Okay. Now, with regard to the probable cause,
17 did you investigate that issue at all in your trial
18 preparations?

19 A Yes. I read -- I read all of the discovery that
20 we had. And again, I think it was well over 100 pages
21 that they provided us with. And looked at everything and
22 went over that with Mr. Lyles. And I say, he, of course,
23 got a copy of that as well.

24 Q Okay. There's been some testimony that there
25 was a discrepancy in the time. It's stated that the

WILLIAM BEAN-DIRECT BY MS. GIOVANOLI

1 confidential informant left the scene of the incident and
2 returned to the police, I'm assuming. It took him two
3 hours and two minutes. I believe that was the testimony
4 on direct.' Do you recall seeing that time discrepancy.

5 A I recall seeing that document. I do not recall
6 noticing the time discrepancy. Although, I would say that
7 that's not totally unusual. Typically, from the police
8 officers to the place where the informant is going to make
9 a buy, there's a very short time. But very often for
10 different reasons, the time coming back is longer. In
11 some cases much longer. But frankly, I did not notice
12 that particular gap of two hours and two minutes.

13 Q Is the time longer sometimes because they're
14 going on other drug buys?

15 A Well, I'm not sure about that but a lot of times
16 they're told to take an difference route. They don't want
17 the -- they being the law enforcement folks, don't want
18 the informant to come straight back to them because
19 someone might be following, watching, whatever. So, they
20 go different ways. Maybe hang out on the corner for a
21 little while, just act as they normally would so that
22 there's no possibility or very small possibility that they
23 would be followed and seen going back to the police.

24 Q Okay. But in this case, the officer and his
25 investigative report said that the confidential informant

WILLIAM BEAN-DIRECT BY MS. GIOVANOLI

1 returned directly to him. Did you see that as a basis for
2 a motion to suppress?

3 A Well, like I said, I didn't realize there was a
4 two hour gap in there. But I don't think in and of itself
5 that would be sufficient to be able to prevail on a motion
6 like that, no.

7 Q Okay. Did you think that you would prevail on a
8 motion to suppress in any other regard to that probable
9 cause?

10 A I did not. That's why none were made.

11 Q Okay. So, in this case, what was your defense
12 theory?

13 A Well basically, the defense was that the drugs
14 were not his. Again, the bag I think was on the fence,
15 he didn't have possession or control of it. And so
16 arguable, it could have been anyones. And that was
17 essentially what the defense was. And I think -- I don't
18 believe the informant testified so there wasn't any
19 connection directly to the drugs from these would be
20 Mr. Lyles.

21 Q Okay. Do you remember at the beginning of the
22 trial specifically making a motion that no evidence of the
23 prior drug buys between Mr. Lyles and the confidential
24 informant be admitted?

25 A Yes.

WILLIAM BEAN-DIRECT BY MS. GIOVANOLI

1 Q Or moving to exclude that evidence?

2 A Right.

3 Q And what was the basis for that motion? What
4 was your reasoning?

5 A Well, the -- let me, if I may look at my notes
6 one second here. I jotted down a few things.

7 Q Sure.

8 A Would you mind restating that?

9 Q So, you moved to exclude the evidence of the
10 prior drug buys. And I was just asking you what your
11 reasoning for that was?

12 A I'm trying to think if that was the fact that
13 they were outside of the 10 year period. I don't remember
14 specifically.

15 Q All right. Let me -- so, in this case, The
16 State began that their case in chief, starting from the
17 execution of the search warrant; do you recall that?

18 A Yes.

19 Q So, would there be any reason why you wouldn't
20 want evidence of prior drugs buys and that he wasn't being
21 prosecuted for it to come in at trial?

22 A Well, no in that case it would not be.

23 Q Okay. And he was not prosecuted for those prior
24 drug buys; is that correct?

25 A That's correct he was not.

WILLIAM BEAN-DIRECT BY MS. GIOVANOLI

1 Q The --

2 MS. GIOVANOLI: Beg the Court's indulgence just
3 a moment.

4 THE COURT: Yes, ma'am.

5 BY MS. GIOVANOLI:

6 Q Okay. I'm going to go to the allegation that
7 you failed to impeach The State's witness, Mr. Wesson, I
8 believe, on the basis that he had prior convictions. Do
9 you recall some of the testimony today about that?

10 A I do a little bit. And I believe that was the
11 one where the prior offenses were outside of the 10 years.
12 So, I took the tact, I guess you could call it, of having
13 them put in as a dishonesty issue rather than straight up.
14 And The Court refused that, so.

15 Q And so, the Court of Appeals opinion saying that
16 you failed to argue 609(a)(1), that was because these
17 offenses were outside of that 10 year window?

18 A That's right.

19 Q Okay. And so, moving on to the allegation of
20 the LWOP notice not being appropriate, you actually
21 brought that up at the beginning of trial that you wanted
22 to clarify whether or not the offenses that were used as
23 the basis for the LWOP notice was proper; do you recall
24 that?

25 A Yes.

WILLIAM BEAN-DIRECT BY MS. GIOVANOLI

1 Q And The Judge's response to you was that that
2 would be addressed in sentencing?

3 A Correct. And I'm not sure why it wasn't. It
4 was my opinion that based on what I knew about the statute
5 that the LWOP notice was proper. But I raised the issue
6 just because there might have been some question about
7 that.

8 Q Okay. And so, you believe that it was proper
9 notice?

10 A I think under the statute it was. That's my
11 reeding of it, anyway.

12 Q Right. So, you're familiar with the Section
13 17-25-45(c)(2)(a) which defines a serious offense as any
14 offense punishable by a max term of 30 years or more,
15 correct?

16 A That is right.

17 Q Okay. And his prior conviction that they were
18 relying on, not only the burglary and murder, second
19 strike was possession with intent to distribute crack or
20 third subsequent, which is punishable by 30 years. Is
21 that your understanding?

22 A Right. And that was my conclusion that they had
23 reached the point where they needed to get in order to do
24 the LWOP.

25 Q Okay. And I know you don't have the transcript

WILLIAM BEAN-DIRECT BY MS. GIOVANOLI

1 in front of you but there's been a specific allegation
2 with regard to a failure to object to a closing argument
3 that The Applicant has alleged was vouching for The
4 State's credibility. And the lines that he referenced in
5 his allegation was on Page 243, Line 19.

6 And the prosecutor basically says, He told
7 you today he testified because number one he was telling
8 the truth. That truth was consistent with what he told
9 the police the first time. Sure, they didn't ask him
10 follow up questions that I did. I ask, you know, I asked
11 him, look, to explain his statement a little bit further.
12 How many times did you see him with the black bag, that
13 sort of stuff. And the police didn't ask him that but he
14 did tell him that a bag belongs to the defendant and I
15 hadn't seen him with it before.

16 Did you find that that was any improper
17 vouching on the part of The State?

18 A I didn't think it got to that level, that's why
19 I didn't object to it.

20 Q Okay. There was also some DNA evidence in this
21 case, wasn't there?

22 A Yes.

23 Q Okay. Do you recall moving to suppress that DNA
24 evidence?

25 A I think -- I think that we were able to get that

WILLIAM BEAN-CROSS BY MS. ROSS

1 excluded, as I recall.

2 Q And that was during trial?

3 A I think so.

4 Q Okay. You would be correct in your
5 recollection. Is there anything you would like to add
6 that I haven't addressed with you?

7 A I think you covered everything as far as I can
8 tell.

9 MS. GIOVANOLI: Okay, thank you for you time.
10 No further questions.

11 THE WITNESS: You're welcome.

12 MS. GIOVANOLI: Answer any questions that
13 Ms. Ross may have.

14 MS. ROSS: Thank you, may it please the Court?

15 THE COURT: Yes, ma'am.

16 CROSS-EXAMINATION

17 BY MS. ROSS:

18 Q Mr. Bean, I just want to go back to -- going
19 back to the closing argument, we addressed on Page 243, I
20 had actually said Line 17. There the solicitor said, He
21 could have possibly been charged with some of the this
22 stuff except for the fact that he's telling the truth and
23 it's the defendant's bag.

24 So, there was more to that in saying that
25 he could have been charged with that by The State but he

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1 wasn't, it's insinuated because he's telling the truth.

2 Was that how you got that?

3 A I'm not sure I understand your question, I'm
4 sorry.

5 Q Okay. Well, I guess, the Attorney General read
6 starting at Line 19. And before that he said -- the
7 solicitor said that the star witness could have been
8 charged with drugs as well but he wasn't. And that was
9 because he's telling the truth. He told that to the jury.
10 Wouldn't you think that would be vouching for him and
11 standing by saying, you know, if he wasn't telling the
12 truth, The State, as the solicitor, me representing The
13 State, would have charged him with the crime.

14 A I suppose you could construe it that way. I
15 just didn't remember hearing it that way and so that's the
16 reason I didn't object.

17 Q Okay. And go backwards. Now, going back, that
18 witness was a guy named Edward Wesson. Does that ring --
19 does that sound right?

20 A I believe that's right. The name sounds
21 familiar, yes.

22 Q Okay. I'm terrible with names, I wouldn't
23 recommend either. Just going back, I was looking through
24 the record, on Page 128, Line 7, it talks about when those
25 convictions were. The prior convictions. And when did --

WILLIAM BEAN-CROSS BY MS. ROSS

1 when was your understanding of the prior armed robbery
2 occurred? Based on that.

3 A I can't remember off the top of my head when
4 that was.

5 Q Okay. But here in the transcript Mr. Spivey
6 said it was around 1995 or 1996, correct?

7 A Yes, that's what it says.

8 Q And then on Page 129 of the transcript,
9 Mr. Spivvy, again, I think says, The burglary third
10 happened in 2006?

11 A Yes, I see that.

12 Q Okay. And that was -- the 2006 was definitely
13 within 10 years of 2013 when this trial occurred; is that
14 correct?

15 A Well, it would have been, yes.

16 Q And as far as -- are you familiar with -- on
17 Page -- I'm sorry, in Rule 609(a)(1), it says 10 years
18 from the time of the conviction or service of the sentence
19 under that rule. Did you understand it to be interpreted
20 that way?

21 A My understanding was that it was the conviction
22 rather than the sentence itself. I may be mistaken about
23 that but.

24 Q And if it was the sentence, wouldn't armed
25 robbery carry a mandatory minimum of 10 years?

WILLIAM BEAN-CROSS BY MS. ROSS

1 A I believe that's right, yes.

2 Q And that would have brought that date up to
3 2005?

4 A Yes.

5 Q Approximately?

6 A Yes.

7 Q Okay.

8 A Correct.

9 Q Okay. Now, as far as talking about Edward
10 Wesson, help the homeowner, did you meet with him or
11 discuss the case with him at all?

12 A I can't remember specifically I think I may have
13 spoken with him on the phone one time but I'm not sure.

14 Q Did you have any -- did you know whose fence
15 that was? I mean, was it on his property or did the
16 neighbor put up the fence?

17 A I went by and looked just one day. And it
18 appeared to me that the fence went with the property. As
19 far as who put it up or whether the property line was, I
20 don't remember.

21 Q Okay. And then going back, just to the
22 investigation, did -- as far as the CI, did you ever see
23 or hear any audio or video about the confidential
24 informant buy?

25 A No, we had photographs were the only thing we

WILLIAM BEAN-CROSS BY MS. ROSS

1 were given.

2 Q Okay. And then did the photographs show any
3 time line to explain that two hour discrepancy afterwards?

4 A I don't believe they did.

5 Q Okay. And as far as that two hour discrepancy,
6 is that explained at all in -- showing you the affidavit
7 and the search warrant. Did the officer explain anything
8 about that two hour discrepancy, what happened during that
9 time?

10 A I don't recall. I can read through this if you
11 want--

12 Q If you want to take some time to look through it
13 that's fine.

14 A Well, it states here in the affidavit that this
15 informant left the buy location and responded back to our
16 original meeting location with surveillance maintained.
17 And no stops made prior to arrival.

18 Q And you never saw whether that surveillance was
19 three hours of taped surveillance or not?

20 A No.

21 Q Okay. And then -- and there's no mention of we
22 drove around for two hours before coming back in this
23 affidavit; is there?

24 A There is not.

25 Q And that's inconsistent with what was in your

WILLIAM BEAN-CROSS BY MS. ROSS

1 discovery with that report of the actual buy and the
2 timeline there?

3 A Yes.

4 Q Okay. Now, when you were talking about not
5 moving to suppress the search warrant, that all would have
6 been outside the presence of the jury, correct?

7 A Yes.

8 Q So, they've wouldn't hear about the prior buy or
9 the CI simply because you made a motion to suppress the
10 search warrant; would they, the jurors?

11 A Right.

12 Q Okay. When -- I'm trying not to repeat what's
13 been gone over in direct. You didn't -- on Page 225, Line
14 7, when the drugs came into evidence and were offered, you
15 didn't move to suppress at that point?

16 A I don't believe so.

17 Q If it's not in the transcript would you agree--

18 A I would.

19 Q And you didn't do a pretrial motion to suppress
20 the drugs based on the search warrant, correct?

21 A Correct.

22 Q And as you said before, you did bring up some
23 questioning whether life without parole was warranted in
24 this case but you didn't renew that at sentencing or
25 readdress your objection at the sentencing?

WILLIAM BEAN-REDIRECT BY MS. GIOVANOLI

1 A Correct.

2 Q Okay.

3 Okay, I've got no further questions. Thank
4 you, Mr. Bean.

5 MS. GIOVANOLI: Just briefly, if I may?

6 THE COURT: Yes, ma'am.

7 REDIRECT EXAMINATION

8 BY MS. GIOVANOLI:

9 Q What is your understanding of vouching when The
10 State vouches for witness?

11 A Well, I think it has to go beyond merely beyond
12 saying they're being truthful or whatever. I think it
13 needs to go into detail in someway to really act like --
14 to sound like The State is saying this person is telling
15 the truth and here's why. And the mere fact that they
16 conclude or in this case they sort of reached a quick
17 conclusion as to why. Because one thing jived with
18 another or something like that. I don't think that rises
19 to the level of vouching as I understand it. That's why I
20 didn't object to it.

21 Q So, would you agree that vouching is more of the
22 government placing its prestige behind a witness?

23 A Sure, I think that's exactly what it is.

24 Q But matters of credibility are allowed to be
25 argued in closings, right?

WILLIAM BEAN-REDIRECT BY MS. GIOVANOLI

1 A Yes.

2 Q Okay. And, you know, in sense, lying can also
3 be discussed in closing as well?

4 A Correct.

5 Q And likewise in sense for telling the truth can
6 be discussed in closing?

7 A Right.

8 Q Going back to those prior convictions of
9 Mr. Wesson. Now, the burglary that he was convicted of in
10 2006, that was a burglary third, correct?

11 A I believe so.

12 Q Okay. And that's punishable by up to five
13 years, right?

14 A I think that's right, yes.

15 Q But you don't know what the sentence that he
16 received at that time?

17 A I do not.

18 Q Okay. You also don't know when he was released,
19 if he ever served time in prison?

20 A I do not.

21 Q Okay. As far as the armed robberies, those were
22 well outside of the 10 year -- the 10 year window for the
23 conviction. He was convicted in 1995 or 1996; is that
24 your recollection?

25 A I think so, yes.

WILLIAM BEAN-REDIRECT BY MS. GIOVANOLI

1 Q And you don't know what sentence he received in
2 those cases, do you?

3 A I do not.

4 Q All right. During the trial when the drugs were
5 admitted, Ms. Ross reminded you that you didn't object to
6 the drugs being admitted into evidence; right?

7 A That is correct.

8 Q Okay. But your theory in this case was that
9 drugs weren't his, correct?

10 A Correct, yes.

11 Q Okay. So, wouldn't it have confused the jury if
12 you were trying to suppress the drugs but at the same time
13 saying the drugs aren't his?

14 A Certainly could have, yes.

15 Q Was that a basis for you not making that
16 objection?

17 A It was.

18 Q What is your familiarity with the indictment
19 process? Do you know much about that?

20 A Generally, not a whole lot of specifics but I
21 have a good idea how it works. You could indict a ham
22 sandwich if you chose to.

23 Q Well, earlier The Applicant has testified that
24 the dates on the indictment for the trafficking offense
25 were inconsistent with the terms of court. Is that kind

WILLIAM BEAN-REDIRECT BY MS. GIOVANOLI

1 of typical, do you know?

2 A I have seen that before in other cases. It's --
3 I think they stamp the dates on the indictments. And I've
4 seen others where the dates have been different than when
5 they actually were supposed to be dated. I don't think
6 it's unusual.

7 Q Okay. Is that -- would that be a basis for a
8 motion to quash the indictment?

9 A Well, I don't think so.

10 Q And why do you not think so?

11 A Well, because I think that they could clear the
12 error if they wish by going back and finding out exactly
13 when the date was supposed to be. I don't think that
14 means that the indictment is invalid.

15 Q Okay. Could it have just been a scriveners
16 error?

17 A That would be what I would call it, yes.

18 MS. GIOVANOLI: I have no further questions,
19 thank you.

20 THE COURT: Ms. Ross?

21 MS. ROSS: None, thank you.

22 THE COURT: All right, thank you, you may step
23 down, I appreciate it.

24 THE WITNESS: Thank you, Your Honor. May I be
25 excused?

1 THE COURT: Any objections?

2 MS. ROSS: No objection.

3 MS. GIOVANOLI: I have no objection.

4 THE COURT: You may be excused.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 Anything further from The State?

8 MS. GIOVANOLI: No further witnesses.

9 THE COURT: Okay. All right.

10 Anything that the Applicant needs to put on the
11 record at this time, Ms. Ross?

12 MS. ROSS: Well, Your Honor, most of what you
13 already have what's there. I would argue as far as
14 the search warrant issue, that is outside the
15 presence of the jury. I think there is some
16 suggestion, whether it's a France v. Delaware issue
17 here, some missing time. There's no mention, it's an
18 omission and a misleading affidavit. Where we would
19 argument that certainly gives reason to challenge
20 than search warrant just to see. And that certainly
21 wouldn't bring the CI in before the jury at the trial
22 at large.

23 THE COURT: Yes, ma'am.

24 MS. ROSS: State v. Bash is a recent case, 2016,
25 that also addresses this curtilage issue. That's

1 opinion No. 27692, we would put on the record. I
2 would argue that it's certainly would have been worth
3 arguing out the issue of the life without parole and
4 whether this was a case that merited life without
5 parole. The record has been made by Mr. Lyles, all
6 those convictions occurred at same time, same
7 incident.

8 THE COURT: Well, let me ask you this, with
9 regard to the search warrant, was the evidence at
10 trial that it was his home? That was searched?

11 MS. ROSS: Well, no. And that's a interesting
12 issue under State v. Missouri and a lot of other
13 cases about whether he had any privacy interest in
14 that home. He has told me that he had stayed there
15 many of times. The testimony of the witness -- I
16 mean, the homeowner was that he had spent a lot of
17 time there.

18 THE COURT: Yeah.

19 MS. ROSS: But that certainly would be something
20 to get in at the trial whether he had a privacy
21 interest in the home. I certainly argue that he has
22 some interest when the drugs are being used against
23 him. And I don't have the cases handy but arguably,
24 if someone is trying to say these drugs are yours,
25 you have a privacy interest in where they're found,

1 so.

2 THE COURT: Yeah, that's a interesting question.
3 The next question I have regarding the search issue
4 is I understand your point about all this suppression
5 hearing needs to take place out of the jury. So,
6 outside the presence of the jury. So, you can make
7 inconsistent arguments, that's done all the time.
8 But factually, was his defense at trial that the
9 drugs weren't his? Not that the drugs weren't there
10 but that they just weren't his.

11 MS. ROSS: He didn't testify at trial. So, it
12 kind of makes it difficult to determine. You know, I
13 think that -- I can't remember all of the closing
14 argument made by the defense. I think it was more of
15 a proof issue.

16 THE COURT: Okay.

17 MS. ROSS: So, I can't answer that question.
18 Just moving on to Rule 609(e), I mean, going back to
19 taking law school evidence classes, my understanding
20 in the little notes that go along with it is the time
21 of conviction or service of the sentence..

22 THE COURT: Yes, ma'am.

23 MS. ROSS: That we're talking about. That was
24 the star witness, the only witness that the drugs
25 belonged -- or the bag belonged to Mr. Lyles. The

1 only way that the jury found any evidence that the
2 bag belonged to Mr. Lyles. So, bringing his
3 credibility into issue would have changed the outcome
4 of this case in our opinion.

5 THE COURT: I haven't read that examination.
6 Were there any other convictions which were used to
7 impeach him or were there none?

8 MS. ROSS: I don't think any other. And I have
9 to go through again, I don't recall. He had some
10 fraudulent checks that all parties conceded would not
11 be admissible for impeachment.

12 THE COURT: What was the CI's name?

13 MS. ROSS: It was Edward Wesson.

14 THE COURT: Okay.

15 MS. ROSS: And there was some testimony outside
16 of the -- proffer testimony outside the presence of
17 the jury, then the testimony -- not to CI, I'm sorry,
18 I apologize, the homeowner. There was no testimony
19 from the CI whatever.

20 THE COURT: Okay, good enough.

21 MS. ROSS: And as to the vouching, I just was
22 looking around, there's a case, it's in Oregon, but
23 it cites an older Supreme Court case from the 40's
24 that I'm just forgetting. But this is Lee v. Mullen.
25 And it talks about vouching. And when you put the --

1 sort of the credibility of The State in their
2 decisions behind your argument to the jury, that is
3 improper argument. And here to say we could have
4 charged, Mr. Wesson, the homeowner, where the drugs
5 were found in his yard, but we didn't because we know
6 he's telling the truth. That is simply vouching and
7 that is putting The State's position behind to
8 support the credibility of their witness. Who
9 otherwise is very incredible. And we would have
10 known that but for being able to bring in his prior
11 convictions.

12 THE COURT: Okay.

13 MS. ROSS: That's all I have got.

14 THE COURT: Okay. Good enough.

15 Yes, ma'am.

16 MS. GIOVANOLI: If I may, Your Honor. With
17 regard to the allegation that there was not a motion
18 to suppress filed in this case, I think it's pretty
19 straightforward that Mr. Bean didn't feel there was
20 any basis for a motion to suppress and that one
21 wouldn't have been successful. I understand there
22 was some discrepancy in the probable cause affidavit
23 with regard to the timing. And, you know, Mr. Bean
24 was honest and he told you that he didn't -- he
25 didn't -- he didn't recognize that initially. But

1 that even knowing that now, that sometimes that does
2 occur. You know, the discrepancy within the time.

3 I feel that if -- I don't think that Mr. Bean
4 was deficient in this regard for not making a motion
5 to suppress. But even if Your Honor did find that
6 there was error, I don't feel that The Applicant has
7 met the second prong of Strickland, which is the
8 prejudice. It's speculative that a motion to
9 suppress would have been granted in this case. So,
10 it's my review of the evidence that if Mr. Bean had
11 moved for -- made a motion to suppress, that that
12 motion would not have been granted and it would
13 not have effected the outcome of his trial.

14 And then moving along to the argument about the
15 curtilage, I have not read State v. Bash, I
16 apologize. I have just glanced over State v.
17 Anderson that was provided today. That case was
18 definitely distinguishable. This was a Greenville
19 case. And it apparently was a path beyond the home,
20 was not considered part of the curtilage. In this
21 case it was actually a bag hanging on the fence, it
22 was on the curtilage of the property being searched.
23 Right on the yard. I'm assuming, generally, that
24 those fences still mark property boundary lines. But
25 that fence would have been part of the property

1 that's being searched.

2 Going to the allegation that the LWOP notice was
3 improper, I think I kind of got this out on the stand
4 from the witnesses, but Section 17-25-45(c)(2)(a),
5 defines serious offenses as offenses punishable by a
6 maximum term of 30 years or more. In this case, the
7 Defendant had been convicted of two most serious
8 offenses. That was the burglary and murder that
9 occurred at the same date. And then he pled at the
10 same time to an offense that occurred at a different
11 date to possession with intent to distribute crack,
12 third. Which is punishable by up to 30 years. So,
13 that would be considered serious.

14 And therefore, he had what we consider one
15 strike for the two most serious crimes, and then a
16 second strike for a serious offense. And so, that
17 notice was properly served and there was not basis to
18 contest that notice.

19 Moving on to The States -- I apologize,
20 Mr. Bean's failure to impeach the witnesses, using
21 that armed robbery conviction and the third degree
22 burglary conviction, I understand that it's the --
23 whichever is later, the date of conviction or the
24 date upon which he is released from SCDC. In this
25 case Mr. Bean testified that he didn't know when he

1 was released from prison. But The Applicant hasn't
2 proved that fact either, when he was released from
3 SCDC. Honestly, we don't -- as the record stands
4 now, we don't even know if he served any time at all
5 for--

6 THE COURT: Just for clarification, this
7 particular witness that we're talking about is the
8 homeowner, Mr. Edward Wesson?

9 THE CLERK:

10 MS. GIOVANOLI: Yes.

11 THE COURT: Okay.

12 MS. GIOVANOLI: And if I can just clarify some
13 of the facts of this case. Basically, there were two
14 separate drug buys that occur between The Applicant
15 and a confidential informant at Mr. Wesson's home.
16 The State presented evidence that The Applicant was
17 actually using Mr. Wesson's home as a place to run
18 his drug business. He did not want to do that in his
19 own home, so he asked Mr. Wesson if he could sell
20 drugs out of his home? Mr. Wesson on the stand
21 testified that he was a drug addict at the time and
22 he was being paid with drugs.

23 He had witnessed The Applicant dealing drugs and
24 the drugs would come out of this black bag that The
25 Applicant kept on the outside of the house hanging on

1 the fence. So, that was sort of the evidence
2 presented at trial in this case. And The Defendant
3 did not testify in this case as well. So, it did
4 boil down to the credibility of Mr. Wesson, The
5 State's star witness. And I think that that kind of
6 rolls us into the closing argument by The State
7 stressing the credibility of that witness. That was
8 fair argument.

9 I think this case law is pretty clear on what
10 rises to the level of vouching. It's actually
11 placing a prestige of the government behind a witness
12 or even making personal assurances as to his
13 credibility. That didn't happen in this case.
14 Closing argument, the prosecutor basically was giving
15 reasons why Mr. Wesson was testifying to the truth.
16 Which is fair game for argument.

17 And let's see -- I want to make sure I address
18 everything. If you have any questions for me, I
19 think that's about all that I have.

20 THE COURT: Well, y'all correct me if I'm wrong,
21 I ask both of you this. I think on Page 142, that
22 Mr. Wesson's prior record, otherwise, was introduced
23 into record. Five forgeries, I believe. And I only
24 introduce that or ask that question or point it out
25 just for clarification. It may not have introduced

1 evidence of burglaries but clearly there was evidence
2 introduced on direct examination of crimes of
3 dishonesty. Am I reading that correctly?

4 MS. GIOVANOLI: Yes, you are. And I'm sorry, I
5 was focusing on cross-examination, that actually came
6 out in direct.

7 THE COURT: That's okay, I just wanted to make
8 sure that was the witness we were talking about and
9 that was direct examination in front of the jury and
10 not part of any type of in-camera review.

11 MS. GIOVANOLI: You're right, Your Honor.

12 THE COURT: Okay.

13 MS. ROSS: And I'll go with whatever the record
14 reflects, I'm not seeing it right now. Part was
15 in-camera and part was not.

16 THE COURT: Okay. All right. Well, you can
17 send me a letter and email and correct me if I'm
18 wrong. I'm going to take it under advisement so I'm
19 going to go back and look at the transcript of record
20 and the application and determine from there. Okay.
21 Thank you very much.

22 MS. GIOVANOLI: Thank you, Your Honor.

23 MS. ROSS: Thank you. Your Honor, just if I
24 fail to bring in Wesson's actual prior record, that
25 testimony, I would just be happy to do that if you

1 need me do to that.

2 THE COURT: You're welcome to supplement the
3 record if you'd like.

4 MS. ROSS: Okay. Thank you.

5 THE COURT: Yes, ma'am.

6 (WHEREUPON, the proceedings were concluded.)
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CERTIFICATE OF REPORTER

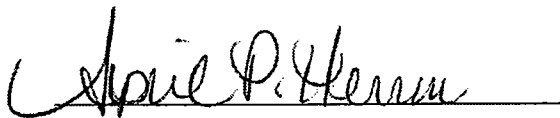
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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Spartanburg County, South Carolina, on
the 28th day of June, 2017.

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

November 20, 2017



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA

AFFIDAVIT

COPY

COUNTY OF SPARTANBURG, SCPersonally appeared before me, one J Kirby

Who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this county:

DESCRIPTION OF PROPERTY SOUGHT

A quantity of cocaine base commonly referred to as "crack cocaine", a schedule II controlled substance as defined under 44-53-370 of The South Carolina Code of Laws as amended in 1976. To include any and all paraphernalia, scales, baggies, sifters, ledgers, monies, photographs, cellular phones and documents used to associate subjects with areas where illegal narcotics are located. Also other devices used to facilitate the distribution and or consumption of cocaine base.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

533 N Forest Street, a single story duplex with red wood siding, two front doors facing N Forest Street and the numbers 533 are clearly visible on the front of said residence. The two doors on the front of this dwelling are not clearly labeled with a letter or number to designate them as two separate units. If you enter the door on the right side, if facing the front of the residence from N Forest Street this is the side of the duplex to be searched. To include the curtilage, outbuildings, vehicles and cellular phones associated with subjects inside this dwelling. Isaac Glenard Lyles, a b/m with a DOB of 04/14/1967. If leaving city hall located at 145 W Broad Street, travel towards Daniel Morgan Avenue. Once you reach Daniel Morgan Avenue, turn right and travel Daniel Morgan Avenue until you reach St. John Street. Turn right onto St. John Street and travel until you reach N Forest Street. Turn right onto N Forest Street and travel until you reach 533 N Forest Street on the right. Once at this location you will enter the door on the right side if facing the residence from the roadway.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

With the past 72 hours of 10/05/2012, your affiant utilized a confidential reliable informant (cri) to make a controlled drug buy from Isaac Lyles at 533 N Forest Street. The CRI's and vehicle were searched prior to going to the buy location and no contraband or weapons were located. The CRI was issued city funds and equipped with a covert listening device to monitor conversations. The CRI responded to the buy location with surveillance maintained and no stops made prior to arriving. Once at the location, the CRI entered the door on the right and met with Isaac Lyles for a brief period and exchanged the city funds for a quantity of crack cocaine. The CRI then left the buy location and responded back to our original meeting location, with surveillance maintained and no stops made prior to arriving. Once back at our meeting location, I recovered a quantity of off white rock like substance from the CRI. The off white rock substance field tested positive for cocaine using a field test reagent. The CRI's and vehicle were then searched again and no contraband or weapons were located. Isaac Lyles has arrest and convictions for weapon law violations as well as crimes associated with violence, based on these facts your affiant respectfully request a "no knock and announce" search warrant.

Sworn to and Subscribed before me

This 5 day of October, 2012
[Signature]
 Signature of Judge 10:29 pm

**APPELLANT'S
EXHIBIT**

1628-11

Jeff Kirby

Address: 145 W Broad St
Spartanburg, SC 29306
 Phone: 864-505-7077

SPARTANBURG PUBLIC SAFETY DEPARTMENT
INVESTIGATOR'S CASE ACTIVITY SUMMARY

Offense: _____ Case Number: _____

Victim: _____ Date Assigned: 10/03/2012

[illegible]

ARREST WARRANT

2012A4210100654

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

10007012

Isaac Glenard Lyles

Address: 355 Farley St

Spartanburg, SC 29306-

Phone: SSN:

Sex: M Race: B Height: Weight:

DL State: DL #:

DOB: 4/14/1967 Agency ORI #: SC0420100

Prosecuting Agency: Spartanburg Police Department

Prosecuting Officer: Jeffrey M Kirby - 1582

Offense: Drugs / Manufacture, distribution, etc. cocaine
base, 2nd offense

Offense Code: 3015

Code/Ordinance Sec: 44-53-0375(B)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Jeffrey M Kirby

who

being duly sworn deposes and says that defendant Isaac Glenard Lyles

did within this county and state on or about 10/3/2012

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)

In the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. cocaine base, 2nd offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on October 3, 2012 in the city of Spartanburg, one Isaac Glenard Lyles did knowingly and without authorization did distribute
crack cocaine, a Schedule II Controlled Substance. Defendant has prior convictions for this offense.

Warrant based upon police investigation. DSC

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 145 West Broad Street

Spartanburg, SC 29306-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

it appearing from the above affidavit that there are reasonable grounds to believe

on or about 10/3/2012

defendant Isaac Glenard Lyles

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg

) as set forth below.

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. cocaine base, 2nd offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 10/4/2012

(L.S.)

Signature of Issuing Judge
Jason Thomas Wall
Judge Code: 7019

Judge's Address Spartanburg County Judicial Center

Spartanburg, SC 29306-2335

Judge's Telephone (864)596-2564

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

AUDIT COPY

Form approved by
S.C. Attorney General
April 21, 2003
SCCA 316

05/20/2013 Page 49 of 175

AUDIT COPY

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ARREST WARRANT

2012A4210100655

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

THE STATE

1007012

against

Isaac Glenard Lyles

Address: 355 Farley St

Spartanburg, SC 29306-

Phone:

SSN:

Sex: M

Race: B

Height:

Weight:

DL State:

DL #:

DOB: 4/14/1967

Agency ORI #: SC0420100

Prosecuting Agency: Spartanburg Police Department

Prosecuting Officer: Jeffrey M Kirby - 1582

Offense: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

Offense Code: 0107

Code/Ordinance Sec: 44-5B-0445(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Personally appeared before me the affiant Jeffrey M Kirby

who

being duly sworn deposes and says that defendant Isaac Glenard Lyles

did within this county and state on or about 10/3/2012

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Spartanburg

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on October 3, 2012 in the city of Spartanburg, one Isaac Glenard Lyles did violate one-half mile of Cleveland Elementary School, a school, park or playground and distribute, manufacture, or sell a controlled substance.

Warrant based upon police investigation. DSC

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Affiant's Address 145 West Broad Street
Spartanburg, SC 29306-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe

on or about 10/3/2012

defendant Isaac Glenard Lyles

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Spartanburg

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 10/4/2012

(L.S.)

Signature of Issuing Judge
Jason Thomas Wall

Judge Code: 7019

Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-2335

Judge's Telephone (864)596-2564

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

Form Approved by
E.C. Attorney General
April 21, 2003
RCCA 916

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

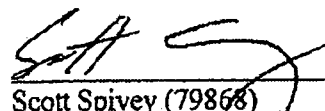
STATE,)
v.)
ISAAC GLENARD LYLES,)
Defendant.)

POTENTIAL WITNESS LIST

2013GS4204570-5

STATE'S POTENTIAL WITNESS LIST

1. Jonathan Lawson	Spartanburg Public Safety
2. Michael Secrest	Spartanburg Public Safety
3. Josh Bagwell	Spartanburg Public Safety
4. Jeff Kirby	Spartanburg Public Safety
5. Edward Wesson	
6. Brendall Mathis	Spartanburg Public Safety
7. Mylnor Beach	Spartanburg Public Safety
8. David Reeves	Spartanburg Public Safety
9. Courtney Burgess	Spartanburg Public Safety
10. Nikki Hughes	SLED
11. Dorris Yarbrough	SLED
12. Verona Gibson	SLED
13. Maryann Boehm	SLED
14. Beth Stuart	Spartanburg County Sheriff's Office


Scott Spivey (79868)
Seventh Circuit Solicitor's Office

December 4, 2013
Spartanburg, SC

Terms of Circuit and Family Court September 2013

**APPELLANT'S
EXHIBIT**

Holiday:
Mon Sep 02, Labor Day

262817

Circuit Number	9/2/2013	9/9/2013	9/16/2013	9/23/2013	9/30/2013
7	Common Pleas/Common Pleas Nonjury Spartanburg Kelly, R. GREEN General Sessions Non-Jury Couch, Roger HUDGINS General Sessions Cherokee Hayes, J. Mark FAUCETTE 3 WATTS 4, 5, 6 General Sessions Non-Jury 3, 4, 5, 6 Kelly, R. GREEN 3, 4, 5, 6	General Sessions Spartanburg Kelly, R. FAUCETTE General Sessions Spartanburg Addy, Frank WATTS Common Pleas/Non-Jury Spartanburg Couch, Roger GREEN 9 am GREEN 10, 11, 12, 13 Common Pleas Non-Jury Hayes, J. Mark JENKINS 9 WOODS 10 am, 11, 12 am WOODS 13 Common Pleas Non-Jury 13 Addy, Frank	General Sessions Spartanburg Kelly, R. WATTS 16 pm WATTS 17, 18 GREEN 19, 20 Common Pleas/Common Pleas Nonjury Spartanburg Cole, J. MOFFITT 16, 17, 18, 19 NO CR NEEDED 20 General Sessions Spartanburg Stilwell, Robin WOODS 16, 17, 18, 19 am WOODS 20 Common Pleas/Common Pleas Nonjury Cherokee Hayes, J. Mark WATTS 16 am NO CR NEEDED 17, 18 WATTS 19 NO CR NEEDED 20		General Sessions Cherokee Kelly, R. WATTS Common Pleas Non-Jury/PCR Cole, J. MOFFITT Common Pleas Non-Jury Couch, Roger BUTLER Common Pleas/Common Pleas Nonjury Spartanburg Hayes, J. Mark WOODS 30, 1, 2 NO CR NEEDED 3, 4

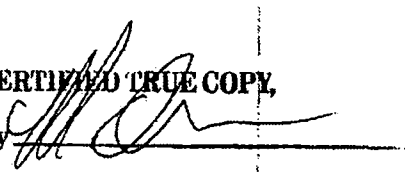
CERTIFIED TRUE COPY

By 
South Carolina Court Administrator

Terms of Circuit and Family Court October 2013

Circuit Number	10/7/2013	10/14/2013	10/21/2013	10/28/2013
7	General Sessions Spartanburg Addy, Frank SCOTT Administrative Week Couch, Roger General Sessions Spartanburg Hayes, J. Mark GREEN	Common Pleas/Common Pleas Nonjury Spartanburg Cole, J. MOFFITT Common Pleas/Common Pleas Nonjury Spartanburg Couch, Roger FAUCETTE 14, 15, 16 NO CR NEEDED 17, 18 General Sessions Cherokee Hayes, J. Mark WATTS 14, 15, 16 NO CR NEEDED 17 WATTS 18	General Sessions Spartanburg Kelly, R. HUDGINS Common Pleas/Common Pleas Nonjury Spartanburg Cole, J. MOFFITT 21, 22 NO CR NEEDED 23, 24 MOFFITT 25 Common Pleas/Common Pleas Nonjury Spartanburg Couch, Roger GREEN General Sessions Spartanburg Macaulay, Alexander WATTS 21, 22, 23, 24 am NO CR NEEDED 25	Common Pleas/Common Pleas Nonjury Spartanburg Kelly, R. NO CR NEEDED Common Pleas Non- Jury Cole, J. MOFFITT General Sessions Non-Jury Hayes, J. Mark WATTS 28, 29 NO CR NEEDED 30, 31 WATTS 1 Common Pleas/Common Pleas Nonjury Spartanburg Stilwell, Robin NO CR NEEDED General Sessions Non-Jury 30, 31, 1 Kelly, R. WATTS 30, 31 NO CR NEEDED 1 General Sessions Non-Jury 1 Spartanburg Cooper, Gordon G. FAUCETTE 1

CERTIFIED TRUE COPY,

By 

South Carolina Court Administrator



APPELLANT'S
EXHIBIT
3
6-28-17

4 628.17

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

STATE,)

v.)

NOTICE OF INTENTION TO SEEK LIFE
IMPRISONMENT SENTENCE

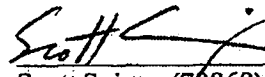
Isaac Glenard Lyles,)

2013GS4204570-5 and 2013GS4204575A;

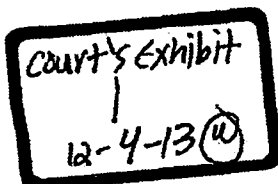
Defendant.)
_____))TO: ISAAC GLENARD LYLES, DEFENDANT, AND WILLIAM BEAN, HIS
ATTORNEY

YOU WILL PLEASE TAKE NOTICE, that the Solicitor's Office intends to seek a life imprisonment sentence pursuant to Section 17-25-45(B), S.C. Code of Laws 1976, as amended, upon the basis that Isaac Glenard Lyles has two or more prior convictions for:

1. A serious offense [to wit: PWID Crack Cocaine 3rd Offense (see Exhibit A, 1994GS4201190)];
2. A most serious offense [to wit: Voluntary Manslaughter (see Exhibit B, 1994GS4200320)];
and
3. A most serious offense [to wit: Burglary 1st Degree (see Exhibit C, 1994GS4200319)].


Scott Spivey (79868)
Seventh Circuit Solicitor's Office

September 30, 2013
Spartanburg, SC



M. HOPE BLACKLEY

2013 SEP 30 PM 2:52

FILED
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

EXHIBIT A

VOID
CLOCKED
2013 SEP 30 PM 2:52
ERROE
FILED

D 7012 43.

WITNESSES

R. D. Thompson
Spartanburg City Police Dept.
145 Broad St.

Spartanburg, SC 29301 ☒

2. REPORT SIGNED ☒

3. HAND POLLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

6. CHECKED SIGNATURE ☒

7. ASSESSMENT AND ☒

ARREST WARRANT NO. *Serving time*

8. TRAFFIC VIOLATIONS COPY ☒

ACTION OF GRAND JURY

At *Isaac Glenard Lyles* advised as to
my legal rights hereby waive
presentment to the Grand Jury.

For *Isaac Glenard Lyles*
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

94-GS-42-1190

The State of South Carolina,
County of Spartanburg (04)

12/12/93

COURT OF GENERAL SESSIONS

MAR 07 1994

TERM

THE STATE

vs.

Isaac Glenard Lyles (26)

Indictment for
Unlawful Drugs

Holman C. Gossett, Jr.

A CERTIFIED COPY

CLERK OF COURT
SPARTANBURG COUNTY

BY *Isaac Glenard Lyles* D.C.

DATED *12/30/93*

Isaac Glenard Lyles

PRIMO Cash Cocaine 3

Isaac Glenard Lyles
K.L. Hurdley

D-701243

FORM 6 (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Spartanburg)

INDICTMENT FOR UNLAWFUL DRUGS

At a Court of General Sessions, convened on FEB 24 1994,
 the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — POSSESSION

That _____ did in _____ County
 on or about _____, knowingly and intentionally possess a quantity
 of _____, a controlled substance under
 provisions of §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended, such posses-
 sion not having been authorized by law.

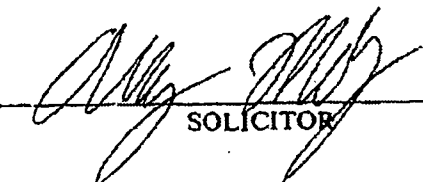
COUNT TWO — POSSESSION WITH INTENT TO DISTRIBUTE

That Issaac Glenard Lyles did in Spartanburg County on
 or about December 12, 1993, possess with intent to distribute a quantity of
Crack Cocaine, a controlled substance
 under provisions of §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended,
 such possession not having been authorized by law.

COUNT THREE — DISTRIBUTION

That _____ did in _____ County
 on or about _____, distribute to one _____
 a quantity of _____, a controlled substance
 under provisions §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended, such
 distribution not having been authorized by law.

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


 SOLICITOR

SENTENCE

STATE OF SOUTH CAROLINA

CASE NO. 94-GS-42-1190SPARTANBURG COUNTY

The defendant Isaac Glenard Lyle is committed to the State Department of Corrections/County for a term of 25 months/years and/or to pay a fine of \$ 100,000; ~~provided upon the service of~~ months/years and/or payment of \$ plus pay/waive costs and assessments as applicable*, ~~the balance suspended with probation for~~ months/years.

Restitution

For physical injury \$ _____

Yes/No

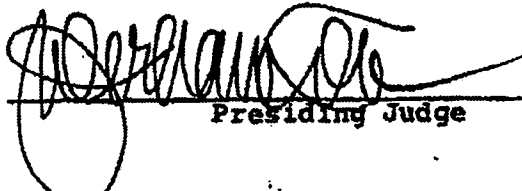
property damage \$ _____

to be paid _____

to clerk for _____.**

Other conditions _____

Date

March 21, 1994

 Presiding Judge

*Costs and Assessments

Non-waivable \$ _____

Not waived \$ _____

Total \$ _____

K. B. Haskins
 Clerk of Court

**Pay to Victim's Compensation Fund if subrogated.

EXHIBIT B

WITNESSES

D. O'Steen

Spartanburg City Police Dept.
145 Broad St.
Spartanburg, SC 293011. SENTENCE MADE ☒2. REPORT MADE ☒3. CARD FILLED ☒4. INDEXED ☒5. CHECKED WARRANTS ☒6. CHECKED SIGNATURE ☒ARREST WARRANT NO. ☒FINE CARD MADE ☒ *Serving fine*8. TRAFFIC VIOLATIONS COPY ☒

ACTION OF GRAND JURY

*John Bick**Jeffery C. Bailey*

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

94-GS-42-0320
DOCKET NO.The State of South Carolina,
County of Spartanburg (02)
Computer 12/17/93

COURT OF GENERAL SESSIONS

JAN 10 1994

TERM

THE STATE

vs.

Isaac Glenard Lyles (26)

Indictment for Murder

Holman C. Gossett, Jr.

I, Isaac Lyles
hereby appear in my own proper person and plead
guilty to MURDER (VOLUNTARY)
On the within indictment.

A CERTIFIED COPY

M. B. Bradley
CLERK OF COURT
SPARTANBURG COUNTY

BY: *Cheryl T. Brown* D.C.
DATED: *1/10/94*

Clerk of Court

D-930751

FORM 5 (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Spartanburg)

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on JAN 06 1994,
 the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — MURDER

That Isaac Lyles (Isaac Glenard Lyles)
 did in Spartanburg County on or about December 15, 1993,
 feloniously, wilfully and with malice aforethought, kill one Timothy Brannon, by shooting
the victim in the head,
 by means of a gun,
 and that the said victim died as a proximate result thereof.

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



SOLICITOR

S E N T E N C E

STATE OF SOUTH CAROLINA

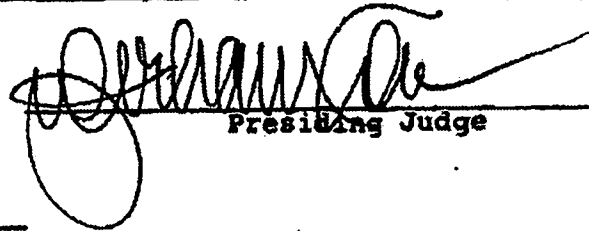
CASE NO. 94-GS-42-320SPARTANBURG COUNTY

The defendant Issac Glenard Lyle is committed to the State Department of Corrections/County for a term of 25 months/years and/or to pay a fine of \$, provided upon the service of months/years and/or payment of \$, plus pay/waive costs and assessments as applicable*, ~~the balance suspended with probation for~~ months/years.

Restitution

For physical injury \$

Yes/No

property damage \$ to be paid to clerk for **Other conditions Date March 21, 1994


Presiding Judge

*Costs and Assessments

Non-waivable \$ Not waived \$ Total \$


Clerk of Court

**Pay to Victim's Compensation Fund if subrogated.

EXHIBIT C

D 930752

WITNESSES

Dennis O'Steen
Spartanburg City Police Dept.
145 Broad St.
Spartanburg, SC 29301

1. SENTENCE MADE ☒
2. REPORT ENTERED ☒
3. CARD PULLED ☒
4. INDEXED ☒
5. CHECKED WARRANTS ☒
6. CHECKED SIGNATURE ☒
ARREST WARRANT NO. _____
7. ASSESSMENT AND
FEE LAST PAID ☒ *See [unclear]*
8. [unclear] ☒

ACTION OF GRAND JURY

John B. [unclear]
Gifford C. Bandy
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury _____
Date: _____

94-GS-42-0319
DOCKET NO.

The State of South Carolina,
Computer

12/15/93

COURT OF GENERAL SESSIONS

JAN 10 1994 TERM _____

THE STATE

vs.

Isaac Glenard Lyles (26)

Indictment for Burglary
(Dwelling)

Holman C. Gossett, Jr.

I, Isaac Lyles
hereby appear in my own proper person and plead
guilty to BURGLARY 1ST DEGREE A CERTIFIED COPY
On the within indictment.
Witness: *[Signature]* Clerk of Court
M. [unclear] Clerk of Court
K. [unclear] BY *[Signature]* D.C.
DATED 9-30-93

FORM 1 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

INDICTMENT FOR BURGLARY
(DWELLING)

JAN 08 1994

At a Court of General Sessions, convened on _____,
the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — BURGLARY IN THE FIRST DEGREE

(DWELLING)

That Isaac Glenard Lyles
did in Spartanburg County on or about December 15, 1993,
willfully and unlawfully enter the dwelling of Timothy Brannon
without consent and with the intent to commit a crime therein and the defendant did enter
671 Twitty Street in the nighttime.

COUNT TWO — BURGLARY IN THE SECOND DEGREE

(DWELLING)

That _____
did in _____ County on or about _____,
willfully and unlawfully enter the dwelling of _____
without consent and with the intent to commit a crime therein.

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

James A. R. A.
SOLICITOR

SENTENCE

STATE OF SOUTH CAROLINA

CASE NO. 94-GS-42-319SPARTANBURG COUNTY

The defendant Issac Glenard Lyles is committed to the State Department of Corrections/County for a term of 25 months/years and/or to pay a fine of \$; provided upon the service of months/years and/or payment of \$, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for months/years.

Restitution

For physical injury \$

Yes/No

property damage \$ to be paid to clerk for **Other conditions Date March 21, 1994

[Signature]
Presiding Judge

*Costs and Assessments

Non-waivable \$ Not waived \$ Total \$

[Signature]
Clerk of Court

**Pay to Victim's Compensation Fund if subrogated.

FORM 7-90 227 12/90

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ISAAC GLENARD LYLES,

APPELLANT.

APPELLATE CASE NO. 2013-002639

FINAL BRIEF OF APPELLANT

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The Trial Court erred in refusing to allow Appellant to attack the credibility of the State's star witness with his prior convictions of armed robbery and third degree burglary where the Trial Court incorrectly ruled that the convictions were inadmissible under Rule 609 because they were not crimes of dishonesty or false statement. Rule 609 permits the use of any crime punishable by death or imprisonment in excess of one year to attack a witness's credibility regardless of whether the crime involves dishonesty or false statement.
- II. The Trial Court erred in allowing the state to qualify an investigator with the narcotics division of the police department as an expert concerning the street value of drugs, the typical habits of a drug user as opposed to a drug dealer, the normal means of packaging and selling certain drugs, typical dosages of street drugs, and opinions concerning avoidance methods persons involved in drug activity use to avoid detection because he was not qualified as an expert under Rule 702.

STATEMENT OF THE CASE

On September 27, 2013, Appellant Issac Glenard Lyles was indicted by the Spartanburg County Grand Jury for (1) possession with intent to distribute marijuana; (2) trafficking in cocaine in an amount more than ten grams; (3) trafficking in cocaine base [crack cocaine] in an amount more than ten grams; (4) possession of a firearm during the commission of or attempt to commit a violent crime; (5) possession with intent to distribute marijuana within proximity of a school; (6) possession with intent to distribute cocaine within proximity of a school; and (7) possession with intent to distribute crack cocaine within proximity of a school. R.256 (Indictments).

Appellant was tried before the Honorable Roger L. Couch and a jury on December 4-5, 2013. R. 1. Appellant was represented by William S. Bean, IV, and the State was represented by Assistant Solicitor Scott Daniel Spivey. Id.

On December 5, 2013, the jury found Appellant guilty on all charges. R. 247, l. 15 – 248, l. 8. Pursuant to S.C. CODE ANN. § 17-25-45, Judge Couch sentenced Appellant to life without parole for the two trafficking offenses and the proximity charges. Judge Couch sentenced Appellant to ten years for the possession with intent to distribute marijuana offense and five years for the possession of a firearm offense with the sentences ordered to run concurrently to the other sentences. R. 253, l. 18 – 254, l. 13; 258 (Sentencing Sheets).

Appellant timely filed and served his Notice of Appeal on December 12, 2013.

STATEMENT OF FACTS

On October 9, 2012, Investigator Michael Secrest of the Spartanburg City Police Department participated in the execution of a search warrant at a duplex on North Forest Street. He drove the tactical truck for the SWAT team members, and after he arrived on the scene, Investigator Secrest took position for the perimeter on the right side of the duplex at a side door. R. 26, l. 25-30, l. 13. According to Investigator Secrest, a fence ran along side of a wooded area next to the duplex. R. 30, l. 14 – 31, l. 1. He testified that no one was outside of the residence when he arrived and no one was near the fence. R. 33, ll. 9-15.

After the perimeter of the duplex was secured, the tactical team made entry through the front door of the targeted residence. As soon as that entry was made, people ran out of the side door. One of those persons was Appellant. Investigator Secrest caught Appellant, and the two of them fell to the ground. Investigator Secrest claimed that while they were falling, money fell out of Appellant's pockets onto the ground. Investigator Secrest further testified that he noticed Appellant's hand "kinda went down toward his waistline." Investigator Secrest looked down, grabbed Appellant's hand, and detained him. He noticed a purple bag on Appellant's right pocket. When Investigator Secrest felt the bag, he felt the butt of a handgun and he secured the weapon. R. 32, l. 20 – 33, l. 8.

Investigator Secrest testified that other people were present at the targeted residence, although he could not recall all of them. He knew that one person was Edward Wesson and another was Harvey Rainey, but he could not recall anyone else. R. 33, ll. 16 – 21. Edward Wesson had exited the same side door as Appellant immediately prior to Appellant exiting. Investigator Secrest believed that Wesson was stopped near the front corner of the house by other officers. R. 33, l. 25 – 34, l. 2.

On cross-examination, Investigator Secrest admitted that tactical team threw a flash grenade into the residence prior to Wesson and Appellant leaving the side door and acknowledged that people would likely run out of the door of a place where a flash grenade was thrown because it could be a frightening experience. R. 40, l. 14 – 41, l. 3.

Investigator Secrest also confirmed that Edward Wesson and Appellant were the two people that exited the side door and that Wesson exited first. Investigator Secrest did not immediately stop Wesson right outside the door and let him keep going. Investigator Secrest stated he did not immediately stop Wesson as he did Appellant because Wesson was not the target of the search warrant. R. 41, l. 19 – 42, l. 17.

Investigator Josh Bagwell of the Spartanburg City Police Department testified that on October 9, 2012, he acted as the return officer for the execution of the search warrant and wrote down anything taken from the scene. R. 43, l. 6 – 44, l. 3. When Investigator Bagwell arrived, he observed Investigator Secrest running down the side of the residence, and he assisted Investigator Secrest. Investigator Bagwell saw Appellant and another individual come out of the side door. R. 44, l. 4 – 45, l. 17.

Investigator Bagwell recovered the firearm from Appellant's person. He also recovered a small clear plastic bag of green plant material in the right pocket of Appellant's coveralls, a small jar of green plant material from Appellant's coveralls, and a small bag containing a white rock or white powder substance. R. 45, l. 18 – 48, l. 5. Investigator Bagwell also recovered \$1281 from the ground near where Appellant was lying. R. 49, ll. 6-18.

In addition, Investigator Bagwell recovered a black tote bag that was hanging on the fence which ran along the side of the residence. R. 51, l. 18 – 52, l. 25. This bag was

found hanging on the side of the fence that was opposite of the residence. R. 55, ll. 16-19. The bag contained a set of goggles, digital scales, a plant material, three separate bags of a white rock substance, and a big bottle of crystalline powder. R. 56, ll. 13-19.

Investigator Bagwell did not actually spot the black tote bag hanging on the fence. While he was sitting inside the residence doing the return, he was informed by another officer that a bag was hanging over the fence. Investigator Bagwell then went outside to recover the bag. He did not see how the bag got on the fence and had no idea how long the bag had been on the fence. R. 54, l. 23 – 55, l. 13.

Edward Wesson lived at the targeted residence on North Forest Street. He had five previous convictions for fraudulent checks. R. 91, l. 17 – 92, l. 21. At trial, Wesson claimed that Appellant had approached him in the summer of 2012 and asked to use his apartment to sell drugs. R. 92, l. 22 – 94, l. 6. Wesson further alleged that from the summer of 2012 until October 9, 2012, Appellant would sell drugs out of the apartment every day and would always carry a black backpack with him. Wesson contended at trial that the black bag found on the fence by law enforcement belonged to Appellant. R. 94, l. 7 – 96, l. 15. Wesson also claimed that Appellant drove a moped and wore goggles and that the goggles found in the black tote bag belonged to Appellant. R. 97, ll. 1-22.

Wesson testified that he let Appellant use his apartment to sell drugs because he was addicted to drugs and Appellant would pay him with drugs for the use of the apartment. Wesson admitted that he himself had touched the black tote bag because he would retrieve the bag for Appellant when Appellant was allegedly selling drugs to someone. R. 98, l. 7 – 99, l. 4. Wesson claimed Appellant kept the bag hanging on the fence most of the time but that he had no idea why Appellant would want to keep the bag there. R. 99, l. 23 – 100, l. 6.

The amount of drugs found were the following: (1) 5.8 grams of marijuana found on Appellant's person; (2) 1.06 grams of cocaine found on Appellant's person; (3) 25.87 grams of cocaine found in the black tote bag; (4) 18.04 grams of crack cocaine found in the black tote bag; (5) 6.27 grams of crack cocaine found in the black tote bag; and (6) 63 grams of marijuana found in the black tote bag. R. 159, ll. 1-7; 167, ll. 17-22; 175, ll. 13-14; 176, l. 24 – 177, l. 4; 191, ll. 6-10.

The jury convicted Appellant on all indicted counts.

ARGUMENT

- I. The Trial Court erred in refusing to allow Appellant to attack the credibility of the State's star witness with his prior convictions of armed robbery and third degree burglary where the Trial Court incorrectly ruled that the convictions were inadmissible under Rule 609 because they were not crimes of dishonesty or false statement. Rule 609 permits the use of any crime punishable by death or imprisonment in excess of one year to attack a witness's credibility regardless of whether the crime involves dishonesty or false statement.**

The only evidence the State presented at trial linking Appellant to the black tote bag containing the 25.87 grams of cocaine, the 18.04 grams of crack cocaine, the 6.27 grams of crack cocaine, and the 63 grams of marijuana was the testimony of Edward Wesson who claimed Appellant sold drugs out of Wesson's apartment and owned the black tote bag found hanging on the fence outside of the apartment. The State presented no physical evidence, such as fingerprints, linking Appellant to the black tote bag. None of the witnesses at trial saw Appellant place the bag on the fence before he was detained by officers and none of the witnesses knew how long the bag had been hanging on the fence.

Wesson's testimony was therefore crucial to the State's case, and the only way the jury could have convicted Appellant of possession and trafficking of the drugs found in the black tote bag is if the jury believed Wesson's testimony. Wesson's credibility was central to the case.

While the Trial Court admitted Wesson's convictions for fraudulent checks, the Trial Court excluded Wesson's prior convictions for armed robbery and third degree burglary, ruling that per this Court's holding in State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013), armed robbery and burglary were not crimes of dishonesty or false statement and therefore inadmissible under Rule 609, SCRE. R. 89, l. 17 – 90, l. 7.

The Trial Court erred in relying solely upon Rule 609(a)(2) and Broadnax in excluding Wesson's convictions for armed robbery and third degree burglary. Rule 609(a)(1) provides "evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted." This provision allows for the admission of any type of crime, not just crimes of dishonesty or false statement. The Trial Court erred by hinging its analysis on whether the prior armed robbery and burglary convictions were crimes of dishonesty or false statements.

Rule 609(a)(2) provides that prior convictions for crimes of dishonesty and false statement shall be admitted regardless of the punishment. Therefore, for crimes which involve dishonesty and false statement, the crimes can be admitted even if the punishment was not by death or imprisonment in excess of one year. However, Rule 609(a)(1) makes it clear that a prior conviction does not have to involve a crime of dishonesty or false statement to be admissible if the punishment was by death or imprisonment in excess of one year. The difference is that the court should perform a Rule 403 analysis before admitting the impeachment evidence which did not occur here due to the Trial Court's erroneous application of Rule 609.

Here, Wesson's armed robbery and third degree burglary convictions were punishable by imprisonment in excess of one year. S.C. CODE ANN. § 16-11-313; 16-11-330. The crimes were admissible under Rule 609(a)(1) to attack Wesson's credibility which was crucial to the State's case against Appellant.

In addition, the Trial Court's reliance upon Broadnax for its holding that prior armed robbery convictions, without more, did not constitute crimes of dishonesty is in error based

on Wesson's admission during his proffered testimony that his taking of money from an elderly woman at gunpoint and his breaking in at a construction site to find a place to sleep were wrongful and criminal actions. R. 77, l. 18 – 85, l. 16; 89, ll. 4-16. With respect to the armed robbery conviction, Wesson's testimony revealed that he went to the parking lot planning to rob someone, hid in the parking lot while waiting on someone to rob, and then carried out that plan. R. 81, l. 21 – 82, l. 21. Appellant showed acts of deceit beyond the basic crimes themselves, and therefore Wesson's crimes of armed robbery and burglary were admissible under Broadnax.

Finally, the South Carolina Supreme Court granted certiorari in Broadnax on June 12, 2014. Should the Supreme Court hold that armed robbery and related crimes constitute crimes of dishonesty that can be used to impeach an accused, certainly these types of crimes should be allowed to impeach a witness. See State v. Al-Amin, 353 S.C. 405, 414-25, 578 S.E.2d 32, 37-43 (Ct. App. 2003) (holding armed robbery is a crime of dishonesty and recognizing that by definition, dishonesty is a "disposition to lie, cheat, or steal.").

The Trial Court erred in not allowing Appellant to attack Wesson's credibility with his crimes of armed robbery and burglary. The error was not harmless. The State's case against Appellant with respect to the drugs found in the black tote bag depended entirely on Wesson's testimony. Without his testimony, the State could not link Appellant to the black tote bag. The State's case against Appellant hinged on Wesson's credibility, and Appellant should have been permitted to fully attack his credibility with his prior convictions. See State v. Pradubsri, 403 S.C. 270, 284, 743 S.E.2d 98, 106 (2013) (holding that where the State could not present evidence amounting to constructive possession of the drugs without the witness's testimony, the witness's testimony was essential to the State's case and the

error in not allowing cross-examination regarding her exact potential sentence was not harmless). Appellant is accordingly entitled to a new trial.

II. The Trial Court erred in allowing the state to qualify an investigator with the narcotics division of the police department as an expert concerning the street value of drugs, the typical habits of a drug user as opposed to a drug dealer, the normal means of packaging and selling certain drugs, typical dosages of street drugs, and opinions concerning avoidance methods persons involved in drug activity use to avoid detection because he was not qualified as an expert under Rule 702.

Investigator Jeff Kirby was assigned to the Narcotics Division with the Spartanburg City Police Department. R. 117, l. 15 – 118, l. 5. Over objection and despite the fact that he had never testified as an expert before, Investigator Kirby was allowed to testify as an expert concerning the street value of drugs, the typical habits of a drug user as opposed to a drug dealer, the normal means of packaging and selling certain drugs, typical dosages of street drugs, and opinions concerning avoidance methods persons involved in drug activity use to avoid detection. Tr. 124, ll. 6-7; 131, ll. 2-13; 133, ll. 13-20. Defense counsel argued that Investigator Kirby was not qualified to testify as an expert. R. 126, ll. 7-24; 130, ll. 11-16.

Rule 702, SCRE provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

The Trial Court erred in qualifying Investigator Kirby as an expert because he is not qualified as an expert under Rule 702. The rule is not intended to allow police officers, who are charged with the responsibility of removing criminals from the streets, to essentially testify that they are doing their job correctly and have correctly charged the defendant with drug possession and trafficking. The State was able to elicit Investigator Kirby's expert testimony that a person who had 1.06 grams of powder cocaine on his person, no drug

paraphernalia for drug use, \$1200 cash, and a gun on his person – remarkably the same items that Appellant had on his person – was in fact a drug dealer. R. 145, l. 19 – 146, l. 5.

This testimony usurped the jury’s fact finding role and was improper:

“[I]t is a little too convenient that the Government has found an individual who is expert on precisely those facts that the Government must prove to secure a guilty verdict—even more so when that expert happens to be one of the Government’s own investigators . . . When the Government skips the intermediate steps and proceeds directly from internal expertise to trial, and when those officer experts come to court and simply disgorge their factual knowledge to the jury, the experts are no longer aiding the jury in its factfinding; they are instructing the jury on the existence of facts needed to satisfy the elements of the charged offense.”

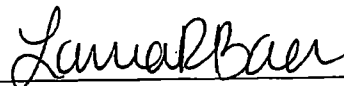
United States v. Mejia, 545 F.3d 179, 191 (2nd Cir. 2008).

Where the Trial Court erred in qualifying Investigator Kirby as an expert, Appellant is entitled to a new trial.

CONCLUSION

For the reasons set forth herein, Appellant Issac Glenard Lyles respectfully requests this Court to reverse his convictions and remand for a new trial.

Respectfully submitted,



Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of April, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ISAAC GLENARD LYLES,

APPELLANT.

APPELLATE CASE NO. 2013-002639

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Apljn, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of April, 2015.



Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of April, 2015.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 27, 2016

Mr. John Benjamin Aplin, Esquire
PO Box 11549
Columbia SC 29211

Mrs. Laura Ruth Baer, Esquire
PO Box 11589
Columbia SC 29211-1589

Mr. Barry Joe Barnette, Esquire
Spartanburg Cnty. Courthouse
180 Magnolia St.
Spartanburg SC 29306

JAN 27 2016

COURT OF
APPELLATE DEFENDANT

Re: The State v. Isaac G. Lyles
Appellate Case No. 2013-002639

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

A handwritten signature in black ink, which appears to read "Jenny Abbott Kitchings", is written over a horizontal line.

CLERK

cc: Alan McCrory Wilson, Esquire
The Honorable Roger L. Couch

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Isaac Glenard Lyles, Appellant.

Appellate Case No. 2013-002639

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

Unpublished Opinion No. 2016-UP-045
Submitted November 1, 2015 – Filed January 27, 2016

AFFIRMED

Appellate Defender Laura Ruth Baer, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Interim
Senior Assistant Deputy Attorney General John
Benjamin Aplin, both of Columbia; and Solicitor Barry
Joe Barnette, of Spartanburg, for Respondent.

PER CURIAM: Isaac Glenard Lyles appeals his convictions and sentences for possession with the intent to distribute (PWID) marijuana, trafficking in cocaine, trafficking in cocaine base, possession of a firearm or knife during the commission

of or attempt to commit a violent crime, PWID marijuana within proximity of a school, PWID cocaine within proximity of a school, and PWID crack cocaine within proximity of a school. Lyles argues the trial court erred in (1) refusing to allow him to attack the credibility of the State's witness with prior convictions of burglary and armed robbery, and (2) qualifying a police investigator as an expert in typical methods of packaging, selling, and using drugs. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. Although Lyles argued the witness's prior convictions were convictions of dishonesty under Rule 609(a)(2), SCRE, at trial, he did not argue Rule 609(a)(1), SCRE, permits the use of any crime punishable by death or imprisonment in excess of one year to attack a witness's credibility, regardless of whether the crime involved dishonesty or false statement. Thus, whether the convictions were admissible under Rule 609(a)(1), SCRE, is not preserved. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *id.* at 142, 587 S.E.2d at 694 ("A party may not argue one ground at trial and an alternate ground on appeal."); *id.* ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground."); *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) ("For an objection to be preserved for appellate review, the objection must be made at the time the evidence is presented and with sufficient specificity to inform the [trial court] of the point being urged by the objector." (citation omitted)). Further, the trial court properly found the prior convictions were not admissible under Rule 609(a)(2), SCRE. *See State v. Bryant*, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006) ("Under Rule 609(a)(2), SCRE, if a crime is viewed as one involving dishonesty, the court must admit the prior conviction because, prior convictions involving dishonesty or false statement must be admitted regardless of their probative value or prejudicial effect."); *id.* ("[A] conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of truthfulness."); *State v. Broadnax*, 414 S.C. 468, ___, 779 S.E.2d 789, 794 (2015) (holding the court of appeals correctly decided to follow the rule as formulated in *Bryant* that a conviction for robbery, burglary, theft, and drug possession, beyond the crime itself, is not probative of truthfulness for purposes of Rule 609(a)(2), SCRE), *reh'g granted*, (Sept. 8, 2015).

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

2. The trial court did not err in qualifying a police investigator as an expert witness. See *State v. White*, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009) ("A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion."); *State v. Henry*, 329 S.C. 266, 273, 495 S.E.2d 463, 466 (Ct. App. 1997) ("There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge."); *White*, 382 S.C. at 273, 676 S.E.2d at 688 ("The party offering the expert must establish that his witness has the necessary qualifications in terms of 'knowledge, skill, experience, training or education.'"); *id.* at 270, 676 S.E.2d at 686 (stating that under its gatekeeping function, the trial court "ensure[s] the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration"); *State v. Douglas*, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009) ("As with any witness, the jury is free to accept or reject the testimony of an expert witness.").

AFFIRMED.

SHORT, GEATHERS, and MCDONALD, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 26, 2016

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Isaac G. Lyles
Lower Court Case No. 2013GS4204570, 2013GS4204571,
2013GS4204572, 2013GS4204573, 2013GS4204574, 2013GS4204575
Appellate Case No. 2013-002639

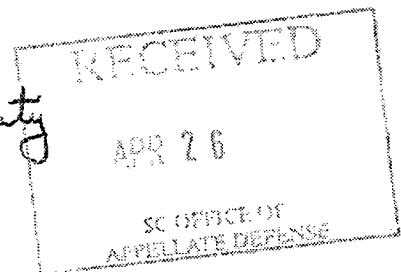
Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK



Enclosure

cc: Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Laura Ruth Baer, Esquire
Barry Joe Barnette, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
	)	IN THE SEVENTH JUDICIAL CIRCUIT	
COUNTY OF SPARTANBURG	)		
	)		
Isaac Glenard Lyles, #209983,	)	2016	
	)	Case No.: ~~2015~~ -CP-42-1479	
Applicant,	)		
	)	ORDER OF DISMISSAL	
v.	)	WITH PREJUDICE	
	)		
State of South Carolina,	)		
	)		
Respondent.	)		

2017 AUG -7 AM 11:16
 CLERK OF COURT
 SPARTANBURG COUNTY

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Isaac Glenard Lyles (Applicant) on April 18, 2016. The State (Respondent) made its return on February 16, 2017, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on June 28, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Susannah C. Ross, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. William S. Bean, IV, Esquire, (Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's direct appeal records, the PCR application, Respondent's return, and the exhibits entered at the PCR hearing.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. Applicant was indicted by the October 2013 term of the Spartanburg County Grand Jury for possession with intent to distribute ("PWID") cocaine within one-half mile of a school or park (2013-GS-42-4570), PWID marijuana

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within one-half mile of a school or park (2013-GS-42-4571), PWID cocaine base within one-half mile of a school or park (2013-GS-42-4572), PWID marijuana, 2nd offense (2013-GS-42-4573), trafficking cocaine, 10-28 grams, 3rd or subsequent offense (2013-GS-42-4574), trafficking in cocaine base (2013-GS-42-4575, count 1), and possession of a firearm or knife during the commission or attempt to commit a violent crime (2013-GS-42-4575, count 2). William S. Bean, IV, Esquire, represented him. The State was represented by Assistant Solicitor Scott D. Spivey of the Seventh Circuit Solicitor's Office. Prior to trial, the State served and filed notice of intent to seek life without parole based on Applicant's prior record. On December 4-5, 2013, Applicant proceeded to trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable Roger L. Couch to five concurrent prison terms of life without parole for the two trafficking charges and the three proximity charges; ten (10) years' concurrent imprisonment for PWID marijuana 2nd; and five (5) years' concurrent imprisonment for possession of a firearm during a violent crime.

A timely notice of appeal was filed on Applicant's behalf. The appeal was perfected. Applicant was represented by Laura Baer, Esquire, (Appellate Counsel) of the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Lyles, 2016-UP-045 (filed on January 27, 2016). The Remittitur was issued on April 26, 2016.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "The trial court lacked subject-matter jurisdiction to try and convict the Applicant for unindicted drug offenses"
 - a. "For evidence in support of his claim, the applicant submits that his indictments indicate that the Spartanburg County General Sessions Court began on October 7, 2013. However, the "Action of the Grand Jury" section indicates that the grand jury "True Billed"

the applicant's indictment on "September 27, 2013," which was nine (9) days prior to the beginning of the term of General Sessions Court in Spartanburg County."

2. Ineffective Assistance of Counsel, in that:

- a. Counsel failed to move for suppression of, or to object to, the State's drug evidence that was seized in violation of Fourth Amendment
 - i. "During the execution of the search warrant, applicant was arrested and drugs were found. Nevertheless, even though the state had failed to disclose the existence of any Confidential Reliable Informant (CRI) to support probable cause for the introduction of any drug evidence against the applicant, his trial counsel did not only fail to move for suppression of the state's drug evidence against him
 - ii. The record in applicant's case was devoid of any CRI to show that police had probable cause to seize the drug evidence
 - iii. The police executed a search of the North Forest Street residence based solely upon information from a "complaint" that was uncorroborated by any investigation of controlled drug buy from him to support any probable cause for his seizure or search by the police."
 - iv. "The Applicant also contends that the state's seizure of drug evidence against him at trial did not only show that the police executed an unlawful search of the residence where he was a guest, but did also show that he was unlawfully seized in violation of the Exclusionary Rule of the Amendment
 - v. Because the State failed to produce its informant prior to or during trial to establish probable cause for the admission of the drug evidence, Counsel's failure to move to suppress the evidence was ineffective because the drug evidence was the only evidence against Applicant
- b. Counsel failed to object to the court's interpretation of S.C. Code §§ 17-25-45 and 17-25-50."
 - i. "...given the fact that the PWID crack cocaine is not listed under section 17-25-45, the applicant contends that inasmuch as the record showed that his burglary first and manslaughter offenses took place at the same time and place, his counsel's failure to object to the trial judge's construction of 17-25-45 in conjunction with 17-25-50 was ineffective assistance of trial counsel, and was prejudiced by the Judge's imposition of his unlawful sentence." [sic]
- c. Counsel failed to impeach the state's star witness with his prior convictions for armed robbery and third degree burglary offenses."
 - i. Wesson's armed robbery and third degree burglary

convictions were punishable by imprisonment in excess of one year. S.C. Code 16-11-313; 16-11-330. Thus, the crimes were as a matter of law admissible under Rule 609(a)(1) to attack Wesson's credibility. Counsel's failure to argue the application of Rule 609(a)(1), SCRE, to impeach Wesson's credibility was ineffective assistance of counsel..."

- d. "Counsel failed to object to the solicitor's vouching for the credibility of a state witness."
 - i. There was no other evidence beyond Wesson's testimony connecting Applicant to the state's drug evidence
- e. Counsel failed "to object to the trial judge's jury charge on the facts."
 - i. "Therefore, the Jury charge by the Court in this instance was in essence a charge on the facts in violation of Article V, [Section] 22 of the S.C. Constitution; of particular note; no Court would charge a Jury the inverse of this charge—you may infer the defendant does not have dominion and control over the drugs "if he does not have control over the premises but is merely present."

On June 23, 2017, Applicant filed an Amendment to his PCR application to include the following allegation:

- 1. "Ineffective assistance of appellate counsel for failing to brief issues of:
 - a. error in Judge's sentence of life without parole pursuant to § 17-25-45."
- 2. "Denial of due process when Judge sentences of life without parole pursuant to § 17-25-45."

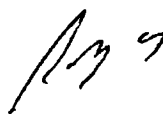
At the evidentiary hearing, Respondent opposed the late amendment noting Rule 15(a), SCRCF. This Court allowed Applicant to proceed on all claims and agreed, if necessary, to bifurcate the proceedings to allow Respondent to supplement the record with further evidence in response to the amended claims. However, this Court finds no such bifurcation is needed

FACTS ADDUCED AT TRIAL

Applicant was arrested on October 9, 2012, during the Spartanburg City Police Department's execution of a search warrant. As the police entered the front door of a suspected drug house, Applicant exited a back door and tried to run; however, he was immediately caught

and detained. Applicant had a gun and small amounts of marijuana and cocaine on his person, and over one thousand dollars in cash fell from his pocket and was found beside him on the ground. The police then found a black bag hanging on the fence between the house and an empty lot next door. The bag contained large quantities of cocaine, cocaine base (crack cocaine), and marijuana, as well as a bottle of caffeine powder and a set of digital scales. Edward Wesson, a second individual who had also tried to run from the house testified that the bag belonged to Applicant. (R.p.26-p.39; p.43-p.622; p.90-p.101; p.107-p.125; p.135-p.146; p.153-p.166; p.170-p.178).

At trial, the State called narcotics investigator Michael Secrest to the stand. He described his role in the October 9, 2012, execution of a search warrant on a residence on North Forest Street in the city of Spartanburg. Secrest drove the tactical truck for the SWAT team members who entered the house. He identified a photograph of the house as well as a satellite image of the neighborhood which showed the location of the house in relation to Cleveland Elementary School, which was .348 miles away. After exiting the truck with the rest of the tactical team, Secrest went to the right side of the house to help secure the perimeter. As soon as entry was made at the front of the house, two individuals, including Applicant, came out the side door and tried to run. Secrest caught Applicant three or four steps from the side of the house and as they fell to the ground, money fell out of Applicant's pocket. Secrest noticed Applicant moving his hand down toward his waistline so he grabbed Applicant's hand as he detained him. Secrest discovered a handgun and a small amount of marijuana in Applicant's pocket. The handgun and bullets from that gun, as well as photographs of the money and marijuana, were identified and then admitted into evidence. (R.p.26, line 16-p.39, line 13).



Next, the State called investigator Josh Bagwell to the stand. Bagwell served as the “return officer” for the search warrant and described each of the items discovered at the scene. He first described the items found on or near Applicant, including a Hi-Point .380 handgun which was loaded with six rounds, two small containers of a green plant-like material, a small bag containing a white powder-like substance, and one thousand two hundred and eighty-one dollars (\$1,281) in cash. (R.p.43, line 6-p.51, line 11). Bagwell next described a black tote bag the police found on the fence along the side of the residence, and the contents of that bag. This included more green plant-like material, a set of digital scales, a white rock-like substance, a powder-like substance, a bottle filled with crystalline powder, and a set of goggles. Bagwell testified he remembered three males being at the residence; however, Applicant was the only one who had drugs. (R.p.51, line 15-p.62, line 11).

Rule 609: Impeachment by Evidence of Conviction of Crime

Before calling Edward Wesson as the next State’s witness, the solicitor handed up a copy of this Court’s published opinion in State v. Broadnax¹ and asked the trial judge to address whether Appellant would be permitted to attack Wesson’s credibility with his prior convictions. The judge commented that pursuant to Broadnax it appeared the court would have to determine if the underlying crime involved some type of dishonesty or false statement before it could be used to impeach. The judge said he would review the case and would rule after the State proffered Wesson’s testimony and Applicant had the chance to cross-examine on the specifics of the crimes. (R.p.71, line 10-p.74, line 12). Wesson then took the stand outside the presence of the jury.

After the proffer, the solicitor moved to prohibit Applicant from using Wesson’s convictions for burglary and armed robbery to impeach. The solicitor noted that regardless of

¹ 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013), aff’d in part, rev’d in part 414 S.C. 468, 779 S.E.2d 789 (2015).

the court's ruling on the two crimes in question, Wesson's prior convictions for fraudulent check would be admissible to impeach. Applicant responded that he believed Wesson's armed robbery and burglary clearly involved dishonesty and should therefore be admitted against him as well. Specifically relying on Broadnax, the trial court concluded there was not sufficient evidence to find that the two crimes were crimes of dishonesty or false statement and therefore excluded them from trial.

After the ruling, the jury returned to the courtroom and Wesson took the stand. At the beginning of his testimony Wesson admitted he had five 2006 convictions for fraudulent check. (R.p.90, line 17-p.92, line 21). He then described his relationship with Applicant and explained he was living at the residence on North Forest Street when the police conducted the search. Wesson testified he met Applicant in the summer of 2012 when Wesson was moving into the apartment and said he saw Applicant nearly every day after moving in. Wesson testified Applicant asked if he could use Wesson's apartment to sell drugs and Wesson agreed. He testified Applicant sold drugs from the residence every day from the summer of 2012 through October and during that time Applicant always carried a black bag. Wesson identified State's Exhibit 14 as the bag belonging to Applicant and the bag was admitted into evidence over Applicant's objection. The items discovered in the bag were also admitted over Applicant's objection. Wesson identified the goggles from the bag as belonging to Applicant and testified he had seen Applicant with the goggles before. According to Wesson, Applicant paid him with crack cocaine in exchange for the use of Wesson's residence to sell drugs. Wesson testified he had seen Applicant take drugs out of the bag to sell, and that most of the time Applicant kept the bag hanging on the fence outside the residence. Wesson insisted the bag belonged to Applicant. (R.p.92, line 22-p.101, line 7). Applicant cross-examined Wesson in regard to inconsistencies in



his testimony and inconsistencies between the testimony and a previous statement he had given to the police but did not ask any questions about Wesson's prior convictions. (R.p.101, line 13-p.114, line 7).

When Wesson finished testifying, the State called investigator Kirby to the stand. Kirby worked for the city police department for eleven-and-a-half years and had been assigned to the narcotics unit for nine-and-a-half years. The State offered Kirby as an expert in the street value of narcotics, how they are packaged and sold, typical intoxicating dosages, and the different habits between an addict and a dealer. Applicant objected to Kirby's qualification as an expert. The trial judge allowed Kirby's qualification as an expert. Kirby proceeded to give detailed testimony on the wholesale cost of cocaine, methods of adding a cutting agent to increase total weight of the drugs prior to sale, and how cocaine is made into crack-cocaine. He described the use of caffeine powder as a cutting agent and the use of scales to weight the product. Kirby also testified as to the street value of crack and the profit that could be made when selling it to individual users. He described the dosages typically smoked by an individual user, the frequency of ingesting those doses, and the paraphernalia associated with the use of crack. Kirby then gave similar testimony regarding the sale and use of marijuana. He testified that drug dealers typically carry cash and that it is not unusual for a dealer to sell drugs from someone else's house. (R.p.135, line 10-p.145, line 7).

The solicitor then asked for an opinion on whether Kirby thought the amount of drugs found on Applicant's person was to be sold or was for personal use; however, the trial judge sustained Applicant's objection to the form of the question. Instead, the solicitor asked Kirby for an opinion in the form of hypothetical by asking whether someone who had 1.06 grams of powder cocaine, no paraphernalia for use, \$1,200 in cash and a gun on his person was likely a

user or a drug dealer. Kirby testified he would qualify that individual as a drug dealer. (R.p.145, line 8-p.146, line 7).

After Kirby completed his testimony, the State called city police department's property and evidence technician, Mylnor Beach, to the stand. He was qualified as an expert in marijuana analysis and testified the two quantities of green plant-like substance found on Applicant's person were marijuana in amounts of 3.85 grams and 1.86 grams. He further testified the green plant-like substance discovered in the black bag was 52.73 grams of marijuana. The marijuana was admitted into evidence. (R.p.153, line 22-p.166, line 12). Next, city police department chemist Mary Elizabeth Stuart was qualified as an expert in the analysis of cocaine and crack cocaine. She described her testing procedures and testified she confirmed four separate quantities of drugs submitted for testing including: 1.06 grams of cocaine, 25.87 grams of cocaine, 6.27 grams of crack cocaine, and 18.04 grams of crack cocaine. The cocaine and crack cocaine were also admitted into evidence. (R.p.170, line 15-p.178, line 11). After the State rested, Applicant moved for a directed verdict in regard to the charges stemming from the drugs discovered in the bag. The trial court denied the motion and questioned Applicant in regard to his right to testify. Appellant elected not to testify and the defense rested. (R.p.179, line 13-p.187, line 14).

During his closing argument, the solicitor acknowledged that as a drug user and a hopeless addict, Wesson was not totally innocent; however, he argued Wesson's testimony was nevertheless consistent with the evidence. The solicitor then discussed Investigator Kirby's experience and training and his knowledge about drugs, dealers and users, and paraphernalia to argue Applicant "ain't a drug user, he's a drug dealer." (R.p.187, line 22-p.200, line 4). Applicant responded by focusing on the lack of physical evidence tying him to the bag and



various problems with Wesson's credibility. (R.p.200, line 8-p.205, line 17). Following a charge conference, the trial court charged the jury on the law. The court included standard charges on the presumption of innocence, the State's burden of proof, reasonable doubt, the roles of the judge and jury, direct and circumstantial evidence, the jury's duty to assess the credibility of witnesses, expert testimony, and the crimes and the elements of those crimes. (R.p.215, line 3-p.236, line 13). Upon deliberating for thirty-two minutes, the jury found Applicant guilty of all charges.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient. Applicant has failed to do so.

I. Subject Matter Jurisdiction

Applicant alleges the trial court lacked subject matter jurisdiction based on defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003).

Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). “[C]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry at 101.; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside and Applicant has failed to do so. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

Applicant further claims that the True Bill dates on his indictments do not coincide with the dates set forth on the South Carolina Court Administration Terms of Court Calendar (admitted as Applicant’s exhibit 2) has no merit. Grand juries are continuous bodies that convene all year and deliberate at various times and for various lengths of time. “After the grand jury has deliberated, it then reports its findings of “True Bill” or “No Bill” to the court of general sessions. This report may be made on the same day as the day the grand jury makes its findings, or it may be made at some later time.” Brown v. State, 316 S.C. 258, 260, 449 S.E.2d 494, 495 (1994). Applicant has failed to meet his burden of proving any irregularity in the grand jury proceedings resulting in his indictments. Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986) (The regularity of the proceedings of a court of general jurisdiction will be assumed in the absence of evidence to the contrary.). Therefore, this allegation is denied and dismissed with prejudice.

II. Due Process

Applicant claims he was denied due process when the trial judge sentenced him to life without parole (LWOP) pursuant to § 17-25-45, S.C. Code Ann. (1976). This allegation is

without merit. The record indicates the notice of intent to seek life without parole was properly served and in accordance with established law. Applicant's criminal history also supports the invocation of § 17-25-45. Applicant claims that his prior conviction for possession with intent to distribute crack, 3rd or subsequent offense, could not have counted as a "strike" under § 17-25-45 because it is not a listed "serious" offense under subsection (C)(2)(b). However, in addition to the list of serious offenses in subsection (C)(2)(b), § 17-25-45(c)(2)(a) defines a serious offense as "any offense which is punishable by a maximum term of imprisonment of thirty years or more which is not listed in subsection (C)(1)². Possession with intent to distribute crack, 3rd or subsequent, is punishable by up to 30 years' imprisonment. Therefore, it is indeed considered a serious offense for the purposes of § 17-25-45. Additionally, Counsel testified the State offered Applicant a plea deal of 18 years, but that Applicant rejected the offer and decided to pursue a jury trial. Applicant has failed to meet his burden to prove this allegation so it is therefore denied and dismissed with prejudice.

III. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

² This section lists "most serious offenses."

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is

easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

A. Failure to move for suppression of drugs

Applicant alleges Counsel was ineffective in failing to move to suppress the drugs found during what Applicant believes was an unlawful search. Applicant testified that Counsel never challenged the search warrant and the Confidential Informant (CI) was never revealed or required to testify. Applicant complained that he was never allowed to question the CI. Applicant also claimed there were false statements in the probable cause affidavit stating that Applicant was selling drugs out of Wesson's house. Applicant introduced the Probable Cause Affidavit and an Investigator's Case Activity Summary together as Applicant's exhibit 1. Applicant pointed out that between the time when the CI left law enforcement and went to the buy location (13:54 hours) and when he arrived back to meet law enforcement (16:10 hours), over two hours had elapsed. Based on this delay, Applicant believes Counsel should have challenged the validity of the search warrant.

Counsel testified that Applicant had never been arrested or charged with the drug buys made by the CI. Because Applicant was not charged for those sales, the CI's identity did not have to be disclosed. The CI was not a witness to the charges for which Applicant was tried. His identity was irrelevant and Applicant was not entitled to a disclosure. The undercover drug buys were, however, the basis for the search warrant executed on Wesson's home. Counsel received and reviewed all the discovery with Applicant. Based on his review, Counsel believed there was no basis to challenge the validity of the search warrant. As to the delay in time from when the CI left for the buy and when he returned to meet law enforcement, Counsel stated that it is common for CIs to take alternate routes or stall before returning to the meeting location in an



effort to maintain their cover. This practice is not unusual. Counsel did, however, successfully move for suppression of DNA evidence tying Applicant to the bag which contained the drugs. (Trial Tr.p. 57 – 68). Counsel also prudently moved to exclude any evidence of the CI buy involving his client and the State agreed to start their case at the time the search warrant was executed on Wesson's home. (Trial Tr.p. 40 – 41).

This Court finds Counsel was not deficient for not challenging the search warrant. Counsel has articulated a valid strategic decision for not pursuing such a course. The record also demonstrates his strategic decisions to pursue other motions proved successful. This Court will not second guess Counsel's exercise of his professional judgment when it is clear his decision was reasonable. Additionally, Applicant has failed to prove how not challenging the search warrant prejudiced him. His claim the search warrant was invalid is speculative, at best. Therefore, this allegation is denied and dismissed with prejudice.

B. Failure to object to LWOP notice

Applicant claims Counsel was ineffective for failing to object to the LWOP notice served upon him. As discussed above, Applicant was properly served with the notice of intent to seek life without parole pursuant to § 17-25-45, S.C. Code Ann. (1976). Upon conviction, Applicant was sentenced to life imprisonment without parole in accordance with established law. Therefore, Counsel was not deficient for not objecting to the notice. This allegation is denied and dismissed with prejudice.

C. Failure to impeach State's witness using prior armed robbery and third degree burglary convictions

Applicant claims Counsel was ineffective for failing to impeach the State's witness using two prior convictions for armed robbery and third degree burglary. At trial, Counsel strenuously

argued Wesson's armed robbery and burglary convictions were admissible under Rule 609(a)(2), SCRE, as crimes of dishonesty, during an *in camera* hearing. (Trial Tr.p 121 – 140). However, Counsel did not argue for their admissibility under Rule 609(a)(1). Despite Counsel's failure to make this argument, the record clearly demonstrates that evidence of prior convictions for crimes of dishonesty were introduced into the record. There may have been additional crimes which could have been introduced to impeach the credibility of the witness. However, Applicant has failed to prove any prejudice inasmuch as Wesson's credibility had already been impeached by and through the introduction of five other prior convictions for crimes of dishonesty. Therefore, this allegation is denied and dismissed with prejudice.

D. Failure to object to the State's vouching for credibility of the State's witness

Applicant claims Counsel was ineffective for failing to object during the State's closing argument because the State improperly vouched for the veracity of Wesson's testimony. The State appropriately addressed Wesson's credibility during closing, but this did not rise to the level of improper vouching. A witness's credibility is proper argument for closing. Therefore, there was no basis for Counsel to object. Applicant has failed to prove Counsel was deficient in this regard and therefore, this allegation is denied and dismissed with prejudice.

E. Failure to object to jury charge

Applicant claims Counsel was ineffective for failing to object to the following charge the trial judge gave to the jury:

Now mere presence at a scene where drugs are found is not enough to prove possession. Actual knowledge of the presence of a drug is strong evidence that the defendant had somehow intended control of its disposition or use.

(Trial Tr.p. 289).

This charge is proper and in line with established law. Applicant has failed to show why it warranted an objection. This Court finds Counsel was not deficient in this regard. Therefore, this allegation is denied and dismissed.

E. Appellate Counsel

Applicant alleges his appellate counsel was ineffective for failing to brief the issue of error in judge's sentence of life without parole pursuant to § 17-25-45, S.C. Code Ann. (1976). This claim was added 5 days before Applicant's evidentiary hearing in the matter. Respondent was not prepared to proceed on this claim because it had no opportunity to subpoena Appellate Counsel for the hearing. This Court finds that Applicant has failed to meet his burden in proving Appellate Counsel was deficient or that he was prejudiced by any deficiency. Therefore, there is no reason to leave the record open for review of Appellate Counsel's performance.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues

on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Ibid.

As discussed above, Applicant was properly served with the notice of intent to seek life without parole. Upon conviction, Applicant was sentenced to life imprisonment without parole in accordance with established law. Therefore, Appellate Counsel was not deficient for not raising the issue on appeal. This allegation is denied and dismissed with prejudice.

CONCLUSION

The remainder of Applicant's allegations are without merit. Applicant essentially questions each and every action or inaction of trial counsel. A Post-conviction relief application is not a venue for second-guessing decisions of trial counsel. Applicant has the burden of proving by a preponderance of the evidence that Counsel was deficient and that the deficiency was prejudicial. Applicant has failed to do so.

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. This Court finds that Applicant has failed to prove any deficiencies on the part of trial or appellate counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in trial or appellate counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice. This Court also finds that Applicant failed to present evidence as to the other allegations, and thus, this Court deems the other allegations abandoned.

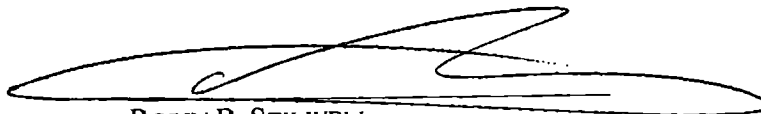
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate

appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 2 day of AUG, 2017.



ROBIN B. STILWELL
Presiding Judge
Seventh Judicial Circuit

GREENVILLE, South Carolina

2017 AUG -7 AM 11:16
M. HOPE BLANCHET

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

August 7, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Isaac Cleland Lyles
Applicant *#2099183*

7TH JUDICIAL CIRCUIT

CASE # *2016CP42-1479*

Site
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Ord. Dismissal w/ prejudice*
In this action dated *8-2 2017* on *8-7-17*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Brianna Greene
Alliea Deere
Susannah Ross

8-7-17
(Date)

Corinne
(Signature)

WITNESSES

SPARTANBURG PUBLIC SAFETY

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT
FINE CARD MADE

ARREST WARRANT NUMBER

2012a4210100739

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

SEP 27 2013

VERDICT

GUILTY

Foreperson of Petit Jury
Date: 12/5/13

DOCKET NO.

13-GS-42-4570

The State of South Carolina

County of

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 11 2013

TERM

THE STATE
vs.

ISAAC GLENARD LYLES

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE
WITHIN ONE-HALF MILE

SC Code: 44-53-445

STATE OF SOUTH CAROLINA)
)
COUNTY OF)

INDICTMENT

At a Court of General Sessions, convened on SEP 27 2010 the
Grand Jurors of County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE WITHIN ONE-HALF MILE

That Isaac Glenard Lyles did in Spartanburg County on or about October 9, 2012, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Cocaine, a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Cleveland Elementary School, under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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


ASSISTANT SOLICITOR

WITNESSES

SPARTANBURG PUBLIC SAFETY

1. SENTENCE MADE

2. REPORT ENDED

3. CARD ROLLED

4. CHECKED WARRANTS

5. CHECKED SIGNATURE

6. FINE CARD

ARREST WARRANT NUMBER

TRAFFIC VIOLATION COPY

2012A4210100737

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

SEP 27 2013

VERDICT

GUILTY

Foreperson of Petit Jury
Date: 12/5/13

DOCKET NO.

13-GS-42-4571

The State of South Carolina

County of

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 02 2013

TERM

THE STATE
vs.

ISAAC GLENARD LYLES

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA
WITHIN ONE-HALF MILE

SC Code: 44-53-445

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2013 OCT -2 AM 9:45

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF)

INDICTMENT

SEP 27 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA WITHIN ONE-HALF MILE

That Isaac Glenard Lyles did in Spartanburg County on or about October 9, 2012, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Marijuana, a schedule I controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Cleveland Elementary School, under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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



ASSISTANT SOLICITOR

WITNESSES

SPARTANBURG PUBLIC SAFETY

1. SENTENCE MADE

2. REPORT ENDED

3. CARD BUILT

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ARRESTED
FINE CARD MADE

ARREST WARRANT NUMBER

2012A4210100738

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

SEP 27 2013

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

12/5/13

DOCKET NO.

13-GS-42-4572

The State of South Carolina

County of

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 07 2013

TERM

THE STATE

vs.

ISAAC GLENARD LYLES

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE BASE
WITHIN ONE-HALF MILE

SC Code: 44-53-445

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2013 OCT -2 AM 9:45

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF)

INDICTMENT

SEP 27 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE BASE WITHIN ONE-HALF MILE

That Isaac Glenard Lyles did in Spartanburg County on or about October 9, 2012, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Cocaine Base, a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Cleveland Elementary School, under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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



ASSISTANT SOLICITOR

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT -2 AM 9:45
M. HOPE BLACKLEY

DOCKET NO.
13-GS-42-4573

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 07 2013

TERM

THE STATE
vs.

ISAAC GLENARD LYLES

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

SC Code: 44-53-370

WITNESSES

SPTG DEPT PUBLIC SAFETY

1. SENTENCE MADE

2. REPORT ENDED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

ARREST WARRANT NUMBER

7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

2013A4270100736

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

SEP 27 2013

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 12/5/13

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on
Jurors of Spartanburg County present upon their oath:

SEP 27 2013

the Grand

POSSESSION WITH INTENT TO DISTRIBUTE

That Isaac Glenard Lyles did in Spartanburg County on or about October 9, 2012, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a schedule I controlled substance, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended, such distribution not having been authorized by law.*

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


ASSISTANT SOLICITOR

WITNESSES

SPTG DEPT PUBLIC SAFETY

1. SENTENCE MADE

2. REPORT

3. WANTS

4. ARREST MADE
FINE CARC MADE

5. TRAFFIC VIOLATION COURT

2013A4210100735

ACTION OF GRAND JURY

True Bill

For person of Grand Jury

Date:

SEP 27 2013

VERDICT

GUILTY

For person of Petit Jury

Date: 12/5/13

DOCKET NO.

13-GS-42-4574

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 07 2013

TERM

THE STATE
vs.

ISAAC GLENARD LYLES

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2013 OCT -2 AM 9:45

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 27 2013, the
Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN COCAINE

That Isaac Glenard Lyles did in Spartanburg County on or about October 9, 2012, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (10) ten grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



ASSISTANT SOLICITOR

WITNESSES

SPTG DEPT PUBLIC SAFETY

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. CHECKED WARRANTS

5. CHECKED SIGNATURE

7. ASSESSMENT
FINE CARD MADE

ARREST WARRANT NUMBER

2012A4210100734 & 2012A4210100740

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

SEP 27 2013

VERDICT

Guilty on Count 2 and Count 2

Foreperson of Petit Jury

Date: 12/5/13

DOCKET NO.

13-GS-42-4575

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 0 / 2013

TERM

THE STATE

vs.

ISAAC GLENARD LYLES

Indictment for

TRAFFICKING IN COCAINE BASE AND
POSSESSION OF A FIREARM OR KNIFE
DURING COMMISSION OF OR ATTEMPT
TO COMMIT A VIOLENT CRIME

SC Code: 44-53-375; 16-23-490

CDR Code:

Class FEL/EXM: FEL/E

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT -2 AM 9:45
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 27 2013

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

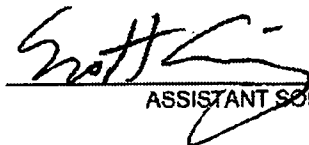
COUNT ONE – TRAFFICKING IN COCAINE BASE

That Isaac Glenard Lyles did in Spartanburg County on or about October 9, 2012, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (10) ten grams of Cocaine Base a schedule II controlled substance, in violation of §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO - POSSESSION OF FIREARM OR KNIFE DURING
COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That Isaac Glenard Lyles did in Spartanburg County on or about October 9, 2012, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to-wit: TRAFFICKING IN COCAINE BASE, in violation of Code §16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR

WITNESSES

SPTG DEPT PUBLIC SAFETY

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. CHECKED WARRANTS

5. CHECKED SIGNATURE

7. ASSESSMENT

FINE CARD MADE

ARREST WARRANT NUMBER

2012A4210100734 & 2012A4210100740

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

SEP 27 2013

VERDICT

Guilty on Count 1 and Count 2

Foreperson of Petit Jury

Date: 12/5/13

DOCKET NO.

13-GS-42-4575

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 01 2013

TERM

THE STATE

vs.

ISAAC GLENARD LYLES

Indictment for

TRAFFICKING IN COCAINE BASE AND
POSSESSION OF A FIREARM OR KNIFE
DURING COMMISSION OF OR ATTEMPT
TO COMMIT A VIOLENT CRIME

SC Code: 44-53-375: 16-23-490

CDR Code:

Class FEL/EXM: FEL/E

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT -2 AM 9:45
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 27 2013

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE – TRAFFICKING IN COCAINE BASE

That Isaac Glenard Lyles did in Spartanburg County on or about October 9, 2012, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (10) ten grams of Cocaine Base a schedule II controlled substance, in violation of §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO - POSSESSION OF FIREARM OR KNIFE DURING
COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That Isaac Glenard Lyles did in Spartanburg County on or about October 9, 2012, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to-wit: TRAFFICKING IN COCAINE BASE, in violation of Code §16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR