

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DINAL WAYNE KEITH,

APPELLANT

APPELLATE CASE NO 2017-001088

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT'S ARE ON FILE WITH THIS COURT:

**STATE'S EXHIBIT NO. 2 (Home Depot parking lot video);
STATE'S EXHIBIT NOS. 3-4, 9, and 12-17 (photographs of text messages); and
STATE'S EXHIBIT NO. 5 (living room video).**

1 STATE OF SOUTH CAROLINA

2 -----X

3 STATE,

4 Plaintiff,

5 Case No.

6 -against- 2016-GS-46-00955

7 DINAL WAYNE KEITH, 2016-GS-46-00956

8

9 Defendant.

10 -----x

11 April 24-27, 2017

12 York, S.C.

13

14 | B E F O R E:

15 HONORABLE J. DERHAM COLE

16

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19 Attorney for the State

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22 Attorney for the Defendant

23

24 Aileen Butler

25 Official Court Reporter

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E X H I B I T S

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1 (WHEREUPON, States Exhibits 1- 27 and Defendant's
2 Exhibits 1-3 were marked pre-trial for
3 Identification).

4 MR. PLEMING: At this time the State calls for
5 trial the State versus Dinal Wayne Keith. I have two
6 Indictments true billed by the Grand Jury of York
7 County. One for trafficking Hydrocodone. That is
8 Indictment number 2017-GS-46-00955 and another
9 Indictment for possession with intent to distribute
10 Buprenorphine. That's Indictment 2017-GS-46-000956,
11 and the State is handing these Indictments up at this
12 time.

13 THE COURT: All right. Miss Lipinski, you
14 represent him?

15 MS. LIPINSKI: Yes, Your Honor I do.

16 THE COURT: Do you have any pretrial matters to
17 address?

18 MS. LIPINSKI: We do Your Honor.

19 THE COURT: Okay. Do you have written motions or
20 are you going to make them orally?

21 MS. LIPINSKI: I have written motions to just kind
22 of outline them Your Honor.

23 THE COURT: Okay, Miss Lipinski.

24 MS. LIPINSKI: May it please the Court, Your
25 Honor. Initially the defendant would move to

1 sequester the State's witnesses including during
2 pretrial motions, even though the majority of them are
3 law enforcement we still feel the danger of collusion
4 exists. We understand the case agent would remain but
5 we would just ask that the other officers be
6 sequestered in addition to any lay witnesses the State
7 would intend to call.

8 THE COURT: What's the State's position?

9 MR. PLEMING: Your Honor, we have no objection to
10 that request as long as our case agent, Leland
11 Harrison, be allowed to remain in the courtroom.

12 THE COURT: Okay, apparently that approved by
13 agreement.

14 MS. LIPINSKI: Thank you, Your Honor.

15 The defense would move at this time to compel the
16 State to reveal any consideration, promises,
17 discussions, deals, exchanges, representation of
18 leniency, whether it applies to sentence or bond as it
19 relates to either of the two would be co-defendants;
20 Sherry Lynn Brandon or the confidential informant,
21 Bryan Carl Sullivan. We would also move for that to
22 exclude Sherry Brandon's son, Zachary Brandon who also
23 has pending charges. The DEU does time allow family
24 members to work out other people charges so we would
25 just ask that that motion to reveal the deal

1 basically. Also include whether or not any
2 conversations have been taking place regarding her
3 son's charges as well.

4 THE COURT: All right, Mr. Fleming.

5 MR. FLEMING: Thank you, Your Honor. From
6 speaking with law enforcement as well as the two
7 witnesses as you have the C.I. and the co-defendant
8 there have been no considerations, promises
9 discussions deals or anything of that nature offered
10 to either of those two in exchange for their
11 testimony.

12 THE COURT: All right, next.

13 MS. LIPINSKI: Your Honor, the defense moves to
14 require the State to produce any and all information
15 that would fall within the parameters of Brady v.
16 Maryland and it's progeny, including but not limited
17 to NCIC records of any of the witnesses including
18 Sherry Lynn. I put -- I meant to put Brandon, I don't
19 know how that got caught off -- and Brian Sullivan,
20 the confidential informant or or any other witnesses
21 they would intend to call during their case in chief.

22 MR. FLEMING: Your Honor, we have complied with
23 all rules of Discovery in this case.

24 THE COURT: Okay. Next.

25 MS. LIPINSKI: That is fine, Your Honor. I just

1 ask them to double check that. I was under the belief
2 that she had at least some minor prior record but if
3 not I understand that that's their position.

4 The defendant would move to suppress the
5 defendant's statement pursuant to Jackson v. Denno or
6 at least require the State to establish that they were
7 freely and voluntarily given prior to them putting
8 them before the jury.

9 MR. PLEMING: Your Honor, we have two officers
10 present today. They are prepared to testify, proffer
11 testimony as part of the Jackson v. Denno Hearing at
12 this time.

13 There were admissions made by the defendant which
14 we do believe would require a Jackson v. Denno hearing
15 and we are prepared to do that.

16 THE COURT: All right, we will do that shortly.
17 Number five.

18 MS. LIPINSKI: Number five, Your Honor, there is
19 reference in the law enforcement records that I was
20 provided that C.I. Brian Carl Sullivan was shown a
21 photograph line-up. I never received a copy of that
22 photographic line-up. It's usually kept in C.I. file
23 and not provided. They did disclose the C.I.. I
24 believe I got the C.I. agreement.

25 MR. PLEMING: I thought that was contained in the

1 materials we turned over to you, but I do not have any
2 intention to seek to admit the photographic line-up
3 during the course of this trial.

4 MS. LIPINSKI: All right, Your Honor.

5 THE COURT: Do you need it?

6 MS. LIPINSKI: I don't need it if they don't
7 intend to introduce it Your Honor.

8 THE COURT: All right.

9 MS. LIPINSKI: That kind of brings up the next
10 one, Your Honor, just to make sure that I do you have
11 complete access to the confidential informant's file
12 for Bryan Carl Sullivan to fully investigate his
13 credibility in impeachable matters. I got an
14 agreement; a C.I. agreement. I was given copies of
15 warrants. I was told that they never served the
16 warrants or withheld the warrants in exchange for his
17 cooperation, but I just want to make sure, is there
18 any other information in his file that might lead to
19 Brady material. Specifically, did he do any other
20 work. Was he ever paid in any way. This would kind
21 of go back in terms of the reveal, the deal situation.
22 Has he been investigated for any matter since that
23 time.

24 It's my understanding there is a pending
25 investigation with the C.I. regarding the -- the -- I

1 don't know if death is the appropriate word, but
2 premature delivery of a child. Possible exposure of
3 that child or other children in the home to narcotics
4 and Mr. Fleming was very forthcoming in providing me
5 with that.

6 I got a CD with approximately three thousand text
7 messages on that which do indicate some drug sales
8 before or after but they got that from the death
9 investigation and not necessarily, it's my
10 understanding, from the C.I. file. So I would just
11 ask whether or not there's any knowledge on the part
12 of DEU or anything else in their file which would call
13 into question his reliability or his credibility on
14 the stand.

15 MR. FLEMING: Your Honor, I will address that. I
16 have spoken with one of the investigators involved in
17 that case and requested that he turn over all reports
18 and documents related to that investigation.
19 Everything that they have turned over to us in
20 compliance with my request I have forwarded to Miss
21 Lipinski.

22 Just a point of clarification, Your Honor, to go
23 back to item number five; Miss Lipinski's pretrial
24 motion. While we don't intend to introduce any
25 photographic line-up I would just like clarification

1 as to whether Mr. Sullivan is permitted to testify
2 that he did at one point identify Mr. Keith in a
3 photographic line-up to law enforcement to establish
4 that he knew who he was and who he was buying drugs
5 from. We would ask the question to that extent but
6 would not -- -

7 THE COURT: Does Mr. Sullivan know Mr. Keith?

8 MR. PLEMING: He did, yes sir, Your Honor.

9 THE COURT: Was the purpose of the line-up just so
10 the law enforcement would know who he was talking to?
11 It wasn't so he could identify somebody who was a
12 potential suspect?

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

14 THE COURT: It was so law enforcement would know
15 who he was talking about?

16 MR. PLEMING: Yes, sir.

17 THE COURT: Okay.

18 MS. LIPINSKI: Your Honor, there has been a number
19 Discovery productions in this case. I don't remember
20 seeing that photographic line-up and just -- I don't
21 feel that I should -- I think it would deny his cross
22 examination and proffer rights if he didn't have
23 access to that information. If it's something they
24 want to give me today and I'll ask him about it before
25 tomorrow that's fine. I would just like to either

1 have it or I don't think it should be mentioned
2 because I did not receive it.

3 THE COURT: Well, I don't think Mr. Fleming is
4 talking about referencing the photographic line-up.
5 He was simply stating that Mr. Sullivan would be
6 saying that he has identified the defendant for the
7 police.

8 MS. LIPINSKI: But I think if it's going to say I
9 identified him from a photographic line-up then the
10 defense should be allowed to inspect that evidence.

11 THE COURT: I agree with that. I don't think
12 they're referencing -- as I understand it, they don't
13 want to reference the line-up. Mr. Sullivan knew Mr.
14 Keith apparently is what he says. So you don't need a
15 line-up to identify Mr. Keith. The police need the
16 line-up so they know what he was talking about.

17 MS. LIPINSKI: I understand the Court's position
18 but I thought when Mr. Fleming clarified that was what
19 the intention of the evidence that he saw it.

20 MR. FLEMING: We won't ask any questions about the
21 line-up Your Honor.

22 THE COURT: You are just going to say or Mr.
23 Sullivan will just testify that he told the police who
24 Mr. Keith was and identified him for them.

25 MR. FLEMING: Yes, sir.

1 THE COURT: And without a reference to
2 photographic line-up?

3 MR. PLEMING: Yes, sir, Your Honor, we will not
4 ask him any reference to the line-up. We will ask him
5 to identify the defendant in Court if he is able too.

6 THE COURT: All right. Okay. And plus you got
7 the line-up. If she wants to look at it there is no
8 reason she can't.

9 MR. PLEMING: No problem at all. I thought she
10 had it. If it was not included in the confidential
11 file that we turned over to her then I apologize for
12 that. I believed that it was.

13 THE COURT: Okay.

14 MS. LIPINSKI: The defendant moves to identify the
15 criminal record upon which the State would rely should
16 the defendant move to testify. Meaning what
17 impeachable offenses that they believe they have.

18 THE COURT: Do you have any 609 offenses?

19 MR. PLEMING: Yes, sir, Your Honor. Beg the
20 Court's indulgence for just a moment.

21 Your Honor, he has a prior conviction for
22 distribution of Hydrocodone. The sentence date was
23 March of 2013 and for proximity charge. And Your
24 Honor, we also have a -- this is a separate issue.
25 For the purposes of impeachment we would seek to

1 impeach him using that conviction. He also has a
2 prior conviction for assault and battery with intent
3 to kill for which he served a ten-year sentence and
4 the date of that conviction was July of 1999.

5 THE COURT: When was he released?

6 MR. PLEMING: I don't have that information
7 available to me at this time.

8 THE COURT: Do you know?

9 MS. LIPINSKI: September the 1st, 2006 Your Honor.

10 THE COURT: All right.

11 MR. PLEMING: And I will seek to confirm that
12 before tomorrow.

13 THE COURT: All right. Any others?

14 Mr. Pleming: He also has a -- no, sir, Your
15 Honor. That will be all.

16 THE COURT: Miss Lipinski.

17 MS. LIPINSKI: So just two?

18 THE COURT: Do you want to address those two or
19 not, or you just want to know what they are.

20 MS. LIPINSKI: Your Honor, we would make a motion
21 that the assault and battery charge is beyond the
22 ten-years. He was released September 1, 2006. That
23 would be over ten years.

24 THE COURT: All right, Mr. Pleming.

25 MR. PLEMING: Your Honor, if that is in indeed the

1 case then we would not contest that. However we are
2 going to make efforts to confirm that tonight so that
3 tomorrow if we find any information contrary to that
4 we would present it to the Court at that time.

5 THE COURT: Okay. Is that the only grounds for
6 objection Ms. Lipinski?

7 MS. LIPINSKI: That is Your Honor.

8 THE COURT: Okay. All right.

9 MS. LIPINSKI: Well, Your Honor, as to the drug
10 offense I think they should be allowed to ask him that
11 he has a felony conviction but I would think asking
12 him specifically that he has a prior for possession
13 with intent to distribute at that point I think 403.
14 Unless we open the door I don't think they should be
15 able to go more factually into that.

16 MR. PLEMING: For purposes of impeachment, Your
17 Honor, we wouldn't argue with that. However, we
18 actually would seek to introduce his prior conviction
19 for the distribution as evidence of intent to
20 distribute at the appropriate time.

21 MS. LIPINSKI: I think that kind of gets us to the
22 next argument, Your Honor, which is to move for the
23 State to identify, and we would move to suppress. I'm
24 making the argument somewhat generally because I'm not
25 sure exactly what is coming. So I want the Court

1 to know that. But what prior bad act pursuant to
2 State v. Lyle evidence they would intend to introduce
3 during their case in chief. We discussed this a
4 little bit in chambers. I have been provided with
5 cell phone text messages that would -- there's two
6 drugs involved in the trial here. You have
7 Hydrocodone and Buprenorphine which is has kind of a
8 brand name of Suboxone. The text messages call at
9 times call them Subs for that which is kind of a
10 street lingo for Suboxone. I acknowledge that there
11 are text messages that are kind of contemporaneous
12 with this drug transaction, but that we put the text
13 messages obviously from the cell phone where they go
14 back significantly farther. There are text messages
15 regarding drug sales of other drugs that aren't a
16 subject here and I think this is where the Court needs
17 to come in as the gatekeeper under 403 analysis of
18 what is needed for the State in to order to establish
19 intent to distribute and when does it reach the danger
20 of unfair prejudice to my client.

21 I think at some point just throwing even you have a
22 prior possession with intent to distribute as part of
23 their case in chief and going back on an entire
24 relationship history between Mr. Keith and Mrs.
25 Brandon and everything they did in the year and a half

1 since that I think at that point you do get into the
2 unfair prejudice and tip the scales against exclusion.
3 I understand some evidence may be germane and
4 pertinent, but I don't think that means they get to go
5 on a historical analog of my client's entire substance
6 abuse history of selling and/or abusing drugs.

7 MR. PLEMING: Your Honor, as I brought to your
8 attention in chambers we do have a number of pieces of
9 evidence and testimony which we would seek to
10 introduce under 404 (B) which goes to his intent to
11 distribute the Buprenorphine that was found on his
12 person on the day of this incident just after the deal
13 was done. And I believe before we get to a 403
14 balancing analysis it probably would be in the best
15 interest of all of this to proffer testimony regarding
16 that evidence so that Your Honor can make a
17 determination as to whether the prejudicial risk
18 substantially outweighs the probative value. And we
19 are prepared to do so at the appropriate time.

20 If Your Honor would like I would be willing to
21 summarize that evidence for the Court.

22 THE COURT: We will do that at the end.

23 Number nine.

24 MS. LIPINSKI: This kind of goes along with the
25 Lyle motion which it includes the text messages in

1 that, Your Honor, but I think it would just be more of
2 that evidence that you would see in a prior bad act in
3 Lyle motion. So eight and nine are somewhat
4 duplicative or kind of overlap.

5 Number ten, is to move -- during the search of the
6 house there were two Ternazepam capsules located
7 during the search. It's my understanding the
8 defendant was charged but I don't believe the State is
9 moving forward on those two Ternazepam pills. It's
10 also not clear I think from the report exactly where
11 they were located. They were not located I believe on
12 my client's person. Just in the house generally. In
13 that they are not proceeding on that charge we would
14 ask that the evidence that they found these two other
15 capsules be excluded under the 403 analysis again in
16 that it relates to a charge that they are not
17 proceeding against and therefore the evidence is the
18 same. It's not relevant or germane to the charges
19 against Mr. Keith in front of the jury.

20 MR. PLEMING: We have no objection to that Your
21 Honor.

22 THE COURT: Okay, 11.

23 MS. LIPINSKI: Number 11. May I approach?

24 As part of the production of evidence, Your Honor,
25 I was given this photograph of a litany of pill

1 bottles that was located, I believe, to be in the home
2 of Sherry and Keith Brandon and I believe most of them
3 are possibly located in the master bedroom. It's my
4 understanding that for whatever reason law enforcement
5 chose one of those pill bottles and maintained it.
6 All the remaining pill bottles which even if you zoom
7 in on that you can't really see any part of the labels
8 sufficient enough -- I couldn't -- to identify both
9 the date and prescription number or even whether or
10 not they were Miss Brandon's name or Mr. Keith's name.
11 And given that evidence was not maintained by law
12 enforcement and again he is being deprived
13 substantially I believe with what is in essence a
14 proffered right to cross examine that testimony or
15 fully examine it. We would move to exclude that
16 photograph, any pill bottles that did contain his name
17 because the other eleven pill bottles all were Sherry
18 Keith's -- or Sherry Brandon's pills or what have you.
19 We have no ability to respond to that evidence, and
20 the prejudice is going to be it's all kind of assigned
21 to Mr. Keith without any ability for the defense to
22 respond. They easily could have collected all the
23 pill bottles they photographed. Allowed the defense
24 to examine those pill bottles. Allowed us to make
25 arguments about if they were old, if they were

1 relatively new, whose name they were in and thereby
2 respond appropriately but their failure to maintain
3 that evidence and just merely photograph it generally
4 without getting the specific information off of any
5 pill bottle and just kind of cherry-picking one bottle
6 and saying we are going to keep this one bottle and we
7 will introduce photographs of all these other eleven
8 and we want that. I think it should be excluded under
9 Rule 403 rule and also because failing to preserve
10 that evidence or spoliating that evidence, it's my
11 understanding that evidence has not been preserved
12 beyond the one pill bottle and I think it violates Mr.
13 Keith's right to examine the evidence against him.

14 MR. PLEMING: Your Honor, as far as the photograph
15 of all the pill bottles that were recovered -- located
16 and recovered, or at least located in the defendant's
17 house, we believe is relevant to this case. We have a
18 larger image, blown-up view of the same image, that
19 was handed up to Your Honor in which I submit you can
20 read the name and the information on the labels and of
21 all those pill bottles that you see lined up before
22 you there are two bottles that have a third-party's
23 name. Someone who there is no reason to believe lived
24 there or was present. And I think based on the
25 testimony that we expect to receive from Miss Brandon

1 as to how they were getting these pills, they would
2 then turn around and sell as well as the defendant's
3 own admission to law enforcement that he was selling
4 his own pills. He was selling his scripts to live. I
5 believe that is relevant that he had maintained all
6 these pill bottles and that two of them were not his.
7 And so, you know, we would seek to introduce that
8 photograph for that basis.

9 THE COURT: Well, is there some record of what
10 these prescriptions who they belonged to and what they
11 are other than this photograph?

12 MR. PLEMING: The two that I referred to, by
13 someone else's name?

14 THE COURT: I am just saying here's a picture of a
15 lot of pill bottles that you contend is relevant in
16 the case, and Miss Lipinski says these things have
17 been destroyed with the exception of two?

18 MS. LIPINSKI: I've only seen one.

19 THE COURT: She's seen one and she said the rest
20 of them are not available.

21 MR. PLEMING: Well, they did not seize them. They
22 did not take them with them. They just took
23 photographs of them at the house and we would just
24 seek to introduce the photographs they took at the
25 house as relevant to what they observed.

1 THE COURT: So these items were not taken pursuant
2 to a search warrant or any other purpose?

3 MR. PLEMING: No, sir.

4 THE COURT: They remained with the defendant?

5 MR. PLEMING: Yes, sir. Well, remained at his
6 house.

7 THE COURT: Okay. Right. Accept for one?

8 MR. PLEMING: There are two pill bottles that I
9 believe are labeled.

10 THE COURT: What I'm saying, Miss Lipinski says
11 she's seen one of these. Was one taken?

12 MR. PLEMING: Oh, okay. We understand now.
13 Apparently when the distribution that occurred on
14 April 28th took place they put the 38 Hydrocodone
15 pills into a bottle that they handed over to the C.I..
16 That's the pill bottle that they kept in evidence. It
17 is not pictured. That pill bottle is out of the house
18 when they took that picture.

19 THE COURT: This picture that shows various
20 prescription bottles it appears with labels, did they
21 make note of anything of what these pill bottles
22 contained or formerly contained or what was stated on
23 the label?

24 MR. PLEMING: I don't believe they made any note
25 of it. Officers told me that they were empty and they

1 didn't take any of them.

2 THE COURT: So you're saying we don't even know
3 what they are for, or why they were at the house or
4 who they belonged to?

5 MR. PLEMING: You can read the labels, and I have
6 a better image that is easier to read.

7 THE COURT: Have you shown Miss Lipinski that
8 image? Have you seen the larger image?

9 MS. LIPINSKI: No.

10 THE COURT: I can't read what's on here.

11 MR. PLEMING: I have shown Miss Lipinski a larger
12 copy of that same image.

13 MS. LIPINSKI: I see that and I could -- you can
14 kind of catch half the name. You can't catch a full
15 name. Like whenever they photograph pill bottles they
16 usually take it as goes around the bottle so I could
17 have the date of the prescription, the full name of
18 the individual the doctor who issued the prescription.
19 They say they're empty and that's fine, but I think if
20 you are going to create the evidence; look at all
21 these pill bottles and these pills must have been
22 distributed by the defendant, he should have had the
23 right to examine that evidence, identify these people,
24 identify the prescription, investigate that, go out
25 and talk to these people. He says there is no reason

1 for them to be there, but I don't know that there is.
2 I can read Linda D off one bottle but not much more.
3 There's a Watkins but I don't even know if that's a
4 doctor's name or the person the prescription is under.
5 That's my problem. They want to parade these pill
6 bottles. Like look at this illegal pharmacy in their
7 bedroom, and all they had to do was swoop them all up,
8 put them in an envelope and drop them in property
9 evidence and then I could at least examine them. But
10 to just photograph them genically and now create this
11 impression and ask the jury to speculate about the
12 nature of them I think violates my client's right to
13 examine the evidence against them.

14 THE COURT: Well, according to Mr. Fleming they
15 were left in possession of your client or at least his
16 residence. They didn't take them. He has them. He
17 has access to them.

18 MS. LIPINSKI: Your Honor, we tried to trace that
19 down initially. Unfortunately he was arrested that
20 day and has never been allowed back to the residence.
21 By the time I got involved and got copies of this
22 evidence that residence was no longer in his
23 possession.

24 THE COURT: You're saying that these pill bottles
25 were not available for the defense? They were not --

1 MS. LIPINSKI: No, sir.

2 THE COURT: You're not saying that or you are
3 saying that?

4 MS. LIPINSKI: I am saying that. I have not been
5 able to put my hands on them.

6 THE COURT: All right, as a defendant or anybody
7 under his supervision or control able to?

8 MS. LIPINSKI: No, Your Honor.

9 THE COURT: All right. I will hold that in
10 abeyance right now. Next.

11 MS. LIPINSKI: I think the last one which is the
12 photograph line-up which we already talked about, Your
13 Honor. I think I included that in just a general --
14 and I apologize if that was redundant.

15 THE COURT: All right. Now we are back to any
16 statements the defendant may have made to law
17 enforcement whether in or out of custody.

18 MR. PLEMING: The State is prepared to have a
19 Jackson/Denno Hearing.

20 THE COURT: Okay.

21 MR. PLEMING: Your Honor, the State calls Mike
22 Ligon.

23 JAMES M. LIGON, called as a witness, having been
24 duly sworn by The Clerk, was examined and testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MR. PLEMING:

3 Q Good afternoon. Will you please state your name and
4 occupation for the record.

5 A James M. Ligon. I'm a lieutenant with the York County
6 Sheriff's Office.

7 Q Thank you, Lieutenant Ligon. Will you just briefly
8 define your duties as lieutenant with law enforcement?

9 A Yes. I'm actually a lieutenant with the Sheriff's
10 office in narcotic's division. I'm also one of the commanders
11 on the York County Multi-jurisdictional Drug Enforcement Unit.

12 Q And do you have occasion to participate in drug
13 investigations involving the use of confidential informants?

14 A Yes, sir, I do.

15 Q And were you involved in one such investigation into
16 the defendant Dinal Keith?

17 A Yes, I was.

18 Q Please summarize your role in that investigation?

19 A I was actually one of the active supervisors on that
20 particular day. Supervised the officers who were were handling
21 the confidential informant and making the purchase from Mr.
22 Keith.

23 Q And that particular day are you referring to the date
24 of the incident, April 28, 2016?

25 A Yes, sir.

1 Q And tell us more specifically what your role was that
2 day?

3 A Basically to oversee the operation; insure everything
4 went right; insure that the informant was properly wired; that
5 the proper paperwork had been filled out on the confidential
6 informant; that the government funds were issued; that the
7 surveillance equipment was properly placed. Things of that
8 nature.

9 Q And can you tell us where that confidential informant
10 was sent and what he was -- what the plan was for him to do?

11 A Basically the many confidential informant was wired.
12 He was giving confidential funds and then he was sent to Mr.
13 Keith's residence located at a -- I believe it was Valley
14 Hidden Trail in Hickory Grove, South Carolina.

15 Q Thank you. And after that controlled purchase was
16 complete tell us what you remember from that day?

17 A Once controlled purchase was complete the confidential
18 informant met back with Investigator Harrelson and myself and
19 Commander Brown and the other officers that were present. At
20 that point in time the surveillance equipment was taken from the
21 confidential informant along with the 38 Hydrocodone pills that
22 were purchased from Mr. Keith. Those were recovered and placed
23 in an evidence bag. At that point in time the confidential
24 informant was then searched again. The vehicle was searched
25 again with no contraband being located other than what was

1 purchased from Mr. Keith, and the confidential informant was
2 released at that time.

3 Q Okay. And after the C.I. was released did you
4 participate in the execution of a search warrant on the
5 defendant's home?

6 A Yes, sir, I did.

7 Q And tell it us what you remember observing upon arrival
8 at his home to serve that warrant?

9 A Upon observing on the scene -- upon arriving on the
10 scene myself and Commander Brown were some of the last ones to
11 actually enter the residence. At that point in time I believe
12 when we entered the residence Mr. Keith was sitting in the
13 living room of the residence.

14 Q Okay. And did you observe anyone serve the warrant on
15 him?

16 A I did.

17 Q And who did that?

18 A Investigator Gander.

19 Q Okay. And did she advise him of what you all were
20 there to do?

21 A Yes, sir, she did. She executed the search warrant on
22 the residence and Mr. Keith.

23 Q And after she served that warrant on him did you
24 observe her advise Mr. Keith of his constitution rights as
25 required by Miranda?

1 A Yes, sir, I did. Any time we execute a search warrant
2 on a residence any party that are present inside the residence
3 do have the Miranda rights read to them from a form that we keep
4 with us in the search warrant packet.

5 Q And where did this take place and where were you when
6 you observed this take place?

7 A In the living room.

8 Q And do you recall who else was present at the scene?

9 A Yes. Myself, Commander Brown, Investigator Mike
10 McGarity, Investigator Gander, I think there were two other
11 officers there.

12 Q Okay. And do you recall if seeing the defendant sign
13 advisement of rights form?

14 A Yes, sir I do.

15 Q Okay. At this time I'm showing defense counsel what
16 has been previously marked as State's Exhibit Number One for
17 identification purposes.

18 Lieutenant I'm handing State's Exhibit One to you at this
19 time, if you take a moment just to examine it and tell us if you
20 recognize it.

21 A Yes, sir I do.

22 Q And what is it?

23 A This would be the constitutional rights form;
24 acknowledgement of rights.

25 Q And is that exact copy of the form that you observed

1 Mr. Keith sign on April 28th, 2016 after officer Gander served
2 the warrant?

3 A Yes, sir, it is.

4 Q Does the contents of that form appear to have been
5 altered in any way?

6 A No, sir, they don't.

7 Q Anything added or deleted?

8 A No, sir.

9 MR. FLEMING: At this time the State moves -- well,
10 admit into evidence, but Your Honor, I will publish it
11 to Your Honor at this time.

12 Q After Mr. Keith was advised of his rights under Miranda
13 did he say anything at that time?

14 A Not at that time. Actually Mr. Keith and Miss Brandon
15 who were then brought out onto the porch where I was sitting
16 with them; myself and I believe Investigator Commander Brown was
17 also out there as well on the porch, and at that point in time
18 it was really more or less just small talk. Speaking -- nothing
19 really talking about anything inside the residence or anything
20 of that nature, about the case itself.

21 Once the execution of search warrant is complete Mr. Keith
22 was then transported to the Moss Justice Center. At the Moss
23 Justice Center we have an interview room just outside the
24 narcotics's office and Mr. Keith was then taken into the
25 interview room where he was interviewed by myself and

1 Investigator Harrelson.

2 Q At any point from the moment at his house when he was
3 advised of his rights until the time that he was transported to
4 that interview room did he ever invoke his right to remain
5 silent?

6 A No, sir, he did not.

7 Q Did he ever ask to have an attorney present?

8 A No, sir, he did not.

9 Q Did he ever say anything about an attorney?

10 A No, sir.

11 Q When he was brought to that interview room can you tell
12 us how many officers were present and who they were?

13 A Just myself and Investigator Harrelson.

14 Q And did you or Officer Harrelson make any threats,
15 promises or any efforts to coerce Mr. Keith into speaking with
16 you?

17 A No, sir, we did not.

18 Q Did he appear to you to be sober?

19 A Yes, sir, he did.

20 Q Did he agree to speak with you?

21 A Yes, sir, he did.

22 Q Did he appear to be coherent?

23 A Yes, sir he did.

24 MS. LIPINSKI: Your Honor, I would object as to

25 the leading at this point.

1 THE COURT: Overruled. Go ahead.

2 Q Did he appear to you to understand what you were saying
3 to him?

4 A Yes, sir, he did.

5 Q And did he speak with you?

6 A Yes, sir, he did.

7 Q And did he ever do anything to indicate to you that he
8 wished you to stop speaking to him or ask him any questions?

9 A No, sir.

10 Q And what did you and Officer Harrelson ask him?

11 A Investigator Harrelson began speaking with Mr. Keith
12 about the case, about what was located inside his residence and
13 some other things. At which point during the interview Mr.
14 Keith, you know, advised that he was basically selling his
15 prescriptions to live. I mean to support himself.

16 Q Okay. Do you recall him saying anything else?

17 A Yes, sir, he did make a statement that everything he
18 did was his fault and it was on him.

19 Q Did he make any comments about his personnel use of
20 pills?

21 A No, sir, he didn't.

22 Q Okay. Did he say where he got his pills?

23 A Yes. He stated he was getting them from a doctor. He
24 got his scripts from a doctor. I can't recall the doctor's name
25 right off hand.

1 MR. PLEMING: That concludes all the questions I
2 have for Lieutenant Ligon at this time.

3 CROSS EXAMINATION

4 BY MS. LIPINSKI:

5 Q Does York County Sheriff's Office -- other than the DEU
6 were there marked units or SWAT team or anything like that
7 involved in the execution of this search warrant?

8 A No, ma'am, they was not. But when we execute a search
9 warrant we do have grey vests that have police on them and
10 stuff, clearly marking and identifying us as law enforcement
11 officers when we go into these types of situations.

12 Q Okay. How many officers -- you stated that you and I
13 believe either Harrelson or Commander Brown were the initial
14 officers and you kind of arrived in the second wave; is that
15 fair to say?

16 A Yes, ma'am.

17 Q And if I misinterpret what you say please clarify me.

18 A Yes, ma'am, I will.

19 Q How many officers are involved in kind of the initial
20 approach to the Dinal Keith household?

21 A Depending on the number of officers we have it could be
22 anywhere between five to eight officers depending on the
23 individuals that we may be dealing with. On this particular day
24 I believe we had six officers present at the residence.

25 Q Does that include you, Harrelson and Brown or is that

1 in addition to you all?

2 A That would be including.

3 Q Okay. So six total officers.

4 This house is out in the country, right?

5 A Yes, ma'am.

6 Q There is other scattered homes about it, but it is not
7 a congested residential area. It's not a commercial area. It's
8 in the Hickory Grove, kind of southwest of here?

9 A Yes, ma'am. It's off a dirt road and the driveway
10 actually leading up to Mr. Keith's house is somewhat of a steep
11 gravel driveway.

12 Q Sure. So do you just walk down the driveway or do you
13 swoop back around the back of the house to prevent him from
14 running out -- I mean --

15 A Yes, ma'am. We had officers go to the back of the
16 residence. We generally have one officer go back to the back of
17 the residence. Secure that nobody runs out of the residence
18 while we are affecting the search warrant, yes, ma'am. We
19 actually drove up in the yard in three vehicles.

20 Q So three vehicles drive up in the yard. You kind of
21 break out of the vehicle. One of you at least runs around back.
22 Nobody is coming through the woods or anything like that?

23 A No.

24 Q All right. And you obviously are not wearing a suit
25 that day. You stated you were wearing some type of SWAT or

1 special vest; bullet proof vest, kind of gear that you use when
2 you execute search warrants?

3 A Yes, ma'am. A grey bib that will generally have spare
4 handcuffs, extra magazines, radios. Things of that nature..

5 Q What about weapons?

6 A Yes, ma'am, we do have weapons.

7 Q On your hip or are you holding that weapon as you
8 approach the house?

9 A My weapon was holstered.

10 Q All right. What about the other officers including the
11 officers who first made entry into the home?

12 A Yes, their weapons were drawn.

13 Q And what kind of weapons were they carrying?

14 A Generally we all carry Glock 40, forty calibers, or 22.

15 Q Or 22 or 23.

16 Q Did anyone have what would be considered an assault
17 rifle, or that type thing?

18 A No, ma'am.

19 Q We are talking all pistols, handgun weapons?

20 A All handguns.

21 Q So six officers, three cars drive out, kind of surround
22 the house. Do you walk in the front door? Do you knock? Do
23 you bust in? How do you gain entry into the home?

24 A We knock, announce. The front door to the residence
25 was actually open. They knocked and announced, opened the door.

1 Advised it's police, search warrant, and then entered the
2 residence.

3 Q And is Investigator Gander the first one into the home?

4 A I couldn't say exactly who was the first person into
5 the residence at that point in time.

6 Q All right. How many people went to the front door, at
7 least two?

8 A No, there were five of us that went to the front door.

9 Q All right, so five of you go to the front door and one
10 of you runs around back?

11 A Yes, ma'am.

12 Q But you stated that you don't get there initially.
13 That you kind of come on the scene a little bit after?

14 A Well, no. We were there. We were just the last ones
15 to actually go into the residence.

16 Q Okay. But for the most part all contemporaneous? You
17 don't hang back in the cars and then walk up ten or fifteen
18 minutes later?

19 A No, ma'am.

20 Q All right, and so Investigator Gander you state
21 immediately kind of served the search warrant on the two of
22 them?

23 A Yes, ma'am. Once the residence was secured and it was
24 insured that there was nobody else in the residence and no one
25 had any weapons or anything on them at that point in time she

1 began to read the search warrant to Mr. Keith and Miss Brown.

2 Q And you didn't have any information that Mr. Keith had
3 weapons or would have any weapons on him?

4 A No, ma'am.

5 Q Other than just kind of general suspicion. The CI is
6 not telling you I saw guns there or anything like that.

7 A No, ma'am, not to my knowledge.

8 Q And where are they located when you all come up? Are
9 they still sitting on the front porch? Are they inside?

10 A When I went in to the residence they were in the living
11 room.

12 Q All right. But when you drive down this driveway are
13 they sitting on the porch or are they inside?

14 A They were inside.

15 Q All right. So Investigator Gander goes in. They are
16 sitting in the living room together?

17 A That would be an assumption on my part, ma'am, because
18 like I said once I got in that's where they were.

19 Q All right. And for the most part -- I don't know the
20 exact structure of the house, but would it be fair to say that
21 it's in essence a doublewide trailer size home?

22 A Yes, ma'am.

23 Q And so there is two of them and six other officers now
24 standing in their living room?

25 A Yes, ma'am.

1 Q And at that point Investigator Gander serves them with
2 a search warrant and reads them that form?

3 A Yes, ma'am.

4 Q And so does that signature on that form take place at
5 the house?

6 A Yes, ma'am, it did.

7 Q When you get back to the Moss Justice Center do to take
8 any efforts to re-Mirandize Mr. Keith?

9 A No, ma'am. He was already read his Miranda rights in
10 my presence.

11 Q And you stated that you sat out on the front porch and
12 talked about small talk. What did you all talk about?

13 A I have had run-ins with Mr. Keith's sons in the past.
14 We spoke about his sons. How they were doing. Where they were
15 working. Things of that nature.

16 Q Did you ever had any run-ins with Miss Brandon's son
17 Zachary?

18 A No, ma'am, I haven't.

19 Q Was she part of the small talk conversation out on the
20 porch as well?

21 A Yes, ma'am, she was.

22 Q Did they appear nervous in any way?

23 A No, ma'am.

24 Q Were they cooperative with you at all times?

25 A Yes, ma'am they were. They were actually they were

1 smoking cigarettes. I think they actually had vapes. These
2 vape things. They were just out smoking on their vape things
3 and we were just sitting there talking.

4 Q Do you remain there the entire time the house is being
5 searched?

6 A Yes, ma'am.

7 Q And do you make Mr. Keith and Miss Brandon aware at
8 that time of what evidence is located within the home?

9 A No, ma'am, I did not. Like I said, I did not know what
10 was located inside the residence because I was actually outside
11 speaking with them myself.

12 Q All right, but other officers were then moving around,
13 correct?

14 A Yes, ma'am.

15 Q At any point -- not you, but does any other officer
16 come out and either inform you or put on the return or
17 Lieutenant Harrelson put on the return in terms of this is what
18 we found in the home, that type thing?

19 A No, ma'am. That generally takes place when we get back
20 to the office. They'll go through all the evidence that's
21 recovered from the residence from the search warrant, and at
22 that point in time the return will be filled out at the office.
23 Once everything is tagged and placed in the proper evidence bags
24 and things of that nature and then they'll fill out the return.

25 Q Is that done prior to you talking with Mr. Keith at the

1 Moss Justice Center?

2 A That was actually taking place while we were speaking
3 with Mr. Keith at the Moss Justice Center.

4 Q Give me a little bit more detail about that? What do
5 you mean while you were talking to him?

6 A While we were interviewing Mr. Keith the other officers
7 that were inside, that had been inside searching the residence
8 and the evidence that they brought back, at that point in time
9 they were dealing with the evidence inside the narc office while
10 we were interviewing Mr. Keith.

11 Q Was Mr. Keith aware of what you found at the house
12 prior to his conversation with you at the Moss Justice Center?

13 A No, ma'am.

14 Q All right. So that return you're suppose to also give
15 the owner of the house a copy of the return and what you take
16 from the home, right?

17 A Yes, ma'am. He gets a copy of that after we complete
18 bagging all the evidence up, tagging it and then putting it on
19 the inventory sheet.

20 Q So he did not know what you have or had not found in
21 the house?

22 A Not at that time.

23 Q Who conducts the pat down of Mr. Keith?

24 A I do not know.

25 Q Was that done at the house or back at the Moss Justice

1 Center?

2 A At the house.

3 Q But you don't know who did that?

4 A No, ma'am. I stepped outside. Once we went in, once
5 the rights and all were read, everything took place there, I
6 then stepped back outside and me and Commander Brown were
7 speaking at that time and then Mr. Keith and Miss Brandon were
8 brought out on to the porch where we were.

9 Q All right. At the same time that you you talking to
10 Mr. Keith who was talking to Miss Brandon?

11 A She was sitting right there beside him. We were all
12 just kind of back and forth.

13 Q At the Moss Justice Center or on the porch?

14 A At the porch.

15 Q At the Moss Justice Center who talked to Miss Brandon?

16 A That would have been Investigator Harrelson and
17 Investigator Vaughn.

18 Q Does she make statements as well?

19 A I wasn't privy to any statements that she made. I
20 wasn't there when she was interviewed.

21 Q So you were just -- you and Harrelson had are the ones
22 talking to Mr. Keith?

23 A Yes, ma'am.

24 Q All right. And he states to you that he's selling his
25 scrips to live and that he got them from some doctor in

1 Charlotte but you can't remember?

2 A Yes, ma'am.

3 Q Are there ever any conversations about what Miss
4 Brandon is doing versus what he is doing or anything of that
5 nature?

6 A No, ma'am. We were just talking to him basically about
7 what he had done and what had transpired over a period of time
8 in investigation that Investigator Harrelson had conducted on
9 Mr. Keith.

10 Q Do you talk to him that there are other buys involving
11 this C.I.?

12 A Yes, ma'am because he's actually getting the warrants
13 served on him from those buys at that time.

14 Q Does he make any statements about those buys; about
15 this buy in particular, the details of anything? He just makes
16 these kind of three generic conclusions; I sell my scrips to
17 live; my fault, and I get them from a doctor in Charlotte?

18 A Again, that was through the whole part of us speaking
19 with Mr. Keith and talking to him about the scrips. Talking to
20 him about the buys that had been taking place and stuff and why
21 was he selling his scrips.

22 Q So what evidence are you confronting him with exactly?

23 A From the buys that Investigator Harrelson had conducted
24 on him.

25 Q I understand that. Are you telling him we know he

1 bought this on such and such a date? Are you -- do you tell him
2 you have him on video? Are you showing him anything? I'm just
3 trying to get more detail.

4 A Yes, ma'am. He was given the warrants from the other
5 buys that Investigator Harrelson had conducted on Mr. Keith.

6 Q Okay.

7 A I was not present for any of those buys. The only buy
8 that I was actually present for was the buy that took place on
9 April 28th right before we executed the search warrant on Mr.
10 Keith's residence.

11 Q And does he react verbally or otherwise to any of these
12 other warrants or does he just make these four generic
13 statements?

14 A No, ma'am, he doesn't make any generic statements in
15 regards to those. In regards to where he's questioned about all
16 the other buys Investigator Harrelson says, you know, what's the
17 deal? Why are you selling your scrips? At that point in time
18 he advised Investigator Harrelson in my presence that he was
19 doing it because he had to make a living.

20 Q All right.

21 A He had to live.

22 Q But there are no comments about the buy specifically
23 like I don't remember that date, or that was her or anything
24 more specific than that?

25 A Well no, there were other specifics in regards to the

1 locations where those buys took place.

2 Q But not from him?

3 A Investigator Harrelson asked him specific questions
4 about the other locations in Rock Hill where the buys took place
5 and Mr. Keith advised Mr. -- Investigator Harrelson that he was
6 aware where those locations were.

7 Q I believe he's asked do you know where the Velodrome is
8 to substantiate the prox charge, right?

9 A Yes, ma'am.

10 Q But beyond that does my client respond in any way with
11 his litany of warrants that you are serving him?

12 A He was not happy. He was agitated. He was not pleased
13 with what was taking place.

14 Q Okay. Does he make any other specific statements other
15 than that?

16 A Not to me, no, ma'am.

17 Q And you are not aware whether or not Miss Brandon made
18 any statement when similar things happened to her?

19 A No, ma'am, because I was not present for that
20 interview.

21 Q All right. Do you ever actually fill out a report
22 yourself?

23 A Some times I do, yes, ma'am.

24 Q On this case did you fill out a specific Mike Ligon
25 report?

1 A No, ma'am, I did not.

2 Q Okay. Just kind of the generic summary which I believe
3 Mr. Harrelson did?

4 A Yes, there is a summary and also the report from the
5 buys. Yes, ma'am. And then of course theirs is a confidential
6 section in the folder itself.

7 Q But there's not this is Mike Ligon, this is my
8 involvement and this is my recollection?

9 A No, ma'am, that would be -- that would be something
10 that Investigator Harrelson would put in the actual case summary
11 as to what my part was in the investigation.

12 Q At this time are you still wearing the vest?

13 A No, ma'am.

14 Q So have you taken them off?

15 A Yes.

16 Q Do you still have weapons on you?

17 A Yes, ma'am.

18 Q In this room where this interview was conducted about
19 how big was that?

20 A I would say the room is roughly maybe ten by eight,
21 give or take. It has a table with four chairs in it. It has a
22 table behind it where there is computer where we will sometimes
23 take statements from people.

24 Q Okay.

25 MS. LIPINSKI: Beg the Court's indulgence one

1 moment. We have no further questions Your Honor.

2 MR. PLEMING: Very briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. PLEMING:

5 Q Lieutenant Ligon, when you -- when Mr. Keith signed
6 that advisement is of rights form was he in handcuffs at that
7 time, do you recall?

8 A Yes, he was.

9 Q Okay. Did he remain in handcuffs when you got him
10 back?

11 A No, he did not.

12 Q So when he answered those questions at the Moss Justice
13 Center to you and Officer Harrelson he was no longer in
14 handcuffs?

15 A No, sir, he was not.

16 Q And you said you all did have guns drawn which is
17 protocol in executing the search warrant. Did you still have
18 your guns out when you are interviewing him?

19 A No, sir, we did not.

20 Q They were holstered?

21 A Yes, sir

22 Q And you said he appeared relaxed when he was being
23 advised of his rights?

24 A Yes.

25 Q Okay. And how would you describe his demeanor there at

1 the Moss Justice Center?

2 A He was calm, but he was agitated.

3 MR. PLEMING: No further questions at this time.

4 THE COURT: You may step down.

5 MR. PLEMING: The State calls Leland Harrelson at
6 this time.

7 LELAND HARRELSON, called as a witness, having
8 been duly sworn by The Clerk, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. PLEMING:

12 Q Please state your name and your occupation for the
13 record.

14 A My name is Hugh Leland Harrelson Jr. I'm an
15 investigator with the York County Narcotics Unit.

16 Q How long have you been Investigator with the narcotic's
17 unit?

18 A For approximately six years.

19 Q And can you tell us were you involved in the
20 investigation of Dinal Keith in a drug investigation in April of
21 last year?

22 A Yes, I was.

23 Q What was your role in that investigation?

24 A I was the case agent.

25 Q And tell us what you did as the case agent in that case

1 on April 28th of 2016?

2 A You said just on the 28th?

3 Q Yes.

4 A On the 28th I worked with the confidential informant to
5 set up the deal with Mr. Keith and help make all the
6 arrangements.

7 Q Okay. And how long had you been -- let me back up a
8 little bit.

9 How long had you been investing Mr. Keith in this case?

10 A My investigation started on March the 16th of 2016.

11 Q Can you just summarize what that investigation
12 included?

13 A I did three undercover deals at that point with Mr.
14 Keith and Mr. Brandon along with the confident informant. I
15 had the confidential informant go out and purchase different
16 types of drugs.

17 Q And those were three prior to the April 28th?

18 A That is correct.

19 Q And the last buy to conclude on April 28th?

20 A Yes, the last buy was on April the 28th.

21 Q After that buy was completed what did you do?

22 A After the buy was completed we cut the C.I. loose and
23 we went back to serve a search warrant at his residence.

24 Q And tell us what you recall observing when you arrived
25 at his residence?

1 A I pulled up in the driveway, walked up to the front of
2 his house. I believe Mr. Keith met me right at the door. I
3 explained to him who I was and what I was doing there.

4 Q And describe his demeanor when you approach him with a
5 warrant, when you and other investigators approached him with
6 the warrant?

7 A He was calm. He was very cooperative. He did not give
8 us any issues.

9 Q Okay. And after -- who searched the warrant on him?

10 A Investigator Gander did. She executed the search
11 warrant.

12 Q And did you observe her do that?

13 A I did, yes.

14 Q And did you observe her advise Mr. Keith of his rights
15 after she had served that warrant?

16 A I did, yes.

17 Q And how did he respond?

18 A He stated he understood them.

19 Q And describe his demeanor at that time?

20 A He was still very calm.

21 Q Okay. Did you -- did he appear to you to understand
22 them?

23 A He did.

24 Q Did he appear aware of what was going on?

25 A Yes, sir, he did.

1 Q And did he appear coherent?

2 A Yes.

3 Q Did he evoke his right to remain silent after he was
4 advised of his rights?

5 A He did not.

6 Q Did he ask for an attorney or bring up an attorney,
7 having an attorney present?

8 A He did not.

9 Q Did he answer any questions at that time regarding your
10 investigation?

11 A No. I did not ask -- I personally did not ask him any
12 questions about the investigation at that time.

13 Q Okay. And did you observe him sign an acknowledgement
14 of his rights?

15 A I did, yes.

16 Q At this time I will show you what has been marked
17 State's Exhibit One and ask you if you recognize it?

18 A Yes, this is the Miranda rights form that we use
19 whenever we execute a search warrant.

20 Q And does that include all of the rights that you are
21 required to read to a defendant after an arrest according to
22 Miranda?

23 A Yes, it does.

24 Q And did you observe Mr. Keith sign that advisement?

25 A I did, yes.

1 Q And could you at this time just go over the rights that
2 are on that form as they were read to Mr. Keith that day as you
3 recall?

4 A Certainly. "You have right to remain silent. Anything
5 you say can be used against you in Court. You have the right to
6 talk to a lawyer for advice before answering questions and have
7 your lawyer present during questioning. You have the right to
8 have the advice and presence of a lawyer even if you can not
9 afford to hire one. We have no way of appointing you a lawyer
10 but one will be appointed by the Court for you if you wish. If
11 you wish you may answer questions without the presence of a
12 lawyer and you may stop answering any time you desire."

13 Q And is that an exact copy of the form you saw the
14 defendant sign?

15 A It is, yes.

16 Q And after Mr. Keith signed that form what did you do?

17 A After he signed that form we began to search the
18 residence.

19 Q Did -- were there any distractions in the home at the
20 time of those rights were being read?

21 A No.

22 Q Okay. Was anybody else trying to talk to him about
23 anything else at the moment that that form was given to him to
24 read?

25 A No.

1 Q And did -- before signing did you or officer Gander ask
2 him if he understood his rights?

3 A Yes, Officer Gander did.

4 Q And how did he respond to that?

5 A He said he did.

6 Q After the search was completed what did you do?

7 A We went back to the Moss Justice Center.

8 Q And what happened next?

9 A At that point myself and Lieutenant Ligon took Mr.
10 Keith into our conference room and began talking to him about
11 the case.

12 Q And describe the room that you all were in?

13 A It's a small ten by eight room with a table, four
14 chairs and there is a computer in the back of the room.

15 Q Okay. And what did you say to him to begin that
16 conversation with him?

17 A You know I explained to him that I had been doing some
18 buys from him. I did have multiple warrants for his arrest and,
19 you know, asked him if he wished to talk about the case.

20 Q And how much detail did you go into in explaining to
21 him the evidence that you had against him?

22 A I just told him I had done several undercover buys with
23 him. You know where we had purchased drugs from him with a
24 confidential informant and we had video of it.

25 Q Did you ask him if he was willing to speak to you after

1 that?

2 A I did, yes.

3 Q And did he ever tell you no?

4 A No, he did not.

5 Q Did he ever ask you to stop talking?

6 A He did not.

7 Q Did he ever do anything to indicate that he wanted the
8 interview to cease?

9 A He did not.

10 Q And at that time was he speaking coherently?

11 A Yes, he was.

12 Q And did he appear to understand what you were talking
13 about at that time in that room?

14 A He did.

15 Q And after he told you that he understood, that he was
16 willing to talk to you -- excuse me. What did you ask him?

17 A I asked him about selling pills. Mr. Keith stated
18 selling the scrips to live and to make ends meet. Mr. Keith
19 stated everything I do is my fault. Mr. Keith stated that he
20 did not use Suboxone scrips or Dilaudid pills.

21 I asked Mr. Keith if he knew where York Technical College
22 was located and he said yes and also asked him if he knew where
23 the Velodrome was located and he said yes.

24 Mr. Keith also stated to me that he got his pills from
25 Doctor Goldberg at the Carolina Pain and Joint Clinic in

1 Charlotte and he had been going there for several years.

2 Q And when he said everything I do is my fault was this
3 in response to any particular question you asked him?

4 A I believed I did not ask him a question. That is just
5 something he stated.

6 Q Did he at any point during that interview or before
7 show any reluctance to speak with you? Did he at any point do
8 anything that would indicate to you that he didn't want to talk
9 to you?

10 A No, he did not.

11 Q And how would you describe his demeanor there in the
12 interview room at the Moss Justice Center?

13 A When we started he was fine. Towards the end he was
14 visibly upset.

15 Q Was this before or after he made those comments to you
16 about selling his pills or selling his script to live?

17 A That was after. That was towards the end of the
18 interview.

19 Q All right. Did you or Officer Ligon promise him
20 anything to get him to speak to you?

21 A We did not.

22 Q Did you make any sort of threats or do anything that
23 would be interpreted as a threat?

24 A No, we did not.

25 MR. FLEMING: Nothing further.

1 MS. LIPINSKI: Beg the Court's indulgence one
2 moment Your Honor.

3 CROSS EXAMINATION

4 BY MS. LIPINSKI:

5 Q So your there for the execution of the search warrant,
6 correct?

7 A That's correct.

8 Q Are you're there for let's call the porch conversation
9 versus the Moss Justice conversation?

10 A I was not.

11 Q So you were not there when Mike Ligon is there talking
12 to him on the front porch?

13 A That is correct.

14 Q All right. Are you there when anybody pats him down?

15 A I searched Mr. Keith.

16 Q You did?

17 A Yes.

18 Q And where do you search him at?

19 A It was right inside of his residence.

20 Q And do you search Miss Brandon?

21 A I did not search Miss Brandon, no.

22 Q All right. What do you find on Mr. Keith?

23 A I found -- I seized a silver container with seven dose
24 units of Bupo -- the Suboxone is Buprenorphine -- I'm not sure
25 how to pronounce that -- pills, from his left front pant's

1 pocket.

2 Q And is that container by itself? Is it attached to a
3 key ring? Where is it?

4 A I'm not sure if it was attached to a key ring.

5 Q But it could have been?

6 A It may have been. I have here noted that I located a
7 silver container.

8 Q I understand that, but did he have anything else in his
9 pocket? E-cig or --

10 A I don't recall if he had anything else in the pocket.

11 Q So he could have keys that could have been attached to
12 a key ring, you did not note that?

13 A I did not.

14 Q And you also found another almost identical pill
15 container this time red in the house, correct, I believe with
16 Miss Brandon or in her purse?

17 A In her purse?

18 Q Or did you right it down?

19 A I think that was the only piece of evidence that I
20 actually seized from the search warrant.

21 Q All right.

22 A I believe officer Gander --

23 Q Right.

24 A Seized the rest of the evidence.

25 Q Okay, but you compiled the report, correct?

1 A That is correct.

2 Q All right. And so there are seven and a half dose
3 units from a similar metal container?

4 A That is correct.

5 Q Okay. And is there any conversation between Mr. Keith
6 and Miss Brandon at that time about those are your pills. You
7 need to tell them it is your pills or anything like that?

8 A Not to my knowledge. No, I was not out at the porch.
9 We were -- Mr. Keith and Miss Brandon was on the porch with
10 Lieutenant Ligon and Commander Brown. Myself and Investigator
11 Gander were inside of the residence along with other
12 investigators searching the residence.

13 Q Okay, but when you find the pills on him is there any
14 conversation between him and Miss Brandon regarding the source
15 of those pills or whose pills they belong too?

16 A Not to my knowledge.

17 Q All right, but it is possible that conversation took
18 place outside of your presence?

19 A It could have. I don't have anything notated down
20 here.

21 Q And you state you take him back to Moss Justice Center
22 and you read him his right's form, correct?

23 A That is incorrect.

24 Q Miss Gander reads it at the scene. I apologize. My
25 confusion..

1 A That is correct.

2 Q Then you take him back. Do you go over the form in any
3 way?

4 A Not again, no.

5 Q But you state you were present for the reading of the
6 form, correct?

7 A Yes, at the residence.

8 Q All right. Is that the form?

9 A It is, yes.

10 Q And contained within it is the clause you have a right
11 to an attorney but we have no way of appointing you an attorney?

12 A That is correct.

13 Q Doesn't that pretty much tell you are not going to get
14 an attorney before you talk to us because we ain't got no way of
15 getting you one?

16 A I don't see it like that. I see it as he has the
17 option to talk with us. If he simply stated I do not want to
18 talk to you I never would have asked him any questions
19 whatsoever.

20 Q I get that he has a right to remain silent. I'm
21 talking about his right to an attorney. You tell him in one
22 breath they have a right to an attorney but tell them in another
23 breath that have you no way of getting him one?

24 A Yes, I mean I can't get an attorney you know out on the
25 scene or at the Moss Justice Center at just any time of night.

1 Q Okay, but could you wait and talk to him once an
2 attorney was available?

3 A If he did not want to speak with us he did not have to
4 speak with us.

5 Q I am talking to you about advising him of his rights to
6 an attorney. In one breath you tell him he has a right to an
7 attorney and the next breath he's told you have no way of
8 getting him one. Don't you think it's fair that the defendant
9 might interpret that while you have a right to one we can't get
10 you one. So that pretty much leaves you with this argument of
11 talk to us or not?

12 A I disagree with you.

13 Q Okay. Well, how would a defendant interpret that they
14 are going to get an attorney and still talk to you?

15 A That they have an option to talk with us. If they
16 don't want to they can get back an attorney and come back to
17 talk with us at a later day.

18 Q Do you explain that to them?

19 A Unless he asks any questions about it I would. To my
20 knowledge they didn't ask any questions.

21 Q Do you go further to explain that, or all you tell him
22 is you have a right to an attorney but we have no way of getting
23 you one?

24 A To my knowledge all Investigator Gander did was read
25 the form.

1 Q Okay. And the next line says the Court can appoint you
2 you one, correct?

3 A That is correct.

4 Q So you tell him you might get one in the future once
5 you get to court?

6 A I mean the court doesn't say might. It says the court
7 will appoint you one.

8 Q The court may appoint you one?

9 A That is correct.

10 Q Right, but that's not going to happen right then,
11 right?

12 A That is correct.

13 Q And from the time the search warrant is executed when
14 did Mr. Keith see a judge?

15 A I am sure it would have been later on that evening.

16 Q Possibly early the next morning or the next day?

17 A I'm sure, yes.

18 Q Okay, but not that night before you talked to him at
19 the Moss Justice Center?

20 A No, he had not seen a judge at that point.

21 Q Okay. But there is usually a bond judge downstairs?

22 A That is correct, yes.

23 Q And he could have been taken before the judge to get a
24 attorney appointed and then give the option of talking with you
25 with an attorney and he wasn't given that option?

1 A He didn't ask for an attorney.

2 Q I didn't ask you if he was asked. I asked if he was
3 given that option?

4 A I did not tell him that I could take him down there,
5 no.

6 Q Did you explain to him, now -- I understand we have no
7 way of getting you one now that at the house but now we're in
8 the Moss Justice Center. We got a bond judge here. I could get
9 one appointed to you before you talk to us before you set him
10 down in this interview room?

11 A I didn't explain any of that to him. Investigator
12 Gander read the form verbatim out on the scene. He stated he
13 understood his rights and he at no time expressed to us that he
14 did not wish to speak to us.

15 Q So he didn't know the right questions to ask. That is
16 what he was left with, what's on the form?

17 A I mean, I'm not putting -- I'm just telling you what we
18 did. I can't tell you what he was thinking or what questions he
19 may have wanted to ask or didn't ask, I don't know.

20 Q But it's your form, correct?

21 A It's the form that we are supplied on the narcotics
22 unit, yes.

23 Q And you state that after you talked to Mr. Keith you
24 start telling him that you made these three other buys, correct?

25 A That is correct.

1 Q And he doesn't just randomly just say I don't use
2 strips, Dilaudid pills, you tell him one of the buys involves
3 two Suboxone strips, correct?

4 A That is correct.

5 Q And strips versus pills these are kind of like this
6 Listerine breath fresher things that dissolve. That's what they
7 mean when they say Suboxone strip? Is that your understanding?

8 A I know there's different types of Suboxone, but I am
9 referring familiar with the strips you are referring it to.

10 Q Okay. But it's not like a strip like a Xanax bar?
11 When they say strips it's usually these things that dissolve
12 under the tongue, correct?

13 A That is correct.

14 Q All right. And you told him there was another buy
15 involving Dilaudid pills, correct?

16 A That is correct.

17 Q And that -- and what that statement, I don't use those
18 or I don't have those, that's what that's in response to?

19 He doesn't just spontaneously start listing off the drugs he
20 doesn't do, correct?

21 A No, I believe there were some other general
22 conversation with that but I didn't note down exactly what, you
23 know, what we spoke about.

24 Q Right. You are only noting down these four kind of
25 generic statements, right?

1 A These were the four really important statements
2 involving this case.

3 Q Important to you at the very least?

4 A That is correct, yes.

5 Q All right. And then he makes his comments about I'm
6 selling my scripts to make ends meet. Everything I do is my own
7 fault. Does he ever make any comments about Miss Brandon or her
8 involvement?

9 A I know we did talk to her but I didn't notate it down
10 in there.

11 Q I didn't ask about her. Did you ever have a
12 conversation with Mr. Keith about Miss Brandon's involvement?

13 A Yes, I know I did mention to him about Miss Brandon.

14 Q And what did you tell him about Miss Brandon?

15 A I can't recall what all was said about that
16 conversation. I didn't not take it down.

17 Q How did he respond about Miss Brandon?

18 A I know there was some conversation about it. Again, I
19 can't say verbatim, you know, exactly what was said.

20 Q So you are picking and choosing which of his statements
21 you are writing down?

22 A Yes, I put down the statements I thought that were
23 important to the case.

24 Q You thought were important?

25 A That is correct.

1 Q But you are not his attorney?

2 A That is correct.

3 Q And you had every opportunity to memorialize everything
4 he said, correct?

5 A To --

6 Q You could have written it all down?

7 A I could have, yes.

8 Q You didn't have to pick and choose, correct?

9 A That is correct.

10 Q You are at the Moss Justice Center, right?

11 A Yes.

12 Q You are at the DEU who have any number of audio and
13 visual recording equipment at your disposal, correct?

14 A Yeah, at this time we do not record interviews at the
15 drug unit.

16 Q I didn't ask you that. I asked you at the Moss Justice
17 Center in particular you have a litany of audio and visual
18 recording devices that you use to wire CI's when they go make
19 buys, correct?

20 A That is correct.

21 Q Fully capable of recording the complete conversation
22 between you and Mr. Keith?

23 A They could have, correct.

24 Q And you did not do that?

25 A That is correct.

1 Q You did not even write down in any kind of note form
2 all of his statements, correct?

3 A I did not, no.

4 Q And you did -- did you go talk to Miss Brandon?

5 A I did, yes.

6 Q And what does she tell you about Mr. Keith's
7 involvement?

8 A The only thing Miss Brandon stated was she knew where
9 the park was and that was it. She did not go into any detail
10 with us at all.

11 Q Do you ever talk to her about cooperating against Mr.
12 Keith or any conversations of that nature?

13 A I can't recall if I did or not.

14 Q But it's possible?

15 A It is, yes.

16 MS. LIPINSKI: Court's indulgence one moment.

17 That's all we have Your Honor.

18 MR. PLEMING: Beg the Court's indulgence. Nothing
19 from the State.

20 THE COURT: You may step down.

21 MR. PLEMING: The State has no more witnesses for
22 purposes of Jackson/Denno hearing.

23 THE COURT: Defense?

24 MS. LIPINSKI: Your Honor, at this time we would
25 just move pursuant to Jackson v. Denno that there was

1 not a knowing, intelligent statement because they were
2 not informing him. I think for a voluntary statement
3 I think because they are parsing out the information
4 that they are finding in the search warrant and what
5 they do have against these other buys. Specifically
6 what I think is problematic is the clause, "You have a
7 right for an attorney but we have no way of appointing
8 you one." I think that eviscerates the defendant's
9 right for sixth amendment right to counsel. Their
10 argument that the defendant could have believed, well,
11 he could have stopped talking and get a lawyer and
12 come back, that's not spelled out in the form.

13 The only purpose of the form -- the inclusion of
14 that phrase, "You have a right to an attorney but we
15 have no way of appointing you one here now" is to
16 encourage or otherwise coerce or suggest to the
17 defendant that they really don't have a right to an
18 attorney and they can't at that point have access to
19 one before they make that informed opinion. And I
20 think that eviscerates their sixth amendment right to
21 counsel and therefore any statements that follow from
22 that I think are done in contravention of the
23 defendant's constitutional rights. That statement was
24 not knowing and freely and voluntarily given.

25 THE COURT: Do you intend to call any witnesses?

1 MS. LIPINSKI: I do not Your Honor.

2 THE COURT: All right. I find the statements to
3 be freely and voluntarily made therefore the motion to
4 exclude is denied.

5 MR. PLEMING: Thank you, Your Honor.

6 THE COURT: What about Lyle?

7 MR. PLEMING: The State would proffer testimony
8 from two witnesses in response to defense motion
9 regarding the Lyle testimony. The first witness would
10 be Brian Sullivan.

11 The State calls Brian Sullivan.

12 CARL BRIAN SULLIVAN, called as a witness, having
13 been duly sworn by the clerk, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. PLEMING:

17 Q Good afternoon. Please state your name.

18 A Carl Brian Sullivan.

19 Q And Mr. Sullivan how old are you?

20 A I am 30 years old.

21 Q And where are you from?

22 A Tega Cay, South Carolina.

23 Q And how long have you lived in Tega Cay?

24 A About 17 years.

25 Q And do you now the defendant in this case Denny Keith?

1 A Yes, sir.

2 Q And how did you first met Mr. Keith?

3 A I met Mr. Keith from a mutual friend that used my phone
4 and when he left Denny Keith called my phone and I meet through
5 him that way and therefore struck up a relationship.

6 Q And what was the basis of your relationship?

7 A Purchasing drugs from Mr. Denny Keith.

8 Q And how long ago was it that that relationship began?

9 A About one year ago.

10 Q And about one year ago today?

11 A No, not one year today. About I would say one year ago
12 from -- about two years I known him.

13 Q And what types of pills would you purchase from him?

14 A I would purchase all sorts; pain pills, Xanax,
15 hydrocodone, all sorts of -- Adderall, all sorts of different
16 type of drugs.

17 Q And did you buy pills from the defendant on April 28th,
18 2016?

19 A Yes, sir, I did.

20 Q And what type of pills did you purchase from him on
21 that day?

22 A I believe Hydrocodone pills.

23 Q Did you purchase these drugs of your own volition or
24 were you assisting law enforcement with an investigation?

25 A I was assisting law enforcement in their investigation.

1 Q And how would you define your role in that
2 investigation?

3 A I would meet with Officer Harrelson. They -- we would
4 put a wire on me. We would go through what I would do and then
5 from there I would go and meet with Denny Keith and purchase
6 drugs.

7 Q And how did you become involved in that investigation
8 in that role?

9 A Officer Harrelson had some warrants out for my arrest.
10 We talked about it and he said if I would cooperate that no
11 promises were made, however they would -- I was hoping that
12 maybe the warrants I would get would -- I was hoping that they
13 would work with me on my warrants if I cooperated with them.

14 Q Okay. And did they -- did he agree to not serve the
15 warrants on you while you were working with him?

16 A No promises were made but he just said he would work
17 with me. That could be one of the options.

18 Q And were those warrants ever served on you?

19 A No.

20 Q And as part of that investigation in which you agreed
21 to buy pills from Mr. Keith how many purchases did you make from
22 Mr. Keith?

23 A I believe four.

24 Q And do you recall how far apart each of those purchases
25 was in time?

1 A They were about a week or two.

2 Q Okay. Do you recall the date of the last purchase you
3 made from Mr. Keith?

4 A I believe it was April 29th -- April 28th.

5 Q Okay. And how many purchases did you make within the
6 prior two months from April 28th?

7 A I believe it was three and April 28th was the forth.

8 Q How would you communicate with Mr. Keith to set up
9 these deals?

10 A Primarily over the telephone either via text or just
11 calling him.

12 Q And with whom would you communicate?

13 A It could have been Denny or Sherry. They -- it was
14 usually they both handled both of their phones so it could have
15 been Denny or Sherry.

16 Q And who Sherry?

17 A Sherry was Denny's wife I believe.

18 Q And did you know Sherry personally as well?

19 A Yes, sir.

20 Q And you say some times you would talk to him or some
21 times you would talk with her. Did you have both of their phone
22 numbers?

23 A Yes, I did.

24 Q And with whom would you text or call to set up these
25 deals, which phone?

1 A I would usually text one of them, whether it will be
2 Denny and Sherry and if one didn't respond right away and I
3 would text the other. Whichever one texted me back first that's
4 who I would go with.

5 Q And how would you know with whom you were speaking each
6 time you sent a text?

7 A Usually the signature if it was Denny's phone their
8 signature would start with Denny and if it was Sherry's phone
9 their signature would end with Sherry first.

10 Q Explain that?

11 A At the end of each text message there is a certain
12 signature and after each text it's either it says Denny and
13 Sherry and that would be Denny's phone. If Denny texted me back
14 it would Denny and Sherry. That would correspond to Denny's
15 phone. And when Sherry texted me back the signature would start
16 with Sherry and Denny. So that's how I would know which one I
17 was talking to.

18 Q Would -- when you would text one of those two phones
19 did the person with whom you were texting ever say -- tell you
20 whether it was Denny or Sherry?

21 A No. No, usually not.

22 Q Okay. And did you ever call either of those phones?

23 A Yes, sir.

24 Q And when you would call either of those phones did
25 Sherry ever answer Denny's phone?

1 A Yes.

2 Q Did Denny ever answer Sherry's phone?

3 A Yes.

4 Q And how frequently would one answer the other phone?

5 A It was pretty frequent. Like I said, it was just
6 interchangeable. It was just a toss-up of who you get.

7 Q And when you would make -- how many purchases did you
8 make from Denny or Sherry in the year that you were buying
9 drugs?

10 A It was quite a few. Probably at least once or twice a
11 week.

12 Q Okay. And once or twice a week over the course of a
13 year?

14 A Yes, probably 50 to 100 times.

15 Q And when you would meet to receive the pills and make
16 these purchases who gave you the pills?

17 A It could have been either one of them. If one was busy
18 the other one would do it. So it could have been a toss-up
19 between either one.

20 Q Did you ever buy pills from Sherry when Denny was not
21 present?

22 A Denny was usually present every time.

23 Q Can you recall a time when he wasn't present?

24 A I can not recall, no.

25 Q Okay. And what -- let's talk about you said that there

1 were four purchases that you made on behalf of law enforcement
2 when you were assisting them in this investigation. Do you
3 recall where each of those four transactions took place?

4 A Yes, sir.

5 Q And tell us where each of those transactions took
6 place?

7 A The first I believe is Sound on Wheels on Anderson
8 Road. The second would be the Home Depot on Cherry Road. The
9 third was at their house in Hickory Grove and the forth was at
10 their house in Hickory Grove.

11 Q I want to talk about that purchase you said you made at
12 the Home Depot. How soon before the final purchase you made in
13 Hickory Grove did that one take place?

14 A Repeat the question.

15 Q In reference to the final transaction at their home
16 when did the Home Depot purchase take place?

17 A I believe it was pretty soon. It was less than a week.

18 Q Okay. And what do you recall from that incident?

19 A From the Home Depot incident?

20 Q Yes.

21 A I met them at the Home Depot. Their car was -- there
22 car needed new breaks. So there was another gentleman repairing
23 their breaks in the parking lot of Home Depot and I made the
24 contact. Denny came over to the other side of the car; the
25 passenger side of the car where he got the pills out from the

1 passenger side of the car -- probably the glove box and that's
2 when we exchanged the money for the pills.

3 Q And what did you purchase from him on that date?

4 A I believe it was ten Dilaudid pills.

5 Q Do you recall how much you paid for those ten pills?

6 A I believe approximately \$130.

7 Q And do you recall seeing a video recording of that
8 transaction?

9 A Yes, sir, I do.

10 MR. PLEMING: At this time I am showing defense
11 counsel what has been previously marked as State's
12 Exhibit Number Two.

13 Q I am showing State's Exhibit Number two to you, do you
14 recognize this?

15 A Yes, sir.

16 Q And how are you able to recognize nice it?

17 A That's my initials and I dated it.

18 Q Okay. And did you initial this disc yourself?

19 A Yes, sir.

20 Q And when did you do that?

21 A I did it I believe on last Wednesday.

22 Q Okay. And did you watch the video recorded on this
23 disc?

24 A Yes, sir.

25 Q And are you familiar with - - were you familiar with

1 the video that was recorded on that disc and the images and the
2 sounds that it portrayed and depicted?

3 A Yes, sir.

4 Q And what is it? What is recorded on that disc?

5 A It's a video of the buy at Home depot.

6 Q And is it a fair and accurate depiction of the incident
7 as it occurred in the Home depot parking lot on April 8th of
8 last year?

9 A Yes, sir it is.

10 MR. PLEMING: At this time the State would move to
11 publish State's Exhibit Number two.

12 THE COURT: All right. For the sake of brevity,
13 Miss Lipinski you've seen this video?

14 MS. LIPINSKI: I have.

15 THE COURT: Are you all in a position to stipulate
16 what it shows.

17 MS. LIPINSKI: Yes.

18 THE COURT: All right. What does it show?

19 MR. PLEMING: It shows Mr. Sullivan approach Mr.
20 Keith and Miss Brandon in the parking lot. Mr. Keith
21 is working on a car. Miss Brandon is holding both of
22 their phones and appears to be texting.

23 The camera that recorded the imagine was filmed by
24 law enforcement who had the incident under
25 surveillance and it shows Mr. Keith stand up from the

1 car he was working on, walk over to the passenger
2 side. Mr. Sullivan asks him ten for 130 and he says
3 -- I believe he acknowledges, yeah, or affirms what
4 Mr. Sullivan says. Then opens the passenger door.
5 Gets in. There is a tree branch that actually blocks
6 from view exactly what took place between them but
7 based on there bodily movements it appears some
8 exchange takes place and then Mr. Sullivan then walks
9 back do his car. And I believe that's a proper
10 summarization.

11 THE COURT: Miss Lipinski do you agree with that
12 recitation?

13 MS. LIPINSKI: For the most part, yes, sir.

14 THE COURT: Do you have anything material you
15 needed to add to it.

16 MS. LIPINSKI: No.

17 THE COURT: All right. It's submitted as an
18 exhibit but I won't need to review it now because you
19 all agree to what it shows.

20 MR. PLEMING: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 CONT'D BY MR. PLEMING:

23 Q Did you know where Mr. Keith and Miss Brandon lived?

24 A Yes, sir, I do.

25 Q And how did you know where they were living at that

1 time?

2 A They told me he there address and they directed my to
3 their house many times before.

4 Q Okay. And approximately how many times have you been
5 to their house before?

6 A Quit a few. Quite a few, a lot.

7 Q Okay. Had you ever bought pills from there house prior
8 to this incident working with law enforcement?

9 A Yes, sir.

10 Q And let's talk about that last incident on April 28th.
11 How did you set up the deal you made on that date?

12 A I received a text from Denny saying he had a large
13 quantity of hydrocodone pills. I know law enforcement was
14 telling me to just look out for just a large quantity so
15 therefore when he texted me that I notified law enforcement that
16 he did have a large quantity of hydrocodone pills that I could
17 purchase. So at that point I met up with you law enforcement
18 and got ready to purchase the large quantity of hydrocodone
19 pills.

20 Q Okay. Just because -- just so I don't forget -- just
21 real briefly jumping back to the Home Depot incident, do you
22 recall seeing Sherry there in the parking lot?

23 A Yes.

24 Q And what was she holding in her hands when you saw her?

25 A I believe she was holding a -- at one time I believe

1 she is holding her cell phone.

2 Q And just her cell phone? Anything else?

3 A She might have been holding Denny's cell phone too.

4 MR. PLEMING: Let me show defense counsel two
5 documents the first of which is marked as State's
6 Exhibit Number three. Showing State's Exhibit Number
7 Three to defense counsel. Now showing States Exhibits
8 Number Four that has been premarked.

9 (WHEREUPON, documents were shown to defense
10 counsel.)

11 Q Now Mr. Sullivan, I am going to hand States Exhibits
12 Number Three and Four to you if you will take a moment to look
13 through each of those two exhibits and tell me when you have
14 finished doing so.

15 Are you familiar with the image depicted in States Exhibits
16 Number Three and Four?

17 A Yes, sir, I am.

18 Q And without -- without yet talking about any
19 communications depicted do you recognize -- well, what is
20 depicted in each of those two exhibits?

21 A In each of the two exhibits is Denny and Sherry's
22 phone. Depicted is me asking them -- talking --

23 Q Let me stop you real quick.

24 A Sure.

25 Q You said -- what's depicted in State's Exhibit Number

1 Three? Let's start with that? Without getting into the
2 specifics of the communications, what is depicted in each of
3 those photographs?

4 A Denny and Sherry's phone.

5 Q In State's Exhibit Number three? Just number three.

6 A This is State's Exhibit Three, this is Denny's phone,
7 depicted.

8 Q Okay. And what is depicted in State's Exhibit Number
9 Four, in each the photographs stapled together in State's
10 Exhibit Number Four?

11 A In number four is Sherry's phone.

12 Q Okay. And how are you able to recognize the two
13 telephones depicted in each of these exhibits?

14 A Well, there is two ways. One, each case, color coded
15 case, the green is Denny's and the pink is Sherry's and also
16 what I was talking earlier in Denny's phone his name starts off
17 the signature. So in his phone Denny's name is first which
18 corresponds to his phone and Sherry's name her name is first on
19 the signature which correspond to her phone.

20 Q Okay. And have you seen Denny using that green phone?

21 A Yes.

22 Q And had you seen Sherry using the pink phone?

23 A Yes, sir.

24 Q And is there -- do you -- and now that you told us that
25 each of those photographs depicts Denny's phone and Sherry's

1 phone respectfully, what -- what is the image depicted in each
2 each one of photographs contained on the screen of the phone?

3 A The conversation. It is me asking each of them if I
4 can get drugs; how much it would be; how much, you know, they
5 would cost and where and when I could meet them.

6 Q Are they text messages?

7 A Yes.

8 Q And do you recognize the telephone number that is
9 associated with the incoming messages depicted in these two
10 exhibits?

11 A Yes, sir. Each one of the telephones is my number.

12 Q And what is your telephone number?

13 A -5260.

14 Q And is that still your number today?

15 A Yes, sir.

16 Q And was that your number at the time?

17 A Yes, sir.

18 Q Do you recall sending and receiving each of the texts
19 which are depicted in State's Exhibit Number Three?

20 A Yes, sir.

21 Q And did you send the text messages that are depicted as
22 coming from your telephone number?

23 A Yes, sir.

24 Q And with whom were you texting this conversation?

25 A Denny.

1 Q And do the images contained in State's Exhibit Number
2 three fairly and accurately represent the text conversation that
3 was exchanged between your phone and Denny Keith's phone on
4 April 28, 2016?

5 A Yes, sir it does.

6 Q And describe the text messages -- well, do you recall
7 sending the text messages from the incoming number in State's
8 Exhibit Number Four?

9 A Yes, sir.

10 Q Okay. And summarize the conversation of those two text
11 message conversations?

12 A In each of them --

13 THE COURT: Excuse me just a minute. Are we
14 talking Lyle evidence? Are we talking about April
15 28th transaction which is the subject of this
16 Indictment.

17 MR. PLEMING: Well, this would be April 28th.

18 THE COURT: Well, the motion is to determine Lyle
19 evidence not to determine the evidence in the case
20 that we are going to try.

21 MR. PLEMING: Yes, sir. Your right, Your Honor, I
22 may have gotten a little carried away in going through
23 my questions, but I will redirect this at this time.

24 THE COURT: Okay.

25 MR. PLEMING: Well, Your Honor, if I clarify some

1 of the couple of messages in this text conversation
2 occurred a couple of days before and were in reference
3 of a sale of a different drug other than the
4 hydrocodone that was the subject here.

5 THE COURT: The purpose of this hearing is to
6 identify and to determine what Lyle evidence you wish
7 to introduce in the trial of this case.

8 MR. PLEMING: Yes, sir.

9 THE COURT: Again, it is not to determine what
10 evidence you intend to introduce to establish the
11 elements of the crime for which he is standing trial.
12 It's to determine what other type of evidence, Lyle
13 evidence, prior bad acts that you wish to offer that
14 you think is relevant to the case that we are going to
15 be trying.

16 MR. PLEMING: Yes, sir. Beg the Court's
17 indulgence for just one moment.

18 Q Mr. Sullivan, just a couple more questions for you.

19 A Yes.

20 Q In the year that you were buying and selling pills from
21 Mr. Keith and from Sherry, would you set up those deals in the
22 same manner as you did in this deal on April 28, 2016?

23 A Yes, sir.

24 Q Okay. And -- just one final series of questions. You
25 said that you purchased all types of pills from Denny.

1 A Yes, sir.

2 Q And you said you about two times a week for about a
3 year?

4 A Yes, sir.

5 Q And tell us -- just name as many pills as you can
6 recall that you purchased from him during that time?

7 A Hydrocodone, Percocet, Xanax, Adderall, Suboxone,
8 Subutex, those -- Dilaudid. Those are mainly all the drugs that
9 I bought from him.

10 Q And with your familiarity with each of those drugs what
11 types of drugs are they?

12 A They're mostly pain pills and anti-anxiety pills.

13 MR. PLEMING: I have no further questions at this
14 time.

15 MS. LIPINSKI: May we approach?

16 (WHEREUPON, an off-the-record discussion was held.)

17 THE COURT: We will take ten minutes. Don't
18 discuss your testimony during the break. You are
19 still on the witness stand. Ten minutes.

20 MS. LIPINSKI: Thank you Your Honor.

21 (WHEREUPON, there was a brief recess.)

22 THE COURT: Miss Lipinski.

23 MS. LIPINSKI: Please the Court.

24 CROSS EXAMINATION

25 BY MS. LIPINSKI:

1 Q Mr. Sullivan, you started your testimony in stating
2 that the reason you got Mr. Keith's phone is that a mutual
3 friend had texted him. Who's the mutual friend?

4 A Mutual friend is name is Clay Humphreys.

5 Q Clay Humphreys. You stated that Clay Humphreys used
6 your phone to text Denny Keith and that's how you met Mr. Keith?

7 A Mr. Keith -- Denny and Sherry -- Clay left because they
8 didn't they didn't call back soon enough. So when they called
9 back I picked up that's how we got introduced.

10 Q Okay. Do you know Sherry Brandon's son Zack Brandon?

11 A I might have met him. I'm not very familiar with him
12 but I may have met him at his house one or twice.

13 Q So that's a yes, you do know him you just don't know
14 how well you know him?

15 A Yes, I do know him.

16 Q Okay. And you stated that you know Sherry Brandon
17 personally?

18 A Personally, I mean Sherry yeah. I know Sherry. I have
19 been to their house. I have a hung out with them.

20 Q And did you know Sherry before you knew Denny?

21 A No, I met them at the same time.

22 Q And based on that errant text message from Clay
23 Humphreys and when approximately was that?

24 A Approximately -- umm --

25 Q You said maybe a year prior to the search warrant

1 incident for lack of a better timeframe?

2 A Yes, ma'am.

3 Q And you stated that during that time you had bought
4 quote, all sorts of pills; pain pills, Hydrocodone, Adderall,
5 things like that?

6 A Yes, ma'am.

7 Q All right. But you can't recall with any detail when
8 those other deals other than the four that lead to charges that
9 Lieutenant Harrelson or Investigator Harrelson directed you to,
10 other than that, do you have any specific knowledge of those
11 transactions?

12 A I don't know any specific date, no, ma'am.

13 Q Forth of July, I remember I bought, you know, a lot.
14 Got really loaded or anything like that?

15 A I just -- I just bought them before that multiple
16 times. Just throughout the year.

17 Q Is it also true that you also sold to Miss Brandon?

18 A I possibly have, yes, ma'am.

19 Q So in addition to selling there was also -- in addition
20 to buying there was also some selling to Miss Brandon?

21 A Selling to Miss Brandon?

22 Q Yes.

23 A I'm sure within that year -- we've all been in the drug
24 game. If they needed something I could find something I would
25 sell to them so ---

1 Q Isn't it true that not only did you buy from Mr. Keith
2 or Miss Brandon you have other sources as well?

3 A Yes, ma'am.

4 Q And you sold to other people as well?

5 A I am sure I have, yes, ma'am.

6 Q And so the first ever drug transaction you state is
7 roughly March of last year?

8 A Yes, ma'am.

9 Q And then the last one is the end of April?

10 A Yes, ma'am.

11 Q Other than the ones that Investigator Harrelson was
12 involved in there were other transactions with Miss Brandon
13 where you sold to her during that time as well, correct?

14 A During the April to March.

15 Q Yes?

16 A That I sold to Miss Brandon?

17 Q Yes?

18 A I can't recall.

19 Q Do you deny that it is possible?

20 A I mean I am not going to deny that it is possible but I
21 don't recall any time I did that.

22 Q And even after Mr. Keith and Mr. Brandon got arrested
23 you continued to engage in buying and selling drugs from other
24 people, correct?

25 A After the investigation I did continue to use drugs,

1 yes, ma'am.

2 Q My question was you continued to not only use drugs you
3 continued to sell drugs?

4 A Possibly, yes, ma'am.

5 Q And you identify for Mr. Keith and Miss Brandon you
6 quote you remember during that year roughly fifty to one hundred
7 transactions but you can't provide any more detail?

8 A About other transactions.

9 Q That was about all you could say is you could
10 approximate fifty to one hundred within the span of when you got
11 to know them until they got arrested?

12 A Yes, ma'am.

13 Q All right. But also during the course of that year
14 there are multiple other transactions not involving Miss Brandon
15 or Mr. Keith in which you were also involved, correct?

16 A Yes, ma'am.

17 Q Because they were not your only source, correct?

18 A Yes, ma'am.

19 Q And you were also selling to other people, correct?

20 A Yes, ma'am.

21 Q So you don't recall anything other than just a generic
22 conclusion some time during that year you would have bought
23 those types of pills correct?

24 A Yes, ma'am.

25 Q You don't remember on July 4th I bought Xanax bars at

1 15 dollars a piece or, you know, for my girlfriend's birthday I
2 bought her a whole lot of hydrocodone and I got a good deal.
3 Nothing of that specific detail, correct?

4 A Nothing that specific, no, ma'am.

5 Q All right. And you make these comments that you're
6 able to tell it's Denny versus Sherry because of the
7 auto-signature on the phone. Are you familiar with that term?

8 A Yes, ma'am.

9 Q And what that means is it says Denny and Sherry or
10 Sherry and Denny. They don't type that out. It just
11 automatically pops up on the bottom?

12 A Yes, ma'am.

13 Q And when you state that you know you are talking to
14 Denny and Sherry really you only know that you are talking to
15 that phone, correct?

16 A Yes, ma'am.

17 Q Because you also made the statement that Sherry would
18 routinely text from Denny's phone?

19 A Yes, ma'am.

20 Q All right. So you don't really -- to sit there and say
21 you bought from Mr. Keith you don't have that clear
22 recollection, you just know you texted some number that belonged
23 to one of them?

24 A Yes, ma'am.

25 Q Somebody replied back?

1 A Yes, ma'am.

2 Q You met one of them?

3 A Yes, ma'am.

4 Q To make the buy or the deal, correct?

5 A Yes, ma'am.

6 Q And you stated that you also knew them to personally
7 take some of these pills, correct?

8 A They did occasionally, yes, ma'am.

9 Q And what pills does Sherry Brandon would have used?

10 A I believe she abused pain pills along with anti-anxiety
11 pills.

12 Q All right. And what pills do you believe Mr. Keith had
13 used?

14 A I know he didn't do it as frequently as Sherry but
15 sometimes to let loose he did take some anxiety pills and some
16 times rarely pain pills.

17 Q Did he ever do that in front of you or was that just
18 your understanding?

19 A He has -- he has taken them in front of me, yes, ma'am.

20 Q What specifically has he taken and when?

21 A I believe over -- when I stayed at their house for two
22 weeks we took Xanax together.

23 Q And when was that?

24 A That was -- it was during Christmas because they are
25 going to have their -- they were going to have their New Year's

1 Eve party soon. So it was during the month of December.

2 Q And you stated that you remember this kind of great
3 detail about the Home depot transaction, correct?

4 A Yes, ma'am.

5 Q You don't really remember that? They showed you the
6 video of it, right?

7 A They did, yes, ma'am.

8 Q Without that you don't have this crystal clear
9 recollection of somebody is working on somebody's car and Sherry
10 is texting on the green phone and the pink phone and he went to
11 the passenger side. You really only remember that because they
12 showed me the video, correct?

13 A It refreshed my memory, yes, ma'am.

14 Q And to prove the point you made two other buys, right?

15 A Yes, ma'am.

16 Q And those buys the audio and video isn't that good and
17 that's why you can't recall them with the same detail, fair to
18 say?

19 A It's fair to say.

20 Q Did Mr. Fleming ever ask you to review those tapes?

21 A Ask me to review them?

22 Q Yes.

23 A We went over them, but -- and let me watch them.

24 Q But you acknowledge they're not that good? The audio
25 is not that good. There's really not good video on either of

1 them, correct?

2 A Of the other two?

3 Q Yes.

4 A It's hard to tell in some of the scenes.

5 Q All right.

6 MS. LIPINSKI: The Court's indulgence one moment.

7 Q Just to clarify one other point. When you first meet
8 with Investigator Harrelson, you're at that time being arrested
9 for distribution of Hydrocodone or Adderall?

10 A I don't know the exact charges. I just know -- I don't
11 know if it's -- I don't know if he was distribution. I just
12 know he had warrants against me.

13 Q You don't know what the charges were?

14 A I believe -- I believe it was distribution, yes, ma'am.

15 Q Okay. And your understanding is he not going to serve
16 those warrants as long as you were going to make drugs buys for
17 him, correct.

18 A There was no promises or guarantees. He said he would
19 work with me.

20 Q I didn't ask about promises or guarantees. You stated
21 that it was your understanding as long as you cooperated those
22 warrants wouldn't be served, correct?

23 A I was hoping they would not be served.

24 Q And they haven't been served to this day, correct?

25 A No, ma'am.

1 Q You didn't even have to post bond and get out on those
2 forms, correct?

3 A No, ma'am.

4 Q All right. And --

5 THE COURT: Excuse me. I think you have to
6 clarify the record. You have said you have not been
7 served with the warrants as of this day, is that
8 correct, and you said, no, ma'am. So that tells me
9 that's not correct.

10 THE WITNESS: You are correct.

11 THE COURT: I wanted to clarify that.

12 THE WITNESS: I apologize. You are correct, yes
13 ma'am.

14 Q You have not been -- those warrants have not been
15 served on you?

16 A No, they have not.

17 Q Okay. And it is your understanding that so long as you
18 cooperated with this prosecution they would not be served on
19 you, correct?

20 A Yes, ma'am, I was hoping.

21 Q But you also understood at that point should have
22 gotten out of the drug selling game, correct?

23 A Yes, ma'am.

24 Q But you didn't?

25 A No, ma'am.

1 Q You continue to buy and sell for the entire past year,
2 correct?

3 A Yes, ma'am. Continued, yes, ma'am.

4 Q And continued to abuse those drugs, correct?

5 A Yes, ma'am.

6 Q And in addition to the narcotic investigation from
7 early 2016 these held warrants you're also now currently under
8 investigation --

9 MR. PLEMING: Objection, Your Honor. I think it's
10 beyond the scope of cross examination what she is
11 about to go in to.

12 THE COURT: Overruled. Go ahead.

13 Q You are now currently under investigation in regarding
14 a child, correct?

15 A I did not know I was under investigation.

16 Q You knew law enforcement conducted some tests, correct?

17 A Yes, ma'am.

18 Q You know that there are circumstances under which a
19 child passed away in your home, correct, or it was premature
20 delivery correct?

21 A Yes.

22 Q And a you know that her system tested positive for
23 narcotics, correct?

24 A Yes, ma'am.

25 Q And so you know as a result of that law enforcement is

1 investigating, correct?

2 A Yes, ma'am.

3 Q So you do know that you are under investigation,
4 correct?

5 A Yes, ma'am.

6 Q And so --

7 THE COURT: Excuse me just a minute, the question
8 I assume here -- at least the one that's relevant --
9 is whether he is under investigation for that death or
10 whether she is or they both are. I am not sure.

11 Q You are both under investigation, correct?

12 A I don't know. I don't know if it is me or her, so I
13 don't know.

14 Q Whose child was it?

15 A It was ours.

16 Q Has law enforcement spoken with you?

17 A They have.

18 Q Has law enforcement asked you to submit to any
19 examination?

20 A Other than -- other than we supplied drug tests, that's
21 it.

22 Q Has law enforcement -- did they come out and search
23 your home?

24 A I believe the night of, yes.

25 Q So, you were not home that night, not involved with

1 that woman, not around that woman at the time, correct; the
2 mother of the child?

3 A I was involved with her.

4 Q And in fact you were supplying her with drugs, correct?

5 A I -- I don't know. Yes.

6 MS. LIPINSKI: That's all we have as to this
7 witness Your Honor.

8 MR. PLEMING: Your Honor, I don't have any
9 redirect witnesses at this time and we can take this
10 up at the appropriate time, but I would like to take
11 this opportunity now based on the questions that were
12 just asked to state on the record the State's
13 objection to any questions pertaining to the
14 investigation Miss Lipinski just went into. It goes
15 beyond impeaching the witness for his character for
16 truthfulness or untruthfulness. I don't believe it
17 would be an appropriate for her to go down that road.

18 She can ask him about continuing to sell drugs in
19 violation of C.I. agreement because we acknowledge
20 that does go to his character of truthfulness or
21 untruthfulness. But as far as any investigation that
22 may or may not be ongoing as to his knowledge I
23 believe that is irrelevant in the scope of cross
24 examination.

25 THE COURT: All right, Miss Lipiniski, do you want

1 to tell Mr. Fleming why it's relevant.

2 MS. LIPINSKI: Your Honor, I do believe that it
3 goes to his credibility. I think it goes to first of
4 all what happens before and after this transaction.
5 He presents and the State wants to present that he's
6 just this person who continuously buys from Mr. Keith
7 and he only does it for these three isolated, or four
8 isolated incidences after that. But I think it goes
9 on that he doesn't stop selling. He continues to not
10 only sell drugs but buy drugs and I think his
11 credibility and character is at issue.

12 THE COURT: He's not talking about that. He's
13 talking about the child issue.

14 MS. LIPINSKI: I think the child issue goes to his
15 credibility as a witness because he could also --
16 because there is no promises and no threats of any
17 kind, he could believe that his testimony here would
18 also advance that investigation and inoculate him for
19 prosecution of that incident because nothing has been
20 written. Nothing has been said. And that hasn't been
21 parched out. So to sit there and try and bifurcate it
22 that he only hopes for some type of consideration for
23 the charges that existed at the time the buys were
24 made and not charges that he may or may not develop in
25 the future, I think it comes within the scope of that,

1 because he could continue to think that this helps
2 him.

3 THE COURT: Okay. Do you want to respond?

4 MR. PLEMING: Yes, sir, Your Honor. There is no
5 evidence that he has been charged or is going to be
6 charged with anything related to the death of this
7 child. All he knows at this point is that he has been
8 asked to submit to a drug test, that his cell phone --
9 an officer came to his home and his cell phone was
10 searched. But at this point I think it's premature to
11 question him about that just based on the -- the --

12 THE COURT: Well, she has to question him about
13 that. That's all pretrial. That's why we are doing
14 this to hash out those issues.

15 MR. PLEMING: Yes, sir.

16 THE COURT: Nobody needs to examine him any more?

17 MS. LIPINSKI: No.

18 MR. PLEMING: No, sir.

19 THE COURT: Step down. All right, what else have
20 you got for Lyle?

21 MR. PLEMING: We intend to call Sherry Brandon,
22 the co-defendant in the case Your Honor, but the Lyle
23 evidence that we intend to elicit would be more
24 lengthy than Mr. Sullivan so the State would suggest
25 that we may be wait until tomorrow morning to do that.

1 THE COURT: We will do that tomorrow.

2 All right. Anything else?

3 MS. LIPINSKI: I have some, I believe. Mr. Fleming
4 gave me some voir dire. I could go ahead and hand
5 those up.

6 Did you hand those up to the Court?

7 MR. PLEMING: I gave a copy to the Court.

8 MS. LIPINSKI: Some of them I think overlap. I
9 would just ask you to look at that tonight so we could
10 get that out of the way, Your Honor.

11 THE COURT: Okay. All right, anything else.

12 MR. PLEMING: Your Honor, the State would just
13 offer to introduce the self authenticating documents,
14 certified copies of Mr. Keith's prior conviction for
15 Hydrocodone and we would ask to admit that into
16 evidence during the pretrial portion of the trial.

17 THE COURT: Prior conviction for what?

18 MR. PLEMING: Distribution of Hydrocodone, first
19 offense. And the relevancy would be to go like the
20 rest of the Lyle evidence, it goes to his intent to
21 distribute the Buprenorphine.

22 THE COURT: And the date of that offense is
23 what?

24 MR. PLEMING: The date of the offense was April
25 12, 2012 and the date of the conviction is March 18,

1 2013. I have certified copies with the stamp of the
2 Clerk of Court of York County on the sentencing sheet
3 Indictment and warrant which we had mark as State's
4 Exhibit Number 24.

5 THE COURT: All right, Miss Lipinski.

6 MS. LIPINSKI: Your Honor, I don't know if you
7 want to wait. So we kind of make a more general -- my
8 argument is that four years prior to the event in
9 question is so remote that I think clearly falls under
10 the type of evidence that 403 would prohibit, is the
11 danger of unfair prejudice it can't be the common
12 scheme or plan. It can't be the intent of the
13 defendant four years later. If this was the case for
14 every distribution and possession with intent to
15 distribute trial every defendant with prior drug
16 records would come in to play. There has to be some
17 nexus between the prior bad act and the crime in
18 question and I don't think anything that happened four
19 years prior when they don't have any factual
20 allegations to substantiate it beyond this certified
21 public record to establish that factual connection or
22 nexus. I think the prejudice is they're trying to
23 convict him based on his record alone and that's
24 exactly what State v Lyle and 404 prohibits when they
25 talk about these prior bad acts not coming in so there

1 isn't a conviction based on character assassination.
2 So we think the prior conviction is inappropriate and
3 should be excluded.

4 THE COURT: Okay. Anything else to address this
5 afternoon?

6 MR. PLEMING: No, sir, Your Honor, that is all
7 from the State.

8 THE COURT: Court will be in recess until ten
9 o'clock in the morning.

10 MR. PLEMING: Thank you, Your Honor.

11 (WHEREUPON, court was in recess until April 25,
12 2017.)

13 THE COURT: All right, we are back with Mr. Keith.
14 Any other matters we need to address before we
15 begin the jury selection.

16 MR. PLEMING: Yes, sir, Your Honor. Just a couple
17 of matters that you asked us to address at the
18 conclusion of the trial yesterday.

19 Regarding the impeachment of our C.I. witness and
20 using the possible investigation into the death of his
21 child recently.

22 I have spoken with what appeared to be the two
23 chief investigators in that case. What they have
24 relayed to me is that at no point have they told him
25 that he was under investigation. It may be obvious to

1 him based on the conversation they have had with him.
2 Apparently he is aware they executed a search warrant
3 and recovered his cell phone. He is aware of the
4 messages related to drugs offenses that are on that
5 cell phone and he has admitted to them that he has
6 given drugs to the mother of his deceased child.
7 However, they said -- both Investigator Officer
8 Spencer of Fort Mill PD and Trista Bear who is with
9 SLED -- she -- they both stated that in their
10 conversations with him they never told him that he was
11 under investigation. Never gave any -- never
12 conducted any sort of interviews in which they pressed
13 him for more information, any admissions or anything
14 of that nature. Of course they also recovered -- got
15 a hair sample from the mother of the child. They are
16 still waiting on the test results from SLED and she
17 basically said that right now they are just -- they're
18 not moving forward on any investigation because they
19 are still awaiting test results that they have sent to
20 SLED. We would just -- of course we can address this
21 at the time of his testimony, but we would just ask
22 that whatever cross examination into that incident is
23 permitted that it be limited to what is necessary to
24 establish a bias. That the details of the death and
25 any more sensitive facts of the investigation of that

1 nature be protected and not -- and not -- that she not
2 be allowed to go into more than is necessary to
3 establish that he would have bias to cooperate because
4 he believes he is under investigation. And I don't
5 know how he would respond to that question as to
6 whether or not he believes he's under investigation at
7 this time or if he believes that charges are
8 forthcoming. I don't know how he would respond to
9 that question.

10 THE COURT: Miss Lipinski.

11 MS. LIPINSKI: I think I can operate within those
12 boundaries to get what I need.

13 THE COURT: Okay. All right, as far as pretrial
14 motion is concerned the defense made.

15 MS. LIPINSKI: Your Honor, if I could about that,
16 I wanted to hand up one case; State v Carter and just
17 put in a little bit more detail the Lyle motion on the
18 record. I know we kind of discussed it in chambers
19 but I don't believe I had a chance to hand that to
20 you.

21 THE COURT: It is number eight on your motion
22 list?

23 MS. LIPINSKI: Yes, Your Honor. I was handed
24 yesterday a case by the prosecution. I don't if they
25 gave that to the Court as well or not.

1 MR.. PLEMING: We did. We handed up all the
2 relevant cases that is we had on that issue.

3 MS. LIPINSKI: And Your Honor, it is somewhat
4 distinguishable from that case; State v Carter talks
5 about proof of other crimes evidence is generally
6 considered inadmissible. That Lyle creates an
7 exception that the Court should keep in mind that the
8 presumption is against inadmissibility and that it
9 goes on to say there must be a strong factual
10 connection between the prior bad act and the act on
11 trial. That if that close degree of similarity in
12 time or fact is not present that the evidence should
13 be in admissible. It quotes a case of State v
14 Campbell which goes on to say that introducing prior
15 bad acts the Court was not necessarily trying to prove
16 -- in that case it was a common scheme exception --
17 but tried to convince the jury that because Campbell
18 had sold crack cocaine in the past he was selling
19 crack cocaine on this occasion, which is precisely the
20 type of inference that Lyle prohibits. It goes on to
21 quote Campbell, Your Honor, and say the Court does not
22 clearly perceive the connection between the extraneous
23 criminal transaction in the crime charged. That is
24 it's logical relevancy. The accused should be given
25 the benefit of any doubt and the evidence should be

1 rejected.

2 It's kind of what I believe to be kind of three
3 categories of Lyle evidence being offered by the
4 State. One being the text messages in the week
5 preceding the transaction or leading up to transaction
6 which the the defense believes that connection, or
7 that factual connection, probably does exist. Then
8 there's what I would call the prior transaction or
9 prior buys the C.I. had made with Mr. Keith and/or
10 Miss Brandon and then this kind of generic journal
11 testimony of I bought or sold to them fifty to one
12 hundred times in a year preceding.

13 I also draw the Court's attention that Lyle
14 evidence must be established by clear and convincing
15 evidence. So I kind of want to start with this what I
16 call journal testimony of I don't have any specific
17 recollection of the dates and times of the
18 transactions but I would estimate that fifty to one
19 hundred times I have bought and/or sold to Dinal Keith
20 and/or Sherry Brandon in the year leading up.

21 The defense would believe that this evidence is not
22 proven by clear and convincing evidence. There isn't
23 a factual connection between the testimony and the
24 transaction in question and it does not go to prove
25 intent a year or so later, whenever these transactions

1 can occur. Then as it goes to the buys preceding, the
2 confidential buys where I think the evidence is
3 probably more clear and convincing because obviously
4 it was recorded in some form or fashion or monitored
5 by Officer Harrelson with the DEU, nonetheless those
6 are for different types of drugs and therefore don't
7 necessary show an intent to distribute the drugs in
8 question on this particular day.

9 So we would ask that based on the lack of factual
10 similarity and if you look to the Lyle evidence where
11 they talked about for instance and I know it's
12 somewhat factually in opposite, but you see it a lot
13 more tracked in sexual abuse cases where the abuse is
14 different, or it happened in a different location or
15 might have happened with a different victim.

16 The Court have ruled in those particular cases that
17 lack of factual similarity is detrimental to the
18 admissibility of that evidence. So we would ask the
19 Court to kind of exercise it's gatekeeping function in
20 relying of 403 and 404 analysis that the unfair
21 prejudice develops. Because I think what you are
22 getting into is what we see rejected in Carter since
23 they sold drugs in the past they must be selling drugs
24 here. This was not necessarily developed as well
25 during the State's proffer of evidence but I believe

1 they will concede that this is what is on the video.
2 He has as Lieutenant Harrelson testified during the
3 Jackson v. Denno, they want the jury to believe that
4 my client has approximately Buprenorphine or Suboxone
5 pills on his person at the time. Also, at the time of
6 the video, there is a buy immediately prior to that.
7 That's the trafficking charge and then the possession
8 with intent to distribute is the drugs they find on
9 him when they execute a search warrant. The C.I.
10 asked him very specifically, do you you have any
11 Suboxone for sale that day and Mr. Keith says, no, we
12 should have some more later next week.

13 The defendant is charged with possession with
14 intent to distribute these drugs, and I think given
15 his statements on that day that he refuses to sell
16 they can't overcome that evidence by again using this
17 history of transactional-type evidence and that's the
18 objection the defense is raising specifically to that
19 possession with intent to distribute exception of the
20 Lyle evidence. And I think the Court needs to be
21 aware that that's where the State's evidence is going
22 to lead as it is to these particular seven
23 Buprenorphine tablets. So categorizing that the
24 defense objects to the journal or just kind of memory
25 log evidence, the prior buy evidence, and specifically

1 the more fact specific evidence, or the text messages
2 in recent time because we believe that they're not
3 necessary to establish intent. We believe the Carter
4 lays down the defendant is entitled to every benefit
5 and this evidence should be kept out because the
6 prejudice does develop once this evidence in
7 particular aggravates involvement.

8 So I just wanted to put our position on the record.

9 THE COURT: Okay. Well, one difference of course
10 is -- I think one difference is, in this case we are
11 talking about transactions between the witness and the
12 defendant. All of the transactions that the State
13 intends to offer under Lyle involve the witness, Mr.
14 Sullivan, and the defendant. It doesn't involve
15 somebody else. The cases that you refer to involved
16 prior bad acts that don't involve the case at hand.
17 Isn't that true?

18 In other words like in a drug case the prior bad
19 acts involve distributions to other people not to the
20 person who is testifying in the case; is that a fair
21 statement?

22 MS. LIPINSKI: Yes, Your Honor, for different
23 drugs, but yes. I think one involved marijuana. I
24 think the State V Campbell case.

25 THE COURT: Well, what I'm suggesting here, if

1 it's appropriate, is that Mr. Sullivan would be able
2 to testify that he has known the defendant for about a
3 year or whatever that timeframe is, and that during
4 that one year he has had a regular course or a
5 re-occurring course of business with Mr. Keith by
6 purchasing drugs and so that's what -- I mean the
7 State has a right to introduce evidence that tends to
8 establish an element of the offense which in this case
9 is intent to distribute. And were it just possession
10 of those pills might not establish an intent to
11 distribute if the relationship between the two people
12 is a drug transaction relationship.

13 In other words, when I need drugs Mr. Keith is who
14 I go to. That clearly is probative to the point of
15 whether or not Mr. Keith intended to distribute those
16 drugs. So, I certainly in that situation find the
17 probative value is not substantially outweighed by the
18 danger of unfair prejudice. So what I'm suggesting is
19 that he'll be able to -- Mr. Sullivan can testify that
20 he had a relationship with Mr. Keith, that he
21 purchased drugs from Mr. Keith before this day.

22 There is one transaction which the State has
23 introduced a video and I understand you say that's not
24 relevant because it's a different drug but it shows
25 the relationship and it shows Mr. Keith's intent with

1 regard to drugs in his possession because he has a
2 regular ongoing relationship with Mr. Sullivan. So
3 that's why I find that to be admissible.

4 The prior drug conviction, I don't find to be
5 admissible simply because that doesn't involve Mr.
6 Sullivan. I don't know what that involves and your
7 right in your assessment earlier that introducing
8 prior drug convictions just -- you're just trying to
9 show this guy is probably a drug dealer but it doesn't
10 relate to Mr. Sullivan and it doesn't relate to the
11 transaction in question that we are here today for the
12 purposes of trial. And it's also based upon the facts
13 of this case is remote. So that will be excluded.

14 Are you intending to have Mr. Sullivan estimate the
15 number of times that he had a transaction with Mr.
16 Keith because he clearly doesn't remember all those
17 transactions. Obviously he remembers he had a
18 relationship with Mr. Keith but he doesn't remember
19 the transactions. I'm suggesting he just testify --
20 if it's truthful -- that he has a relationship with
21 Mr. Keith, that over the last year he purchased drugs
22 from Mr. Keith.

23 MR. PLEMING: His testimony that was proffered
24 yesterday was that he purchased drugs approximately
25 twice a week for that year.

1 THE COURT: Well, okay.

2 MR. PLEMING: And there were -- while he can't
3 give specific dates because I don't think someone who
4 has been buying drugs regularly over a course of year
5 can remember that many, but he does make specific
6 references to going to their house, seeing Mr. Keith,
7 you know, take a pill himself. It shows a familiarity
8 with the drug habits between Mr. Keith and Miss
9 Brandon and also -- I mean, he can make more general
10 references to specific sales that occurred over time,
11 but he can't nail down the times and dates.

12 THE COURT: I understand that and I'm not
13 suggesting that he should. But my understanding of
14 his testimony was he had previously purchased
15 Buprenorphine and Hydrocodone from Mr. Keith?

16 MR. PLEMING: Yes, sir, Your Honor, as well as
17 other similar types of drugs.

18 THE COURT: Yes, other ones.

19 MR. PLEMING: And I'd also like to mention just
20 for the record since we are on the topic, that part of
21 the State's basis for introducing that evidence goes
22 to the conspiracy element between -- that existed
23 between Mr. Brandon -- I mean Miss Brandon and Mr.
24 Keith.

25 In our Indictment we are alleging that he did

1 conspire to distribute these drugs and I believe that
2 Mr. Sullivan's testimony regarding their relationship
3 and the way they interacted and who he dealt with over
4 the course of that year goes to establishing that
5 conspiracy in that case as well.

6 THE COURT: Okay. All right. So the prior -- the
7 testimony regarding prior drug transactions within the
8 previous year with Mr. Keith as well as his wife that
9 testimony will be admitted pursuant to Lyle and it's
10 probative, more probative than prejudicial.

11 As far as the photographs are concerned -- the
12 conviction is not permitted -- the photograph of the
13 prescription bottles, I'm granting the defense's
14 motion to exclude that based upon the lack of showing
15 of relevance.

16 MR. PLEMING: Yes, sir.

17 THE COURT: Speculation instead of proof. I think
18 everything else we have addressed in court, is that
19 not a correct statement?

20 MS. LIPINSKI: Yes, Your Honor. We would still
21 like because I don't know how much is going to deviate
22 and I don't know that the parameters we established
23 for Mr. Sullivan are necessarily applicable to Miss
24 Brandon. And I know the Court stated you may want to
25 do that at later time, but I still think that evidence

1 should be proffered. I don't know if you know when
2 that might happen. The only reason I ask is because
3 Miss Russo who represents her is back here.

4 THE COURT: Okay. When do you anticipate getting
5 to Miss Brandon's testimony.

6 MR. PLEMING: During the course the trial?

7 THE COURT: Yes.

8 MR. PLEMING: She would be our third witness. We
9 would call one law enforcement witness, Lieutenant
10 Ligon, whose testimony is relatively short and then
11 the C.I. and Miss Brandon would follow the C.I.

12 THE COURT: All right. Well, probably -- I can't
13 know with any real certainty, likely that will take us
14 to lunch and we can arrange to have her testimony
15 proffered before we start back this afternoon.

16 MS. LIPINSKI: Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. PLEMING: Yes, sir, Your Honor.

19 THE COURT: Miss Russo, I can't tell you what time
20 that is going to be.

21 MS. RUSSO: That's fine, Your Honor.

22 THE COURT: Are you going to be here in the office?
23 Are you staying for this? I mean, are you going to be
24 observing or are you coming back?

25 Was it your intention to just to be here when Miss

1 Brandon was testifying?

2 MS. RUSSO: I would probably just stay through her
3 testimony so I can be available for that.

4 THE COURT: That's what I am saying. You don't
5 intend to be here for any other purpose.

6 MS. RUSSO: No, I have no other reason to be here.

7 THE COURT: All right, but where will you be in the
8 office?

9 MS. RUSSO: Yes, our office is downstairs.

10 THE COURT: All right, we will let you know when we
11 need you.

12 MS. RUSSO: All right. Thank you, Your Honor.

13 THE COURT: Thank you.

14 All right. What about voir dire. Do you have any
15 objections to the voir dire that has been submitted by
16 each?

17 MR. PLEMING: I have no objection.

18 THE COURT: What about the State's request.

19 MS. LIPINSKI: No objection to the they over
20 extent they overlap. We leave it in your discretion.

21 THE COURT: All right. Any other matters we need
22 to address before we have panel brought up?

23 MR. PLEMING: Just one more from the State, Your
24 Honor.

25 THE COURT: Okay.

1 MR. PLEMING: I just wanted to notify the defense
2 and the Court that we did contact the probation
3 department and parole this morning regarding Mr.
4 Brandon's (sic) prior AWIK conviction from 1999 in
5 which as I stated yesterday that he was released from
6 prison in 2006. That is correct, he was released from
7 prison on September 1st, 2006, however he remained on
8 parole and was not released on parole -- from parole
9 until August 31st, 2008. We believe that would land
10 that conviction within the ten-year period and it
11 would be available for us to impeach him should he
12 decide to testify.

13 THE COURT: All right. Well, do you want to
14 address that?

15 MS. LIPINSKI: Your Honor, I understand there is
16 case law that kind of goes along that supervision can
17 include but I still think that the prejudicial value
18 would outweigh the probative value and it shouldn't be
19 used for impeachment. I think at that point it's
20 still too remote in time if you go back that far, Your
21 Honor. We are talking about an act that transpired in
22 1996.

23 THE COURT: Is your objection just as to
24 remoteness?

25 MS. LIPINSKI: Yes, Your Honor. I don't believe

1 they should be able to include probation. I don't
2 know what kind of supervision that he had.

3 THE COURT: All right. The objection as to
4 remoteness is overruled.

5 All right.

6 MS. LIPINSKI: While they are on there way up as to
7 the voir dire reviewing the State and the defense, I
8 think some of them may -- specifically the questions
9 about prior history of family members with drug
10 issues, I think we may just need to ask a kind of
11 catchall. If they want to come down forward and not
12 necessarily respond to those while back in the gallery
13 might be appropriate.

14 THE COURT: Okay. Are you all going to be
15 participating in the trial?

16 MS. WEAVER: Yes.

17 THE COURT: Give me you all names too.

18 MS. WEAVER: Teasa, T-e-a-s-a, Weaver.

19 MR. RUDNICK: Charles Rudnick, R-u-d-n-i-c-k.

20 THE COURT: What was the location of this event?

21 MR. PLEMING: Hidden Valley Trail in Hickory
22 Grove -- Valley Haven Trail, Hickory Grove, South
23 Carolina.

24 THE COURT: That is the residence of the defendant?

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

1 but we will make that determination. Thank you for
2 your participation. Have a good afternoon.

3 (WHEREUPON, non-selected jurors leave the
4 courtroom.)

5 THE COURT: We will be at ease for ten minutes.

6 (WHEREUPON, there was a short break.)

7 THE COURT: All right. Are we ready for the
8 jury?

9 MR. PLEMING: Yes, sir, Your Honor.

10 MS. LIPINSKI: Yes, Your Honor.

11 THE COURT: All right. Bring them in and ask
12 Mr. Constantine to take the foreperson's seat. Mr.
13 Constantine, juror fifty 52.

14 THE BAILIFF: Yes, sir.

15 (WHEREUPON, the jury enters the courtroom.)

16 THE COURT: Ladies and gentlemen, we are ready to
17 begin with the trial of the case for which you have
18 been selected and Mr. Constantine I am going to ask
19 you to serve as foreperson of the jury. As a
20 foreperson you will you have three specific duties
21 that none of the other jurors will have. First of
22 all, you will be asked to serve as the spokesperson
23 for the jury, and that just means if something arises
24 during the trial that you or your fellow juror has
25 some difficulty, problem, or question you will be the

1 person to let me know either directly if you are in
2 courtroom or through the bailiff if you are outside
3 the courtroom.

4 Secondly, you will precede over jury deliberations
5 when that time comes at the trial's conclusion. When
6 the jury goes back to begin their deliberations you
7 will prside over that process there simply to insure
8 that those deliberations are carried out in some
9 orderly fashion. And thirdly, you will actually write
10 the verdicts or the decisions of the jury and you will
11 do that on verdict forms that I'll provide you at the
12 trial's conclusion on which you will indicate the
13 jury's unanimous decision as it relates to each of the
14 separate in Indictments.

15 The foreperson has those specific duties that I
16 just indicated, but that doesn't mean he is any more
17 important then any of or other jurors and that's
18 because the decision of the jury is the unanimous
19 consensus opinion of all 12 of you jurors. So all of
20 you and each of will you have equal say and equal vote
21 in what the ultimate decision will be in this case.
22 Someone simply has to be delegated those
23 responsibilities that I just indicated and I have
24 delegated those to Mr. Constantine in appointing him
25 as foreperson. But all of you jurors are equally

1 important as far as the ultimate decisions in this
2 case are concerned because as I stated the verdicts
3 have to be unanimous. All of of you must be in
4 agreement.

5 Now Mr. Anguiano --

6 MR. ANGUIANO: Yes, sir.

7 THE COURT -- you have been selected as an alternate
8 juror. The function of an alternate is to take the
9 place one of the original 12 jurors if during the
10 trial one of these 12 can not continue to serve for
11 some reason. And so if one is called away because of
12 an emergency or illness or some other reason that
13 prevents their continuance to serve as a juror then
14 you take that person's place. In that event you
15 become the 12th juror. In that event you participate
16 throughout the trial including the jury deliberations
17 at the trial's conclusion. However, when the trial
18 does conclude and the jury is asked to go back to
19 begin deliberations if the original 12 are able to
20 perform that function then your service ends and you
21 don't participate any further and that's because the
22 decision of a jury is that of 12 and no more than 12
23 are are permitted to engage in that deliberation
24 process. But it is important that you pay just as
25 careful attention as we ask of all the jurors in this

1 case because it does occur from time to time for one
2 reason or another one of these 12 may be unable to
3 continue and in that event you become the 12th. So we
4 do appreciate your participation as an alternate juror
5 just as we appreciate the participation of each of you
6 jurors who have been selected for the purpose of
7 deciding the verdicts in this particular case.

8 You may swear the panel.

9 THE CLERK: Please stand and raise your right.
10 You shall well and truly try in true deliverance make
11 between the State of South Carolina and the defendant
12 at the bar whom you shall have in charge and a true
13 verdict give according to the evidence and the law so
14 help you God. Please respond by saying I will.

15 JURORS: I will.

16 THE CLERK: Thank you.

17 THE COURT: Ladies and gentlemen, as you know you
18 have been selected to decide the verdicts in the case
19 of the State versus Dinal Wayne Keith. As you also
20 know Mr. Keith has been accused by the prosecutor by
21 way of these Indictments with having committed two
22 separate and distinct criminal offenses. Although
23 they are alleged to have occurred or arisen out of one
24 particular event event or course of events which the
25 State alleges occurred back on April the 28th, 2016.

1 But they are separate Indictments. They are separate
2 charges for which you are called upon to render
3 separate and distinct decisions and your decisions as
4 to the each of the separate charges will obviously
5 depend upon your determination of fact as it relates
6 to the various allegations. Your application of the
7 law that I will provide you at the trial's conclusion
8 in order for you to determine whether or not the
9 defendant has been proven guilty of a crime beyond a
10 reasonable doubt.

11 Mr. Keith, as you know, is charged with trafficking
12 in Hydrocodone, and he is also charged with possession
13 with intent to distribute Buprenorphine. Now as to
14 each of those charges and those Indictments he has
15 entered a plea of not guilty. As I told you that plea
16 of not guilty is placed upon the State because they
17 brought the charges to establish the allegations that
18 they have made in the Indictment, to prove each of the
19 essential elements of the crime charged against the
20 defendant and therefore the burden is upon the State
21 to establish the defendant's guilt to the satisfaction
22 of you 12 jurors beyond a reasonable doubt before any
23 verdict of guilt could be returned.

24 Every person who is accused of a crime and it
25 doesn't matter how serious or minor the offense might

1 be, every person accused of a crime is always presumed
2 innocent of that charge. And that presumption of
3 innocence remains with any defendant as it does with
4 this defendant from the time he has placed under
5 arrest and throughout the course of the criminal
6 process and even throughout the course of the actual
7 trial in the case and that presumption of innocence is
8 with Mr. Keith and it will be him throughout this
9 trial and it will be with him even when you go back to
10 begin with you deliberation at the trial's conclusion.
11 It will be with him in that jury room and it will be
12 with him forever unless you 12 jurors determine that
13 he is no longer entitled to that presumption of
14 innocence.

15 In other words, after you considered all the
16 evidence and from that evidence you determined the
17 facts as they relate to the allegations, and after
18 deciding the facts you apply the law that I would have
19 provided you, if you 12 jurors unanimously determine
20 that his guilt has been proven beyond a reasonable
21 doubt as it relates to a particular charge then he
22 would no longer be entitled to that presumption of
23 innocence as it relates to that charge. But it is
24 only if, unless and until you are satisfied of his
25 guilty beyond a reasonable doubt that the presumption

1 of innocence would no longer be applicable.

2 Now the way the trial would proceed is that in a
3 moment the lawyers are going to address you in what
4 are called opening statements. There are two
5 occasions in the trial of a case where the lawyers are
6 permitted to address the jury. That is at the
7 beginning of the trial before any evidence has been
8 introduced. Then again at the conclusion of the trial
9 after all of the evidence has been received. But
10 please keep in mind that the lawyer's statements are
11 not evidence. You are not to rely upon the lawyer's
12 statements as proof of any fact in issue and that's
13 because the lawyers don't know anything about this
14 case of their own personnel knowledge or perception
15 like witnesses will be testifying to when they are
16 called to the witness stand. The lawyers aren't going
17 to testify as a witness. They are not going to take
18 the witness stand. They are not going to be placed
19 under oath. They will not be subjected to direct and
20 cross examination like every witness will be that
21 testifies during the course of this trial, and
22 therefore you should not consider their statements as
23 being any evidence upon which you will base your
24 decision. But you should listen to what the lawyers
25 have to say because those statements do serve a

1 purpose.

2 The opening statements serve to provide you with a
3 basic understanding as to what this case is about from
4 both the the perceptive of the state and the defense,
5 so that you will have some context in which to place
6 the evidence that we will be receiving shortly
7 thereafter. The closing statements occur after all of
8 the evidence has been received, and again, while those
9 statements are not evidence those statements do afford
10 the lawyers an opportunity to discuss with you the
11 evidence that you have seen and heard during the
12 course of the trial and through that discussion each
13 will have an opportunity to try to persuade you or to
14 convince you that the evidence in the case does or
15 does not support a particular decision. It's in
16 between those opening and closing statements that we
17 actually receive the evidence upon which you will base
18 your decision.

19 The State as you know has the obligation. They
20 have the burden of proving the defendant guilty beyond
21 a reasonable doubt. So they will go forward first in
22 there presentation of evidence. After the State has
23 concluded in that presentation any defendant has an
24 opportunity to take the witness stand and testify, to
25 call a witness or introduce evidence, but a defendant

1 is never under any obligation to testify. Like the
2 State has an obligation to prove his guilt the
3 defendant has no obligation. He certainly has no
4 obligation to prove that he is not guilty or to prove
5 that he is innocent because in some cases that might
6 not even be possible. The burden is on the State
7 because they brought the charge to establish his guilt
8 beyond a reasonable doubt. But, every defendant is
9 afforded an opportunity to present evidence if he or
10 she wishes to do so. And where a defendant does not
11 take the witness stand and testify, doesn't call a
12 witness, doesn't introduce evidence, that's not a fact
13 or circumstance that the jury may consider in any way
14 whatsoever in your determination as to whether or not
15 he is guilty of the crime he is charged with. You
16 can't consider it in any way. You can't allow it to
17 effect your judgement. You can't allow it to weigh
18 even in the slightest degree against the defendant
19 because as I say, the defendant does not have the
20 burden to prove anything because in some cases that
21 might not be possible. But, as I say defendants are
22 afforded the opportunity to present evidence if they
23 wish to do so.

24 So after all the evidence has been received and
25 after you hear the final summations of the lawyers I

1 will then instruct you fully on the criminal law
2 generally and on these particular crimes specifically.
3 After which you will be asked to go back and begin
4 with your deliberations and through that process you
5 will be called upon through the exercise of good
6 judgement and common sense, conscientiously apply to
7 the testimony and evidence in the case to try to
8 determine what the facts are as they relate to these
9 allegations. Once you decide those facts you apply
10 the law that I will have provided to you and you
11 determine whether or not the the defendant's guilt has
12 been proven beyond a reasonable doubt.

13 Now, in your duties as jurors it is your
14 prerogative to determine the facts and in determining
15 the facts it's your prerogative to accept or reject
16 testimony or other evidence. In other words, when a
17 witness testifies you can believe everything that
18 witness testified to or you may choose to believe none
19 of it. You may believe some portion of a witness's
20 testimony and reject some other portion of that same
21 witness's testimony. You could believe one witness as
22 opposed to several, or several as opposed to one. But
23 whatever your good judgement and common sense tells
24 you is the most believable and credible testimony and
25 other evidence is the testimony and evidence that you

1 should accept. And you should reject any evidence
2 that you find not to be credible or believable.

3 Again, your sole obligation in this case is to render
4 a fair and impartial decision based upon the evidence
5 and the law that is applicable as it will be provided
6 to you.

7 It's important that you keep an open mind
8 throughout the course of the trial. Give every
9 witness the same degree of attention as they testify
10 because as I say you might have to evaluate a
11 witness's credibility. Where there's conflicting
12 testimony or conflicting evidence and that conflict
13 needs to be resolved in order for you to arrive at a
14 decision you get to resolve the conflict. In other
15 words you decide the credibility and the believability
16 of a witness's testimony. But in order to be in a
17 proper position to be able to fairly evaluate the
18 credibility of testimony you've got to give every
19 witness the same degree of attention as they testify
20 so that when you go back to begin deliberations you
21 will be able to judge each witness's testimony in
22 light of not just that witness's testimony but in
23 light of all of the testimony and all of the evidence
24 received during the course of the trial. And that's
25 why you got to keep an open mind throughout the trial

1 because there might be several witnesses called and
2 you never know when the most important or the most
3 credible testimony or evidence might be introduced.
4 So just wait until all the evidence has been received
5 and you have been told to go back and begin
6 deliberations and that's when you start discussing it
7 and making up your minds as to the ultimate decision.
8 And as I say in the meantime you keep an open mind and
9 don't begin formulating your opinions as to what you
10 think the ultimate decision will be until you have
11 been instructed to do so at the trial's conclusion.

12 I do want to thank you in advance for your
13 participation as well as for your careful attention.
14 I will ask that you please give the lawyer your
15 attention now as they give you their opening
16 statements.

17 Mr. Fleming.

18 MR. PLEMING: Thank you, Your Honor, may it please
19 the Court.

20 Good morning ladies and gentlemen of the jury. We
21 are here today because this defendant, Denny Keith, on
22 April 28, 2016, just last year, was essentially
23 operating a pharmacy out of his house. Now, the
24 problem with that is that Mr. Keith is not a
25 pharmacist. He's never been to pharmacy school and

1 under the law of South Carolina it is illegal for him
2 to sell prescription medication to anyone without --
3 well, to anyone. Period. There is a right way and
4 wrong way to do a lot of things and as he admitted to
5 two officers that you will hear from in this case both
6 the York County Multi-Jurisdictional Drug Enforcement
7 Unit, he admitted to selling his scripts and selling
8 his pills to make ends meet but of course the law does
9 does not allow him to do that and that is why we are
10 here. That is the wrong way to make a living.

11 The evidence will show that the defendant, Denny
12 Keith, on April 28th of last year sold 38 Hydrocodone
13 pills to a confidential informant by the name of Brian
14 Sullivan. Mr. Sullivan is a drug addict. He's
15 addicted to pain pills and he was working with the
16 DEU, the Drug Enforcement Unit, as a confidential
17 informant that day. In the course of this trial you
18 will hear more about what that means, what a
19 confidential informant is and how they assist law
20 enforcement officers in enforcing the drug laws under
21 this state. There were three people in Mr. Keith's
22 living room where this drug transaction took place, at
23 403 Hidden Valley Trail in Hickory Grove. And two of
24 those people, the two people in addition to the
25 defendant are here to testify before you this week

1 during the course of this trial. The two others were
2 of course the CI, Brian Sullivan, and the defendant's
3 girlfriend, Sherry Brandon, who is his partner in this
4 operation. The two of them as the evidence will show
5 had conspired together and were selling drugs
6 together. They were selling their pills, they were
7 selling other people's pills. And while you will hear
8 from both of them and they will tell you about their
9 involvement with Mr. Keith in this drug selling
10 operation because Mr. Sullivan was equipped with audio
11 and video recording equipment during the course of
12 that transaction you will also get to see everything
13 that happened in the course of that drug deal on April
14 28th. It will be like you were sitting in the living
15 room with them watching this deal unfold. And so
16 everything that you will need in this trial to reach
17 the ultimate determination of his guilt as to that
18 trafficking charge, trafficking Hydrocodone, you will
19 have on that video. And that video will provide
20 everything that you need to know that what Mr.
21 Sullivan tells you and what Miss Brandon tells you
22 about what happened inside that room is the truth.

23 You will see Mr. Brandon -- excuse me, Miss Brandon
24 count out those 38 pills. You will see Mr. Keith
25 collect the \$300 from the confidential informant. You

1 will hear them talk about the deal they had already
2 worked out through a series of text messages. You'll
3 hear the defendant ask Mr. Sullivan to hold on to five
4 of those pills for another person who is paying a
5 different price for them. You will hear him tell Mr.
6 Sullivan that -- the defendant tell Mr. Sullivan that
7 he can sell him any Suboxone pills that day, and that
8 he will have to wait until the first of the month.

9 Now, during the course of this trial you will
10 also hear from those two officers with DEU that I
11 mentioned, Lieutenant Ligon and Investigator
12 Harrelson and they will tell you that just after this
13 drug transaction took place in Mr. Keith's living room
14 they executed a search warrant on Mr. Keith at his
15 residence. During the course of serving that search
16 warrant they found seven Buprenorphine, which is also
17 commonly known as Suboxone, in Mr. Keith's pocket,
18 which we know from the other evidence that will be
19 presented throughout the course of this trial he was
20 holding to sell to someone else. That evidence will
21 come to you in the form of text messages from his
22 partner Sherry Brandon and Mr. Sullivan that were sent
23 from their cell phone to perspective buyers the week
24 leading up to this incident.

25 You will hear from the State chemist that tested

1 these drugs who will tell you that the weight of those
2 38 pills came out to over 14 grams and that's what
3 makes it trafficking.

4 His honor will instruct you on the law at the
5 conclusion of this case but that's the reason why he's
6 charged with trafficking Hydrocodone as opposed to
7 something else. It's because the weight of the 38
8 pills that he sold. Under the law of South Carolina
9 rises to the level of trafficking.

10 You'll also hear, as I mentioned the evidence will
11 show a conspiracy existed between Mr. Keith and Miss
12 Brandon to sell these drugs. And as Your Honor has
13 already told you the burden of proof in this case is
14 on the State. It is our job to prove this case to
15 you. And we must prove with evidence that convinces
16 you beyond a reasonable doubt. Evidence that leads
17 you firmly convinced of the defendant's guilt.

18 The evidence in this case ladies and gentlemen
19 especially that video will be more than enough to
20 leave you firmly convinced of his guilt as to tracking
21 charge, and other trustworthy testimony from these
22 officers, the text messages and the other witnesses in
23 the case will also leave you firmly convinced of his
24 guilt for possession with intent to distribute those
25 seven pills, those seven Buprenorphines that were

1 found in his pocket.

2 Now, in any trial I can't promise you what anyone
3 is going to say because they haven't testified yet and
4 until they do, I mean technically they can say
5 anything. And while I certainly have expectations
6 about what you will and will not hear throughout the
7 course of this trial I can't make those promises.
8 However, like I say, you will see that video.

9 Everything that you need to know in this case, to know
10 that this defendant is guilty of these two charges,
11 you will have for you on that video. And because that
12 video makes him guilty of trafficking Hydrocodone at
13 the conclusion of this trial I will ask you to find
14 him guilty of trafficking Hydrocodone, and I will also
15 ask you to find him guilty of PWID Buprenorphine.

16 I look forward to the opportunity to stand before
17 you again at the conclusion of trial and I thank you
18 for the services in the meantime.

19 MS. LIPINSKI: May it please the Court, Your
20 Honor.

21 THE COURT: Miss Lipinski.

22 MS. LIPINSKI: Well, we are just past good
23 morning at this point. Good afternoon ladies and
24 gentleman of the jury. My name is Mindy Hervey
25 Lipinski. I am attorney here in York County.

1 It is my privilege over the course of the next
2 couple of days to represent Dinal Wayne Keith. He
3 goes by Denny. You may hear that name on occasion.
4 And as Honorable Judge Cole instructed you as he sits
5 here even having listened to opening arguments where
6 you heard it's all on video, there's not going to be
7 any doubt, you will have is everything you need, he is
8 still sitting there presumed to be innocent. And what
9 my role over the next few days is to challenge that
10 evidence that the State is going to put before you
11 because what I submit to you is that while they would
12 like it to be very obvious and very easy the reason
13 that you are going to hear all of this other evidence
14 beyond the video is because they need that evidence to
15 try and bootstrap what really happened in to these
16 very serious and egregious charges that they brought
17 against Mr. Keith. What you notice is that he has
18 plead not guilty specifically to these charges; two
19 things, trafficking in Hdrocodone and Mr. Fleming used
20 an acronym like SCUBA or something like that that
21 criminal attorneys often use called PWID, but what
22 that is is possession with the intent to distribute
23 Buprenorphine which is the other drug involved. So
24 you have two of those. He has plead not guilty to
25 those two charges. And at the end of the trial we

1 will come before you and ask that you find him not
2 guilty. Some defenses are legal. It's not so much
3 the facts that people disagree with but it's the legal
4 charges that people disagree with. Some defenses are
5 legal in nature. We basically kind of agree on the
6 facts. But it might be a murder case where somebody
7 believes they've acted in self-defense. Some defenses
8 are a mixture of those two things. But it's my role
9 over the next few days to expose those weaknesses, to
10 challenge the evidence that the State brings before
11 you and to help you evaluate that evidence with a
12 critical eye. Because if it's all on video and it's
13 all easy then really why are you here? Why did we
14 take you away from your jobs? Why did we take you
15 away from your family and why do we take you away from
16 your lives and ask you to come in here and serve on a
17 jury. It is because we just don't in this day and age
18 nor have we ever quite frankly just rubber stamped
19 whatever law enforcement has to say. It's because we
20 don't just sit there and say, well, the prosecution
21 says he's guilty and there is a video then let's call
22 it a day. We're all done here. Because what the
23 prosecution didn't tell you is while they called their
24 CI or this confidential informant this addict, in
25 reality he's a dealer himself. They don't want you to

1 know that. They don't want you to know about his bias
2 or his prejudice in testifying against Mr. Keith. It
3 will be my role as he testifies to expose that bias or
4 prejudice and that will be significant in helping you
5 assess is Mr. Keith guilty of the charges that the
6 State has brought before you. Because ultimately I am
7 sure when you all came up here you're up here for jury
8 selection and they say your name and the prosecution
9 says, "Present the juror" and I say, "Swear the
10 juror." Trust me, we all see that haa. Really. I
11 was really hoping to go back. I got things to do
12 today. We get that. And I know at the end of the day
13 you all are not pharmacist. You just sit here and go
14 I know about this stuff. I've watched a lot of Miami
15 Vice and CSI and NCIS and so I'm an expert in this.
16 That must be why they picked me. We really picked you
17 because you don't know anything. And you may wonder
18 well, why do you want such an inexperienced,
19 unknowledgeable jury. I mean certainly you could go
20 out and find people who are experts and who might make
21 make a better decision. Because what you are an
22 expert in is kind of the human experience. We all on
23 a day-to-day basis talk to people and have them tell
24 us their story. From our kids who come up to us at
25 night and say he did it. He started it. You know,

1 that he is leaving a lot of that story out. He's
2 leaving out the fact that he pestered his little
3 brother for about 45 minutes before he finally got mad
4 at him and locked him out of his room or took his
5 stuff or broke his toy. We work with people. We talk
6 to people at work. We all have people at work who
7 come up to us and they either want to be the victim of
8 everything that happens at work or they're a pretty
9 straight shooter when they tell us the good and bad of
10 what's going on, or they may have some bias. They are
11 trying to play nice to us because they want our
12 support on a project or upcoming role. We go to Lowes
13 at night because our refrigerator needs replacing and
14 we got to listen to that salesman and we have to
15 evaluate. Does he get a commission on this
16 refrigerator. Is that why he's pushing this Samsung
17 Model or do does he really think this is the best
18 refrigerator they make right now. That's the
19 experience that you are really going to draw upon in
20 the next few days, is listening to the credibility of
21 these witnesses and why they are here. For the most
22 part while you are going to hear and see kind of a
23 parade of law enforcement where they try and clean up
24 these two people, the two main people are Sherry
25 Brandon who you will hear is charged with what Mr.

1 Keith is charged with. Somehow she's here testifying.
2 And you will hear from the confidential informant who
3 they would like you to believe is just a hapless
4 addict falling victim to Mr. Keith's grand pharmacy
5 when in reality he was a drug dealer himself and a
6 user. And the reason they want to talk about this
7 video so bad is because they are lucky they have it
8 because without it I venture you to say you would not
9 rely on the testimony of Miss Brandon or Mr. Sullivan,
10 the CI, for any decision you would make in your life.
11 Because that's what reasonable doubt is. At the end
12 of the trial you will hear that term reasonable doubt
13 and Judge Cole will try and outline it, but it's
14 evidence that leaves you firmly convinced of what
15 happened. It's evidence or testimony upon which this
16 typical that you would rely in picking your own
17 important life decision. And while there are things
18 on that video that may not portray the defendant in
19 the best light, there are a lot of other little
20 details that you need to pay attention to as well.
21 And as you listen to that testimony I am going to ask
22 you to pay attention to those details because bias
23 will be important. What people say and when they say
24 it will be important. What their motive is in
25 spinning things, in putting a hint on things. Their

1 own selfish interest on those kind of things is
2 important. What law enforcement did and did not do in
3 order to investigate this case will be important. And
4 so at the end of the day those are the things, that is
5 my role is to come in here and shine a light on those
6 things, cross examine those witnesses, help expose
7 those bias and prejudice.

8 I want to thank you for your time and attention as
9 I said I know we have taken you away from your lives
10 and we appreciate it. But often time when you hear
11 about jury duty we all kind of fail to understand the
12 significance of that role. You know you hear about it
13 and you watch it on TV, you might see it in the movie,
14 some of you might read it in a book, but you really
15 don't understand why we have it until you sit where
16 you sit.

17 Mr. Keith is on trial for some very serious charges
18 here today and this isn't something that we just need
19 to gloss over and rubber stamp and sign off on. This
20 is very important. It's very important to the State.
21 And so we ask that you take this critical view of the
22 evidence because that's what the constitution requires
23 and that is what Mr. Keith is entitled to in his
24 trial. As any American citizen would be, as any
25 member of your family, you would want them to have

1 that same experience. And the evidence must be
2 compelling and the charges are very technical and
3 specific.

4 So thank you for that time and attention. I think
5 perhaps now you understand the importance of your
6 role. We will try to move this along as quickly as we
7 can. But I ask you as you go forward to remember what
8 Judge Cole started off with. Mr. Keith as he sits
9 over there is presumed innocent. And then when you
10 heard it's all on video you started thinking why are
11 we here. You're already kind of dancing on the line
12 of what that robe says you can't do. And they may
13 call one or two witnesses and you're sitting there,
14 really. Why are we here? But again you are making up
15 your mind perhaps too fast. And so most of all I ask
16 that you have patience, and I ask that you wait until
17 the very end because some of these things will not be
18 exposed until you see all of them together. Until you
19 hear one witness at the start and one witness at the
20 end. Until you have an opportunity to view certain
21 things and evaluate witnesses against one another.

22 So I thank you for your time and your patience on
23 Mr. Keith's behalf.

24 The Court's indulgence. I apologize Your Honor.

25 THE COURT: Mr. Fleming.

1 MR. PLEMING: Thank you, Your Honor. The State at
2 this time calls Lieutenant Mike Ligon. Please bring
3 Mr. Ligon in.

4 JAMES M. LIGON, called as a witness, having been
5 duly sworn by the clerk, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. PLEMING:

9 Q Good afternoon Lieutenant Ligon. Will you please
10 introduce yourself to the jury and state your occupation?

11 A Lieutenant James M. Ligon. I'm with the York County
12 Sheriff's Office.

13 Q And what is your position there with the York County
14 Sheriff's Office?

15 A Lieutenant of narcotics division and I'm also one of
16 the supervisors on the York County Drug Enforcement Unit.

17 Q How long have you been involved with the DEU?

18 A Sixteen of my almost 22 years.

19 Q And just go over your duties as a lieutenant in the
20 drug enforcement unit?

21 A I supervise day-to-day operations, sign off paper work,
22 case folders, things of that nature as far as dealing with the
23 the drug unit itself.

24 Q Briefly summarize what sort of training and experiences
25 you have that prepare you for your job in that position?

1 A I have been to two drug unit commander schools. Of
2 course 16 years on the job training in narcotic investigations,
3 surveillance schools. Also a graduated of the FBI National
4 Academy.

5 Q And when you investigate drug cases do you commonly
6 work with confidential informants?

7 A Yes, sir, we do.

8 Q How often do you work with individuals; confidential
9 informants?

10 A Daily basis.

11 Q And how many C.I.'s have you had the opportunity to
12 work with over the years?

13 A 16 years, hundreds. May be thousands.

14 Q And during that time is there any way to estimate how
15 many controlled drug purchases you have supervised?

16 A I would say hundreds if not thousands.

17 Q And explain for the jury the different ways in which
18 you use C.I. in your investigations?

19 A Well, generally when we use an informant we will bring
20 them in. They can be someone who is simply giving information
21 and deciding to give a tip. It can be someone who is working
22 off charges. It can be just a multitude of things how we
23 generate these confidential informants. But through this
24 process we will actually bring them in. They will have an
25 agreement sheet that they have to sign with us. We'll sign them

1 up as confidential informant and there is an agreement sheet
2 basically telling what they can and can't do while cooperating
3 with York County Multi-Jurisdictional Unit. And at that point
4 in time we can use these informants to do what we consider
5 search warrant buys where they will go in somewhere, purchase
6 drugs for us. At that point in time they can leave. We have
7 certain amount of days where we can execute a search warrant.
8 We have what we call distribution buys where they'll actually go
9 in buy from the individuals and we also actually charge them
10 with the dope -- the individual with with the dope that we
11 actually purchased using the confidential informant.

12 Q And were you involved in one such controlled purchase
13 of drugs in Hickory Grove on April 28, 2016?

14 A Yes, sir I was.

15 Q And what was the nature of of your involvement in that
16 investigation?

17 A Myself and Commander Brown were supervising the
18 officers that were actually conducting the confidential buy from
19 Mr. Keith.

20 Q Did you personally know the confidential informant that
21 was used in that case?

22 A No, I did not. It was the first time I have been
23 involved in an operation with the confidential informant.

24 Q And had you had any conversation with him then or
25 since?

1 A No, sir I have not.

2 Q Do you recognize the defendant in this case, Denny
3 Keith?

4 A Yes, sir I do.

5 Q And were you present for the execution of a search
6 warrant at his home on April 28th of last year?

7 A Yes, sir, I was.

8 Q And tell us where take took place?

9 A It took place at Valley Haven Trail, Hickory Grove,
10 South Carolina.

11 Q And is that in York County?

12 A Yes, sir, it is.

13 Q Tell us what you remember from that event?

14 A Basically made the control purchase. The informant was
15 searched before and after the control purchase to insure that
16 there was no contraband and that the confidential informant did
17 not have any drugs on them other than what was purchased from
18 Mr. Keith. Confidential went and made the purchase from Mr.
19 Keith. He then came back and met with us at predetermined
20 location. We recovered the drugs. I believe it was 38
21 Hydrocodone that was purchased from Mr. Keith at that time.
22 Investigator Harrelson took control of that evidence. We then
23 took surveillance equipment off the confidential informant and
24 we then got a search warrant for the residence from where we had
25 made the control purchase.

1 Q And you mentioned Investigator Harrelson. Who was in
2 charge of that investigation?

3 A Investigator Harrelson was actually in charge of the
4 investigation because he had made some other purchases from Mr.
5 Keith before this purchase.

6 Q Do you -- after that purchase took place tell us what
7 happened?

8 A Got a -- we actually got search warrant. Got a search
9 warrant served for the residence based on the purchase from Mr.
10 Keith out of the residence. At which time myself, Commander
11 Brown, Investigator Harrelson, Investigator McGarity,
12 Investigator Gander and I think there was -- I think there was
13 two more officers. At that time we then got into three
14 vehicles. Went to the residence. Got our -- got our actually
15 what we call raid gear on. Where we put our bullet proof vest
16 on. They got police markings on the front, holds our handcuffs,
17 holds extra magazines along with our radios and of course our
18 fire arms on the side. Loaded in three vehicles. Went to Mr.
19 Keith's residence at which point in time we executed a search
20 warrant on the residence.

21 Q And was Mr. Keith present at the scene when you
22 executed that search warrant?

23 A Yes, sir, he was.

24 Q And where did you see him at the scene?

25 A I was one of the last people into the doorway. Once I

1 got into the residence Mr. Keith was actually seated in the
2 living room.

3 Q And who served the search warrant on him?

4 A Investigator Gander.

5 Q Were you present when she presented that warrant to Mr.
6 Keith?

7 A Yes, sir, I was.

8 Q And after presenting him with that warrant do you
9 recall if she advised him of his so called Miranda rights at the
10 scene?

11 A Yes, she did. Basically when we execute a search
12 warrant at the residence there is a form that we have. It is
13 printed out, it has constitutional rights and Miranda warning on
14 the form, and at the time of execution the officer or officers
15 who execute the search warrant will then read this form stating
16 what their constitutional rights are and their Miranda warning.
17 And then they will have the parties that are present at the
18 execution of the search warrant actually sign advising that they
19 understand their rights.

20 Q And where does this take place, this advisement of the
21 defendant's rights?

22 A In the living room.

23 Q And were you in the living room then at that time?

24 A Yes, sir, I was.

25 Q And do you recall if he signed that form acknowledging

1 his rights?

2 A Yes, sir, he did.

3 Q And did he indicate or do anything to indicate that he
4 understand stood his rights?

5 A Yes, sir, he signed the form indicating he understood
6 his rights.

7 Q After he was a advised of his rights and signed that
8 form did anyone speak to him there in your presence?

9 A I mean -- when you say speak to him, he was actually
10 brought out to the porch so officer can actually execute the
11 search warrant. At that point in time myself and Commander
12 Brown were sitting on the porch speaking with Mr. Keith and a
13 female party, Miss Brandon, that was actually present at his
14 residence.

15 Q Did you ask him any questions related to drug dealing
16 or anything like that?

17 A No, sir, not at that time.

18 Q And did he at any time there evoke his right to remain
19 silent?

20 A No, sir, he didn't.

21 Q Did he ever ask to have an attorney present?

22 A No, sir, he didn't.

23 MR. PLEMING: At this time I am going to show
24 defense counsel what has been previously marked as
25 State's Exhibit Number One.

1 Q I am handing State's One up to you. If you please just
2 take a moment to read it over and tell us if you are familiar
3 with the the contents of it?

4 A Yes, sir, I am.

5 Q What is that?

6 A This would be the form that I spoke of earlier. That
7 officers -- where the officers when they execute the search
8 warrant will then advise the defendants or the people present of
9 their constitutional rights and also their Miranda warning and
10 acknowledgement of rights.

11 Q And do you see the defendant's signature on that
12 document?

13 A Yes, I do. It's the first one.

14 Q Does that appear to you to be an exact copy of the form
15 that you saw him sign?

16 A Yes, sir, it is.

17 Q And have the contents of that form been altered in any
18 way?

19 A No, sir, they have not.

20 MR. FLEMING: Nat this time, Your Honor, the State
21 moves to admit State's Exhibit One into evidence.

22 MS. LIPINSKI: Without objection Your Honor.

23 THE COURT: It is admitted.

24 (State's Exhibit One, Acknowledgment of Rights,
25 received in evidence as of this date.)

1 Q Lieutenant Ligon, if will you take State's Exhibit
2 Number One and just read for the jury out loud his rights as you
3 recall them read to him at the scene?

4 A The form in it's entirety is at the top of the heading
5 is York County Mult-Jurisdictional Drug Enforcement Unit. The
6 next paragraph says, "To be utilized on search warrants,
7 residential consent searches and any other practical
8 applications. Read constitutional rights and waiver of rights
9 to the group. Ask each person individually if they understand
10 their rights and receive an affirmative response. Either have
11 the person sign this form or put unable be sign if they are
12 unable to sign due to safety issues or right in refuse if they
13 refuse to sign.

14 If this person is to be questioned ask him if they don't
15 mind talking with you. Constitutional rights: You have the
16 right to remain silent. Anything you say can be used against
17 you in court. You have the right to talk to a lawyer for advice
18 before answering any questions. And you have -- and to have
19 your lawyer present during questioning. You have the right to
20 the advise and presence of a lawyer even if you can not afford
21 to hire one. We have no way of appointing you a lawyer but one
22 will be appointed by the Court for you if you wish. If you wish
23 you may answer any questions without the presence of a lawyer
24 and you may stop answering at any time you desire.

25 Acknowledge of rights. I have read or had read to me the

1 statement of my rights shown above. I understand what my rights
2 are and know what I am doing. I know that the person or persons
3 talking with me is or are a police officer or officers and I
4 understand what he or she is talking about."

5 Q And after he signed that form what did you -- you said
6 that other officers searched the house?

7 A Yes, they did.

8 Q And after you all concluded the search warrant at his
9 house what do you remember?

10 A Once the search warrant was concluded at Mr. Keith's
11 residence Mr. Keith and Miss Brandon were then placed in our
12 vehicles and transported back to the Moss Justice Center. Once
13 back at the Moss Justice Center myself and Investigator
14 Harrelson then took Mr. Keith into one of the interview rooms
15 just outside the narcotic's office at the Moss Justice Center
16 and began the interview with Mr. Keith.

17 Q Let me back up real quick. When he was advised of his
18 rights you were in the living room?

19 A Yes, sir.

20 Q And did officers have guns drawn at that time?

21 A No, sir, they did not.

22 Q And did you draw weapons when you first entered the
23 residence?

24 A Yes, there were officers that had drawn their weapon
25 initially on the entry.

1 Going into these situations where there are people who deal
2 drugs and stuff they may or may not be weapons present. We did
3 not have any information that Mr. Keith had any weapons but
4 that's always a potential when you are dealing with people whole
5 deal drugs. I mean, it's just a potential. Therefore officers
6 do everything that they can to insure the safety of themselves
7 and the other officers that are around them.

8 Q And is that typically how you execute a search warrant
9 entering with weapons and with bullet proof vests?

10 A Yes, sir.

11 Q And how would you describe Mr. Keith's demeanor when he
12 was advised of his rights and signed that form?

13 A I think at first startled just because the whole
14 severity of the situation. Officers coming in. I mean, people
15 do get stunned at times. Once this situation was calm down and
16 the search warrant was read to him you could tell that he was
17 calm but he seemed to be agitated by the whole situation.

18 Q Did he appear to you to be sober?

19 A Yes, sir, he did.

20 Q And of course as an officer do you have an opportunity
21 to encounter people who are under the influence of drugs or
22 alcohol?

23 A Oh, yes, sir I do.

24 Q Was there anything to indicate to you that he was under
25 the influence of any substance?

1 A No, sir.

2 Q Was he able to speak to you coherently?

3 A Yes, sir, he was.

4 Q Now, going back to after you all placed him in car and
5 taken him to the Moss Justice Center, where did that interview
6 take place at the Moss Justice Center?

7 A Again, there's an interview room just outside the
8 narcotic's office, just directly beside the narcotic's office at
9 the Moss Justice Center.

10 Q And describe that room for jurors so they have a
11 picture of it?

12 A The room is approximately possibly maybe ten foot by --
13 about a ten by eight room. It has a table in it with four
14 chairs and it has a desk on the back corner that has a computer
15 on it for taking statements and things of that nature and one
16 cabinet in it and clock on the wall.

17 Q And who else was present with you in that room with the
18 defendant?

19 A Investigator Harrelson.

20 Q Did you and Investigator Harrelson interview him at
21 that time?

22 A Yes, sir, we did.

23 Q And who did most of the talking?

24 A Investigator Harrelson.

25 Q And what do you recall Investigator Harrelson asking

1 the defendant and what did he say?

2 A Well, once he we got the defendant in there there was a
3 few things going on. Investigator Harrelson had warrants that
4 had to be served on Mr. Keith from other cases that were
5 involving Mr. Keith and those warrants were getting served at
6 the same time as we were speaking --

7 MS. LIPINSKI: Your Honor, objection as to the
8 other warrant evidence subject to our pretrial.

9 THE COURT: Sustained.

10 Q Disregarding what you just previously stated. What did
11 Investigator Harrelson begin asking him about pertaining to this
12 incident?

13 A Basically he is asking Mr. Keith about the Hydrocodone
14 pills. Where he was getting them from. Why was he selling his
15 prescriptions and stuff. At which point Mr. Keith advised that
16 he was selling his scripts basically to live. To get by. And
17 that's pretty much the gist of that conversation.

18 Q And did he appear to understand what Investigator
19 Harrelson was asking him about with respect to those pills?

20 A Yes, sir, he did.

21 Q Do you recall him saying anything else?

22 A Yes. There were statements in regards to Investigator
23 Harrelson was asking Mr. Keith about certain places that were
24 involving some other incidents and asked him if he was aware of
25 where those places were and what -- what they were. And Mr.

1 Keith advised him he did know where those places were, specific
2 incident places and advised him he knew what they were.

3 Q Did he make any statements with regard to his own
4 personal use?

5 A No, sir, he didn't make any statements in regards to
6 his own personal use. What he did say to Investigator Harrelson
7 and myself at that time was that he, you know, what he did was
8 on him. It was his fault. Nobody elses.

9 Q And did he say anything about where he got those pills;
10 the Hydrocodone pills?

11 A They were prescriptions that he had gotten from a
12 doctor that had been prescribed to him. I do not recall the
13 doctor right off hand.

14 MR. PLEMING: I have no further questions at this
15 time.

16 Please answer any questions Miss Lipinski has for
17 you.

18 CROSS EXAMINATION

19 BY MS. LIPINSKI:

20 Q Lieutenant Ligon, you testified at the beginning you
21 were a supervisor, but this was not kind of your dog and pony
22 show, fair to say?

23 A Yes, ma'am, it was not.

24 Q You were there as kind of back up and assistant because
25 there was search warrant. But this for the most part would have

1 been Investigator Harrelson's case and he's considered what is
2 cause the case agent, correct?

3 A Yes, ma'am. We supervise case agents. I was there
4 merely for safety issue and insure that everything was going as
5 it should be.

6 Q And extra manpower. You guys usually want a certain
7 quota of people involved, correct?

8 A Yes, ma'am, for safety issues we like to have at least
9 five or six officers on a search warrant if not more depending
10 severity or where we're at, the location, the size of the
11 residence. Things of that nature.

12 Q All right. And you stated that part of your role or a
13 lot of your cases deal with confidential informants and some of
14 them are people who call you and leave, you know, there's a lot
15 of traffic at the house down the hill or something like that.
16 But then you have people who actually go and make narcotic
17 transactions for you, correct?

18 A Yes, ma'am.

19 Q And for the most part the people who make narcotic
20 transactions for you you state are are quote, working off
21 charges?

22 A No, ma'am, not for the most part.

23 Q But at least some of them are?

24 A Some do, yes, ma'am.

25 Q Some get paid?

1 A Yes, ma'am.

2 Q And some of them are -- are -- have pending charges,
3 correct?

4 A Yes, ma'am.

5 Q So, and some of them have criminal records and are now
6 trying to make money doing this?

7 A No, ma'am.

8 Q You never worked with a confidential informant who had
9 a criminal record and is being paid to make transactions?

10 A Yes, ma'am, I did. But not based off of -- not all,
11 no, ma'am.

12 Q I said some of them. There are various types?

13 A Yes.

14 Q But you don't get a lot of recruiting out boy scouts,
15 that's fair to say, right?

16 A No, ma'am, we do not.

17 Q So for the most part the people who are involved as
18 confidential informant have some history in the drug trade, fair
19 to say?

20 A Yes, ma'am.

21 Q All right. And by nature of that and the fact that you
22 are asking them to engage in additional drug transactions they
23 require some supervision, correct?

24 A Yes, ma'am.

25 Q Because some of them do have criminal records, right?

1 A Yes, ma'am.

2 Q And some of them will lie to get what they want,
3 correct?

4 A I haven't dealt with any that lied ma'am.

5 Q Okay. But are you aware of some that have not been
6 quote as truthful with you as they should have been?

7 A No, ma'am. Again, we have a confidential informant
8 agreement that clearly states what the guidelines are when they
9 do work with us. Anybody whose not willing to abide by those
10 guidelines does not work for us.

11 Q Right, but they can work up until the point you figure
12 out they are not be truthful, correct?

13 A Yes, ma'am, they could.

14 Q And the agreement itself does it actually require them
15 to be truthful? Is there truthfulness clause?

16 A No, ma'am, there's not.

17 Q All right. And in terms of of supervising these CI's
18 do you subject them to any type of drug testing?

19 A No, ma'am, we do not.

20 Q But one of them is that they basically not engage in
21 any criminal activity which would include possession or
22 consumption of illegal drugs beyond what they are doing for you,
23 correct?

24 A Yes, ma'am.

25 Q And in addition to these C.I.'s when they come in do

1 you ever scroll through their phones to see if they are
2 violating your agreement?

3 A Yes, ma'am, we do. We have full access to search them.
4 At any time we have meetings with them which include their
5 phones, their vehicles, themselves, so yes, ma'am.

6 Q You have access to it, but is it done every time you
7 meet with them?

8 A No, ma'am, it's not.

9 Q And it's possible even if they were engaging in those
10 type things you can delete messages off a phone, right?

11 A Yes, ma'am, anything is possible.

12 Q So they are not under 24 hour surveillance or anything
13 like that, fair to say?

14 A No, ma'am, they're not.

15 Q And when you say, "working off charges", what do you
16 mean by that?

17 A Well, I mean, we have your typical person who we might
18 get with a small bag of marijuana and they would be willing to
19 come in and do search warrant buys for us. It's strictly
20 voluntarily on there part. It's not something that they have to
21 do.

22 Q What you mean though is that if they engage in this
23 work for you they get some consideration beyond financial,
24 correct?

25 A Yes, ma'am, they could.

1 Q So they could have their charges dismissed, correct?

2 A That is option.

3 Q They could receive a lenient sentencing offer or
4 recommendation from the prosecution, correct?

5 A That is an option.

6 Q They could receive as lenient as time served correct?

7 A They could.

8 Q They could receive a reduction in charge, correct?

9 A Yes, ma'am, they could.

10 Q They could have their charges dismissed outright,
11 correct?

12 A They could.

13 Q And there's also this practice you have of hold
14 warrants, correct?

15 A No, ma'am we don't hold warrants.

16 Q You never withheld warrants or not served warrants on
17 the CI?

18 A No, ma'am. If we were going to make charges against
19 somebody we would get the warrants and then charge them and
20 place them in jail. Now there have been instances where people
21 have actually been arrested or brought in for charges but no
22 warrants ever drawn up or served on them at that time.

23 Q All right. Okay, so you are saying that the DEU has
24 never and in particular in this case, never drawn up warrants
25 but never served them on the confidential informant in exchange

1 for him working off these charges?

2 A I have not.

3 Q But it could be possible that other people in your
4 agency do it?

5 A It could be possible, but again, the people in the
6 officers that I supervise do not do that.

7 Q All right. And when you say served on them that would
8 require them to actually be processed, be booked, make bond?

9 A Yes, ma'am.

10 Q But working off those charges while that might not be
11 your particular prevalence if withheld the warrant that means
12 it's never actually served? You never get booked, right? You
13 never post bond?

14 A Again, a warrant would be only issued if we were going
15 to place someone in jail and they would be placed in jail at the
16 time the warrant was issued. We would not arrest somebody and
17 then bring them in and then turn around and type up warrants and
18 then say oh, we're going to let you go if you want to work. If
19 we bring somebody in for possession of marijuana or any charge
20 and we sit down and we speak with them and they are willing to
21 cooperate at that time they are free to go. They go.

22 If at later date we tell them at some point in time there
23 will be warrants issued for these charges and you will have to
24 turn yourself in on those warrants that's what we'll do. But we
25 will not actually at the time that we bring somebody in and they

1 decide that they want to cooperate with us we immediately draw
2 up warrants and hold those warrants.

3 Q Got it. But the charge withholding warrants that
4 practice you are at least familiar with it, correct?

5 A Yes, ma'am, I am familiar with it.

6 Q And what that means is we're not going to served the
7 warrants on you and if you work with us you never get the
8 warrants served on you?

9 A No, ma'am.

10 Q That's what that terms mean. I'm not saying you use
11 it. You are familiar with that term?

12 A What I'm familiar with is if people come in cooperate
13 at some point in time there will be warrants issued for their
14 arrest and they will have to be placed in the Moss Justice
15 Center and be taken in and post bond on those particular
16 charges.

17 Q Just so you could dismiss them?

18 A Ma'am, I don't dismiss warrants and I don't dismiss
19 charges.

20 Q If the agreement is you work with us and then we
21 dismiss your charges what's the point in serving them if that is
22 all that is going to be the deal?

23 A Well, first of all, there's never where you come in
24 work with us we're going to dismiss your charges. You decide
25 you want to come in and work with us as a confidential informant

1 you have three options. One, is a reduction in sentence; two,
2 could be probation; three, could be that your charges do get
3 dismissed, but us as officers those are three options. We can
4 not promise them anything. We can not tell them that these
5 things are going to happen.

6 What they do is they come in and work. Based off their work
7 we then talk with the solicitors and those solicitors will then
8 decide after talking with us what would be the best route to
9 take with any confidential informant that comes in and does
10 work. If they are indeed working off charges. If it's a paid
11 informant they get paid and they go on there way. But as far as
12 confidential informants they have three options that are working
13 off charges. You can get reduction in sentence. You could
14 potentially get probation or you can potentially get your
15 charges dropped. We can't tell them what three things --

16 Q That wasn't my question. I was asking you that
17 practice you are familiar with that exists at least in whatever
18 training you been to even if it's not your particular practice
19 of withholding warrants is, there is a practice where you hold
20 warrants and they are never served if the confidential informant
21 cooperates?

22 A No, ma'am, that's not --

23 Q That's not your practice.

24 A That's not --

25 Q Are you familiar with all of narcotic's investigation?

1 A Yes, it does happen with other agencies, yes, ma'am.

2 Q Thank you. Now you stated that you were there and you
3 went to Mr. Keith's residence. Actually Sherry Brandon lived
4 there as well, correct?

5 A Yes, ma'am.

6 Q You weren't part of any investigation to determine who
7 owned the residence? Who was paying rent? Who had been there
8 the longest? Anything of that nature?

9 A No, ma'am, I was not.

10 Q All right. And you stated that this was kind of in the
11 Hickory Grove area, correct?

12 A Yes, ma'am.

13 Q And you stated that as you approached the residence you
14 were in typical raid gear?

15 A Yes, ma'am.

16 Q That's in bullet proof vest?

17 A Yes, ma'am.

18 Q Helmet?

19 A No, ma'am.

20 Q Badge though clearly displayed or at least writing
21 across the vest that who says who you are?

22 A Yes, ma'am.

23 Q And you stated on this occasion to best of your
24 recollection there were approximately seven officers, correct?

25 A Six.

1 Q And you drove up in three cars?

2 A Yes, ma'am.

3 Q But unmarked cars?

4 A Yes, ma'am.

5 Q It is possible to have marked cars available with you
6 at search warrants, correct?

7 A Yes, ma'am.

8 Q And at times you do?

9 A Yes, ma'am, we do depending on the severity and who we
10 are dealing with and the people involved. Yes, ma'am.

11 Q And the cars of the drug enforcement unit were any of
12 those cars equipped with any type of dashcam?

13 A No, ma'am.

14 Q Were any of the officers equipped with any type of body
15 cam?

16 A No ma'am.

17 Q But the drug enforcement unit does have a litany of
18 audio and video surveillance equipment available to it, correct?

19 A Yes, ma'am.

20 Q Because not only do you do these things where you wire
21 CI's, is that term, but you actually may sit across the street
22 or sit at the end of the street or sit up on a business or what
23 have you and engage in prolonged either video or visual
24 surveillance, correct?

25 A Yes, ma'am.

1 Q And you do have the means by which to record
2 statements?

3 A Yes, ma'am, we do.

4 Q And most of you even walk around with just kind of
5 simple cellphones in this day and age, correct?

6 A Yes, ma'am, we do.

7 Q All right. And so in this case there was a control buy
8 prior to the search warrant?

9 A Yes, ma'am.

10 Q That C.I. had audio and visual equipment, right?

11 A Yes, ma'am.

12 Q It was working to best of your knowledge, correct?

13 A Yes, ma'am.

14 Q It didn't run out of the memory, the battery die or
15 anything to the best of your knowledge during the transaction?

16 A No, ma'am, not that I recall.

17 Q All right. And so when you executed that search
18 warrant it was possible at least or you had available to you the
19 ability to record the execution of that search warrant, correct?

20 A Yes, ma'am.

21 Q But you choose not too?

22 A No, ma'am.

23 Q And that is just your prerogative, correct?

24 A No, ma'am. Again, at that point in time you are
25 looking at time and age where we're constantly evolving. You're

1 constantly looking at the issues with bodycams versus no
2 bodycams and things of that nature. At that point in time we're
3 in transition phase with that. There is no policies and
4 procedures clearly stating whether we do or do not video search
5 warrants. We're still in the process of getting that worked
6 out. Where that's going to fall as far our investigations and
7 who we do it with, who we don't do it with. There can be
8 incidents involved that you can't video and things of that
9 nature. So when you start -- when you put it in that terms we
10 did not have a policy or anything in effect at that point in
11 time with regards to bodycams or recording us going in on the
12 search warrant.

13 Q But to the extent that you do have audio and visual
14 recording equipment available to you --

15 A Yes, ma'am, we do.

16 Q -- to extent there are cars with dashcams available to
17 you to assist you on search warrant it was possible for your
18 agency to record the execution of the search warrant at least in
19 part or in full, yes?

20 A We don't have dashcams, but yes.

21 Q Okay. But you could have had a marked car with a
22 dashcam or had an unmarked car with a dashcam participate in the
23 search warrant that could have recorded it from that perspective,
24 yes?

25 A Yes, but we did not have one there.

1 Q So it was your prerogative not to include a vehicle or
2 equipment to that end, correct?

3 A It was not -- yes, ma'am. Yes, ma'am.

4 Q All right. And so then you state that you go in and
5 Officer Gander, I believe, Mirandized the two suspects; Miss
6 Brandon and Mr. Keith, correct?

7 A Yes, ma'am.

8 Q And that happened together, correct?

9 A Yes, ma'am.

10 Q And Mr. Fleming had you read from State's Exhibit
11 Number One, correct?

12 A Yes, ma'am.

13 Q And you read these instructions at the top those are
14 for officers. Did you read those to them about if they refused
15 to sign mark that?

16 A No, ma'am. They were read their constitutional rights
17 and acknowledgement of rights.

18 Q So just this second paragraph, correct?

19 A The second and third. Yes, the second and third.

20 Q All right. And it begins with you the right to remain
21 silent. Anything you say can be used against you in Court. You
22 have right to talk to a lawyer before answering questions and to
23 have your lawyer present during questioning. You have the right
24 and advice and presence of a lawyer even if you can not afford
25 one. We have no way of appointing you one but one will be

1 appointed by the court if you wish.

2 Doesn't that pretty much say you have a right to a lawyer but
3 we have no way of getting one out here right now?

4 A Yes, ma'am.

5 Q And the significance of that is is to really persuade
6 the defendant from even exercising that right?

7 A No, ma'am.

8 MR. PLEMING: Objection Your Honor.

9 THE COURT: Sustained.

10 Q Well, you're telling them you have no way of getting
11 them one, right?

12 A Yes, ma'am.

13 Q But if they asked for one -- if they thought they could
14 have one and they asked for one you would stop questioning,
15 correct?

16 A Yes, ma'am.

17 Q And you don't tell them if you want a lawyer we'll stop
18 questioning and we will wait until you can get one, correct?

19 A It's clearly stated there in the waiver of rights that
20 we'll be glad to get them one if they want one.

21 Q It then says if you want to stop answering the
22 questions or if you want one the Court will appoint you one. It
23 doesn't say you'll get them one?

24 A Right.

25 Q Right. And there is no court there at Valley Haven

1 Trail, correct?

2 A No, ma'am.

3 Q All right. So at that point what you're telling them
4 while you have a right to a lawyer we can't get you one here now
5 really?

6 A Yes, ma'am. We don't have a way of getting a lawyer
7 out there to them. No, we don't.

8 Q Do you sit there and specifically ask them do you want
9 to wait until we get you an attorney?

10 A No, ma'am, because again during the rights it says you
11 have the right to remain silent. Anything you say can be used
12 against you in court. You have the right to talk to a lawyer
13 for advice before any questioning and to have your lawyer
14 present during the questioning. You have right to the advice
15 from the presence of lawyer even if you can not afford to hire
16 one.

17 We have no way of appointing you a lawyer because we don't.
18 That's not up to us. That's up to them and the court. If they
19 choose to hire a lawyer they can hire one. But if they already
20 have a lawyer or they don't want to speak with us all they have
21 to do is say listen, I want to talk to my attorney or I want to
22 wait for the court to appoint me an attorney before I choose to
23 speak with you. I mean, it's clearly stated there.

24 Q But you could say if you want a lawyer because we have
25 no one appointed here we could wait until we could get one?

1 MR. PLEMING: Objection, Your Honor. Asked and
2 answered.

3 THE COURT: Overruled. Go ahead one more time.

4 Q The form could be written in that way; if you want the
5 presence of a lawyer we can wait until you get to court and then
6 appoint you one?

7 A Yes, it could be.

8 Q It could state that?

9 A It could, but that's not the way it is written.

10 Q All right. And so then at that point there is some
11 small talk with Mr. Keith and Miss Brandon out at the residence.
12 You take them back to the Moss Justice Center for more specific
13 questioning, fair to say?

14 A Yes, ma'am.

15 Q And did you transport Mr. Keith?

16 A I think -- I think so. I'm not one hundred percent at
17 this point on that because we moved people around in vehicles a
18 couple of different times. I do remember him getting back to
19 the Moss Justice Center in one of those three vehicles.

20 Q All right. Someone transported him back?

21 A Yes, ma'am.

22 Q You didn't teleport? You don't have that equipment?

23 A No, ma'am, we don't.

24 Q And so you all come in with raid gear. You take Mr.
25 Keith, Miss Brandon to walk outside. You don't even have to

1 knock. The door is kind of open, right?

2 A Yes, ma'am, the door was open.

3 Q And they kind of meet you at the front door and then
4 kind you go on the porch?

5 A Yes, ma'am.

6 Q And other people are searching the residence, correct?

7 A Yes, ma'am.

8 Q And then you all transport Mrs. Brandon and Mr. Keith
9 back to the Moss Justice Center?

10 A Yes, ma'am.

11 Q They're not transported together, are they?

12 A No, ma'am, they are not.

13 Q They are transported separately?

14 A Yes, ma'am, they are.

15 Q And when you get back there you and Lieutenant -- I'm
16 sorry, Investigator Harrelson then question Mr. Keith, correct?

17 A Yes, ma'am.

18 Q There's two of you there?

19 A Yes, ma'am.

20 Q In part for security, but in part just because there's
21 two of you?

22 A Yes, ma'am.

23 Q But this is Investigator Harrelson's case, correct?

24 A Yes, ma'am.

25 Q And even if you are limited by the equipment that you

1 brought with you at the executions of the search warrant you are
2 now back at the Moss Justice Center, correct?

3 A Yes, ma'am.

4 Q Pretty much your office is within this complex, fair to
5 say?

6 A Yes, ma'am.

7 Q And in addition we didn't have dashcams then or we
8 didn't have that, we have even more equipment back at the
9 office, correct?

10 A Yes, ma'am.

11 Q All right. Because you kind of pick and choose the
12 equipment based on the surveillance that you might do?

13 A Yes, ma'am.

14 Q And you had every opportunity when you spoke to Mr.
15 Keith to record that conversation?

16 A Yes, ma'am, we could have.

17 Q But you choose not to?

18 A Didn't think about it at the time to be honest with
19 you.

20 Q And you stated that you and Investigator Harrelson
21 engaged in this conversation with Mr. Keith and you kind of
22 remember four things he basically told you, right?

23 A Yes, ma'am.

24 Q He kind of knew his way around Rock Hill. You state he
25 told you it was on him. It's his fault or something. Told you

1 that he did have a doctor in Charlotte and that he sold scripts
2 to live?

3 A Yes, ma'am.

4 Q But no one is sitting there writing down exactly word
5 for word verbatim what Mr. Keith is saying?

6 A Actually Investigator Harrelson was taking notes
7 because he was speaking with him.

8 Q Was taking note, right?

9 A Yes.

10 Q But it doesn't say question this, his response that?
11 He was for the most part is taking down the gist of the
12 conversation, correct?

13 A Yes. I wasn't looking at Investigator Harrelson's
14 notes but I know he was writing as Mr. Keith was speaking.

15 Q And did you ever get the opportunity for Mr. Keith to
16 sign a statement containing the statements you claim he made?

17 A No, ma'am.

18 Q But you do have pen and paper there?

19 A Yes, ma'am.

20 Q So it was possible to memorialize all of these things
21 and have him sign it?

22 A Yes, ma'am. It was.

23 Q And a you choose not to?

24 A Didn't ask him.

25 MS. LIPINSKI: Beg the Court's indulgence one

1 moment.

2 That's all, Your Honor. Thank you.

3 MR. PLEMING: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. PLEMING:

6 Q Lieutenant Ligon, back to the topic of confidential
7 informants. Do you automatically stop using a C.I. if they're
8 found in any sort of violation whatsoever with their C.I.
9 agreement?

10 A Yes, we do, and some cases if it was some type of
11 violation of a criminal act we would lock them up. We put them
12 in jail.

13 Q And when you said now, I didn't ask any questions about
14 Sherry Brandon at the scene there, but did you see Miss Brandon
15 at the scene at their house when you executed the search
16 warrant?

17 A Yes, sir, I did.

18 Q And did she say anything at the scene? Don't say what
19 if anything she said, but did she talk to you?

20 A I mean she spoke out on the porch. Again, it was out
21 on the porch with Mr. Keith and again they were out smoking or
22 "vaping" as you would call it, and just basically making small
23 talk in regards to my knowledge and knowing Mr. Keith's son and
24 different things of that nature.

25 MS. LIPINSKI: I will object as to that, Your

1 Honor. Not relevant.

2 THE COURT: Overruled.

3 Q And was Miss Brandon also placed under arrest at the
4 house?

5 A Yes, sir, she was.

6 Q And when you got back to the Moss Justice Center did
7 you talk to her?

8 A No, sir, I didn't.

9 Q Do you know if anybody else did?

10 A Yes, sir, Investigator Harrelson and Investigator
11 Vaughn spoke with her.

12 Q And when you were back at their house did you take part
13 in the actual search of the residence?

14 A No, sir, I didn't.

15 Q When you saw Mr. Keith sign that form did he have an
16 opportunity to read whatever is on the form in State's Exhibit
17 Number One?

18 A Yes, sir, he did.

19 Q And so could he have read the whole thing if he wanted
20 to?

21 A Yes, sir, he could have. In fact they get a copy of
22 the search warrant and all of that stuff especially under Rule 5
23 or at any other time to where he would have received a copy of
24 all that information at the time of the execution of the search
25 warrant or shortly thereafter.

1 Q Did you see him receive a copy of that form at his
2 house?

3 A It actually wasn't given to him at his house. I
4 believe it was placed into his property at the Moss Justice
5 Center after the Return was filled out and then gotten back to
6 him and a return is basically whatever we take from the
7 residence we have to catalog it. Once it is taken into evidence
8 we will also fill out a return form showing everything that we
9 did take from the residence whether it be drugs or money or
10 property or things of that nature is placed on this return form
11 and then all that is actually placed in his property once the
12 Judge had signed it..

13 Q Do you recall any distractions in the house or in the
14 area at the time he was being advised of his rights?

15 A No.

16 Q Was anybody else talking to him or diverting his
17 attention away from that form?

18 A No, sir.

19 Q And what was the length of the interview here at the
20 Moss Justice Center would you say?

21 A Twenty-five to ten minutes. It wasn't very long.

22 Q At the conclusion of that short interview what happened
23 with Mr. Keith?

24 A He was then taken over to the Moss Justice Detention
25 Center again where he waited for us to type up warrants for his

1 charges, any additional charges and things. He was placed there
2 to be held until bond was set.

3 Q Thank you.

4 MR. PLEMING: Nothing further Your Honor.

5 THE COURT: You may step down. We are going to
6 break for lunch. Let me caution the jury at no time
7 are you permitted to talk about the case until and
8 unless you are involved in jury deliberations and that
9 won't be until the end of the trial after all the
10 evidence has been received, I've instructed you on the
11 law and then told you to begin deliberations. So keep
12 in mind during the course of the trial until that time
13 don't talk about the case with anybody including
14 yourself or among yourself. Okay. With that have a
15 good lunch.

16 Please report to the jury room and 2:30 this
17 afternoon. 2:30 this afternoon.

18 (WHEREUPON, the jury leaves the courtroom.)

19 THE COURT: Court is in recess until 2:30. Let me
20 see the lawyers just a minute please.

21 (WHEREUPON, court was in recess for luncheon
22 recess.)

23 THE COURT: All right, ready for the jury.

24 MR. PLEMING: Yes, sir, Your Honor.

25 MS. LIPINSKI: Yes, sir.

1 MR. PLEMING: Before we begin we still need to
2 proffer that testimony from Sherry Brandon. Would you
3 just like to wait until we're about to call her.

4 THE COURT: We will probably not get to her this
5 afternoon.

6 MR. PLEMING: Yes, sir.

7 THE COURT: We will see. Is Mr. Sullivan next?

8 MR. PLEMING: Yes.

9 THE COURT: That's what I thought. All right.
10 Bring the jury in please.

11 (WHEREUPON, the jury enters the courtroom.)

12 THE COURT: The State was in the mist of their
13 presentation so we will continue with that
14 presentation this afternoon.

15 MR. PLEMING: At this time the State calls Brian
16 Sullivan. Bring Mr. Sullivan in.

17 CARL BRIAN SULLIVAN, called as a witness, having
18 been duly sworn by the clerk, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. PLEMING:

22 Q Good afternoon. Will you please state your name?

23 A My name Carl Brian Sullivan.

24 Q Mr. Sullivan where are you from?

25 A I am from Tega Cay, South Carolina.

1 Q And how old are you?

2 A I am 30 years old.

3 Q And how long have you lived in Tega Cay?

4 A For about 17 years.

5 Q Do you have family here?

6 A Yes, sir.

7 Q And where did you live prior to moving to Tega Cay?

8 A I lived in Tampa, Florida.

9 Q Do you know the defendant in this case Denny Keith?

10 A Yes, sir, I do.

11 Q And how did you first meet Mr. Keith?

12 A I met Mr. Keith through a mutual friend. He used my
13 cell phone. The mutual friend left and therefore Denny called
14 my phone to get in touch with the mutual friend. He was not
15 there so I talked to Denny and that's when our relationship
16 began.

17 Q Okay. And what was the nature of your relationship
18 with Mr. Keith at that time?

19 A At that time my relationship basically consisted of
20 buying drugs and me purchasing drugs from Denny.

21 MS,. LIPINSKI: Your Honor, at this time we renew
22 our pretrial objection. I understand the Court's
23 ruling.

24 THE COURT: Overrule the objection.

25 Q And about when was that when you first met Denny?

1 A It was about two years ago.

2 Q Okay. In the time that you knew him has the nature of
3 relationship changed?

4 A Since -- at the time, like through our whole
5 relationship did it ever change?

6 Q Right.

7 A No. We were -- I just -- our nature basically just
8 consisted of me calling him and seeing if I could purchase drugs
9 from him.

10 Q Other than purchasing drugs from him did you ever spend
11 any time with him socially?

12 A A couple of times, yes.

13 Q And did any of those times involve just social
14 reaction? It had nothing to do with drugs?

15 A No. Usually if we did something social it was after
16 the purchase of drugs of some sort. But it was always
17 consisting of some sort of purchasing drugs.

18 Q Describe the type of drug that you purchased from Mr.
19 Keith?

20 A I bought mainly pain pills, anti-anxiety; so Xanax,
21 percocet, Hydrocodone, Dilaudid. All sorts of that type of
22 drugs.

23 Q And you say pain pills. Can you be more specific about
24 what types of pain pills you would buy for him?

25 A Sure. Oxecodone, which is Roxies, Hydrocodone which is

1 like Norco's; Percocets is oxycodone; Dilaudids which is
2 hydromorphone. It could be Suboxone, Subutex and of course
3 Xanax, Klonopin's of the anti-anxiety nature.

4 Q Okay. Did you buy pills from him on April 28, 2016?

5 A Yes, sir, I did.

6 Q What type?

7 A I bought Hydrocodone pills.

8 Q Let's talk about that incident. When you purchased
9 those Hydrocodone from Mr. Keith, did you purchase those drugs
10 on your own volition or were you assisting law enforcement?

11 A I was assisting law enforcement.

12 Q And define in your own words what your role was in
13 assisting law enforcement?

14 A My role was I would meet law enforcement. I would set
15 up a deal and buy. I would call the specific person. Set them
16 up. Asked them if I could purchase drugs from them. Set up a
17 location. Therefore then they would usually put a wire on me,
18 put a video camera and then after a brief talk with law
19 enforcement I would go and meet the individual and purchase
20 drugs.

21 Q And did you have specific title for your role?

22 A Usually I am considered a C.I., confidential informant.

23 Q Okay. And how did you become involved as C.I. in this
24 case?

25 A Before I got into the C.I. I was -- I was -- there was

1 warrants against me for a couple of charges that I had. So
2 therefore when they brought me in they asked if I wanted to
3 become a criminal (sic) informant.

4 Q And how did -- and who was it that asked you if you
5 wanted to be a C.I.?

6 A Officer Harrelson.

7 Q How did he approach you to offer for you to become a
8 C.I.?

9 A He sat me down and we talked about it and he made no
10 promises. However, he said if I become a C.I., a criminal
11 informant that they might could work with me with the charges
12 they had against me.

13 Q And did he ask you for any particular type of
14 information?

15 A No, he just -- I gave him some information. I gave him
16 some names and I said, you know, we will go over it and we'll
17 see how it pans out.

18 Q And what was it in for you? Why did you decide to
19 accept their offer to assist them as C.I.?

20 A Well, I mean obviously I was hoping that, you know, my
21 sentences would be reduced or something of that nature. You
22 know, it's not fun being a C.I.. It's kind of dangerous, so I
23 was hoping I would get something out of it if, you know, they
24 accepted my offer and accepted what I could do for them and the
25 information I was going to give them.

1 Q Okay. And did you -- have you received anything in
2 exchange for your assistance at this point in time?

3 A I -- they told me that they possibly could hold the
4 warrants off of my charges and not charge them and so far they
5 haven't charged me with those warrants.

6 Q Did you as part of your agreement to work as C.I., did
7 you agree to make any certain number of purchases?

8 A No, it was never a quota or anything like that.

9 Q And of the names that you provided to them of people
10 you could purchase from was Mr. Keith one of those?

11 A Yes, sir, he was.

12 Q And how many purchases of pills did you make from the
13 defendant as part of your agreement to assist in this
14 investigation?

15 A I purchased I believe four separate different
16 occasions.

17 Q Okay. And in reference to the date of April 28, 2016
18 when did those other purchases take place?

19 A Repeat the question. I'm sorry.

20 Q How soon before April 28th did you purchase drugs? How
21 many times before April 28th and do you recall the dates of
22 those three other purchases?

23 A I believe the first one started on April 8th. I
24 believe.

25 Q And do you recall where each each one of those

1 purchases took place?

2 A I do recall where they took place.

3 Q And where did each of those other three purchases take
4 place?

5 A The first purchase took place on Sound on Wheels on
6 Anderson Road. The second purchase took place at Home Depot on
7 Cherry Road. The third purchase took place at Mr. Keith's house
8 -- Mr. Keith's house in Hickory Grove, and the forth took place
9 at his house in Hickory Grove.

10 Q And just to be clear within what kind of timeframe, how
11 many weeks or months did all of those four purchases take place?

12 A They -- each one took place within a matter of a week
13 or two.

14 Q Okay. On that first purchase at Sound on Wheels, what
15 did you buy from Mr. Keith?

16 A The first purchase on Sound on Wheels I believe I
17 purchased Suboxone strips.

18 Q And on the second time at Home Depot?

19 A The second time it was ten Dilaudid pills.

20 Q And the third time?

21 A Third time I believe it was Alprazolam which is Xanax.

22 Q And what did you buy from Mr. Keith that last date
23 April 28th?

24 A The last purchase on April 28th was Hydrocodone pills.

25 Q Tell us how you would communicate -- and let me back

1 up. Did you only purchase pills from Mr. Keith or was there
2 anyone else involved?

3 A Usually his wife Sherry was with him.

4 Q And how would you communicate with them to set up these
5 deals?

6 A I would communicate with them over the cell phone, via
7 text or I would call. Usually I would text them first. See
8 where they are at. See if they had anything and from that point
9 on if they did if they could meet I would call them.

10 Q Did they both have cell phones?

11 A Yes, sir, they did.

12 Q Did you have both of their numbers?

13 A Yes, sir, I did.

14 Q Who would you contact to set up these deals?

15 A I would -- usually in my phone if the last person
16 texted me I would text that person back. Either Denny or Sherry
17 but I would usually just text one of them and, you know,
18 whichever. Usually -- some times text both and whoever would
19 text back first that's who I would just talk too.

20 Q Okay. Discuss for us how they would use their cell
21 phones?

22 A They would use their cell phones usually texting back,
23 if they had anything, if they could met. Usually that's how
24 they would use their telephone or they would just call me.

25 Q And did you speak to them on the phone as well as

1 texting them?

2 A Yes, sir, I did.

3 Q And did you ever know Sherry to use Denny's phone?

4 A Yes, they -- they changed phones some times. If say
5 Denny was in the store and I texted she would text back, or if
6 she was in the store he would text her phone.

7 Q And when you would call them -- if you called who would
8 answer when you call each of their phones?

9 A Usually they would -- the respective cell phone of
10 their possession would answer. If I called Denny's phone
11 usually Denny would pick up.

12 Q Did Sherry ever answer Denny's phone?

13 A She did. She did.

14 Q Did Denny ever answer Sherry's phone?

15 A Sometimes, yeah. It happened.

16 Q Okay. And if you sent a text message to one of those
17 two phones was there any way for you to know which of them was
18 responding to you?

19 A Of course, you know, if I would text them. You know, I
20 wouldn't know -- you know -- on the other end who is texting,
21 but so there is no definite possible way to know that. However,
22 usually they would have a signature and that's how I would just
23 know who is texting me back because they would have signature at
24 the bottom.

25 Q Okay. And describe what you mean when you say they had

1 a signature at the bottom?

2 A Well, when you have a cell phone you can add a
3 signature to the bottom. Each time you send a text it can be
4 your own personnel signature. So usually if I would text
5 Denny's phone it would start off Denny and Sherry as a signature
6 and that would correlate to Denny's phone. If it was Sherry's
7 phone it would say Sherry first then Denny would be the
8 signature; Sherry and Denny. And that would correlate her
9 phone. But of course, you know, actually who's texting me I
10 could never possibly know, but that's how I would know which
11 phone number is texting me.

12 Q When you would make these purchases in person who
13 actually would give the pills to you that you are were buying?

14 A It was usually a toss up. Some times Denny. Some
15 times Sherry. Like I said, you know, if one was busy they were
16 interchangeable. So, usually it could just be anybody but
17 mostly -- mostly Denny.

18 Q Was there any time that you bought pills from Sherry
19 and Denny was not present?

20 A Yeah, there could have been times that he wasn't
21 present like in the room or something, but usually they were
22 always together.

23 Q Okay. And with each of these four transactions that
24 occurred weeks before April 28th transaction who did you buy
25 pills from? Which of the two of them gave the pills on each of

1 those dates?

2 A On each of the specific buys?

3 Q Yes?

4 A I believe -- I believe the first -- I believe the first
5 two the one at Sound of Wheels and the Home Depot Denny. I can
6 not recall the third buy. And then on the forth buy they were
7 sitting together.

8 So I believe Sherry counted out the pills and Denny took the
9 money.

10 Q Okay. And did you interact with him on each of the
11 transaction that you can remember on those four?

12 A Yes.

13 Q And when you first gave their names to Investigator
14 Harrelson, did you refer to them by full name or just first
15 name?

16 A I believe I knew there last name so I believe I said
17 Denny Keith and Sherry Keith.

18 Q Okay. Let's talk about the purchase you made in the
19 parking lot of the Home Depot. Walk us through that incident.
20 What do you remember occurring from start to finish?

21 A When I pulled into Home Depot I remember their car was
22 -- they called a mutual friend of ours to get breaks replaced on
23 their car. So, he was doing that. I walked up to -- I walked
24 up to Denny and -- I walked up to the car and Denny walked over
25 to the passenger side and I said ten -- it was I believe ten

1 Dilaudid pills for \$130. So I said ten for 130, right? He
2 acknowledged. So therefore he went into the passenger side door
3 and to the side of the car, I believe got the pills out from
4 where ever he was keeping it in the passenger side car. Gave me
5 the pills which I gave him the money for.

6 Q At this time I am showing defense counsel what has been
7 previously marked as State's Exhibit Number Two. Handing
8 State's Exhibit Number Two up to you at this time. Please take
9 a moment and tell me if you recognize it?

10 A Yes, I do recognize it.

11 Q And what is it?

12 A It's I believe a video of that date and it has my
13 initials and date on it that I wrote.

14 Q Have you seen the video that's contained on that disc
15 before?

16 A Yes, sir, I have.

17 Q And when did you watch it and how to you know it
18 contains the video that you claim you saw?

19 A I watched it last week with law enforcement and they
20 showed me the video of that particular but. That particular
21 buy.

22 Q Is that when you signed and dated it?

23 A Yes, sir, it was.

24 Q And what was the date that you put on that disc?

25 A 4-19-17.

1 Q And the video that you watched that is contained on
2 State's Exhibit Two is that a fair and accurate depiction --
3 well, first of all, what is recorded on that disc? What do you
4 remember viewing?

5 A This was the recording of the Home Depot buy and it has
6 what I described on there is that I acknowledged Denny Keith.
7 We went over to the passenger side, side of the car, he got the
8 pills out, I acknowledged him for 130. I gave him the money he
9 gave me the pills. And that's what is depicted on this video.

10 Q And is that a fair and accurate depiction of that event
11 that you just described in the Home Depot parking lot in April
12 of last year?

13 A Yes, sir, it is.

14 MR. PLEMING: At this time the State moves to
15 introduce State's Exhibit Number Two into evidence.

16 MS. LIPINSKI: Subject to our pretrial
17 objection.

18 THE COURT: It is admitted over objection.

19 (State's Exhibit Two, Video, received in evidence
20 as of this date.)

21 MR. PLEMING: Your Honor, the State would like to
22 publish the video at this time and we just ask the
23 Court's indulgence as we prepare to play the video.

24 THE COURT: Okay.

25 MR. PLEMING: Can you dim the lights for us.

1 (WHEREUPON, the video was played.)

2 Q Mr. Sullivan did you notice -- can you tell us whose
3 cell phone she was holding in that video?

4 A I believe in the very -- I think in the very beginning
5 she was holding Denny's phone.

6 Q And let's talk about that distribution that occurred or
7 the purchase that occurred on April 28, 2016. Where did that
8 take place again?

9 A That took last at Mr. Keith's residence.

10 Q And where is Mr. Keith's residence?

11 A Located in Hickory Grove.

12 Q And prior to that date did you know where they lived?

13 A I did yes, sir.

14 Q And how did you know where they lived?

15 A They directed me to their house times before that to
16 pick them up if they needed a ride to purchase drugs. That sort
17 of thing.

18 Q And about how many times have you been to their house
19 prior to that date?

20 A It was a good amount. Probably at least a dozen or so
21 times.

22 Q And did you ever buy pills from them at their house
23 other than on April 28th?

24 A Yes, sir, I have.

25 Q About how many times did you buy pills there at their

1 house?

2 MS. LIPINSKI: Your Honor, objection. This is
3 speculation.

4 THE COURT: Well, I think he is asking a specific
5 question. Overruled. Go ahead.

6 A I believe --

7 Q If you know and you can estimate?

8 A I can't recall exactly how many times but I have bought
9 from them at their house.

10 Q As for the deal that occurred on April 28th, let's talk
11 about that some more. What was your phone number on that date?

12 A Phone number was area code -5260.

13 Q Is that still your cell phone number today?

14 A Yes, sir, it is.

15 MR. PLEMING: At this time I am showing defense
16 counsel what has been previously marked for
17 identification as State's Exhibit Number Three.

18 I am now showing defense counsel what has been
19 marked as State's Exhibit Number Four for the record.

20 Q Mr. Sullivan at this time -- and don't show that to
21 anyone quite yet. I am handing you what has been marked State's
22 Exhibit Number Three. Take a moment please to flip through the
23 pages of that document and examine it and when you're done let
24 me know if you are familiar with the context of State's Exhibit
25 Three.

1 A Yes, I recognize these.

2 Q Okay. And describe for us what is depicted in that
3 document?

4 MS. LIPINSKI: Your Honor, we renew at this time
5 our pretrial motion.

6 THE COURT: Objection is overruled. Go ahead.

7 A Depicted in this exhibit is I believe Denny's phone. I
8 am texting him. I am texting him if I can purchase drugs from
9 him.

10 Q Okay. And do you recognize the phone that is pictured
11 in each of those photographs?

12 A I do recognize the phone. It is Denny's phone because
13 I can tell by a phone case and their signature I was talking
14 about earlier.

15 Q And what is it about the phone case that help you
16 identify it as Denny's phone?

17 A Each one of their phones had a specific phone case.
18 Green for Denny's phone, pink for Sherry's phone. So this phone
19 has a green case on it and it has the signature with Denny being
20 first on the phone.

21 Q Okay. I am now handing up State's Exhibit Number Four.
22 Please take a moment to look through that just as you did with
23 States Three.

24 A Yes, I recognize that.

25 Q And what color is the phone case depicted in the

1 | photographs contained in State's Exhibit Number Four?

2 | A In this phone -- in the photograph it is pink which
3 | therefore -- and the signature starts with Sherry so therefore
4 | this is Sherry's phone.

5 | Q So when you say the signature starts with Sherry
6 | clarify that for me? What do you mean by that?

7 | A The signature Sherry and Denny, since Sherry's name
8 | first that corresponds with her cell phone and this has the pink
9 | case around it. So that would correlate that it is Sherry's
10 | phone.

11 | Q And all those times that you had met with them in
12 | person did you see Sherry use that phone?

13 | A I did see Sherry use this phone, yes.

14 | Q And did you see Denny use the phone, the green phone,
15 | depicted in State's Exhibit Three?

16 | A Yes, sir, I did.

17 | Q And do you recognize the telephone number associated
18 | with these incoming texts that are depicted in each of those
19 | photographs in State's Three and in States Four?

20 | A Yes, each telephone number from whom they are texting
21 | is my phone number -5260.

22 | Q Drawing your attention first to State's Exhibit Number
23 | Three, have you taken time here in this courtroom to read over
24 | the text messages that are depicted there?

25 | A I did read over the text messages when I looked over

1 first exhibit.

2 Q Do you recall sending and receiving those texts that
3 are depicted in State's Exhibit Number Three on your phone
4 around the time of April 28th?

5 A Yes, sir.

6 Q And did you send the text messages that are depicted as
7 coming from your phone in those pictures?

8 A Yes, sir, I did.

9 Q And with whose phone were you sending those text
10 messages?

11 A I was sending the text message to Mr. Keith.

12 MS. LIPINSKI: Objection to that. He has already
13 testified that he didn't know it was going to Mr.
14 Keith. He just knew to that phone. He said he didn't
15 know who was on the other end of it and responded.

16 THE COURT: Is that an objection?

17 MS. LIPINSKI: Your Honor, I do object because he
18 is speculating. I apologize.

19 THE COURT: Overruled.

20 Q To which phone were you sending those texts?

21 A I was sending the text to Mr. Keith's phone.

22 Q And do the images contained in State's Exhibit Number
23 Three fairly and accurately represent the conversation you
24 recall exchanging with the phone that you believed to be Denny
25 Keith's phone on that date?

1 A Yes, sir, it was.

2 MR. PLEMING: Your Honor, the State moves to
3 introduce State's Exhibit Number Three at this time.

4 THE COURT: It is admitted over objection.

5 (State's Exhibit Three, Photos, received in
6 evidence as of this date.)

7 MR. PLEMING: Thank you, Your Honor.

8 Your Honor, the State is requesting to publish
9 State's Exhibit Number Three at this time.

10 Actually Mr. Sullivan before I get ahead of myself,
11 have you had a chance to review the text messages that
12 were sent and received as depicted in State's Exhibit
13 Number Four which you said was Sherry's phone, that
14 you recognize as her Sherry's phone?

15 A I did. When you handed it to me I did look over the
16 text messages.

17 Q And are those messages -- do those messages fairly and
18 accurately depict the conversation that you sent and received
19 from that phone on April 28th?

20 A Yes, sir, they do.

21 Q And in the days preceding?

22 A Yes, sir, they do.

23 Q And at this time I draw your attention to States --

24 MR. PLEMING: Well, Your Honor, the State is
25 moving to introduce State's Exhibit Number Four at

1 this time.

2 THE COURT: It's admitted over objection.

3 (State's Exhibit Four, Photos, received in evidence
4 as of this date.)

5 MR. PLEMING: Thank you, Your Honor.

6 MS. LIPINSKI: I am sorry, is this three or four?

7 MR. PLEMING: This is three.

8 We are publishing State's Exhibit Number Three at
9 this time.

10 Q Mr. Sullivan, did Mr. Keith have a nickname for you?

11 A Yes, he called me Sully.

12 Q Sully?

13 A Yes, sir.

14 Q And if you would will I turn through each photograph
15 contained in State's Three and I would ask you to just read for
16 us aloud the text message conversation as you recall?

17 A Read his text message and my text message?

18 Q Yes.

19 A I said how much are they? He said 20. I said, Den,
20 what happened to 15? I believe he said 15 went to hell. Yeah,
21 Den, what happened to 15. He said 15 went to hell. So I guess
22 I'll ask to check that though. He said okay.

23 Then I said how many can you get. And if I can get 10 or 20
24 can you do cheaper. And then I said -- I said like 10 for 70 or
25 20 for 150 which is dollars. Yeah, 10 for \$70, 20 for \$150. He

1 said eight each. I said even if I get 20 no price break and
2 then he responded you already got the price break. I said,
3 okay, I got ya. When are you getting them. At that point I
4 said my girl at work until 4:30. I can't do anything until
5 then. I said the same message. He said sup. He said I'm ready
6 Freddy. And he said 38 left. I said hydro-tens, right? In
7 which he replied yes and he said I am in Rock Hill. Tell me
8 something.

9 Q And when you are referring -- you say Hydro, what are
10 you referring to?

11 A Hydro is slang for Hydrocodone pills.

12 Q And when you ten what are you referring to?

13 A Hydrocodone -- Hydro -- when I say Hydro-ten, Hydro is
14 referring to Hydrocodone. Ten is referring to ten milligrams of
15 Hydrocodone in each pill.

16 I then said one minute. Calling my home girl. He said K.
17 And I said hold them all. Can I get all of them for \$300, for
18 300.

19 Q Will you note the date and time depicted in this
20 message when you asked if you could get all of them for 300?

21 A Yes, it is April 28, 2016.

22 Q And what's the time?

23 A The time 5:19 p.m. Which he replies yes, come. And
24 then he said K, laugh out loud. And that's about it. Then he
25 sent a blank text. I said got the money, heading your way.

1 Q Now, you said you recall sending those messages. After
2 you sent -- concluded that text message conversation what do
3 you recall doing that day?

4 A That was the same day that I was helping law
5 enforcement in the investigation and then after this
6 conversation I met with Officer Harrelson and therefore went to
7 Hickory Grove to do the undercover buy.

8 Q And did you contact Officer Harrelson before or after
9 you started sending these messages?

10 A I believe I contacted him during the message because
11 law enforcement instructed me that they wanted -- they wanted to
12 get a good buy from him. A lot of pills. So I would usually
13 text, you know, Mr. Keith randomly to see what he has and if
14 there was, you know, a good amount then I would contact law
15 enforcement and say I can get this.

16 Q If you will at this time note for the jury what the
17 date and time of the first text that you sent that day?

18 A The first text I sent it was April 28, 2016 at 8:12
19 a.m..

20 MR. FLEMING: At this time I am publishing for the
21 jury what has been admitted into evidence as State's
22 Exhibit Number Four.

23 Q I am going to ask you to read through each of these
24 message as well if you will please first tell us the date and
25 time of the the first text that you sent according to your

1 recollection and what's depicted in these photograph?

2 A The first text was sent on April 26, 2016 at I believe
3 at 1:13 p.m.. I am texting Sherry's phone and I am asking her
4 about drugs. So therefore I said anything good around. She
5 says footballs at three fifty a piece. A football is a slang
6 term for Xanax. She says it is forty left. I say are you on
7 Rock Hill. She replies yes.

8 Q While we are on it, why do you refer to them as
9 footballs?

10 A Because the Xanax, the Xanax one milligrams which are
11 slang for footballs they are in football shape. So it looks
12 like little footballs.

13 She replies yes. I believe she ment to say you coming.
14 Then she says are you coming. If you could do seven for 20
15 dollars. She said dude, seven for thirty. Which I replied six
16 for 20. What do you all think? I'm already in Rock 2, which
17 is Rock Hill.. She says how many do you want? I say, six is
18 only three bars. And bars is a slang term for Xanax for two
19 milligrams. They are in little bar shapes. So bars you just
20 call them slang. I said six is only three bars. You're getting
21 almost seven dollars a bar. That's already a good profit. Six
22 -- I said the same thing. Could you do six for 20 and these are
23 are only one milligram. She replies.-- she said where are you
24 at. Heading to your place. Traffic is crazy on 77, Celanese.
25 And after from the short little timeframe I went there and left

1 and then she text me back my wallet is here.

2 Q Now, if you will note the date and time of the last
3 text message that you sent?

4 A The last text message I sent was April 28, 2016 at 6:24
5 p.m..

6 Q Okay. That last text message that you read about your
7 wallet, explain what that was about?

8 A I went over to their house and I left my wallet there
9 and they were texting me back that my wallet is there.

10 Q And so after you had set up that deal for April 28th.
11 Where did you met with Investigator Harrelson?

12 A After I set up the April 28th deal I met with Officer
13 Harrelson first at here, at Moss Justice Center. We went over
14 some details. I received the money to purchase the drugs from.
15 He gave me a wire. We then proceeded to Hickory Grove at a
16 church. We parked at the church and therefore set up all the
17 equipment. Set up the audio, the video and just went a brief
18 quick run through of everything and therefore from the church,
19 Hickory Grove, I proceeded over to Mr. Keith's house.

20 Q And when you got to Mr. Kieth's house, what did you
21 see?

22 A I went to Mr. Keith's house. Sherry and Mr. Denny den
23 was there. I proceeded to go in. We sat down. We did the
24 deal. We did the buy. They gave me the pills. I exchanged the
25 money and then from there on we went outside. We talked for a

1 little bit and then I left.

2 Q Okay. And how many pills did you actually receive
3 there from him?

4 A The -- I was suppose to receive 38, however they kept
5 five for another individual so I received 33 that day.

6 Q What do you mean you kept some for another individual?

7 A They withheld five from the 38 I was suppose to get so
8 I only receive 33.

9 Q And how much did you pay in cash?

10 A I paid \$300 in cash.

11 Q After you -- and who do you give the cash too?

12 A I gave the cash to Denny.

13 Q And who gave you the pills?

14 A Sherry counted out the pills.

15 Q After you had completed that transaction what did the
16 three of you do?

17 A After we completed that transaction we walked out to
18 the porch. We sat down. We talked for a couple of minutes, you
19 know.

20 Q And let me caution you. Please don't get into the
21 context of any conversation that you had with them after the
22 sale?

23 A Yes, sir. We just sat down. We just talked for a
24 little. Talked for a couple of minutes. It wasn't unusual.
25 Just to hang out for a minute. Talk to us. See how we're

1 doing. And therefore I left the residence and met up with
2 officer Harrelson.

3 Q And where did you meet up with Officer Harrelson after
4 the deal was completed?

5 A After the deal was completed I met Officer Harrelson at
6 the church.

7 Q Do you see Denny Keith, the man that you bought -- that
8 you paid the \$300 cash to in this courtroom today?

9 A Yes, sir.

10 Q And can you point him out and describe what he is
11 wearing?

12 A Yes, sir. Mr. Keith is right there. (Indicating) He
13 has a beard with a blue blazer, with a blue button down shirt.

14 MR. PLEMING: Please let the record reflect that
15 Mr. Sullivan has identified the defendant.

16 Q Did you ever in your time with Mr. Keith ever know him
17 to take any pills?

18 A He usually did not take a lot of pills from what I know
19 him. He did every now and then to relax, but he usually did not
20 take pills.

21 Q And what about Sherry?

22 A Sherry was more of the pill taker.

23 Q Okay. Now you said that you were equipped with a
24 camera and wire when that transaction occurred. Have you had a
25 chance to watch the video that you recorded on that camera with

1 that equipment?

2 A The video of April 28th?

3 Q Yes, sir.

4 A Yes, sir, I did.

5 Q And where did you watch that video?

6 A I watched that with law enforcement.

7 Q Where?

8 A At the Rock Hill Police Department.

9 Q Okay. And did that video accurately record the entire
10 transaction between you, Denny and Sherry?

11 A Yes, it did.

12 MR. PLEMING: At this time I am showing what
13 has previously been marked as State's Exhibit Number
14 Five to defense counsel.

15 Q I am now handing it to you Mr. Sullivan. As you did
16 with the previous disc please take a minute to look at it and
17 tell me if you are familiar with it?

18 A Yes, sir, I am familiar with.

19 Q How are you familiar with it?

20 A This is the same disc that I watched with law
21 enforcement. I know this because my initials are on it and the
22 date.

23 Q Okay. And on what date did you watch that video
24 according to what you wrote on the disc?

25 A This video I watched on April 24th.

1 Q Okay. And do you see your initials on that particular
2 disc that you are holding in your hand right now, exhibit number
3 five?

4 A Yes, I do.

5 Q And is the video recorded on State's Exhibit Number
6 Five a fair and accurate depiction of the entire incident that
7 took place between you and Denny in his living room on April 28,
8 2016?

9 A Yes, sir, it is.

10 MR. PLEMING: At this time the State moves State's
11 Exhibit Number Five into evidence and would offer to
12 publish it at this time.

13 Q Actually Mr. Sullivan, before I publish the video let
14 me ask you a couple other questions.

15 THE COURT: Is there any objection to it?

16 MS. LIPINSKI: To the video of the 28th
17 transaction?

18 THE COURT: Yes.

19 MS. LIPINSKI: No.

20 THE COURT: It's admitted.

21 (State's Exhibit Five, Video, received in
22 evidence as of this date.)

23 MR. PLEMING: Thank you, Your Honor.

24 Q As we prepare to publish the video, let me just ask a
25 few questions about your work as a C.I.

1 A Yes, sir.

2 Q At the time you began assisting the DEU did you have a
3 drug problem?

4 A Yes.

5 Q And how would you describe the nature of your drug
6 problem?

7 A I was addicted to opiates, pain killers, so therefore I
8 needed to take them so I would not get sick.

9 Q And do you still struggled with that addiction?

10 A I struggled every day, yes, sir.

11 Q And when you agreed to assist the DEU in this
12 investigation did you sign a confidential informant agreement?

13 A I did, yes, sir.

14 Q What sort of things did you agree to do or not to do
15 while assisting law enforcement with this investigation?

16 A I did agree to refrain from taking substances. I did
17 agree to stay out of trouble. I did agree to a code of conduct
18 so I did sign a couple of things to do and not do.

19 Q And did one of things include not possessing or selling
20 any controlled substance except at the direction of the DEU?

21 A Yes, sir.

22 MR. FLEMING: I am showing defense counsel State's
23 Exhibit Number Six that was previously marked.

24 Q Passing State's Exhibit Number Six up to you at this
25 time. Mr. Sullivan, take a moment to review it.

1 A Yes.

2 Q Okay, do you recognize what is depicted in State's
3 Exhibit Number Six?

4 A I do. This is the agreement I signed to cooperate with
5 law enforcement.

6 Q And do you see your signature at the bottom?

7 A I do.

8 Q Does that document appear to be in the same condition
9 and appearance as it was on the day that you signed it?

10 A Yes, sir, it does.

11 Q Or an exact copy of the agreement that you signed as it
12 appeared when you signed it?

13 A Yes, sir, it is.

14 Q Okay. And what is the date that you signed that
15 agreement?

16 A I signed this on March 15th of 2016.

17 Q Okay. All right. Do you notice any alterations,
18 modifications or deletions to that document?

19 A No, sir, I don't.

20 Q Okay.

21 MR. PLEMING: At this time, Your Honor, the State
22 moves to admit State's Exhibit Number Six into
23 evidence.

24 MS. LIPINSKI: Without objection.

25 THE COURT: Its admitted.

1 (State's Exhibit Six, CI agreement, received in
2 evidence as of this date.)

3 Q Mr. Sullivan, have you complied with the terms of that
4 agreement since you signed it?

5 A I would say not. I did suffer from substance abuse
6 problems that would violent that agreement.

7 Q Did you continue to possess drugs during the time since
8 you signed that agreement?

9 A Yes, sir, I did.

10 Q Did you continue to sell and buy drugs since you signed
11 that agreement?

12 A I did buy. I did buy and sell certain drugs, yes.

13 Q And since this incident to your knowledge have you been
14 involved in any other investigation by law enforcement unrelated
15 to this incident?

16 A A few weeks ago my wife -- me and my wife suffered a
17 premature birth which my son died and as all child deaths the
18 Tega Cay Police Department did come out and do an investigation.
19 As if I'm specifically under investigation I do not know, but
20 they did do an investigation on the child's death.

21 Q And did you -- what did they do as part of that
22 investigation?

23 A They came out and they just searched the house. They
24 searched the bathroom for which the premature birth happened.
25 Collect evidence. And yes, that's what they did.

1 Q Okay. And do you know of any charges forthcoming as a
2 result of that investigation?

3 A I do not know of any charges. Me and my wife have been
4 cooperating completely. This happened I believe on February 1st
5 so no, they haven't. The last time I talked to them was a few
6 weeks ago. Me and my wife went and talked to them and no
7 charges or nothing that we have heard so far.

8 MR. PLEMING: At this time Your Honor we would
9 like to publish the video from the controlled purchase
10 on April 28th, at Mr. Keith's residence.

11 THE COURT: You may.

12 MR. PLEMING: Beg the Court's indulgence for just
13 a moment.

14 Your Honor, it seems we have a computer problem.
15 I don't think it's related to the disc itself. If we
16 can take a quick break to correct it.

17 THE COURT: Okay. I will ask the jury to please
18 go to the jury room. Do not discuss the case. I will
19 bring you back as soon as we figure out the glitch.

20 You can step down. Don't discuss your testimony
21 during the break. We will be at ease.

22 (WHEREUPON, there was a brief recess.)

23 THE COURT: All right. We about read.

24 MR. PLEMING: Yes, sir, Your Honor.

25 THE COURT: Bring the jury in please.

1 (WHEREUPON, the jury enters the courtroom.) (.

2 THE COURT: All right, the jury is present. You
3 may proceed.

4 MR. PLEMING: Thank you, Your Honor. Madame
5 clerk if you would dim the light at this time we will
6 publish State's Exhibit Number Five.

7 (Whereupon, the video was played.)

8 Q Mr. Sullivan, real quick, where is the camera at this
9 point and do you know what is happening right now in the video?

10 A Yes, right now I am leaving the church to go to Mr.
11 Keith's house. The camera is on key chain. It is little key
12 chain that I have so some times I put it in my pocket or it will
13 be hanging from my keys like just looking down on the ground
14 while I am driving.

15 MR. PLEMING: Okay.

16 (Video was continued playing:

17 Q Now Mr. Sullivan, just a couple of quick questions.
18 You said that you had placed the camera in your pocket when you
19 were on the way to the Keith's house. Can you tell us what was
20 going on in the part from the period after you arrived at their
21 house until the point you pulled the camera out of your pocket
22 in the living room?

23 A At the point -- which point again?

24 Q When you arrived at their house what did you observe
25 when you arrived at Keith's house?

1 A I observed I think Denny was watering some flowers and
2 I was just, you know, talking to him. You know, killing a
3 little time talking about his little flower garden he had on the
4 right side of the house. And then Sherry I think was on the
5 front porch. So we just talked for a little while. Basically
6 just mingling, talking before we went inside and did the
7 purchase.

8 Q Okay. And did you pull the camera out of the pocket as
9 soon as you went inside or did you wait?

10 A Soon -- it might have been a little delayed, but right
11 when we go inside I remember that we sat down. It was pretty
12 much right at the beginning.

13 Q Okay. I have no further questions. At this time
14 please answer any questions that Miss Lipinski might have for
15 you.

16 A Yes, sir.

17 MS. LIPINSKI: The Court's indulgence one moment.

18 CROSS EXAMINATION

19 BY MS. LIPINSKI:

20 Q Mr. Sullivan, let's talk first about State's Exhibit
21 Number Six. This is the confidential informant agreement that
22 you signed?

23 A Yes, ma'am.

24 Q And you signed that with Investigator Harrelson?

25 A Yes, ma'am.

1 Q And this agreement is basically your agreement to work
2 for them as an undercover. You said a criminal informant,
3 correct?

4 A Yes, ma'am.

5 Q All right.

6 A Confidential informant.

7 Q Criminal -- I think criminal informant you used, but
8 either way you are basically making undercover buys for them?

9 A Yes, ma'am.

10 Q And you're not doing that to get paid?

11 A No, ma'am.

12 Q You're not doing it out of the goodness of your heart?

13 A No, ma'am.

14 Q You are doing that because at that point prior to this
15 agreement being signed Investigator Harrelson informed you that
16 he had warrants against you?

17 A Yes, ma'am.

18 Q And the agreement was he was going to hold those
19 warrants. Not serve them on you. Not take you to jail. Not
20 make you post bond. And in return you would work as a C.I. for
21 them?

22 A Yes, ma'am. He said no promises. He said they
23 couldn't -- he wouldn't -- he couldn't promise that he could
24 hold the warrants but he said if I worked with him we would see
25 what happens. Yes, ma'am.

1 Q But those warrants to this day have not been served on
2 you?

3 A No, they haven't.

4 Q You have not been processed?

5 A No, ma'am.

6 Q You have not been to jail?

7 A No, ma'am.

8 Q And you've not been required to post bond?

9 A No, ma'am.

10 Q And the first of this is just I will agree to work and
11 kind of I'm not an agent, but you do state that you agree that
12 you won't buy and sell drugs without their supervision or
13 permission?

14 A Yes, ma'am.

15 Q And that you'll will basically refrain from violating
16 the laws of South Carolina, correct?

17 A Yes, ma'am.

18 Q There is nothing in this agreement anywhere is there
19 that says you agree to be truthful with them?

20 A No, ma'am, I believe there isn't.

21 Q And even though you agree not to violate the laws in
22 South Carolina you acknowledge on direct that despite that
23 agreement you continue to buy and sell drugs while working at
24 C.I. for DEU?

25 A Yes, ma'am, I did have a substance abuse problem. Yes,

1 ma'am.

2 Q You had a substance abuse problem you also had a
3 substance abuse selling problem. You also distributed drugs as
4 well, correct?

5 A There was one person at work that needed some not to
6 get sick. So she was one person I sold to, yes, ma'am.

7 Q And that would constitute distribution, correct?

8 A Yes, ma'am.

9 Q All right. And the warrants that he had against you
10 were for two separate incidents, correct?

11 A I don't know which separate incidents. I know there
12 was a couple of warrants out for me.

13 Q Do you know even how many warrants they had?

14 A They had a few.

15 Q And it's possible that they had warrants that
16 represented at least two different dates, correct?

17 A Yes, ma'am, possibly. Yes, ma'am.

18 Q Because prior to meeting Investigator Harrelson you had
19 obviously sold drugs on at least two separate occasions?

20 A Yes, ma'am.

21 Q In fact far more than two separate occasions before you
22 finally got caught, fair to say?

23 A Fair to say. Yes, ma'am.

24 Q And even since agreeing to work as a C.I. and since the
25 arrest of Mr. Keith and Miss Brandon you continued to engage in

1 drug use and drug sales, correct?

2 A Yes, ma'am, I'm not going to lie. Yes, ma'am.

3 Q All right. And so your testimony here today is that on
4 four separate occasions you agreed to be a C.I. for Mr. Keith
5 and Mrs. Brandon, correct?

6 A Yes, ma'am or I believe at times you call them Mr. and
7 Mrs. Keith, is that fair to say.

8 A Yes, ma'am.

9 Q All right. But, for the most part we are talking about
10 Sherry the female, right?

11 A Yes, ma'am.

12 Q And Denny Keith, right?

13 A Yes, ma'am.

14 Q All right. And your testimony is that you believe that
15 your relationship started with Denny Keith through some guy by
16 the name of Clay Humphries, correct?

17 A Yes, ma'am.

18 Q But you never gave a statement to Investigator
19 Harrelson about that, about how you developed this relationship
20 with either one of those? That's not memorialized anywhere is
21 it?

22 A I don't think so, no, ma'am.

23 Q You just kind of gave them a bunch names of people that
24 you routinely bought and sold from in terms of people you might
25 be able to make buys from?

1 A Yes, ma'am. I gave them acquaintances that used and
2 sold drugs.

3 Q And lieutenant -- Investigator Harrelson then directed
4 you to ones they were interested in, correct?

5 A We went down the list and I'd told them what each
6 person could get, what they sell. Yes, ma'am, we went through a
7 couple.

8 Q And even at the initial part of the investigation you
9 also gave him the name of Sherry Brandon, correct?

10 A Yes, ma'am. Yes, ma'am.

11 Q You didn't just say I only by from Dinal Keith and
12 sometimes Sherry happens to be there. You stated that you
13 routinely bought from both of them?

14 A Yes, ma'am.

15 Q In fact the first number you gave them was actually
16 Sherry's number, correct?

17 A I don't recall which number I gave them first.

18 Q And you kind of told them the story about them sharing
19 a phone, right?

20 A They routinely if one phone was broken they would share
21 the phone, yes.

22 Q All right. But what you see on these videos is Sherry
23 actually text from both phones, correct?

24 A Yes.

25 Q And you say that, I don't really know who is on the end

1 of the text message, right? You are going off some automatic
2 signature that is added no matter what, correct?

3 A That's correct. I don't know exactly who is on the
4 other end, no.

5 Q So it is possible that on the end of every one of these
6 text messages is Sherry Brandon, correct?

7 A It could be possible, yes.

8 Q Because you don't have any independent knowledge other
9 than auto signature and phone, correct?

10 A Right, unless I heard their voice, no, I couldn't tell.

11 Q You can't hear their voice in a text message, correct?

12 A No, ma'am.

13 Q But there is nothing about the way I they text? Sherry
14 always texted with emojis and Denny never used emojis. There
15 is nothing like that so specific about the nature of the text
16 messages where you say I definitely knew at that point I was
17 talking to one verses the other?

18 A No.

19 Q Really your testimony is at one point or the other I
20 was either talking to the green phone or the pink phone and
21 somebody was responding, correct?

22 A Correct.

23 Q And you stated that you -- we've seen two videos here
24 today. There was audio and video recording device with all of
25 these transactions, correct?

1 A Yes, ma'am.

2 Q But two of the transactions you've become since aware
3 that the audio and video is just not that clear, correct?

4 A In certain parts when it's in my pocket, yes, ma'am.

5 Q And subsequent to these purchases you would have given
6 statements to Investigator Harrelson, correct?

7 A You mean after everything I would give a statement,
8 yes, ma'am.

9 Q All right. And you stated you started out the first
10 transaction that you recall making with Investigator Harrelson
11 happened at I believe it's called Sound on Wheels?

12 A Yes, ma'am.

13 Q And you stated your originally testimony I believe was
14 that you set that purchase with Denny, correct?

15 A If -- I -- yes.

16 Q But you can't really recall can you?

17 A I can't recall exactly who, but -- yes, ma'am.

18 Q But the statement you gave them would have been closer
19 in proximity and your memory would have been fresher then it is
20 here today?

21 A Yes.

22 Q So, odds are that is probably a more accurate
23 recollection of what you remember happening that day?

24 A Yes, ma'am.

25 Q So is it possible that after the sale of the

1 transaction you stated you actually called Sherry Keith to set
2 up the buy?

3 A Is it possible that I did call Sherry Keith? It could
4 be possible, yes, ma'am.

5 Q Let me show what has been marked as Defendant's Exhibit
6 One for identification and ask you if you recognize this to be
7 the statement you gave subsequent to the Sound on Wheels
8 transaction?

9 A Yes, ma'am, it is.

10 Q And that states that you called Sherry Keith to set up
11 that buy?

12 A Yes, ma'am.

13 Q I may be getting the chronology a little out of order a
14 little bit, but then there is allegedly this Home Depot
15 transaction, correct?

16 A Yes, ma'am.

17 Q And your testimony was previously that you agreed to
18 set up that buy with Denny, correct?

19 A Yes, ma'am.

20 Q And you similarly gave a statement about that
21 transaction subsequent to that purchase, correct?

22 A Yes, ma'am.

23 (WHEREUPON, a document was handed to the witness.)

24 Q Was that your statement subsequent to the Home Depot
25 by?

1 A Yes, ma'am.

2 Q And this one says that you called Sherry to set up the
3 buy, correct?

4 A Yes, ma'am.

5 Q And actually acknowledges Sherry's number as an 803
6 number, correct?

7 A Yes, ma'am.

8 Q And then you stated there is a third purchase which you
9 don't believe is the best video where you went to their house
10 and bought Klonopin, is that correct?

11 A Yes, ma'am. Anti-anxiety pill. It was either Xanax or
12 Klonopin, yes, ma'am.

13 Q And your recollection of that event is that you bought
14 ten from Denny?

15 A From his house?

16 Q What is your recollection of who you purchased from
17 that day?

18 A This is the third purchase right at his house. I can't
19 -- I can't exactly recall who gave me the drugs.

20 Q All right. Is it possible that you purchased from
21 Sherry, and not Denny?

22 A It could be possible, yes, ma'am.

23 Q It's possible that you also had to give Denny a ride to
24 a store that day, do you remember that? Have you ever given him
25 rides to the store?

1 A I have given him rides to the store, yes, ma'am.

2 Q All right. And not just that occasion on multiple
3 occasions?

4 A On multiple occasions, yes, ma'am.

5 Q All right. And then do you remember saying that when
6 you got back -- that you purchased some from Sherry, then when
7 you got back you just purchased I think three from Denny. Do
8 you remember that? Is it possible?

9 A Is it possible, yes, ma'am, it's possibly.

10 Q Let's me show what has been mark for ID and I am not
11 trying to trick you. Is that the statement that you gave
12 subsequent to the -- it says Klonopin. Is that your spelling of
13 Klonopin?

14 A Yes, quite probably it is.

15 Q But you are not typing this statement, correct?

16 A No, ma'am.

17 Q And it mentioned that you go and you make a purchase
18 from Sherry?

19 A Repeat the question again.

20 Q You originally make a buy from Sherry. Then you take
21 Denny to the store and then when you get back you make a
22 purchase from Denny. Is that what that statement reflects?

23 A Yes, ma'am, it does.

24 Q All right. But because you gave Denny a ride to the
25 store according to your testimony he was obviously there

1 initially, correct?

2 A Yes, ma'am.

3 Q But the Sound on Wheels transaction and this earlier
4 house transaction while there should have been audio and video
5 there could have been problems with the equipment, things beyond
6 your control, but you haven't been asked to exhibit those videos
7 at all?

8 A I think we went over the Sound on Wheels one. We went
9 over the Sound of Wheels one but the sound was a little like you
10 say, a little shaky. Yes, ma'am.

11 Q And you stated that you met with law enforcement. You
12 actually met with prosecutors in preparation for your testimony
13 here today?

14 A Yes, ma'am.

15 Q And you stated in the Home Depot transaction that that
16 buy was originally set up with Sherry, correct?

17 A Yes, ma'am, that's what I said.

18 Q But while you get there there are other people milling
19 around and pulling in and out of the parking lot. Do you recall
20 that?

21 A It was depicted on the video, yes, I do.

22 Q There was a guy there working on the car. There is
23 some other woman walking around. There is another car that
24 pulls up?

25 A Yes, ma'am.

1 Q And you see Sherry though at both times working both
2 the phones, correct?

3 A Yes, ma'am.

4 Q And other than Sherry handing him the phone at the end
5 she's on both Denny or the green and pink phone, fair to say?

6 A Yes, ma'am, fair to say.

7 Q And you stated that you live in Tega Cay?

8 A Yes, ma'am.

9 Q And they live in Hickory Grove?

10 A Yes, ma'am.

11 Q So fairly long way for you to drive, correct?

12 A Yes, ma'am.

13 Q So certainly you had other sources that were closer to
14 you?

15 A Yes, ma'am.

16 Q That you could buy and sell from?

17 A Yes, ma'am.

18 Q Which you did do?

19 A No, ma'am.

20 Q You never bought and sold from any other source other
21 than the two of them?

22 A Oh, yes. Yes, ma'am.

23 Q And obviously when they get arrested on April 28th, you
24 stop selling and buying from them and to them, correct?

25 A Yes, ma'am.

1 Q You don't have any relationship with them beyond April
2 28th of last year, correct?

3 A No, ma'am.

4 Q So none of the drugs that you bought and sold from them
5 in any way have to do with the incident involving your child,
6 correct?

7 A No, ma'am.

8 Q But does she even ever met either one of them?

9 A Does who ever met?

10 Q Your girlfriend or the mother of your child or your
11 wife? I don't want to use the term that is inappropriate?

12 A No. No.

13 Q So that was kind of something that developed after
14 this?

15 A Yes, ma'am.

16 Q All right.

17 Q And you stated that you continued to do it because you
18 have a drug problem but you also continued not only to
19 distribute to this friend at work, you actually distributed to
20 your girlfriend, correct?

21 A We were together when we both drugs, yes, ma'am.

22 Q Your pregnant girlfriend?

23 A Yes, ma'am.

24 Q So you knowingly gave your pregnant girlfriend drugs?

25 A I did not want to give her drugs, but she expressed

1 that if she withdrew she would lose the baby. So I continued to
2 allow her to do drugs.

3 Q But you also continued to bring drugs to her, correct?

4 A Yes, ma'am.

5 Q It wasn't just I allowed her. I turned a blind eye or
6 I couldn't stop her. You actually brought drugs into the home
7 that both of you did?

8 A Yes, ma'am.

9 Q After this event?

10 A Yes, ma'am.

11 Q And you stated that while you don't know exactly the
12 status of that investigation they did come to your house,
13 correct?

14 A Yes.

15 Q They conducted a search warrant, correct?

16 A Yes, ma'am.

17 Q Not only of your house but of your phone, correct?

18 A Yes, ma'am.

19 Q And you admit here today that you gave drugs to your
20 pregnant girlfriend, correct?

21 A Yes, ma'am.

22 Q And subsequently to that that baby passed away,
23 correct?

24 A I don't know what the baby passed away of.

25 Q That's what's under investigation, correct?

1 A I don't know what is under investigation.

2 MR. PLEMING: Objection, Your Honor. Asked and
3 answered.

4 THE COURT: Sustained.

5 Q Her doing drugs didn't probably help the baby, did it?

6 MR. PLEMING: Objection, Your Honor.

7 THE COURT: Sustained.

8 Q And in terms of while nothing has been promised you
9 they never even after realizing that you continue to sell and
10 use drugs, they never served those warrants on you, correct?

11 A Correct.

12 Q And you still expect in exchange for your testimony
13 here today that those warrants will never be served on you,
14 correct?

15 A I hope. I don't expect. I hope.

16 Q Even though you violated every aspect of that
17 confidential agreement?

18 A I didn't live up to certain aspects of it, no.

19 Q Two of the big ones, right? I won't engage in criminal
20 behavior and I won't buy and sell drugs without the supervision
21 of the DEU, right?

22 A Right.

23 Q You didn't violate the agency agreement, correct?

24 A Correct.

25 Q You didn't violate this hyper-technical -- it says I

1 understand nobody is going to pay money and I went back and
2 demanded money from them, correct?

3 A Correct.

4 Q And despite all of that, you continued to expect that
5 these warrants will never be served on you, correct?

6 MR. PLEMING: Objection, Your Honor, asked and
7 answered.

8 THE COURT: Sustained.

9 Q And that includes a warrant for distribution of
10 Adderall?

11 A I don't know which drug it was.

12 Q You dealt so many drugs you have no idea which one you
13 got charged with, is that your testimony?

14 A No, ma'am. That's just -- no. I just don't know when
15 you say Adderall, I don't know which specific drug.

16 Q You don't know what specific drugs they have on you.
17 Well, that presumes you would know what drugs you have bought
18 and sold and if you don't know that means that you sold so many
19 drugs you don't even know what warrants Investigator Harrelson
20 is holding against you?

21 A We didn't go over the specific drugs under my warrants.

22 Q But if you had only sold a very specific amount for
23 this one girl at work you would likely be able to identify which
24 drugs that they have warrants on you for?

25 A The warrants were for --

1 Q Pardon?

2 A The warrants -- if that's what the warrants said it was
3 Adderall then it was Adderall, yes, ma'am.

4 Q I didn't ask if that's what the warrant says. Do you
5 know that that's what the warrant is?

6 A I don't know specifically if that's what the warrant
7 is.

8 Q Do you know that they charges against you for
9 distributing within a half mile of a school?

10 A No, I didn't know that was one of the warrants.

11 Q Did they tell you that they had distribution of
12 Hydrocodone?

13 MR. PLEMING: Objection, Your Honor. Asked and
14 answered.

15 MS. LIPINSKI: I haven't asked about that specific
16 drug, Your Honor.

17 THE COURT: Overruled.

18 Q All right. For distribution of Hydrocodone?

19 A Yes, I do know the Hydrocodone.

20 Q So you're not even aware that you have a warrant for
21 distribution of Hydrocodone and one with proximity of a school.
22 Didn't even know that?

23 A I said that I knew there was were several warrants. I
24 didn't know exactly specifically each one it stated.

25 Q Do you even know how much time you're facing?

1 MR. PLEMING: Objection, Your Honor.

2 MS. LIPINSKI: It goes to his bias or prejudice.

3 THE COURT: Overruled. Go ahead.

4 A I do not know. I do not know what each one carries.

5 Q Because they never discussed that with you?

6 A No, ma'am I never asked.

7 Q But no promises have been made and you don't have any
8 expectations. You just have a hope that these warrants aren't
9 even going to show up on your record?

10 A I hope they would just go lenient on me, yes, ma'am.

11 Q Lenient on you. They haven't even served it on you.

12 Lenient presumes they served them on you and they are going to
13 give you a lenient sentence.

14 A If they served me I couldn't be a C.I., so ---

15 Q Well, that's your belief. You're not a narcotic's
16 officer, correct?

17 MR. PLEMING: Objection, Your Honor. She's
18 arguing with this witness at this point.

19 THE COURT: Sustained.

20 Q And you don't know anything and you don't know any
21 whether any warrants are forthcoming as a result of the incident
22 at your house?

23 A No.

24 Q And that was well after -- almost a year after this
25 incident took place at Mr. Keith and Sherry Brandon's home,

1 correct?

2 A Yes, ma'am.

3 MS. LIPINSKI: The Court's indulgence one moment,

4 Your Honor.

5 That's all we have Your Honor.

6 MR. FLEMING: Beg the Court's indulgence for just

7 a moment, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. FLEMING:

10 Q Mr. Sullivan, Miss Lipinski just showed you three
11 exhibits that she marked as Defendant's Exhibit one, two, and
12 three. I will hand them back to you at this time. You said you
13 recognize those statements?

14 A Yes, sir, I do.

15 Q And do you recall signing each of those statements?

16 A Yes, sir, I do.

17 Q Okay. And have you had an opportunity since she handed
18 them up to you to read them each individually in their entirety?

19 A Not in their entirety. I skimmed over each one.

20 Q Well, beginning with Defendant's Exhibit Number One.

21 Will you please read your entire statement that you signed.

22 MS. LIPINSKI: Your Honor, just for the
23 clarification, that exhibit is not in evidence. I
24 don't know if the State wishes to move it into
25 evidence at this point.

1 MR. PLEMING: Your Honor --

2 Q Take a moment please to read through each of those
3 exhibits and tell me if if they appear to be exact copies of the
4 statements that you signed.

5 A Yes, I do recognize these. Yes, sir.

6 Q Okay. And are each of those statements as they appear
7 before you in substantially the same -- are they substantially
8 the same as they were and contain all the same information as
9 when you signed them originally?

10 A Yes, sir.

11 MR. PLEMING: Beg the Court's indulgence.

12 Q Referring you to Defendant's Exhibit Number One. Do
13 you see any modifications, additions or deletions to that
14 statement as compared to the ones -- the original copy that you
15 signed.

16 A No, sir,

17 MR. PLEMING: Your Honor, I guess we will need to
18 mark them as this point as a State's Exhibit.

19 THE COURT: All right, they are Defendant's
20 exhibits for identification, then State's Exhibits for
21 introduction.

22 MR. PLEMING: Thank you, Your Honor. If we can
23 mark Defendants Exhibit Number One as State's Exhibit,
24 for purposes of admission into evidence. Defendant's
25 Exhibit Number One, is also mark as as State's Exhibit

1 Number 25, and the State would move to admit that
2 exhibit into evidence at this time.

3 MS. LIPINSKI: Without objection, Your Honor.

4 THE COURT: It's admitted.

5 (States Exhibit 25, statement, received in evidence
6 as of this date.)

7 Q Mr. Sullivan, drawing your attention to State's Exhibit
8 Number 25, five lines down when you begin reading the sentence
9 where it begins I arrive.

10 A I arrived and found Sharon (sic) and Denny Keith
11 sitting inside their older model white Saturn car. Denny Keith
12 approached me after I got out of the vehicle and asked if I
13 still wanted two Suboxone strips. I told Denny Keith yes and he
14 handed me two Suboxone strips and I handed him \$40. I then
15 placed the two Suboxone strips in my pocket and proceeded to
16 help Sharon and Denny Keith get their vehicle started. I then
17 left and met with Investigator Harrelson who I gave the two
18 Suboxone strips I purchased. Investigator Harrelson then
19 searched me.

20 Q And that's in reference to the incident that occurred
21 at what location?

22 A At the first location on Sound on Wheels.

23 Q Okay.

24 MR. PLEMING: At this time I would like to mark
25 Defendant's Exhibit Number Two as State's Exhibit

1 Number 26.

2 Q I'm handing State's Exhibit Number 26 to you now, Mr.
3 Sullivan. If you'll take a moment to read over that statement.

4 Does that statement appear to be the same as the statement
5 that you signed originally, the original version of that copy?

6 A Yes, sir, it is.

7 MR. PLEMING: The State moves to introduce State's
8 Exhibit Number 26 at this time.

9 MS. LIPINSKI: Without objection.

10 THE COURT: It is admitted.

11 (State's Exhibit 26, Statement received in evidence
12 as of this date.)

13 Q And drawing your attention to four lines down beginning
14 with the word Sherry. Please read that sentence.

15 A Sherry said she had them and to meet them in the Home
16 Depot parking lot. I was searched by Officer Harrelson with no
17 contraband being found. I was given \$130 by Officer Harrelson
18 to buy the pills with. I was given a wire -- excuse me -- and
19 camera to record the deal. I drove over to the Home Depot and
20 met with Denny and Sherry. I handed \$130 to Denny and he handed
21 me ten Dilaudid pills.

22 Q Okay. And that incident occurred on what date?

23 A This incident occurred on --

24 Q Drawing your attention to the first line.

25 A On April 8, 2016.

1 Q Okay.

2 MR. PLEMING: Defendant's Exhibit Number Three has
3 now been marked as State's Exhibit Number 27 for
4 introduction.

5 Q Mr. Sullivan does that statement appear to be the same
6 in every way as the original statement that you signed in
7 reference to that incident at the Keith's home?

8 A Yes, sir, its does.

9 Q And tell us according to your statement on what date
10 that drug deal took place?

11 A This took place on April 22, 2016.

12 Q Okay. And if you will, drawing your attention seven
13 lines down beginning with the word "I went", if you will please
14 read the sentences that follow?

15 A "I went in and met -- I went in and met Keith and he
16 asked me to take him to the store.

17 Q I beg your pardon one moment.

18 MR. PLEMING: The State moves to admit State's
19 Exhibit 27 at this time.

20 MS. LIPINSKI: No objection.

21 THE COURT: It is admitted.

22 (State's Exhibit 27, Statement, received in
23 evidence as of this date.)

24 Q Please continue. I apologize for that.

25 A "I went in and met Keith and he asked me to take him to

1 the store. Before we left I handed Sherry \$40 and Sherry handed
2 me four Klonopin pills. I then took Keith to the store and went
3 back to the house. When we got back Keith said he had three
4 Klonopin pills and would sell them to me for ten dollars. I
5 gave Keith the ten dollars and he handed me three pills. After
6 that I left and met with Officer Harrelson a few blocks away and
7 handed the pills to Officer Harrelson. I then followed Officer
8 Harrelson back to Moss Justice Center. Officer Harrelson
9 searched me with no contraband being found.

10 Q So in each of those three incidents for which you gave
11 those statements did you purchase pills directly from Mr. Keith?

12 A Yes.

13 Q And in each of those incidents did you have contact
14 with Sherry Brandon regarding those transactions before they
15 took place?

16 A Did I have contact with Sherry, yes.

17 Q Did you answer?

18 A Yes. Yes. I did have contact with Sherry.

19 MR. PLEMING: I have no further questions at this
20 time for Mr. Sullivan.

21 MS. LIPINISKI: Nothing further, Your Honor.

22 THE COURT: You may step down.

23 We will recess for the afternoon. Keep in mind
24 the caution I've previously given you. You can't
25 discuss the case with anyone including your fellow

1 jurors. You can't conduct your own research or your
2 own investigation into any issue that might arise.
3 You have to base your decision solely upon what you
4 see and hear during the trial of the case. You can't
5 supplement that knowledge by conducting outside
6 resources or discussing the case with other people.
7 With that caution in mind have a good evening. I got
8 something else scheduled in the morning and so we
9 won't be able to start back in this case until 11
10 o'clock. So please report to your jury room at 11
11 o'clock in the morning.

12 Have a good evening.

13 Miss Russo, Miss Brandon needs to be here at 9:45
14 in the morning.

15 MR. PLEMING: She is in the holding cell.

16 THE COURT: Just be sure she is up here in the
17 morning.

18 MS. RUSSO: Yes, Your Honor.

19 MR. PLEMING: We will make sure as as well.

20 THE COURT: Anything else?

21 MR. PLEMING: Nothing from the State, Your Honor.

22 THE COURT: The court is in recess until ten
23 o'clock in the morning.

24 (Court was in recess until 10:00 April 26, 2017).

25 (Continuation of Trial on April 26, 2017).

1 THE BAILIFF: All rise.

2 THE COURT: All right. Are we ready for the jury.

3 MR. PLEMING: The State is ready Your Honor.

4 MS. LIPINSKI: Prior to calling the jury in I,
5 just need to put a few things on the record.

6 I think this morning we anticipated the proffer of
7 Miss Brandon and we were able to avoid that by in
8 chambers conference during which Mr. Fleming on behalf
9 of the state for the most part summarized what he
10 believed would be Miss Brandon's testimony. Namely,
11 about her relationship with Mr. Keith and kind of how
12 things developed from just I think kind of historical
13 or narrative perceptive and then stated he intended to
14 introduce some text messages and some correlation
15 testimony about some deals that were in the week prior
16 to the transaction in question. I was provided a copy
17 because we received thousands of pages of text
18 messages from the C.I., Miss Brandon and Mr. Keith as
19 it relates to all of this, or phone records, not just
20 text messages. And he kind of condensed them. The
21 defense would put their objection, the text messages I
22 believe they intend to introduce now go beyond the
23 C.I. and now go to other C.I.'s that involve other
24 substances for which the defendant is not on trial.
25 And for that reason we would renew our objection

1 pursuant to Lyle and 404 that go beyond the scope of
2 this. Specifically, into what I believe are text
3 messages referencing the sale of Xanax with additional
4 third parties and/or Roxies which are Oxycodone and
5 Hydrocodone, for which he is on trial today, again
6 delves into the nature whether the prejudicial value
7 of the evidence starts outweighing the probative
8 effect. I think they can accomplish the probative
9 evidence and get to where they are going without going
10 into these other potential customers of other
11 potential drugs and for that reason the defense would
12 renew our objection to anything beyond the transaction
13 at trial. But more specifically this morning in
14 advance of Miss Brandon's testimony make a new
15 objection to those text messages as they relate to
16 drugs that are not the subject for which Mr. Keith is
17 on trial today and don't refer to the C.I. that was
18 involved in this particular case.

19 THE COURT: All right. Mr. Fleming.

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

21 While the text messages don't involve the C.I. in
22 this case they are still evidence of the conspiracy
23 that we have alleged in both Indictments that existed
24 between Mr. Keith and Miss Brandon to sell Hydrocodone
25 and to possess with intent to distribute

1 Buprenorphine. The text messages are all efforts by
2 Mr. Keith and Miss Brandon to find buyers for the
3 drugs they obtained that week. The week just prior to
4 the April 28th incident. The C.I. is just one of
5 those perceptive buyers and the one that ended up
6 buying on behalf of law enforcement. So it is
7 relevant to the conspiracy.

8 As far as the relevance in Lyle, we believe that
9 the probative value for this evidence still remains
10 very high. We expect the credibility of both our
11 witnesses, Mr. Sullivan and Miss Brandon will be
12 strongly challenged and so the need to corroborate
13 their testimony with these text messages remains very
14 high. And we believe that it is not substantially
15 outweighed by any risk of prejudice that may exist by
16 introducing it at this time.

17 THE COURT: All right. Miss Lipinski, I do find
18 that the evidence presented is certainly relevant as
19 to material fact in this case and the element of the
20 offense. And I also find the probative value is not
21 substantially outweighed by the danger of unfair
22 prejudice. So I note your objection, but it will be
23 permitted.

24 Anything else?

25 MR. PLEMING: Nothing from the State.

1 MS. LIPINSKI: Nothing from the defense.

2 THE COURT: Okay, bring the jury in please.

3 (WHEREUPON, the jury enters the courtroom.)

4 THE COURT: Good morning ladies and gentleman. As
5 you know when we recessed yesterday the State was
6 still in the the mist of their presentation and
7 evidence so we will continue with that this morning.

8 Mr. Fleming.

9 MR. PLEMING: Thank you, Your Honor. The State at
10 this time calls Sherry Brandon. Can we please bring
11 Miss Brandon from the holding cell at this time.

12 SHERRY BRANDON, called as a witness, having been
13 duly sworn by the clerk, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. PLEMING

17 Q Good morning. Will you please state your name and
18 introduce yourself to the jury?

19 A I am Sherry Lynn Brandon.

20 Q Miss Brandon, where are you from?

21 A I am originally from Kentucky. I reside in Rock Hill.

22 Q Okay. And how long have you lived in Rock Hill?

23 A Over 45 years.

24 Q Okay. And do you have family here?

25 A Yes.

1 Q And does your family still live here in Rock Hill or in
2 this area?

3 A Yes. I have a mother and two children and a sister and
4 three nephews.

5 Q Okay. And prior to your arrest where were you living?

6 A In hickory Grove.

7 Q And can you give me the exact address?

8 A Valley Haven Trail.

9 Q All right. Who else lived there with you?

10 A Denny Keith.

11 Q Anybody else?

12 A No.

13 Q Tell us how you met Mr. Keith?

14 A A mutual friend called me up and asked me did I want to
15 buy any pain pills and I met them at the store and she
16 introduced me to him. I had known him prior to that from buying
17 pills from him through my ex-boyfriend.

18 Q And when was that that you met him through your friend?

19 A When we started dating?

20 Q The time you just referred to?

21 A The day before Thanksgiving of 2014.

22 Q And what type -- well, did the two of you start dating
23 immediately that week?

24 A Yes. We went out that night.

25 Q Okay. And tell us about that? How did that

1. relationship begin?

2 A Well, we was introduced at the station. He got my
3 phone number and he called me before I even got home and we went
4 out that night, shot some pool and ended up staying together
5 that night.

6 Q Okay. When did you move in with him in Hickory Grove?

7 A Probably -- I think it was like in April or May of
8 2015.

9 Q Okay. And describe -- you said that you bought pills
10 from him. Did you have an addiction to pills?

11 A I did. I was addicted to pain pills.

12 Q And describe that addiction, the nature of it?

13 A I would take them. Any money I had I would buy pain
14 pills. I was working so any money that I did make I would hunt
15 down pain pills to take.

16 Q Okay. And when you moved in with Mr. Kieth did you
17 have a job at that time?

18 A I did. I was working at IHOP.

19 Q And when did you stop working at the IHOP?

20 A I had taken -- I was off for the weekend of
21 Thanksgiving. I was suppose to go back that Monday and I never
22 did return.

23 Q And did the two of you remain together in a
24 relationship up until the day of your arrest on April 28, 2016?

25 A Yes.

1 Q And how would you describe the nature of your
2 relationship with Mr. Kieth during what was roughly a year and a
3 half?

4 A It was fine. We lived together the whole time.

5 Q Was he working during this time?

6 A No, he wasn't.

7 Q And if the two of you weren't working what were you
8 doing to make ends meet?

9 A Selling pills. He also got social security. A check.

10 Q How frequently were you selling pills together?

11 A As often as we could get them. On a daily basis.

12 Q And during that year and a half that you were together
13 how much time were you all spending together?

14 A Every day. All day long.

15 Q If one of you had errands to run would you go with him?

16 A Yes.

17 Q And if you went to the doctor would he go with you?

18 A Yes.

19 Q And how much of this time was spent selling pills would
20 you say?

21 A All day long. Every day as much as we could get we
22 would try and get rid of.

23 Q And can you tell us what type -- were you taking any
24 prescribed medications for yourself at this time?

25 A I had a prescription for Xanax and prescription for

1 Subutex.

2 Q And what would you do with the medication that you were
3 prescribed?

4 A I would take what he would let me take and then we
5 would have to sell the rest.

6 Q What do you mean what he would let you take?

7 A Well, he would give me like -- I got like 120 Subutex
8 he would just give me thirty to take and we would have to sell
9 the others, the rest of them. Same thing with the Xanax.

10 Q Did you have any say into what was sold from your
11 prescriptions and what you kept to take yourself?

12 A No.

13 Q And where were you getting your prescription?

14 A From the doctors.

15 Q Okay. Where would you go to doctor?

16 A In Rock Hill. One was was in Rock Hill and one was in
17 Monroe.

18 Q Okay.

19 A Well actually in Pineville and Monroe, excuse me.

20 Q As you were selling pills together define each of your
21 two roles in that business?

22 A Well, he use to call me his secretary. I would do the
23 text and send text. He would tell me what pills we had to sell,
24 how much, and how many we were going to get rid of and if
25 someone replied and wanted to buy some he would say where to

1 meet them and how much they were going to be.

2 Q And what type of pills were you selling?

3 A Hydrocodone, Xanax, Adderall. Anything we we could
4 get. We would buy from someone else and then resell them.

5 Q Okay. How many people were you selling during this
6 time?

7 A Anywhere from 15. Around 15 or so.

8 Q Did -- when did the two of you start selling pills
9 together after your relationship began?

10 A The first day. He was -- like I said, I met him
11 because I was buying pills from him that day that I met up with
12 him.

13 Q And now you said that he called you his secretary and
14 that you would set him up. Describe in more detail if you can
15 how the two of you would set up these transactions?

16 A Maybe to purchase some someone would call us and say
17 they had a bottle of hydrocodone for sale. We would go purchase
18 them and then we would come back and I would text the people
19 that would normally buy them and tell them how much we had and
20 how much we were selling them for and whenever they would reply
21 back with whoever wanted to buy them he would say -- tell them
22 where we were going to meet them or whatever and we would go
23 meet them and he would get the money and do whatever. Re-invest
24 I guess.

25 Q Whose phone were you using to set these deals up?

1 A Both of them really, usually since mine was in my hand,
2 I would use mine a lot.

3 Q I believe you said that he would set the prices, did
4 you have any impute in what the price of the pills you would
5 sell would be?

6 A No.

7 Q And do you know how he would decide what the cost of
8 each type of pill would be?

9 A No, just going rate I guess.

10 Q Did you ever keep any of the money that you gain from
11 selling these pills?

12 A He kept all the money.

13 Q And would you ever set up a deal without his impute?

14 A No.

15 Q Did you ever sell any pills without him present with
16 you?

17 A No.

18 Q And how would the two of you communicate with one
19 another about the deals that you were setting up?

20 A Just -- he would just tell me what we had, what he was
21 going to get rid of and how much and I would either call or text
22 ore he would call people as well.

23 Q Okay. Did each of you have your own cell phones?

24 A We did.

25 Q And describe those two cell phones for the jury?

1 A They were identical phones. Mine had a pink case
2 around it and his had a green case around it.

3 Q Did he use your cell phone to communicate as well?

4 A He did.

5 Q Did you ever use his cell phone to communicate with
6 your buyers?

7 A Yes.

8 Q And did your buyers have any way to know that you and
9 Denny were sharing these two cell phones?

10 A I'm assuming they did just because you know when we
11 talked to them and once we did meet them. But like mine - mine
12 phone would say Sherry and Denny and his would say Denny and
13 Sherry as far as our signature. But I don't know if anyone
14 actually knew that, but they knew both of our numbers.

15 Q Would you ever speak to any of your perceptive buyers
16 on the phone as opposed to just texting them?

17 A Yeah.

18 Q And when you would receive calls from your buyers did
19 you ever use his phone? Did you ever answer his phone I should
20 say?

21 A He mostly answered his phone.

22 Q Did you ever answer his phone?

23 A I'm sure I did.

24 Q Did he ever answer your phone?

25 A Yes, I know he did.

1 Q Can you estimate in a typical month how much you were
2 selling?

3 MS. LIPINSKI: Your Honor, I object to estimation
4 and relevance. Speculation.

5 THE COURT: Overruled.

6 Q Go ahead.

7 A We were selling daily. If we had them we sold them. I
8 don't know of amount. Just anything we could get we would sell.

9 Q To how many different people were you regularly selling
10 at any given time?

11 MS. LIPINSKI: I object to that evidence as well
12 as being speculation and our 404 objection.

13 THE COURT: Overruled.

14 A Anywhere from five to 15 people.

15 Q Around the date of your arrest April 28, 2016, were you
16 and Denny both receiving prescriptions on that date?

17 A What was the date again?

18 Q April 28th 2016.

19 A Yes.

20 Q And what prescriptions did you have at that time?

21 A I was getting Buprenorphine which is Subutex.

22 Q Okay. And did you continue taking any of those
23 medications as you were prescribed during the time that you were
24 prescribed them?

25 A Yes.

1 Q And did Denny have any prescriptions?

2 A Yes.

3 Q And would you go with him to fill these prescriptions?

4 A Yes.

5 Q And was he taking the medication that he was
6 prescribed?

7 A He might take ten a month and he would sell the rest.

8 Q Okay. And how many would he receive per month?

9 A I believe it was like 120.

10 Q Okay. After you would fill a prescription what would
11 you do with those pills?

12 MS. LIPINSKI: Your Honor, asked and answer. I
13 think we gone over this.

14 MR. FLEMING: I believe I have asked that. I
15 withdraw that.

16 Q Let's now talk about what happened on April 28th and
17 the week leading up to it. Do you remember what you were doing
18 when the police arrived at your house that afternoon?

19 A I believe we were sitting on the porch maybe smoking a
20 cigarette or just coming back in from the porch just sitting
21 around watching TV.

22 Q And tell us what you remember when the police arrived
23 and walk us through what happened?

24 A I just remember them pulling up out in the front in the
25 driveway and coming in the house. They had me and Denny sit out

1 on the front porch as they searched the house. And they went
2 through it and gave us -- read us our rights and brought us in.

3 Q Did you see them pat Denny down before they executed
4 that search warrant?

5 A Yeah.

6 Q Did you see what if anything they found?

7 A Yeah. They found a pill bottle on him which some
8 Subutex in it.

9 Q Did they show you and Denny the warrant they had?

10 A Yeah.

11 Q And did they tell you why they were there?

12 A Yeah.

13 Q What did you do while they searched the house?

14 A Sit on the front porch.

15 Q Did they show you what they found?

16 A Yes.

17 Q And what did they find?

18 A They found some pills on him and then in my pocketbook
19 they found some Subutex.

20 Q And what are Subutex?

21 A Buprenorphine.

22 Q And to whom did those pills belong the ones they found
23 in the purse, your pocketbook?

24 A To me.

25 Q Can you describe what kind of container they were in?

1 Were they in container?

2 A There was some in a little read pill bottle and then I
3 think one or two in another little medicine bottle, or not a
4 bottle but a little container.

5 Q Do you recall on that date April 28th, do you recall
6 when the last time was that you filed one of your Subutex or
7 Suboxone stirps?

8 A I do not. It had to be fairly within that week because
9 we got rid of them pretty quick so we only had a few left.

10 Q Okay. And as for the pills they found in your house
11 and in Denny's pocket, where did you get those pills?

12 A They were prescribed to me.

13 Q And what else, if anything, do you recall did they take
14 when executing that search warrant?

15 A They took some pills they found under the sink in the
16 soap dish.

17 Q Did they take your cell phone?

18 A Yes. Yes.

19 Q Did you see them look at your phone?

20 A Yes.

21 Q And did they tell you what if anything they observed on
22 your phone or on Denny's phone?

23 MS. LIPINSKI: Objection as to hearsay, what they
24 told her was on those phones.

25 THE COURT: Who is it you are referring to?

1 MR. PLEMING: The police officers, but I can
2 modify the question to not call for hearsay.

3 Q Without getting into what they said, did they talk to
4 you about anything they found on the phone?

5 A I don't recall.

6 Q Okay. Did they talk to you before they placed you
7 under arrest?

8 A I don't really recall.

9 Q Do you recall if they advised you of your rights?

10 A Well, yes, they did.

11 Q And having been so closely involved with Mr. Keith are
12 you familiar with his signature and what it looks like?

13 A Yes.

14 Q And did you see him sign a form at your house?

15 A Yes. Yes.

16 Q I'm showing an exhibit that has been marked and entered
17 into evidence as State's Exhibit Number One. Do you recognize
18 the signatures at the bottom of this form?

19 A Yes.

20 Q And who is are they?

21 A Denny's and mine.

22 Q And do you recall signing this form?

23 A Yes.

24 Q And when your rights as indicated on that form were
25 explained to you did you understand them?

1 A Yes.

2 Q Were they explained clearly to you?

3 A Yes.

4 Q Did you have any confusion about them?

5 A No.

6 Q And was Denny present with you when they were advising
7 you and him of your rights?

8 A Yes.

9 Q Do you recall sending out any drug related text message
10 that day or in the week leading up to that day?

11 A Yes.

12 MR. PLEMING: Beg the Court's indulgence just one
13 moment.

14 Q I am showing defense counsel for the record two photos
15 marked as State's Exhibits Number Seven and Number Eight.
16 Handing these two exhibits up to you at this time, Miss Brandon,
17 please take a moment to look at them and tell us if you are
18 familiar with the images depicted in each of those exhibits?

19 A Yes.

20 Q And what are they?

21 A My cell phone and Denny's cell phone.

22 Q Okay. And the exhibit that I handed up first, State's
23 Exhibit Number Seven which cell phone is depicted in that
24 photograph?

25 A This is mine.

1 Q And in State's Exhibit Number Eight which photograph is
2 depicted?

3 A That's Denny's.

4 Q And how are you able to recognize the cell phones
5 depicted in those two?

6 A Well, because the way I-phones are set up and because
7 of the red case -- pink case.

8 Q Are you familiar with the image that is depicted in
9 State's Exhibit Number Seven?

10 A Yes.

11 Q On the telephone?

12 A Yes.

13 Q Okay?

14 Q And what is that?

15 A The picture of Denny.

16 Q Is that the -- do you recognize that particular
17 picture?

18 A Yes.

19 Q And is that the image that was saved as the
20 background of his phone on the date you were arrested last year?

21 A Yes.

22 Q And drawing your attention to State's Exhibit Number
23 Eight do you recognize the photograph that is the background on
24 that phone?

25 A Yes.

1 Q And describe whose phone that is and how you recognize
2 it?

3 A That's Denny's because I can tell because of the green
4 case and the picture the background.

5 Q Do you remember that picture as the one set as the
6 background?

7 A Yes.

8 Q And is that the picture that was set as the background
9 on that day?

10 A Yes.

11 Q And is State's Exhibit Number Seven a fair and accurate
12 depiction of your phone as it would have appeared April 28th of
13 last year?

14 A Yes.

15 Q And is State's Exhibit Number Eight a fair and accurate
16 depiction of Denny's phone as it would have appeared on that
17 date?

18 A Yes.

19 MR. PLEMING: At this time the State moves to
20 introduce State's Exhibit Number Seven and Eight into
21 evidence.

22 MS. LIPINSKI: Without objection.

23 THE COURT: They are admitted.

24 (State's Exhibit Numbers Seven and Eight received
25 in evidence as of this date.)

1 MR. PLEMING: Just a few more questions. I am
2 showing defense counsel what has been marked as
3 State's Exhibits Number Nine at this time.

4 Q I am handing State's Exhibit Number Nine at this time.
5 Please take a moment to examine each of the four photographs
6 that are depicted.

7 Are you familiar with those images?

8 A Yeah.

9 Q Okay. And describe what is contained in there without
10 reading the context of the message, just describe what is
11 depicted?

12 A Sent a text to a girl that buy pills from us asking her
13 did she want any Suboxone strips.

14 Q And can you tell that these texts came from your cell
15 phone?

16 A Yes.

17 Q And are you familiar with the name of the recipient of
18 those texts?

19 A Yes.

20 Q And do you recall sending each of the outgoing texts as
21 depicted in State's Nine?

22 A Yes.

23 Q Is each of the photographs contained in State's Exhibit
24 Nine a fair and accurate depiction of the conversation through
25 text messaging that you had with the phone number listed in your

1 context list that is Chystal New between April 23rd and 27th of
2 last year?

3 A Yes.

4 Q And are each of those photographs as they would have
5 appeared on your phone on April 28th of last year?

6 A Yes.

7 MR. FLEMING: At this time the State moves to
8 introduce State's Exhibit Number Nine.

9 MS. LIPINSKI: Subject to our pretrial objection
10 Your Honor.

11 THE COURT: It's admitted over objection.

12 (State's Exhibit Number Nine, received in
13 evidence as of this date.)

14 MR. FLEMING: I am going to publish to the jury at
15 this time State's Exhibit Number Nine. Can you madame
16 clerk if we can dim the lights to make it easier to
17 read.

18 Q Can you read aloud for us the contexts of these text
19 messages?

20 THE COURT: Do you have an extra copy of that
21 because she can't see it from where she is.

22 THE WITNESS: Yeah, I can't see it that great.

23 MR. FLEMING: Let's do this --

24 THE COURT: Do you have an extra copy of the
25 document so she read?

1 MR. PLEMING: I don't, but instead of publishing I
2 will ask her to read from them.

3 THE COURT: Okay.

4 MR. PLEMING: And the jury will have these later to
5 view on their own if necessary.

6 Q Miss Brandon do you usually wear glasses?

7 A Yeah.

8 Q Can you read those text messages even though you don't
9 have your glasses on?

10 A Yeah.

11 Q Please read aloud the text message depicted in State's
12 Exhibit Number Nine.

13 A I sent Chrystal a text asking her do you want any Sub
14 strips. She replied back, let me ask my dad and I will let you
15 know and after -- I'm not sure what she meant by that last word
16 -- I said K, and then don't mean to rush you but only have two
17 and somebody wants them. I need to know if you want them. She
18 said give her five. And said I'm a sorry girl we got them. I
19 will holler next time.

20 Q And when you said "we" to whom were you referring,
21 when you said "we"?

22 A Me and Denny.

23 Q And did the two of you have different styles of text
24 messaging?

25 A Yeah.

1 Q And are you familiar with the way he would text?

2 A Yeah.

3 Q And does that help you to identify whether the text was
4 sent from you or Denny?

5 A Yes.

6 MR. FLEMING: At this time I am showing defense
7 counsel what has been previously marked as State's
8 Exhibit Number 12.

9 Q I'm handing State's Exhibit Number 12 up to you at this
10 time, Miss Brandon, if you please look over and tell us if you
11 are familiar with the photograph depicted in this exhibit?

12 A Yes.

13 Q And how are you familiar with those images?

14 A Because I recall sending them on my phone.

15 Q And were the text messages sent that are depicted in
16 those images, did they come from your cell phone as well?

17 A Yes.

18 Q And are all the images depicted in State's Exhibit
19 Number 12 text messages on your phone as they would have
20 appeared that day?

21 A Yes.

22 Q And what are the dates of the text messages from the
23 first to the last?

24 A April 28, 2016.

25 Q And do these photographs present a fair and accurate

1 depiction of the text messages you sent between you and this
2 person as they would have appeared on that date?

3 A Yes.

4 MR. FLEMING: At this time the State moves State's
5 Exhibit Number 12 into evidence.

6 MS. LIPINSKI: Subject to our pretrial objection,
7 Your Honor.

8 THE COURT: It is admitted over objection.

9 (State's Exhibit 12, photo, received in evidence as
10 of this date.)

11 Q Actually, hold on to that. At this time go ahead and
12 read aloud the text messages that are depicted in State's
13 Exhibit Number 12?

14 A The text came from Wendy. It says, "Hey girl, do you
15 all got anything going on tomorrow? And we replied, "Only
16 Subutex. Keep trying us." She said, "Okay. Thank you. Do you
17 do you have -- do you think you'll have any by this weekend?
18 I'm flying back out Monday." And I said, "I will try." She
19 said, "Thanks so much."

20 Q You can set that down on the bar there when you are
21 done.

22 MR. FLEMING: Now showing defense counsel what
23 has been marked as State's Exhibit Number 13.

24 Q Showing State's Exhibit Number 13 to you now. Just as
25 you did with the previous exhibits look them over and describe

1 what is depicted on that photograph.

2 A Describe it?

3 Q Yes...

4 A A guy that we some times purchased pills from and he
5 purchased from us as well. He sent a text and said he has two

6 --

7 Q Let me stop you there real quick. Can you tell if the
8 messages depicted in that photograph were sent from your phone?

9 A Yes..

10 Q And is that a fair and accurate depiction of those
11 messages as it would have appear on April 28th last year?

12 A Yes.

13 MR. PLEMING: The State moves exhibit number 13
14 into evidence at this time.

15 MS. LIPINSKI: Subject to our pretrial objection.

16 THE COURT: It is admitted over objection.

17 (State's Exhibit 13, photo, received in evidence as
18 of this date.)

19 Q If you will read aloud those messages at this time.

20 A Travis sent a message and said, "I have Subs tomorrow
21 when I get home. And then he said, "They'll be strips. And
22 said, strips \$20 is what he means. And we said, "We're good."

23 Q And what are strips?

24 A Subutex strips. I mean Suboxone strips, excuse me.

25 Suboxone strips.

1 Q Describe what those are for the jury?

2 A They are to help you -- like if you are addicted to
3 pain pills they help you to get off. They're an opiate blocker
4 I guess is what it's called.

5 MR. PLEMING: Okay. I got four more similar
6 exhibits that I am showing to defense counsel at this
7 time. State's Exhibit Number 14, State's Exhibit
8 Number 15, State's Exhibit Number 16 and State's
9 Exhibit Number 17 all previously marked for
10 identification.

11 Q All right. Miss Brandon, I am passing up what has been
12 marked State's Exhibit 15. If you will please look at those
13 eight photographs and tell us if you are familiar with the
14 contents?

15 A Yes, I am familiar.

16 Q Okay, who is Ash and Travis?

17 A Someone that purchased pills from us.

18 Q And is that how she would stay in your contact list?

19 A It is actually Ashley and Travis.

20 Q And describe the photographs contained in State's
21 Exhibit Number 15?

22 A She's wanting to buy some strips from us and we were on
23 our way to meet her.

24 Q Are the photographs fair and accurate depiction of the
25 text message conversation I had with her on April 28th of last

1 year?

2 A Yes.

3 Q If you will you just read for us the first and last
4 page of those eight pages of messages?

5 A She says, "Okay. Thanks. See you soon I hope?

6 MS. LIPINSKI: Have you moved them into evidence?

7 MR. PLEMING: At this time the State moves State's
8 Exhibit Number 14 into evidence.

9 MS. LIPINSKI: We would renew our 404 objection.

10 THE COURT: It is admitted over objection.

11 (State's Exhibit 14, photo, received in evidence as
12 of this date.)

13 Q If you will read us the first page and the last page
14 contained in State's Exhibit 14.

15 A Okay, she says, "Okay. Thanks. See you soon I hope.
16 Be safe. Love you. Can you do four for ten dollars and Friday
17 I'll give you whole strips. Swear on my life ma." I said,
18 "Can't babe. Got to pay a bill and we're broke. I will come up
19 with the other two." Then she says, "Okay. Come down that
20 road. The old camper top use to be." Said "K. Can you let me
21 get them for four till Friday and I will give you a Sub. Trav
22 just got off. His brother didn't have fifty today. For sure
23 tomorrow."

24 Q Okay. I'm handing up State's Exhibit Number 15. Are
25 those also pictures of your cell phone and text messages sent to

1 and from your cell phone?

2 A Yes.

3 Q What are the dates of those messages?

4 A April 27th and 28, 2016.

5 Q Are those messages fair and accurate depictions of the
6 messages you sent and received as they would have appeared on
7 that date?

8 A Yes.

9 Q On those two dates. And do you recall -- do you recall
10 sending each of those messages?

11 A Yes.

12 Q And if you will tell us --

13 MR. PLEMING: Well, first the State moves State's
14 Exhibit Number 15 into evidence at this time.

15 MS. LIPINSKI: Subject to our 404 objection.

16 THE COURT: It is admitted over objection.

17 (State's Exhibit 15, photo, received in evidence
18 as of this date.)

19 Q Please read aloud the text messages contained in that
20 exhibit?

21 A "What's up. Subutex \$20. She said, "Okay. We want
22 one or two. Where you at?" Says she's on the way home now.
23 She said, "Okay. Can we get them in the morning a.m.? I said,
24 "Yeah, we're in town. We are -- that was the next day. We
25 said, "Okay, we're in town." She said she's at gymnastics. "I

1 can meet you 11:25 somewhere if that's okay."

2 Q I'm handing up State's Exhibit Number 16 now. Is that
3 another text message that is sent from your phone on April 28th
4 of last year?

5 A Yes.

6 Q And who is the recipient of that message?

7 A Whitney.

8 Q And do you recall sending those messages?

9 A Yes.

10 Q Okay. Does the image of your phone and the text
11 messages on your phone a fair and accurate depiction of those
12 messages as they would have appeared last year on that date?

13 A Yes.

14 MR. PLEMING: The State moves State's Exhibit
15 Number 16 into evidence at this time.

16 MS. LIPINSKI: Renew our 404 objection.

17 THE COURT: It is submit over objection.

18 (State Exhibit 16, photo, received in evidence as
19 of this date.)

20 Q Please read those messages aloud to the jury at this
21 time.

22 A We sent Whitney a message. "We have three Subutex
23 pills, \$20 dollars each. Do you want any?" She said, "No
24 thanks."

25 Q I will show you the last set of photographs now marked

1 as State's Exhibit Number 17 and if you will tell us the cell
2 phone that you see depicted in each of those images?

3 A It's Denny's phone.

4 Q And how do you know it's Denny's phone?

5 A Because it's green. It's got the green case on it.

6 Q And let me ask you this. In the time that you are with
7 him did -- you said that some times you use his cell phone and
8 he occasionally he would use yours. Did any other third person
9 ever use his cell phone to text to send messages?

10 A No.

11 Q And you were with him every day during this time you
12 said?

13 A Yes.

14 Q And have you read over these text messages before?

15 A Yes.

16 Q Are you familiar with the contact that is listed as
17 Brandy in those messages?

18 A I can't recall who she is really to be honest.

19 Q Okay. And can you tell from reading through those
20 messages whether those texts were sent by you or by Denny?

21 A It looks like probably me.

22 Q And why does it appear to -- why do those messages
23 appear to have been sent by you?

24 A Because of the spelling. The way I text and the way he
25 texts is different.

1 Q Describe what the difference is between the way you and
2 him text?

3 A He has a problem with spelling correctly. It just
4 looks like my texting the way I would write the text.

5 Q Ok. Are the images contained in State's Exhibit Number
6 17 fair and accurate depictions of how those images would have
7 appeared on Denny's phone on April 28th of last year?

8 A Yes.

9 MR. FLEMING: At this time the State moves State's
10 Exhibit Number 17 into evidence.

11 MS. LIPINSKI: Subject to our 404 objection.

12 THE COURT: It is admitted over objection.

13 (State's Exhibit 17, photo, received in evidence as
14 of this date.)

15 Q And Miss Brandon, if you can just summarize for us --
16 first tell us the dates associated with the messages in State's
17 Exhibit Number 17?

18 A It started on April the 23, 2016 ending on April 28,
19 2016.

20 Q Okay. Go ahead and read through those messages for us
21 at this time?

22 A The first one Brandy says text -- on Denny's phone --
23 it says, "Text me. Not a good connection." Brandy says,
24 "Sorry, he said we can't afford it. He just bought four Subutex
25 earlier so it took all our cash. We prefer the Subutex because

1 the Suboxone make us sick to our stomach." Let's see. "Because
2 of the taste. But we get -- because of the taste, but we get it
3 if we can't get the Subutex. Thanks man, I appreciate you
4 letting me know. Hit me up next time you here something."

5 I say "Okay" and then she said, "Thank you'all. Though if
6 we had more money we would have went ahead and got them.
7 Because it's better than nothing." And we said, "It's fine. We
8 just wanted to give you first chance." She said, "Thank you."
9 We said, "Is it okay for us to come by now?" She said I can get
10 seven or eight tomorrow morning." We said, "Okay." She said,
11 "Thank you." On the 28th we said, "Are you still going to want
12 these eight tomorrow? She said, "Yes, nine a.m." we said,
13 "Okay." She said, "Cool. Thanks. See you tomorrow."

14 Q Thank you. Do you recall what happened on the
15 afternoon of April 28th last year before the police came out to
16 your house?

17 A Yeah.

18 Q Tell us what you remember from that incident?

19 A Brian Sullivan come to the house and purchased 33
20 hydrocodone. I had counted them out for him and Denny got the
21 money and Denny asked him can he take five of the Hydrocodone to
22 someone else and he agreed.

23 Q Okay:

24 A He left. He paid and left.

25 Q And have you seen any video of that incident as it took

1 place?

2 A Yes.

3 Q In your living room?

4 A Yes.

5 Q At this time I would like to show you just a portion of
6 that video. The video has been previously marked and admitted
7 into evidence as State's Exhibit Number Five. Before we play
8 the video can you explain to us the deal that you and Denny had
9 worked out to hold those five pills. Who was he holding those
10 pills for?

11 A I can't recall.

12 MR. PLEMING: Beg the Court's indulgence right now
13 as we try to get the video to work.

14 Your Honor, I think we will have to restart the
15 computer, can we take a five-minutes break.

16 THE COURT: Okay. I'll ask the jury to go to the
17 jury room please. Don't talk about the case. I will
18 bring you back after that break.

19 (WHEREUPON, the jurors leave the jury room.)

20 THE COURT: Okay. Bring the jury in.

21 (WHEREUPON, the jury enters the courtroom.)

22 THE COURT: Okay, you may proceed.

23 MR. PLEMING: Thank you, Your Honor. Madame
24 clerk will you please dim the lights for us please.

25 (WHEREUPON, the video was played.)

1 Q Now Miss Brandon, it may seem obvious but can you
2 identify the individuals depicted in the video we just watched?

3 A Me and Denny.

4 Q And if Denny had seven Suboxone pills on him that day
5 why would he tell Brian to wait until the first of the month?

6 MS. LIPINSKI: Objection as to speculation.

7 THE COURT: Well, if she knows of your own
8 personal knowledge you can testify or if it is
9 something Mr. Kieth told you you can testify to. But
10 you can't speculate about it.

11 A He had them sold.

12 Q Go ahead.

13 A He had them them sold. Promised to someone else.

14 Q Okay. And explain about why were you asking Brian to
15 hold five?

16 A I believe he was asking Denny to -- he was asking Brian
17 to take five to another person is what he was doing.

18 Q And did you have personal information about that
19 decision?

20 A No.

21 Q Okay. Did you -- when you -- describe what you did in
22 that video?

23 A I counted out the pills that he told me how many to
24 count out. I counted them out for him.

25 Q How many did you count out for Brian?

1 A Thirty three and then the other five, thirty eight.

2 Q And what did you do with the five that you counted out
3 separately?

4 A I put -- kept them all together. They were all
5 together I believe.

6 Q Okay. Who made the decision to hold those five for
7 this other person?

8 A Denny.

9 Q Have you been in jail since the day you were arrested
10 on April 28, 2016?

11 A Yes.

12 Q And have you received any -- what were you charged in
13 regard to this case?

14 A Trafficking.

15 Q Okay. And have you received any offers to plead
16 guilty?

17 A No.

18 Q Has anyone offered you anything in order to -- for you
19 to testify here today?

20 A No.

21 Q Has anyone made any promises to you to have you testify
22 here today?

23 A No, sir.

24 Q Why have you chosen to testify?

25 A To tell the truth.

1 Q And do you have any hope of reward for testifying?

2 A I want to go home but, I mean, you know, I haven't been
3 promised anything. Of course I want to leave and go home and
4 get this over with.

5 Q And are you being held in jail right now on the charges
6 related to this incident?

7 A Yes.

8 Q And have you -- are you being held on any charges that
9 have arisen since?

10 A No.

11 Q Describe what is the nature of your relationship with
12 Mr. Kieth since this happened?

13 A We are no longer together.

14 Q And after you were arrested did you are remain in
15 contact with him?

16 A For the first couple of months I had no contact with
17 him but then may be five or six months after we were locked up
18 we started corresponding through mail.

19 Q And how long did that last?

20 A Several months.

21 Q And why did you stop contacting him after those several
22 months?

23 A I just quit writing back because I knew it was over.
24 The relationship was over.

25 Q Did you ever know Denny to take any pills for his own

1 personal use?

2 A Just on occasion.

3 Q And under what circumstances would he -- did you
4 observe him take pills?

5 A Normally like the day that he would get his
6 prescription we might party and drink and he might take a few
7 pills then, but other that not too often.

8 Q Did you ever know him to keep several pills or any
9 other quantity of pills for his own use?

10 A No.

11 Q And did you know him to ever keep pills on him for any
12 other reason?

13 A No, just to sell.

14 MR. PLEMING: I have no further questions at
15 this time. Please answer any questions Miss Lipinski
16 may have for you.

17 CROSS EXAMINATION

18 BY MS. LININSKI:

19 Q You stated that when you met Mr. Kieth you were already
20 an addict, right?

21 A Yes.

22 Q And you were already buying and selling pills to
23 support your habit, correct?

24 A I was buying pills. I wasn't selling them. I was
25 eating them.

1 Q Right. But it's typical of addicts that you get your
2 prescription and you go through it faster then prescribed and
3 then you got to put your hands on some more and somebody else
4 you know who is addict will let you have some of their's until
5 you get your prescription and you all go back and forth sharing
6 pills, correct?

7 A Correct.

8 Q So, you did kind of engage in that pattern of behavior?

9 A Yes.

10 Q All right. And so that wasn't something that Mr. Kieth
11 introduced you to? You came to him with that addiction,
12 correct?

13 A Yes.

14 Q And you were working at that time, had a job, right?

15 A Correct.

16 Q And had a car had a way to get back and forth to work?

17 A Correct.

18 Q And you got family, right?

19 A Yeah.

20 Q And you already had a network of people that you could
21 get pills from, right?

22 A Yes.

23 Q Because you kind of developed these little circles,
24 correct?

25 A Yes.

1 Q And so you already came to him with that, correct?

2 A Yes.

3 Q All right. And so then you state though that you meet
4 him through this girl, right?

5 A Yes.

6 Q And after one night you kind of start dating and then
7 shortly thereafter you moved in together, correct?

8 A Correct.

9 Q But at that point he starts controlling your
10 prescriptions is your testimony?

11 A Yes.

12 Q Okay. But you were already an addict, right?

13 A Yes.

14 Q And you stayed it the entire time?

15 A Yes.

16 Q And continued to use?

17 A Yes.

18 Q And continued to buy and sell to feed your addiction,
19 correct?

20 A Yes.

21 Q All right. So, again that was something you kind of
22 came to him with, correct?

23 A Yes.

24 Q All right. And so let's talk about these text messages
25 that Mr. Fleming has asked you about.

1 MS. LIPINSKI: Court's indulgence one moment.

2 Trying to get them in order a little bit.

3 Q You talked about your phone and his phone and that you
4 would routinely text from both phones, correct?

5 A Correct.

6 Q And you stated sometimes the C.I. testified that there
7 was this auto signature that your phone said Sherry and Denny
8 and his said Denny and Sherry, right?

9 A Right.

10 Q But that was just an indication of what number it was
11 going to not necessarily who they were talking to?

12 A Correct.

13 Q So the fact that it starts out Denny doesn't mean Denny
14 is the one responding to those text messages?

15 A Correct.

16 Q As a matter of fact the odds were he was actually
17 talking to you on Denny's phone?

18 A On Denny's phone he always talked on the phone.

19 Q Well --

20 A Texting -- -

21 Q The odds are if he was texting Denny's phone he was
22 probably texting you?

23 A Not necessarily.

24 Q But you did text frequently from Denny's phone?

25 A I did mostly on my phone, but I did use his phone as

1 well.

2 Q All right. So, showing you State's Exhibit Number Nine
3 on page three it talks about you want any honey, you were
4 talking -- those are the kind of words and phrases that you
5 would use over Denny, right? Spelled correctly. You stated
6 that you had a style that was different.

7 A Yes.

8 Q Right. And this is your phone, right?

9 A Yes.

10 Q All right. So State's Exhibit Number 12 again you say
11 things like hon, and again your phone, more likely you're
12 texting on your phone, right?

13 A Yes.

14 Q State's Exhibit Number 13. It just says we good, but
15 again this is your phone, Sherry and Denny, right?

16 A Yes.

17 Q And nothing indicates that Denny is using your phone to
18 engage in this conversation, right?

19 A Correct.

20 Q Again State's Exhibit Number 14 your phone, correct?

21 A Correct.

22 Q And the person texting you, this Alexis and Travis,
23 she's says swear on my life ma?

24 A Yes.

25 Q She call you ma?

1 A Yes.

2 Q Okay. So again the context of this conversation is
3 that she is talking to you on your phone?

4 A Yes.

5 Q Right?

6 A Yes.

7 Q And again on page four of State's Exhibit Number 14,
8 again you're using the phrase honey, right?

9 A Yes.

10 Q Again, still likely you engaging in this conversation,
11 right?

12 A Yes.

13 Q State's number 15 they are talking to you about they
14 are at gymnastics, right?

15 A Yes.

16 Q And again it appears to be a conversation they are
17 having with you, correct?

18 A Yes.

19 Q But you quote them a drug and a price, right?

20 A Yes.

21 Q And you tell them where to meet right behind Burger
22 King on Celanese?

23 A Because Denny told me where to tell them to meet.

24 Q I didn't ask you that question. You texted that
25 information to the buyer, correct?

1 A Probably, yes.

2 Q Now, they admitted State's Exhibit Number 17 reporting
3 to be from Denny's phone, right?

4 A Yes.

5 Q So this is your part of the text message or is this --

6 A The yellow is what I texted.

7 Q All right.

8 A Or he texted one of us.

9 Q But properly spelled the word connection?

10 A Yes.

11 Q All right. Talk about we just want it, right? And it
12 says to give you first chance, right?

13 A Yes.

14 Q Talk about us. Again the phrasing appears to be
15 something where you were talking, right, "we" because Denny
16 would just be like, "I" -- I just wanted to give you first
17 chance, right?

18 A Yes.

19 Q And even after all this you stated that you continued
20 to write him, right?

21 A Yes.

22 Q While you are in jail any number of letters and
23 correspondence, correct?

24 A Yes.

25 Q Continuing to profess your love to him?

1 A Yes.

2 Q Planning your life with him, correct?

3 A Yes.

4 Q Talk about when you two get out you wanted to get back
5 together with him, correct?

6 A Yes.

7 Q Talked about how you wanted to move away with him,
8 correct?

9 A Yes.

10 Q Talked about how you were done with pills, correct?

11 A Yes.

12 Q Talk about how you wanted to get his initials tattooed
13 on you or something like that at one point?

14 A If that's what's on the letters.

15 Q Is that something you dispute saying?

16 A I do -- I do have his initials on me.

17 Q All right. And so, there was -- it wasn't just you
18 were his secretary? There was a lot to this relationship,
19 correct?

20 A Yes. There was a lot to the relationship, yes.

21 Q You stated that on the day in question they found --
22 you know, they found seven Buprenorphine or what you call them
23 Subs, correct? Kind of street lingo for them, right?

24 A Yes.

25 Q And they found those on Denny, right?

1 A Yes.

2 Q But they found seven in your purse or on the table near
3 your purse, correct?

4 A Correct.

5 Q And the seven that were on Denny were in a little pill
6 container, right?

7 A Yes.

8 Q Do you know where they were found or the condition they
9 were found in?

10 A They were in this packet in the container.

11 Q Attached to a key ring, do you recall that?

12 A I believe so.

13 Q All right. And the ones in your purse were in a very
14 similar container, a red one though, right?

15 A Yes.

16 Q And those were just loose in your purse, correct?

17 A In the container.

18 Q Well, the container was in your purse, right?

19 A Yes.

20 Q You had other things in your purse so the pills don't
21 float around all in the bottom and get lost and ground up you
22 had put them in some little container?

23 A Yes.

24 A All right. But the exact you have like seven, seven
25 and a half on you in your purse?

1 A That's for my personal use.

2 Q And you stated that while nothing has been promised to
3 you you were charged with trafficking second, right?

4 A First, yes.

5 Q You have a lawyer?

6 A Yes.

7 Q She's advised you what that carries?

8 A Yes.

9 Q That isn't time served and go home kind of sentence is
10 it?

11 A No.

12 Q And she's talked to you that you have been charged with
13 multiple incidences, correct? You didn't just get charged for
14 April 28th incident did you?

15 A Yes.

16 Q Okay.

17 A First, yes.

18 Q They didn't charge you for any of the other buys?

19 A Yes.

20 Q Okay. So for the other buys you could get consecutive
21 time, correct?

22 A I'm not familiar. I'm not sure exactly what you are
23 saying.

24 Q They discussed that with you, right?

25 A I just know what my charges are.

1 Q Well, have they gone over with you the potential
2 sentences?

3 A Yeah.

4 Q And --

5 A They're not trafficking.

6 Q Concurrent versus consecutive time?

7 A What about it?

8 Q Have they explained that to you or has no one ever had
9 that conversation with you?

10 A I know what it means, yes.

11 Q And you met with the prosecution prior to this,
12 correct?

13 A Yeah.

14 Q You met with Investigator Harrelson the night of the
15 arrest, correct?

16 A Yes.

17 Q And your hope is by testifying here today you go home?

18 A Of course.

19 Q All right. But you understand you are facing a
20 significant amount of time?

21 A Yes, I do.

22 Q How much time do you think you are facing on these
23 charges?

24 A I really don't know.

25 Q You don't know?

1 A Twenty years. Up to 20 years.

2 Q Up to 20 years?

3 Q It could be more than than actually, couldn't it?

4 A I'm sure.

5 Q And there are mandatory minimums involved on your
6 charges, correct?

7 A Yes.

8 MR. PLEMING: Objection Your Honor.

9 THE COURT: Overruled.

10 Q But you think that all goes away, right?

11 A I didn't say it goes away.

12 Q You said you are expecting time served?

13 A No, I didn't. I said I would like to go home.

14 Q Well, the only way you go home is time served?

15 A Well, I can hope to go home.

16 Q Right. But no one has told you that's not an option,
17 have they?

18 A They haven't told me anything.

19 Q But they didn't tell you that's off the table?

20 MR. PLEMING: Objection Your Honor. Asked and
21 answered this whole line.

22 THE COURT: Sustained.

23 Q Has the prosecution told you -- you sit there and say
24 nothing has been promised to you but also nothing has been
25 denied to you?

1 MR. PLEMING: Objection Your Honor. Asked and
2 answered.

3 MS. LIPINSKI: It's a different question.

4 THE COURT: Go ahead. Overruled.

5 Q Nothing has been denied to you, correct? They didn't
6 tell you time served wasn't an option, correct?

7 A No.

8 Q They didn't tell you dismissal of all your charges
9 wasn't an option, correct?

10 A No.

11 Q And in the video it kind of starts weird, but you had
12 an opportunity to review it other than just a snippet they
13 showed you today, correct?

14 A Yes.

15 Q As a matter of fact you met with them right on at least
16 once or multiple occasions, correct?

17 A Yes.

18 Q How many times have you met with them?

19 A Twice.

20 Q They would have reviewed that evidence with you,
21 correct?

22 A Yes.

23 Q You have an attorney, Miss Russo, in the courtroom,
24 correct?

25 A Yes.

1 Q You would have had opportunity to review evidence with
2 her as well, correct?

3 A Yes.

4 Q It starts off you're the one that goes and gets the
5 pills and starts counting them, correct?

6 A Yes.

7 Q It's not like Denny comes over and hands you the pills
8 and tells you to count them. When the video picks up it's
9 showing you already got five or ten laid out there and then you
10 continue to count the rest, right?

11 A Yes.

12 Q And Denny is actually kind of standing up and then
13 comes over eventually and sits down next to you, correct?

14 A Yes.

15 Q And so you're coming in here and saying you're his
16 secretary basically. You think everything is going away?

17 A No, I don't think that.

18 Q But you're hoping?

19 A Of course.

20 Q And no one has told you not to hope for that?

21 A I mean I can hope for whatever I hope for I think. It
22 doesn't mean it's going to happen.

23 Q Nobody has told you it's not going to happen.

24 MS. LIPINSKI: Court's indulgence one moment Your
25 Honor.

1 Let me look at one more photo. I apologize Your
2 Honor.

3 Q State's Exhibit Number 17, which purports to be Denny's
4 phone. The second page actually says Sherry have a good night.

5 A Yeah, but it's you can see where the Denny is not
6 there.

7 Q Right, but Sherry have a good night, and that's the
8 text above it.

9 MS. LIPINSKI: Nothing further.

10 MR. FLEMING: Briefly Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. FLEMING:

13 Q Miss Brandon, Miss Lipinski just asked you about a
14 number of different options of how your case can be resolved,
15 right?

16 A Yes.

17 Q Is probation an option as far as you know?

18 A As far as I know, yes. I mean anything is an option as
19 far as I know.

20 Q Is dismissal of the charges to you an option?

21 A To me it would be a wonderful.

22 Q Is prison time an option?

23 A I'm sure it is.

24 Q As far as you know?

25 A Yes, as far as I know it is an option.

1 Q And she said -- she asked you if you had met with the
2 prosecution prior to your trial?

3 A Uh-huh. Yes.

4 Q And did you ever meet with the prosecution to discuss
5 any plea offers?

6 A No.

7 Q What was the purpose of you meeting with the
8 prosecution, with law enforcement officers prior to this trial?

9 A Just to answer questions pertaining to this case, to
10 this trial.

11 Q And did you watch the video at that time?

12 A Yes to watch the video.

13 MR. PLEMING: Nothing further thank you.

14 THE COURT: You may step down.

15 (Witness excused).

16 MR. PLEMING: At this time Your Honor the State
17 calls Leland Harrelson to the stand.

18 LELAND HARRELSON, called as a witness, having been
19 duly sworn by the clerk, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. PLEMING:

23 Q Good afternoon. Will you please state your name and
24 occupation?

25 A My name is Hugh Leland Harrelson, Jr. I am employed by

1 the City of Rock Hill as police officer and I'm currently
2 assigned to the York County Multi-jurisdictional Drug
3 Enforcement unit as investigator.

4 Q And Investigator Harrelson how long have you been in
5 law enforcement?

6 A I have been in law enforcement for nine years and I
7 have been assigned to the narcotic unit for the past seven.

8 Q And have you always worked here in York County?

9 A I have yes.

10 Q Are you from here originally?

11 A Yes, I am born and raised in Rock Hill.

12 Q And explain what your current duties are with the York
13 County Multi-Jurisdictional Drug Enforcement Unit?

14 A As an investigator I'm probably one of 18. We go out
15 and work different drug cases inside York County. I do a lot of
16 different things. I work with confidential informants. I go out
17 and participate in surveillance operations. If somebody is
18 selling drugs at a particular house we go and just do knock and
19 talks where we go knock on the door if we have information
20 somebody is selling drugs and just speak with them about.

21 Q And you mention you work with C.I.'s. how often do you
22 do?

23 A That's probably a good eighty percent is what we do is
24 working work CI's. One of the biggest reasons we do that, York
25 County, Rock Hill is relatively small and I grew up here and

1 it's very difficult for us as police officers to go out and
2 purchase drugs. So we do have to get it to have people do it on
3 on our behalf.

4 Q And do you know how many on C.I.'s you had the
5 opportunity to work with over the years?

6 A It's probably been hundreds of C.I.'s.

7 Q And were you involved in the investigation of Denny
8 Kieth that took place in March and April of last year?

9 A Yes, I was.

10 Q And what was the nature of your involvement in that
11 investigation?

12 A I was the case agent involved in the case. Kind of the
13 lead investigator. You know, I started it up by talking with
14 the confidential Informant, Mr. Sullivan, and we kind of took it
15 from there.

16 Q And did you take notes throughout your investigation?

17 A Yes, I did.

18 Q And did you type a summary of that investigation?

19 A For this particular one?

20 Q Yes.

21 A Yes, I did.

22 Q Okay. And would it assist you to use that summary,
23 your notes in your to report to refresh your recollection in
24 testifying today?

25 A Yes, have it right here.

1 Q How did Brian Sullivan --

2 MS. LIPINSKI: Can we approach just briefly.

3 THE COURT: Okay.

4 (WHEREUPON, an off-the-record discussion was held.)

5 Q Investigator Harrelson, how did Brian Sullivan become
6 involved in that investigation?

7 A How did he become involved in this particular
8 investigation?

9 Q Yes.

10 A I met with Mr. Sullivan and asked him who we can buy
11 drugs from and Denny Kieth and Sherry Brandon were two of the
12 names that he gave me.

13 Q And did you know Mr. Sullivan prior to his involvement
14 in this case?

15 A Yes. I had arrested Mr. Sullivan on some other prior
16 distribution charges that I had against him.

17 Q Talk to us about the agreement that you made with Mr.
18 Sullivan in order to get him to assist you in this
19 investigation?

20 A We have a standard agreement. We can't promise them
21 anything. We do have an agreement, kind of rules. There is
22 nine of them that we ask them to go by. One of course is not to
23 use, possess or sell any drugs unless under our direct
24 supervision. Another one stating they're not an employee of the
25 drug enforcement unit. They are cooperating with us. Another

1 was is they are volunteering to do it. They have an option.
2 They do not have to do this. We are not forcing them to come in
3 and purchase drugs on our behalf.

4 Q And what exactly were you asking him to do as it
5 pertains to the investigation of Mr. Kieth?

6 A To go out and purchase drugs on our behalf.

7 Q And how did you receive information that he would be
8 able to do that from Mr. Kieth?

9 A Brian and I would talk on the phone.

10 Q And did he give you Mr. Keith's name?

11 A He did yes.

12 Q And walk us through the process that you went through.
13 Well, let me back up.

14 How many times did he purchase drugs from Mr. Kieth on your
15 behalf?

16 A Four times.

17 Q Walk us through the process that you went through on
18 each of those incidents in which you sent Brian to buy drugs
19 from Mr. Kieth and Miss Brandon?

20 A Yes. We will touch base through the week or through
21 the day and kind of set up a day and time tentatively where we
22 we will go out and purchase some drugs. Usually that day we
23 kind of confirm everything. I tell him where to meet us, which
24 office. We have three offices in York County. We have one in
25 Rock Hill, one here at the Moss Justice Center and one in Fort

1 Mill.

2 The C.I. or Mr. Sullivan will come and met with us. You
3 know, we kind of talk about the specifics of the deal. A couple
4 of things that we do we want to search our informant. We want
5 to make sure that he is not bringing drugs to the drug deal so
6 we will search him from top to bottom. You know, we check in
7 his pockets, check in his waistband. We are not strip searching
8 him but we are checking him everywhere.

9 Another thing we do is search his vehicle if the person is
10 driving to make sure there is is no drugs or weapons inside the
11 vehicle. We will have an officer search that vehicle. We will
12 issue the informant money to go out and purchase the drugs with.
13 We supply the money so we will give him the money and give him a
14 wire and recording device in order to record the transaction.
15 The wire that we give him is so we can kind of listen live what
16 is going on. And we use it for a couple of different reasons.
17 Number one, it's going to be safety. We don't want anything to
18 happen to our informant and the other reason, you know, so we
19 can hear the progress of the deal. If for some reason the deal
20 is going bad and we need to take some type of law enforcement
21 action. We don't want him to get hurt. You know, we would go
22 in at that point. So we will give him the wire and the camera.
23 And then of course I will have a briefing with the guys that are
24 working with me on the route that we are taking. We get pretty
25 detailed on what we are doing. You know, from who we are buying

1 from and then, you know, we'll all leave together.

2 So the informant is in his vehicle and we will have several
3 officers in unmarked vehicles. So we go out there with them.
4 Now we are not, you know, standing beside them of course when
5 they do the deal but we are around the block. You know, right
6 down the road street. So we follow the C.I. to wherever they
7 are going to meet with the target and we kind of listen to the
8 deal and after the deal we all follow the informant back to the
9 place where we are going to meet.

10 At that point we would recover the evidence from the C.I.
11 and go ahead and collect our equipment back from him which would
12 be the wire and the recording equipment.

13 We'll search the C.I. again to make sure we recovered all
14 the evidence that he was suppose to bring to us to make sure he
15 doesn't have anything else on him and we will re-search his
16 vehicle again. And then typically, you know, we will do some
17 paperwork involving the deal and we will cut him loose at that
18 point.

19 Q Did you follow that process and procedure in each of
20 the four buys that Brian made from Mr. Kieth in this case?

21 A Yes, I did.

22 Q And when he provided Mr. Keith's information to you at
23 the beginning did he only provide Mr. Keith's information or did
24 he mention Sherry Brandon as well?

25 A He mentioned Sherry Brandon as well.

1 Q And did he say -- did he indicate which of the two he
2 he could buy from?

3 A He stated both.

4 Q And did -- with regard -- where did each of those four
5 transactions take place? Where did you send him to purchase
6 drugs from Mr. Kieth and Miss Brandon on each of those four
7 incidents?

8 A One was the Sound on Wheels on Anderson Road which is a
9 local business, the other one was at Home Depot parking lot near
10 Celanese and Cherry Road and the two last ones were at his
11 residence at Valley Haven, in Hickory Grove, South Carolina.

12 Q And drawing your attention to the Home Depot incident
13 did you or any other officers report the transaction in that
14 case?

15 A Yes, Mr. Sullivan was equipped with a camera and we
16 also had another officer that shot an external video from a car
17 that he was parked at in the parking lot.

18 Q And when did that incident take place?

19 A The actual date was -- April the 8th, 2016?

20 Q Let me ask you a question about the recording
21 equipment. Did you review each of the videos that was captured
22 during each of those incidents?

23 A Yes, I did.

24 Q And was there a time stamp on on those videos?

25 A There is a time stamp but it's not accurate just due to

1 some times our battery will run out. It may not last long and
2 it just resets that time every time. So a lot of times we will
3 just give what we call a preamble at the beginning just stating
4 the date and time because we are already aware that the time
5 stamp on our video is not going to be accurate to that actual
6 day and time.

7 Q And do you recall with regard to the April 28th
8 incident if you recorded the actual date and time at the
9 beginning of that recording?

10 A I believe I did.

11 Q Were you with the officers stationed near the Home
12 Depot that recorded that incident?

13 A Yes, I was.

14 Q Were any of the other four incidents video recorded
15 like the Home Depot?

16 A On every one that we did we did send him with a video
17 equipment.

18 Q Did you all actually record from a distance on any of
19 the others?

20 A No, that was the only that we actually recorded
21 ourselves. It was just a situation where we felt we could
22 actually see the deal and see what was going on without being
23 spotted.

24 Q And you just said that you have reviewed the videos and
25 recordings from each the other incidents. How did those videos

1 and recordings turn out?

2 A Some didn't turn out as well as the others, you know, I
3 think on the the first one we did get some video but we didn't
4 get, you know, a good face shot, we just saw the ground mostly.
5 On another video I think we had some technical issues with our
6 camera and we just didn't get any actual video, we just got
7 sound.

8 Q Okay. Did you use Mr. Sullivan's assistance to conduct
9 a controlled buy on April 28th of last year?

10 A I did yes.

11 Q Where did that take place?

12 A It took place at Valley Haven Trail in Hickory
13 Grove, South Carolina.

14 Q Walk us through that incident from beginning to end
15 beginning end, beginning at where you met Mr. Sullivan?

16 A I met Mr. Sullivan here at the Moss Justice Center
17 originally. I already knew he could purchase some pills from
18 Mr. Keith and I got with the office here to see if the guys
19 could assist me with this particular deal.

20 We meet with him. Went ahead and search Mr. Sullivan.
21 Searched his vehicle. Got some money together and our equipment
22 together and then we proceeded to head out to Hickory Grove
23 because it is a little bit of drive from here in York and we met
24 at another location which was a church near by the actual
25 residence.

1 Q Did the C.I., Mr. Sullivan, stop anywhere between the
2 Moss and that church where you met?

3 A No, he did not. We followed him directly out to that
4 church so he did not make any other stops except at the church
5 with us to met with us.

6 Q And how far was that church from Mr. Keith's home?

7 A Probably less than half a mile.

8 Q And after you met at the church and then sent him to
9 make the purchase what did you do?

10 A We didn't go down to where they are because it's kind
11 of a dead end street. We were just out on the main street
12 sitting and listening as the deal progressed.

13 Q And were you able to listen to the entire deal as audio
14 transmitted might?

15 A That is correct, we could could listen to it.

16 Q And after that incident concluded where did you met
17 with Mr. Sullivan?

18 A We met with Mr. Sullivan back at church.

19 Q And what if anything did you find on him at that time?

20 A We recovered some Hydrocodone pills from him.

21 Q And did you search Mr. Sullivan's person and his car
22 again at the church?

23 A I did, yes.

24 Q Did you find anything else?

25 A We did not.

1 Q Did you watch the video that Mr. Sullivan recorded with
2 the equipment you provided?

3 A I did yes.

4 Q And when did you first watch that video?

5 A It was probably the next day.

6 Q And could you observe the house on the video where that
7 incident took place?

8 A Yes, you could.

9 Q And is that the same location of the house where you
10 executed the search warrant that day?

11 A Yes, it was.

12 Q Let's talk about that. When did you all execute the
13 search warrant on Mr. Keith's home?

14 A Probably kind of right after. I would say within 15,
15 20 to 30 minutes from meeting with Mr. Sullivan. When we cut
16 him loose we would went ahead and went down to the house to
17 execute the search warrant.

18 Q When did you obtain that search warrant?

19 A I had done a previous buy from Mr. Kieth with Mr.
20 Sullivan and I was able to obtain a search warrant from that
21 buy.

22 Q And can you recall the other officers who were involved
23 in the execution of that warrant?

24 A Yes. The officers present that day on the 28th were
25 Investigator Vaughn, Logan, Gander, Lieutenant Ligon, Commander

1 Brown and myself.

2 Q And where did you find the defendant and Sherry when
3 you arrived at their home?

4 A In the living room of the residence.

5 Q And what did you do when you first arrived?

6 A I got out, went up. We went inside. I think Mr. Kieth
7 was kind of coming to the door. Identified ourselves as law
8 enforcement officers and, you know, stated to them they were
9 under arrest and we had a search warrant for their residence.
10 At that time I searched Mr. Kieth and I found a container of
11 pills in his pocket.

12 Q Were you able to observe his reaction to you all's
13 presence?

14 A Yeah. I mean he was pretty calm. He wasn't greatly
15 upset or anything. And we all kind of took him out I think
16 right into the living room and that's where we had an
17 investigator who executed the search warrant.

18 Q And who executed that search warrant?

19 A That was Investigator Gander.

20 Q And explain what that investigator does when they
21 execute the search warrant?

22 A They read the portion of the search warrant where
23 basically explaining to the people there, you know, what we are
24 searching and who we are searching.

25 Q And did you observe anyone search Mr. Keith's person?

1 A I searched Mr. Keith's person.

2 Q And what did you find when you searched him?

3 A I found a silver container with seven dose units of
4 Buprenorphine and in his left front pant's pocket.

5 Q And what is is that?

6 A It's I guess Subutex is the slang for it.

7 Q Do you know any other names for that particular drug,
8 any other terms that people commonly call those drugs?

9 A Subs or Subutex is what I know they go by to my
10 knowledge.

11 Q What did you do with those drugs after you found them
12 in Mr. Keith's pocket?

13 A Placed them in an evidence bag and placed them in
14 another bag that we carried with us to transport all the
15 evidence back to our office.

16 Q And after you placed those pills in the evidence bag
17 what did you do with them or what happened to them next?

18 A We brought back here to the Moss Justice Center where
19 filled and sealed the evidence bag.

20 Q And who did you next transfer them to?

21 A I believe I transferred them to Investigator Gander.

22 Q From the time that you collected those pills in Mr.
23 Keith's pocket until the time that you handed them over to
24 Officer Gander did they remain in your exclusive custody and
25 control?

1 A Yes, they did.

2 Q Did you find anything else on on the defendant when you
3 searched him?

4 A I found some money.

5 Q How much money?

6 A It was \$300.

7 Q And did you make note of the serial numbers on the
8 bills that you collected from Mr. Kieth?

9 A I did, yes.

10 Q And were they the same bills that you given to Mr.
11 Sullivan to make a purchase?

12 A Yes, they were.

13 Q And did you photo copy those before you gave them to
14 Mr. Sullivan?

15 A Yes, we did.

16 Q Did you photo copy them after you retrieved them from
17 the defendant?

18 A Yes, we did.

19 MR. PLEMING: At this time, I am showing defense
20 counsel State's Exhibit Number 22, and 23 previously
21 marked for identification.

22 Q Handing up State's Exhibit 22 and 23 to you. If you
23 will take a moment to examine them.

24 Are you familiar with what is depicted in each of those two
25 exhibits?

1 A Yes, I am.

2 Q And who actually made those photocopies?

3 A Detective Vaughn -- Investigator Vaughn actually made
4 all four of these copies.

5 Q Did you actually record the serial numbers before and
6 after the deal when you had the money with you?

7 A Before we issue the money to our informant, before we
8 left the office Investigator Vaughn would have made a photo copy
9 of all the money and then when we returned to the office he made
10 another photocopy of the money that we recovered from Mr. Kieth.

11 Q Okay. Did you yourself look at the serial numbers
12 after the money was collected from the defendant?

13 A Yes, I did.

14 Q Okay. And describe -- explain to the jury what's
15 depicted in State's Exhibit Number 22?

16 MS. LIPINSKI: Your Honor, they need to be moved
17 into evidence prior to that.

18 MR. PLEMING: I am asking him to just describe
19 what they are at this point.

20 A It's a photo copy of \$300 in various denominations.

21 Q And do those photocopies fairly and accurately display
22 the serial numbers on the bills as they appeared on the bills
23 prior to the control purchase on April 28th?

24 A Yes, they do.

25 Q And describe what's contained -- what's depicted in

1 State's Exhibit Number 23?

2 A Three hundred dollars in various United States
3 currency.

4 Q And do the photocopy in State's Exhibit Number 23
5 fairly and accurately display the serial numbers on the bill as
6 they appeared after the control buy on that 28th?

7 A Yes, they do.

8 MR. PLEMING: At this time the State moves State's
9 Exhibit numbers 22 and 23 into evidence.

10 MS. LIPINSKI: Without objection.

11 THE COURT: They are admitted.

12 MR. PLEMING: Thank you, Your Honor.

13 (State's Exhibits 22 and 23, photographs, received
14 in evidence as of this date.)

15 Q Did you observe any of the other officers present
16 during the search at Mr. Kieth's residence?

17 A Yes, I did.

18 Q And did you see what if anything those officers found?

19 A I know Investigator Gander located some other pills
20 inside the residence.

21 Q And what else if anything was collected from the house?

22 A We also collected two cell phones.

23 Q Did you see the cell phones that were collected on that
24 date?

25 A I did, yes.

1 Q Describe them?

2 A They were both identical cell phones. One was in a
3 green case. The other was in a pink case.

4 Q And did you yourself look through the cell phones that
5 you collected from the defendant's residence?

6 A I did, yes.

7 Q And without getting into any specifics of what you read
8 or any communications on those devices what did you observe from
9 looking at those phones?

10 A On both phones I saw text messages that are referring
11 to selling and using drugs.

12 Q After you collected those items from the house and
13 placed Mr. Kieth and Miss Brandon under arrest what did you do?

14 A Can you repeat the question?

15 Q What did you do after the execution of the search
16 warrant?

17 A I help conduct the search of the house.

18 Q And after that was completed what did you do?

19 A At that point we all kind of gathered everything up and
20 we took Mr. Kieth and Miss Brandon and we all went back to our
21 office here at the Moss Justice Center.

22 Q Did you speak with either of them?

23 A I spoke with both of them.

24 Q And were you present when they were advised of their
25 Miranda rights?

1 A I was, yes.

2 Q Who do you recall doing that?

3 A Investigator Gander read Miranda.

4 Q And where did this take place?

5 A This was at the residence on Valley Haven Trail.

6 Q At any point after they were advised of their rights
7 did Mr. Kieth agree to speak with you?

8 A Yes, he did. He never said that he did not want to
9 speak with us.

10 Q Okay. Did he ever ask you for an attorney?

11 A He did not.

12 Q And did you observe him sign his advisement of rights
13 form?

14 A I did yes.

15 Q Did you speak to him there at the residence at all.

16 A I did not, no.

17 Q Where did you first talk to the defendant?

18 A Here at the Moss Justice Center.

19 Q And where did that take place, that conversation?

20 A We have a small conference room or interview room down
21 in the basement of the Moss Justice Center that we use.

22 Q Was anyone else present?

23 A Lieutenant Ligon was present with me.

24 Q And did Lieutenant Ligon ask him any questions?

25 A No, I mainly spoke with Mr. Kieth.

1 Q What did you ask him and how did he respond?

2 A When we were here in the conference room at the Moss
3 Justice Center I asked Mr. Kieth about selling pills. He stated
4 to me that he was selling my scripts to live and to make ends
5 meet. Mr. Kieth also stated everything I do is my fault --
6 excuse me. Everything I do is my own fault. Mr. Kieth also
7 stated to us that he did not use Suboxone strips or Dilaudin
8 pills. I did ask Mr. Kieth if he knew where York Technical
9 College was and the Velodrome. I asked Mr. Kieth -- or Mr.
10 Kieth stated that he got his pills from Doctor Goldberg at the
11 Carolina Pain and Joint clinic in Charlotte, North Carolina and
12 that he had been going there for several years.

13 Q And did you make any attempt to speak with Miss Brandon
14 that day?

15 A I did, yes.

16 Q And did she agree to talk to you?

17 A She agreed. We asked her about some schools were
18 located, but at that time she did not want to talk about any
19 details of the case.

20 Q Can you describe the defendants willingness or
21 reluctance to speak with you during that interview?

22 A He spoke with us. You know, didn't say that he did not
23 want to speak with us. During the start of the interview he was
24 pretty calm. Of course during the close to the end of the
25 interview he was a little upset.

1 Q Did you do anything to persuade him to talk to you?

2 A I did not.

3 Q And about how long did that interview take place?

4 A Probably 15, 20 minutes.

5 Q The evidence that was collected from Mr. Kieth that day
6 did you actually submit any of that evidence into the locker at
7 the Moss Justice Center, the evidence locker?

8 A No, I did not. Investigator Gander actually dropped
9 all the evidence at the Moss Justice Center.

10 Q Okay. And do you recall where you handed those pills
11 that you collected to Investigator Gander?

12 A Here at our office.

13 Q Okay. Please answer any questions defense counsel may
14 have.

15 MS. LIPINSKI: Your Honor, I ask that those
16 documents --

17 THE COURT: Okay, anything you are referred to in
18 your notes would you put on the rail.

19 THE WITNESS: Sure.

20 MS. LIPINSKI: Your Honor, can we approach briefly?

21 THE COURT: Okay.

22 (WHEREUPON, there was an off-the-record discussion
23 held.)

24 THE COURT: All right, ladies and gentlemen, we
25 have got to review some documents. We will continue

1 the cross examination but it's a good time to break
2 for lunch so we will do that now. Keep in mind the
3 caution I previously given you; no discussions about
4 the case, no research, no investigation.

5 Do have good lunch. Report to the jury room at
6 this afternoon at 2:30..

7 (WHEREUPON, the jury leaves the courtroom.)

8 THE COURT: You can you step down from the stand
9 but you can not discuss your testimony with anyone
10 during the break.

11 THE WITNESS: Yes, sir.

12 (WHEREUPON, court was in recess for lunch.)

13 THE COURT: All right. Ready for the jury?

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

15 MS. LIPINSKI: Yes, sir, Your Honor.

16 THE COURT: Okay. Bring in Denny Keith.

17 (WHEREUPON, the jury enters the courtroom.)

18 THE COURT: Good afternoon. As you know we
19 recessed for lunch. The witness had just completed
20 the direct examination, so we will now continue with
21 the cross examination by the defense.

22 MS. LIPINSKI: May it please the Court.

23 THE COURT: Yes, ma'am.

24 CROSS EXAMINATION

25 BY MS. LIPINSKI:

1 Q Investigator Harrelson, you still have your notes. You
2 don't have to get them but do you have them with you?

3 A I do, yes.

4 Q Investigator Harrelson, let's talk a little bit about
5 the criminal -- that was his term, confidential informant I
6 think is your term, in this particular case Brian Carl Sullivan.
7 Is your testimony that he came to you under the circumstances
8 that you had warrants for him, correct?

9 A That he knew he had warrants for him.

10 Q But that's how you came to encounter him?

11 A That is correct.

12 Q And you explained those warrants to him?

13 A Yes, I did.

14 Q Or did you just generally tell him you had some
15 warrants for him?

16 A No, I told him what warrants he had.

17 Q All right. But you did not serve those warrants on
18 him?

19 A That is correct, I did not.

20 Q And that technique is called holding the warrant,
21 right?

22 A That is correct.

23 Q And that means you don't even serve them on them.
24 While there is no formal agreement the reason for withholding
25 them is that if they cooperate those warrants are indeed never

1 served on them, correct?

2 A That is an option, yes. One the reasons we do that is
3 a lot of times when somebody is booked in the Moss Justice
4 Center they put their picture on the internet and a lot of
5 people that sell drugs check that on a frequent basis. So as,
6 you know, technology advances, you know, we do have to kind of
7 change up our tactics from time to time to different stuff. To
8 kind of way we do business.

9 Q But you heard Lieutenant Ligon testify that his
10 practice and procedure was not to withhold warrants?

11 A I do not work directly for Lieutenant Ligon. He is a
12 supervisor in our drug unit. I report to Commander Brown and I
13 also report Sergeant Reneer (Phonetics) who was the supervisor
14 in my office.

15 We have three supervisors in the drug unit and Lieutenant
16 Ligon is a supervisor, but that portion of the case I handled in
17 the Rock Hill office so I contacted Commander Brown and Sergeant
18 Reneer in order for my decision to withhold those warrants.

19 Q But that is the process where they were never served,
20 correct?

21 A Yes, that is correct.

22 Q All right. And it leaves open the possibility that
23 they don't even ever show up as having been arrested for those
24 charges or having those convictions?

25 A That is correct, yes.

1 Q All right. And in this particular case before you
2 started to work Mr. Sullivan -- let me show you what has been
3 marked State's Exhibit Number Six. You went over the C.I.
4 agreement with him, correct?

5 A That is correct.

6 Q Do you have a copy of that in your notes?

7 A I believe I do. No, I do not. I just have the case
8 folder. I don't have the C.I. agreement.

9 Q Okay.

10 MS.LIPINSKI: May I approach the witness Your
11 Honor?

12 THE COURT: Yes, ma'am.

13 Q But you are familiar with this? You use this this
14 every case, right?

15 A Yes, that is correct.

16 Q You don't have a separate one in the Rock Hill office
17 or you don't tailor make them for each individual confidential
18 informant, fair to say?

19 A That's right. This is something that is used
20 throughout the entire drug unit.

21 Q All right. The first one, the main one is I will not
22 violate the criminal laws in furtherance of gathering
23 information. That I know I'm forbidden to possess, sell or
24 deliver any controlled substance except under the direction of
25 you, basically?

1 A That is correct.

2 Q All right. But you never did anything in terms of
3 following up with Mr. Sullivan. He was in never subjected to
4 any drug testing?

5 A No, we did not drug test Mr. Sullivan.

6 Q And as far as your notes reflect there was never any
7 auditing done of his phone?

8 A I may have looked through his phone probably just from
9 the conversations that, you know, we are having with our bad
10 guy. But as far as checking his phone for other stuff he was
11 doing I did not do that.

12 Q So in the most part you are taking them on their word
13 that they are complying with that provision of the agreement?

14 A Yeah. We ask them and we talk to them and of course we
15 look to see if he has been arrested recently and at that time
16 Mr. Sullivan had not been rearrested on any drug charges.

17 Q But that doesn't mean that he's not continuing to
18 violate the laws and not continuing to use. He is not
19 continuing to sell and buy outside your supervision?

20 A That is correct. I am not with him 24 hours a day.
21 I'm not his probation officer. You know I do have a
22 professional type relationship with him in the work that we are
23 doing together.

24 Q But in your experience as a narcotic's investigator you
25 do know that it is possible to subject them to drug testing,

1 correct?

2 A I would assume that you could do that. I've never seen
3 that done in the drug unit that I'm a part of and it's not I
4 know part of our procedures to drug test our confident
5 informants.

6 Q But obviously you do know drug testing is available,
7 right

8 A Yes, I do know it's available.

9 Q And that would resolve whether or not he is continuing
10 to use drugs? At the very least that would answer that question
11 for you, correct?

12 A Yes, that is correct.

13 Q And even telling them that they were subject to random
14 alcohol and drug testing might make them then understand that
15 there would be some stronger supervision then just their word
16 that they wouldn't violate your agreement, right?

17 A Yes. You could word the agreement differently.

18 Q And you stated that when you looked at his phone even
19 if you did you mainly looked at whether or not there were any
20 text messages as it pertained to the buys that he was setting up
21 for you, correct?

22 A Yes, that's typically what I do.

23 Q But he doesn't sit there and say oh, you can only have
24 it for five minutes, or I am only going to show you this screen.
25 You can have unfettered access to take phone, correct?

1 A That is correct. But at that time I had no suspicions
2 or reasons to know Mr. Sullivan was still interacting in the
3 drug trade. You know, going behind my back. I had no idea.

4 Q So you were just taking him on his word for the most
5 part?

6 A That is correct, yes.

7 Q All right. And nowhere contained in this agreement is
8 any obligation on his part to even be truthful with you,
9 correct?

10 A That is correct. That is not in the agreement.

11 Q All right. It mean it says I understand I don't have an
12 official status. I'm not an agent or employee. That makes it
13 sound like they can not sue you for workers comp or something
14 like that?

15 A I did not write the agreement. You would need to talk
16 with my supervisor.

17 Q All right, I understand. It says tell them you
18 understand you may be called to testify, right, that may be part
19 of it, correct?

20 A That is correct.

21 Q That they do it freely and voluntarily, right?

22 A That is correct.

23 Q That they know that some of their conversations may be
24 recorded, right?

25 A That is correct.

1 Q They can't have a gun, right?

2 A That is correct.

3 Q They don't get any of the money. So nobody comes back
4 and say oh, I thought I could keep half of this if I sold this
5 for you anything like that?

6 A That is correct.

7 Q But you do pay informants, correct?

8 A Yes we do under certain circumstances.

9 Q All right. And consent to searching of his car, right?

10 A That is correct.

11 Q And then again the last one kind of of lawyer thing; I
12 release you from any liability. I can't sue you kind of thing,
13 right?

14 A Yes, that is correct.

15 Q But truthfulness that's not important to you all?

16 A It is very important to us and that's one reason why we
17 are not just sending this individual out and say hey, go buy
18 drugs and be back in 20 minutes. We're out there with them. We
19 are controlling the deal to the the best that we can. You know,
20 we can't walk with them. And certainly I don't -- you know, he
21 may not be truthful with me and I know that and that's one
22 reason especially on the deals that we do is why we do all the
23 work, the preparation, searching him, searching his vehicle.
24 You know, going out with him, being in the area of the deal, so
25 we can, you know, hopefully maintain the integrity of our deal.

1 Q Because you are dealing with criminals?

2 A That is correct.

3 Q And criminals lie?

4 A That is correct.

5 Q And so really that stuff is really there to fact check
6 them and make sure that they don't lie?

7 A That is correct, yes.

8 Q And then at some point you stated that he came to you
9 and didn't just say that he could buy or sell from Denny Keith
10 he actually gave you Keith and Brandon, correct?

11 A Yes, that is correct.

12 Q So he didn't designate Keith as anything in particular?
13 He gave you both their names, correct?

14 A That is correct.

15 Q As a matter of fact he started off with her number?

16 A He may have. I took them together. When we spoke
17 originally that they were kind of together and did this
18 together. It wasn't just one or the other. It was both.

19 Q All right. But you would have wrote that number down?

20 A Yes, that is correct.

21 Q And you put that in your general sessions case summary?

22 A Yes, I did. That is correct.

23 Q And if you could refer to the first page of that
24 narrative it does state that they shared a phone, not two
25 phones. A phone.

1 A Okay.

2 Q And he gave you the 803 or Sherry's number?

3 A Let me take a look. Yes, that is correct..

4 Q And no where in your general session case summary do
5 you ever then add a number for Denny Keith or change that they
6 are actually two phones involved?

7 A I did not, no.

8 Q And as a matter of fact the first buy that he did was
9 the Sound on Wheels buy, right.

10 A That is correct, yes.

11 Q And this Sound of Wheels buy it happened at Sound on
12 Wheels because their car actually broke down, right?

13 A Yes, that is correct.

14 Q They just didn't randomly pick it, that is where they
15 were?

16 A That is where, you know, they told us the C.I. to come
17 meet them.

18 Q All right, but you observed or monitored that buy,
19 right?

20 A That is correct.

21 Q And you remember car trouble being part of an issue,
22 correct?

23 A Yes, yes, that is correct.

24 Q And after that he gave you a statement, correct?

25 A Yes, he did.

1 Q And is State's Exhibit 26 is a statement about that
2 buy?

3 A Yes, that is correct.

4 Q And it states that he sets up the deal with Sherry
5 Keith?

6 A This is the Home Depot.

7 Q I'm sorry. I really should put my glasses on. State's
8 Exhibit 25, is the Sound on Wheels buy?

9 A Yes, that is correct.

10 Q And it states that he sets up the deal and he names
11 Sherry, correct?

12 A Yes, that is correct.

13 Q All right. And then after that there is the Home Depot
14 buy, correct?

15 A Yes, that is correct.

16 Q And that's the one you all video monitored, correct?

17 A Yes.

18 Q And again, he states I called Sherry and give Sherry's
19 number the 803 number?

20 A Yes, that is correct, I called Sherry.

21 Q And then then there is this other buy which there is no
22 video because some question with the equipment. You say that is
23 didn't work.

24 A That is correct.

25 Q At the house, right?

1 A Yes.

2 Q But in this buy he states that he originally buys 40
3 pills -- four pills from Sherry for \$40, right?

4 A Let me take a look here.

5 A Yes, it is stated he handed Sherry \$40 and Sherry
6 handed him four Klonopin pills.

7 Q And because I don't know if this is ongoing car trouble
8 but then he has to take Keith to the store somewhere and when
9 they get back then there is a separate transaction was Denny
10 Keith?

11 A Correct, yes.

12 Q So Sound on Wheels they got car trouble. Home Depot --
13 there's more car trouble at Home Depot, right, like somebody is
14 working on the car. I don't know if it was a wheel or break job
15 or what but there is some work being done on the car at the Home
16 Depot deal as well, correct?

17 A That is correct.

18 Q All right. And then the C.I. drives all the way from
19 Tega Cay all the way down to Hickory Grove because you assume
20 they have car trouble because you wouldn't drive all that way
21 down there, right? The more convenient thing would be to meet
22 halfway, correct?

23 A Yes, that would be the more convenient thing to do.

24 Q And then even in the fourth one is at the house,
25 correct? There is the buy right before the search warrant of

1 the house -- that is at the house?

2 A Yes, that is correct.

3 Q They don't go out and meet him again, correct?

4 A No, they do not.

5 Q And you stated that you searched Mr. Keith's person and
6 that's where you found these seven Buprenorphine or Suboxone or
7 Subutex or whatever you are calling them. You found them in a
8 metal container, correct?

9 A That is correct.

10 Q But you did not document what the condition of that
11 metal container at the time you searched it, correct?

12 A The container?

13 Q You didn't take a picture of it before you opened it?

14 A No, I did not.

15 Q And you don't know or on you can't recall whether or
16 not it was attached to a key ring or anything else?

17 A No, not to my knowledge.

18 Q But you don't recall?

19 A No, I do not recall if the the container was attached
20 to any keys. I know I did find it in his pant's pocket.

21 Q But you could have whatever condition you found it in
22 photographed it if it was attached to keys, then remove the
23 metal container and photographed that and then place that into
24 evidence, correct?

25 A Yes, I could have photographed the container when I

1 took it out of his pocket.

2 Q And you didn't do that?

3 A I did not.

4 Q All right. And in addition to that you found more or
5 less the same seven pills on Sherry's purse or in or around her
6 purse?

7 A I do not believe that was me.

8 Q Well --

9 A Let me go back.

10 Q This is your case.

11 A I know, but that's a difference from somebody who
12 actually finds it.

13 Q Okay. Someone executing the search warrant with you
14 also found seven pills around Sherry Keith's purse?

15 A Yes, that is correct. That was Investigator Gander.

16 Q All right. But that was still information that was
17 relayed to you as part of the investigation, correct?

18 A Yes, that is correct.

19 Q And did you ever have the opportunity to observe the
20 Sherry Keith's purse container versus what you call the one you
21 got off Denny Keith's pocket?

22 A Have I seen it?

23 Q Yes, have you looked at both of them?

24 A Yes, I have seen them, yes.

25 Q All right. And for the most part they are the exact

1 same thing but different colors?

2 A I believe that is correct.

3 Q One is red and one is silver?

4 A Yes, that is correct.

5 Q And you stated that originally you said that you copied
6 the money involved in this case but then I think when Mr.
7 Fleming showed it to you you remembered that Detective Vaughn is
8 the one that actually copied it?

9 A Yes, I was incorrect. I was not the one that made the
10 photocopies.

11 Q And that's because for the most part while you are
12 running this show there are number of people out there involved
13 in it, correct?

14 A Yes, that is correct.

15 Q And that's the important of taking notes, correct?

16 A Correct.

17 Q Importance of taking accurate notes because you do
18 enough of these you weren't just working Brian Sullivan you had
19 number of C.I.'s working for you correct?

20 A That is correct.

21 Q And so it helps you to keep things straight, right?

22 A Yes, that is correct.

23 Q And again prior to this buy you sent in Brian Carl
24 Sullivan to do a deal, right?

25 A That is correct.

1 Q And while we have seen some text messages from Sherry's
2 phone and may or may not be Sherry on Denny's phone or Denny on
3 Denny's phone, you do not have text messages from the C.I.
4 setting up any of these purchases?

5 A I do not, no.

6 Q But you could have done that?

7 A I could have, yes.

8 Q And that would have documented perhaps more accurately
9 and more contemporaneously who he is actually dealing with and
10 the conversations surrounding those buys?

11 A Yes, that is correct.

12 Q And as a narcotic officer you do in some cases actually
13 do that?

14 A Yes, that is correct.

15 Q So it's an investigative technique that you know is
16 important and significant?

17 A Yes, that is correct.

18 Q But you choose not to do it in this case?

19 A I would say I didn't choose. I did not do it in this
20 case that is correct.

21 Q It happened at least three times. You just didn't
22 forget once, correct? So it was a conscious part on how you
23 worked this investigation?

24 A I wouldn't say it's a conscious part that I just didn't
25 make the -- take the photocopies. I can say I did not

1 photograph the text messages on Mr. Sullivan's phone.

2 Q For any of the buys?

3 A That is correct.

4 Q And you didn't photograph the drugs you took off the
5 defendant other than once you removed them from the key ring or
6 whatever other condition they were in when you claim you found
7 them on him. Correct?

8 A Right when I took it out of his pocket?

9 Q Uh-huh.

10 A That is correct, I did not take a picture of it.

11 Q Nor did you take any notes about its condition or
12 anything like that?

13 A No, I did not take any additional notes.

14 Q All right. And you stated that you went and you
15 interviewed the defendant in the conference room, correct?

16 A Yes, that is correct.

17 Q And you were there and Detective Ligon was there?

18 A That is correct.

19 Q And even though you had audio and visual recording
20 equipment available to you that day, correct?

21 A Yes, that is correct..

22 Q When you executed the search warrant nobody video or
23 audio recorded the execution of that search warrant, correct?

24 A Yes, back then in 2016 we did not video our execution
25 of search warrants. That is our supervisors, you know, their

1 decision. So at that time we did not do that.

2 Q Have you changed that policy?

3 A The drug unit is a little different. You know, we are
4 made of officers from all over the county. I'm employed by the
5 Rock Hill Police Department. We have guys on our drug unit that
6 are Fort Mill, Tega Cay, York and Clover. Rock Hill has just
7 recently had a policy that we do that. Rock Hill PD has issued
8 its DUE officers body cameras, so it is something a little bit
9 different from officer to officer and office to office. Just
10 depending on what office you are actually, you know, placed in.

11 Q But you didn't need a body camera to do that, correcty?
12 I understand the policy shift in your department but that wasn't
13 required for you to catch the search warrant, correct? Other
14 equipment available to you could have accomplished that goal?

15 A Yes, that is correct.

16 Q You have a cell phone on you, correct?

17 A Yes, I do.

18 Q Audio recorded the very least, correct?

19 A Yes.

20 Q Capture your entire conversation with Mr. Keith and
21 Mrs. Brandon, correct?

22 A Yes, that is correct.

23 Q And you never did that?

24 A That is correct.

25 Q Either at the house, correct?

1 A Correct.

2 Q And no other officer out there -- there were six or
3 seven you say?

4 A Yes, I think six of us.

5 Q And no one else did that either, correct?

6 A That is correct.

7 Q But there was a couple people sitting on the porch with
8 Mr. Keith and Miss Brandon, right?

9 A That is correct.

10 Q And this isn't a huge house, for most part it's a
11 doublewide trailer, right?

12 A That is correct.

13 Q So you did have manpower available I guess is my
14 question, correct?

15 A Yes, we did have enough people with us.

16 Q You could have handed one of them something to record
17 the entire thing, correct?

18 A Yes, that is correct.

19 Q And then you say that you take Mr. Keith back to the
20 Moss Justice Center to interview him further, correct?

21 A Yes, that is correct.

22 Q And prior to that Investigator Gander who I understand
23 is going to be here this afternoon you were there though when
24 she would have Mirandized Mr. Keith, correct?

25 A Yes, that is correct.

1 Q And again, this is DEU form, right?

2 A Yes, that is correct.

3 Q This isn't a form that the Rock Hill PD uses, correct?

4 A No, this is not. This is different from what Rock Hill
5 police uses.

6 Q And different from what York County Sheriff's office
7 uses, correct?

8 A I would assume so. I've never seen there's. I can
9 testify it is different from Rock Hills.

10 Q All right. And that's because you did other things
11 other than DEU while you have been with law enforcement?

12 A Yes, I'm an officer with the Rock Hill Police
13 Department.

14 Q So you've Mirandized people prior -- and I don't want
15 to put words in your mouth -- but at some point other than
16 working for the DEU but working for the Rock Hill PD you've
17 Mirandized other suspects?

18 A That is correct.

19 Q All right. But this form does state that while you
20 have the right to the advice and presence of an attorney we have
21 no way of appointing you one, correct?

22 A That is correct.

23 Q And that was read to him out at the house, correct?

24 A Yes.

25 Q And that language is pretty much saying you have a

1 right to lawyer but we can't get you one out here?

2 A Yes, that is correct.

3 Q But when you brought him back to the Moss Justice
4 Center there is a bond court here, correct?

5 A Yes, there is a bond court.

6 Q And they get appointed attorneys, correct?

7 A I am not one hundred percent sure if a bond judge can
8 appoint attorney or not.

9 Q Well, it's at least a court official, correct?

10 A Yes, I know we do have a bond judge. I know he sets
11 bonds. I am not sure what other aspects they do in the legal
12 system.

13 Q All right, but it is a court, right?

14 A Yes, that is correct.

15 Q And the court has the power to appoint him an attorney.
16 There is also this court part of the Moss Justice Center,
17 correct?

18 A Yes. That is correct.

19 Q Did you notify Mr. Keith that those circumstances had
20 changed, that he was now in closer proximity to a court that
21 could get him an attorney if he wanted one prior to speaking
22 with you?

23 A No, I did not. At no time whatsoever Mr. Keith asked
24 for an attorney or did not ask for -- or did not state that he
25 did not want to speak with us.

1 Q I didn't ask you that. That paper says we have no way
2 of getting you one right now. Did you ever notify him of a
3 significant change in his circumstances namely that he was now
4 closer to somebody who might be able to appoint an attorney to
5 him?

6 A No, I did not.

7 Q And you kind of for the most part summarized what you
8 claim or more or less four statements that Mr. Keith made to
9 you. Of course sentences, not four separate statements, but
10 four conclusions or that kind of thing. You're not transcribing
11 word for word what is going on, correct?

12 A I am not. Yes, I am not taking verbatim dictation.

13 Q As a matter of fact I think you testified pretrial that
14 you pretty much wrote down what was important to you, correct?

15 A I don't recall if I used those words or not but I do
16 write down the most important things. I write down a lot of
17 stuff and I put the most important things in my general sessions
18 summary.

19 Q Do you have other notes of this conversation that have
20 less important things written down somewhere?

21 A No, I do not, but there could be other notes, you know,
22 about may be who somebody is buying from sometimes. Of course I
23 wouldn't put that in general sessions summary or other details.

24 Q But you could write it on a separate piece of paper,
25 correct, and not put it in the general sessions case summary,

1 right?

2 A I could have. That is correct.

3 Q Because you do at times do that, right? The
4 confidential informant's statements don't go in the general
5 sessions case summary, correct? That is held in the
6 confidential file?

7 A Yes, that is is correct.

8 Q So it is possible to memorialize everything Denny Keith
9 told you and keep it separate from the general sessions case
10 file and you chose not to do that in this particular case?

11 A Yeah, I did not do that in this or any of the other
12 cases that I do.

13 Q And you weren't alone?

14 A No, Lieutenant Ligon was with me.

15 Q Sitting there?

16 A Yes, that is correct.

17 Q Not note taking?

18 A Not to my knowledge he was not taking any notes.

19 Q And again while not only have you put him closer to a
20 court that could appoint him an attorney even if you limit
21 yourself to what equipment you brought out there that day your
22 now back at the DUE where there is any litany of audio and
23 visual recording available to you, correct?

24 A Yes, we do have audio and video equipment at my our
25 office.

1 Q And did you nothing to change the circumstance or now
2 record anything you claim Mr. Keith said?

3 A Yes, that is correct. I did not record our
4 conversation.

5 Q Nor with Mrs. Brandon, correct?

6 A Yes, that is correct.

7 Q And you wrote in your statement that Mrs. Brandon told
8 you she knew where the Velodrome was and York tech?

9 A That is correct.

10 Q But your testimony now is that the reason that is all
11 she said is because she indicated she wanted to stop talking to
12 you or evoked her fifth amendment right?

13 A That is all that she stated to us.

14 Q Is that all she stated to you or did she evoke her
15 rights?

16 A I don't recall.

17 Q You don't recall?

18 A No, I don't. I do have is in there that we did ask her
19 about the park and the Velodrome. I don't believe that I asked
20 her anything else about the case. I don't think she wanted to
21 talk to us. I did not write down if she stated that she wanted
22 an attorney.

23 Q But that would be a pretty significant detail for you
24 to memorialize don't you think?

25 A Yes, that is correct.

1 Q Don't you think Miss Russo her attorney would have
2 liked to know whether or not she evoked her rights and exactly
3 at what point in that conversation that transpired?

4 A I can't say if she did or did not. I do not recall.

5 Q But that is a pretty significant detail for you to
6 leave out?

7 A It would be if she had said that, yes, that is correct.

8 Q But you can't even recall if that's what happened?

9 A Yes, that is correct.

10 Q And, it does state that in your general sessions case
11 summary that you also charged Miss Brandon with charges,
12 correct?

13 A Yes.

14 Q Trafficking Hydrocodone, second offense, correct?

15 A Let me take a quick look here. Yes, that is correct.

16 Q And possession with intent to distribute Buprenorphine
17 or Subutex, second offense, correct?

18 A That is correct.

19 MS. LIPINSKI: That's all I have on cross.

20 MR. PLEMING: Just a couple of questions Your
21 Honor.

22 REDIRECT EXAMINATION

23 BY MR. PLEMING:

24 Q Investigator Harrelson, did you arrest Mr. Sullivan?
25 Did you detain him in this case?

1 A Mr. Sullivan was arrested.

2 Q You just did not served the warrant on him?

3 A That is correct.

4 Q And if you had served the warrant on him what would
5 have happened to him?

6 A He would have been booked and transported to the moss
7 Justice Center.

8 Q And explain the reason -- well, explain the importance
9 of maintaining confidentiality of the C.I.? Explain the
10 importance of why you maintain the confidentiality of your C.I?
11 Why do you not allow their identity to go public?

12 A With people working with us of course we don't want
13 anybody to know that they are working with law enforcement.
14 There's a couple of different reasons. One, if people know that
15 he has had contact or work with law enforcement a lot of people
16 in the drug world wouldn't deal with him any more. You know,
17 they're afraid that they may cooperate with law enforcement and
18 set them up and get them arrested.

19 You know another thing is there safety. Of course if I work
20 with any informant I tell that informant I don't want you to
21 tell anybody that you are cooperating or working with us because
22 there is dangerous people out there. You know, he can run
23 across -- say something to the wrong person, you know. People
24 don't look favorably some times to people that cooperate with
25 law enforcement. So we do try to maintain, you know, some

1 confidentiality there to kind of keep it quiet so he is able to
2 go out and do some work on our behalf.

3 Q Thank you. And did you ever tell Mr. Sullivan that if
4 you cooperated those warrants would never be served on him?

5 A I have not, no.

6 Q And is there anything up to this point in this case
7 that would preclude you from serving those warrants on him after
8 this case is resolved or even before?

9 A No, the warrants still could be served on Mr. Sullivan.

10 Q And you said that you never promised anything to Mr.
11 Sullivan to get him to cooperate?

12 A That is correct.

13 Q And so could you still serve those warrants on him for
14 any reason?

15 A Yes, I could.

16 Q And Miss Lipinski pointed out that in his C.I.
17 agreement there is no clause requiring him to be truthful?

18 A That is correct.

19 Q But if you caught him lying could you on that basis if
20 you wanted to choose to serve those warrants?

21 A Yes, that is correct. And that also a lot of times
22 will terminate our agreement with him based on that.

23 Q And does that option still remain on the table as it
24 pertains to his case?

25 A Yes, that is correct.

1 Q Now even though you were not the one that photocopied
2 the bills after you collected the \$300 off of Mr. Keith prior to
3 that deal did you record the serial numbers from those bills or
4 did you or someone at your direction record the serial numbers?

5 A Yes, Investigator Vaughn was the one that photocopied
6 the original bills.

7 Q And after you recovered that \$300 did you confirm that
8 the serial numbers matched?

9 A Yes, I did look at the money myself.

10 MR. PLEMING: Beg the Court's indulgence. Nothing
11 further from the State.

12 MS. LIPINSKI: Just briefly on redirect.

13 THE COURT: Recross you mean.

14 MS. LIPINSKI: Recross, Your Honor. I'm sorry.

15 Long day. My bad.

16 RECROSS EXAMINATION

17 BY MS. LIPINSKI:

18 Q Let me ask you about Mr. Sullivan. You've since become
19 aware that he did violate the agreement, correct?

20 A Yes, that is correct.

21 Q And you learned about that even before his testimony
22 here yesterday, correct?

23 A Yes, that is correct.

24 Q And you didn't serve the warrants on him even after you
25 learned of that information, correct?

1 A At this time no warrant have been searched on Mr.
2 Sullivan from us.

3 Q And so having learned that he continued to buy and sell
4 drugs and use drugs you didn't say you violated my agreement. I
5 am going to have to go on and served these warrants on you,
6 correct?

7 A Yes, that is correct.

8 Q And while you talked a lot about the reason you did
9 that was about confidentiality, obviously there are a lot of
10 C.I.'s even working at the Rock Hill office where warrants are
11 served on them, correct?

12 A Yes, that is correct.

13 Q And you either go to the judge and ask them to give
14 them a lenient bond or you help them work out a bond or you get
15 them out of jail and then work them. So you don't have to not
16 serve the warrant to work that C.I., correct?

17 A Yes, that is correct. You can serve the warrants and
18 still work a confidential informant.

19 Q So that's really a judgement call on your part that
20 that's how you operate the C.I.?

21 A In this particular case this is the course of action
22 that I went with my supervisor's approval.

23 Q All right. But there are other C.I.'s you work where
24 you do go ahead and do the warrants?

25 A Yes, that is correct.

1 Q And so while you may maintain their confidentially you
2 might not notify the person they're making buys from that
3 there's that CI until much later on in the process. We don't
4 serve the warrants because that's the only way we can protect
5 them, that's not true because there are -- you still work some
6 C.I.'s under those circumstances?

7 A I don't believe I ever said this is the only way that
8 we do business. We do have different tools and different ways
9 that we can do things. In this particular case I choose not
10 along with my supervisors approval not to serve the warrants on
11 Mr. Sullivan at that time.

12 Q And you continued to not serve them with your
13 supervisors approval, correct?

14 A Yes, at that date we have not served the warrants on
15 Mr. Sullivan at this time.

16 MS. LIPINSKI: That's all we have Your Honor on
17 recross.

18 MR. PLEMING: Nothing further Your Honor.

19 THE COURT: You may step down.

20 MS. WEAVER: Your Honor, the State calls Officer
21 Gander

22 ROBIN GANDER, called as a witness, having been
23 duly sworn by the clerk, was examined and testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MS. WEAVER:

2 Q Officer Gander if you please state your full name?

3 A Robin Gander.

4 Q And where do you currently work?

5 A City of Rock Hill Police department.

6 Q And you are police officer?

7 A Yes.

8 Q How long have you been a police officer?

9 A About eight years.

10 Q And all with Rock Hill Police Department?

11 A Yes.

12 Q And where are you currently assigned within the
13 department?

14 A I'm currently on the patrol division.

15 Q And were you previously assigned to drug enforcement?

16 A I was.

17 Q What years?

18 A Approximately six years.

19 Q And were you working with with them back in April of
20 2016?

21 A I was.

22 Q And did you assist in serving a search warrant in
23 Hickory Grove?

24 A I did.

25 Q Regarding Dinal Keith?

1 A Yes.

2 Q And what were your duties concerning that search
3 warrant?

4 A Served the search warrant and I collected evidence.

5 Q Did you also read Miranda rights?

6 A I did, yes.

7 Q And as part of serving the search warrant what do you
8 read as far as the warrant?

9 A The constitutional rights or the Miranda rights.

10 Q Do you let them know that you are there pursuant to a
11 warrant?

12 A Yes..

13 Q And what you are searching for?

14 A Yes.

15 Q And you also did the Miranda form?

16 A I did.

17 Q And I am showing you what has been marked as State's
18 Exhibit One. Is that the form that you read to the defendant on
19 April 28, 2016?

20 A Yes, it is.

21 Q And their multiple paragraphs on that form. What
22 paragraph did you read to the defendant?

23 A Middle one, labeled as the Constitutional rights.

24 Q And the third paragraph did you read that to the
25 defendant or does he read it himself?

1 A I have them read it themselves, their acknowledgement
2 of rights.

3 Q And after they read those acknowledgement of rights,
4 what do you do?

5 A I ask them if they understood, if they had any
6 questions and if they did understand if they could sign next to
7 their name which I had asked them to sign after I written it
8 down.

9 Q And did the defendant indicate he understood?

10 A Yes.

11 Q And did he sign his name?

12 A He did.

13 Q And actually on the form there's his name is twice.
14 There is a printed name and a signature?

15 A Yes.

16 Q Who printed his name?

17 A I wrote his printed name after I asked him his name and
18 date of birth and have him sign his name next to it confirming
19 that it is him and his date.

20 Q At any time did he have any questions for you about
21 this form?

22 A No.

23 Q How about questions about his rights?

24 A No.

25 Q Did he ask for an attorney?

1 A No.

2 Q Did he tell you he did not want to talk to you?

3 A No.

4 Q And where was this done?

5 A In his residence.

6 Q Where in his residence.

7 A In his living room.

8 Q And who else was present?

9 A Myself, the other officer who were there on scene as
10 well as a Sherry Lynn Brandon who was also advised of her
11 rights.

12 Q And did you make any promises or any threats?

13 A No.

14 Q To sign this form?

15 A No.

16 Q Or to waive his rights?

17 A No.

18 Q How about any other officer?

19 A No.

20 Q And another part of your duties during the search
21 warrant did you take pictures?

22 A I did.

23 Q And you took pictures inside the home?

24 A Yes.

25 Q And you took pictures of what was found in the home?

1 A Yes.

2 (States Exhibits 28-32 marked for identification as
3 of this date.)

4 Q Officer Gander, I'm showing you what has been marked as
5 28, 29, 30, 31 and 32 and if you can tell me what those are?

6 A These are photographs that I took while at the
7 residence.

8 Q And those are just printouts of the photographs you
9 took?

10 A Yes.

11 Q Do they fairly and accurately represent what you had
12 taken on that day?

13 A Yes.

14 MS. WEAVER: Your Honor, we ask that State's
15 Exhibit 28 through 32 be entered at this time.

16 MS. LIPINSKI: Without objection.

17 THE COURT: They're admitted.

18 (States Exhibit 28-32, photographs, received in
19 evidence as of this date.)

20 Q And as a part of executing the search warrant you took
21 in evidence?

22 A I did.

23 Q And did you fill out an evidence form?

24 A I did, yes.

25 MS. LIPINSKI: Your Honor, if I can see what she

1 is handing.

2 MS. WEAVER: I am just getting it marked. I will
3 show you.

4 (States Exhibit 33 -35 marked for identification as
5 of this date.)

6 Q Officer Gander, I'm showing you what has been marked
7 State's Exhibit 33. And if you can tell me if that item was
8 ever in your possession?

9 A Yes, it was.

10 Q When did you first receive it?

11 A I received it at 7:36 p.m. on April 28, 2016.

12 Q And who did you receive it from?

13 A From Investigator Harrelson.

14 Q And when you received that item from Investigator
15 Harrelson what did you do with?

16 A It was already placed in the evidence bag. I secured
17 it and then later filled out the bag and sheet, sealed it up,
18 signed and printed it..

19 Q Okay, and when you say evidence bag --

20 A Yes.

21 Q -- I just want to note for the jury there's outer bag
22 and inside is a bag that has a blue ring around it.

23 A Yes.

24 Q Which bag did you place it in?

25 A The inner bag with the blue ring around it.

- 1 Q So the outer bag is something different?
- 2 A Yes.
- 3 Q So you placed it in that blue ring bag, sealed it?
- 4 A Yes.
- 5 Q And did you say you initialed?
- 6 A I sign and actually dated the bag on the back.
- 7 Q And explain to the jury that -- that -- what type of
- 8 evidence bag is that?
- 9 A This is our narcotics bag, narcotics evidence bag.
- 10 Q And what's the significance of the blue ring around it?
- 11 A It's a heat shield. It prevents tampering. It will
- 12 show if it was ever tampered with.
- 13 Q So it would show you if someone tried to open it?
- 14 A Yes.
- 15 Q And after you placed that item in the bag and sealed it
- 16 what did you do with?
- 17 A I then placed it in our secured evidence drop or night
- 18 drop. The vault that is downstairs.
- 19 Q Downstairs where?
- 20 A In the evidence room.
- 21 Q In where?
- 22 A At the sheriff's department.
- 23 Q Sheriff's department. And explain to the jury what
- 24 that vault is. What is it locker?
- 25 A It's a sealed -- basically a safe. One way, you can

1 only enter evidence through. I have no way of accessing it. No
2 one does beside our evidence tech.

3 Q So after you seal it and you place it in that locker
4 there is no way you or anyone else in the drug enforcement unit
5 can get back in there.

6 A It would be impossible for me to get it.

7 Q Only an evidence technician can get in there?

8 A Yes.

9 Q I am showing you what has been marked State's Exhibit
10 Number 34. Did that item ever come into your possession?

11 A Yes.

12 Q When?

13 A Approximately 8:08 p.m. on April 28, 2016.

14 Q Okay. And where did you retrieve that item?

15 A The kitchen table from Mr. Keith's residence.

16 Q Okay. And after retrieving that item what did you do
17 with it?

18 A I again sealed it in the evidence bag, signed, printed
19 and dated it.

20 Q Same as did you for exhibit number 33?

21 A Yes, exact same.

22 Q And after sealing it in that bag and signing your
23 initials in the tamper proof evidence bag you placed it in the
24 locker?

25 A Yes.

1 Q Where here at the Moss Justice Center?

2 A Yes, at the Moss.

3 Q And I am showing you what has been mark as State's
4 Exhibit 35. And was that item ever in your possession?

5 A It was.

6 Q Where did you retrieve that item?

7 A This was given to me from Investigator Harrelson which
8 was recovered from Mr. Keith's front pants pocket on April 28th
9 at approximately 7:49 p.m.

10 Q And after retrieving that item from Investigator
11 Harrelson what did you do with it?

12 A I again placed in same evidence bag or drug bag,
13 signed, printed and dated it.

14 Q And after sealing it in the tamper proof bag where did
15 you place it?

16 A Into the evidence chest, or evidence locker.

17 MS. WEAVER: I have no further questions Your
18 Honor.

19 CROSS EXAMINATION

20 BY MS. LIPINSKI:

21 Q You and I have obviously never met, correct?

22 A Yes.

23 Q So I will just ask you some background information so I
24 can just understand that. All right. You have been with law
25 enforcement how long?

1 A Approximately eight years.

2 Q How long have you been working with the DEU?

3 A I was assigned to the unit for approximately six of my
4 eight years.

5 Q All right. And so you worked a number narcotic
6 investigations, correct?

7 A Yes.

8 Q And even outside your time with the DEU you would have
9 worked for other types of investigations, correct?

10 A Yes.

11 Q And randomly, I know it's pretty rare, I understand you
12 all are even called to assist non-narcotic investigations,
13 right?

14 A At times, yes.

15 Q Something might start off as burglary and turn into a
16 narcotics investigation or they just need more man power and you
17 happen to be close kind of thing?

18 A Yes.

19 Q And you execute search warrants, correct?

20 A Yes.

21 Q And you perhaps assist in other agencies in execution
22 of search warrants, correct?

23 A Yes.

24 Q Because you don't know if drugs are found but may be
25 they want you guys on standby, right?

1 A Correct.

2 Q So understand the significance of documenting evidence
3 as you find it and those type things, correct?

4 A Yes.

5 Q And in working in narcotic investigations you also
6 understand that ultimately possession or ownership of narcotics
7 often becomes a contested issue especially when multiple people
8 are involved, correct?

9 A Correct.

10 Q And so the importance of documenting exactly where you
11 find the narcotics, the condition in which you find it, those
12 kind of things tend to provide these kind of circumstantial
13 clues as to who it might belong to, correct? Right?

14 A Yes.

15 Q Fair to say. Not always dispositive but information
16 you need to document, correct?

17 A Correct.

18 Q And you participated in the execution of this search
19 warrant did you do a report?

20 A A report was done.

21 Q Did you?

22 A I did not personally do it, no. I handled the
23 evidence.

24 Q But you could have done a report as well, correct?

25 A I conducted the evidence sheet. That was my task.

1 Q That is not my question. I'm not trying to trick you.
2 You could have done a report as well?

3 A I could have, yes.

4 Q There are times you perhaps were assisting another
5 investigation where they wanted you to just document what you
6 did and what you saw, who you talked to, correct?

7 A That isn't usually documented on our evidence sheet.

8 Q But if you did something more than just collect
9 evidence you do know that you are capable of producing your own
10 independent report of what you did and saw at a particular
11 location or as part of a particular investigation?

12 A I could, yeah.

13 Q And you did not in this case?

14 A No.

15 Q But you could have?

16 A It could have been possible, yes.

17 Q So you actually are one the first persons at the house,
18 correct?

19 A I was as a group of us, yes.

20 Q All right. Do you remember if you were the first
21 person at the house?

22 A I believe Officer Harrelson arrived at the same time.

23 Q You believe?

24 A Yeah. We were riding in the same car together so we
25 arrived at the same time.

1 Q But you didn't document that anywhere?

2 A I did not personally, no.

3 Q All right. There could have been a car in front of?

4 A There could have, yes.

5 Q But you don't remember?

6 A I can't recall at this time.

7 Q But if had you done a report that day that would help
8 you refresh your recollection?

9 A It could.

10 Q But you don't have that here?

11 A I don't.

12 Q And when you say you arrived at the house you are in
13 raid gear, right?

14 A I had a bullet proof vest on, yes.

15 Q Right, but you don't show up "Avon calling". It's not
16 a nice encounter like that, correct?

17 A We walked up to the front porch.

18 Q But in full raid gear, right?

19 A I was wearing jeans and a t-shirt as well my bullet
20 proof vest.

21 Q And you had a weapon?

22 A Yes.

23 Q Drawn?

24 A No.

25 Q You didn't have a weapon drawn?

1 A No.

2 Q You approached the house with no weapons drawn?

3 A No, it wasn't needed at that time.

4 Q Nobody else approached the house with weapons drawn?

5 A I can't recall whether the other officers did.

6 Q The other officers could have done it. But ultimately
7 you guys don't like slowly arrive at the driveway. You all bust
8 in together. You all evacuate the cars together. People swoop
9 around the back of the house to make sure nobody is exiting and
10 you all are in kind of raid gear, right?

11 A We have done that in the past, yes. At this instance
12 no, we did not.

13 Q You didn't this time?

14 A No, I did not run in, force in.

15 Q I didn't say run in force in, but you don't just drive
16 up and a couple officers show up. You all three go there
17 together and there are other officers sent around the back of
18 the house, correct?

19 A Yes.

20 Q And then most of you go to the front door, correct?

21 A Yes.

22 Q And the door was actually open or do you remember that?

23 A I can not recall.

24 Q Can't recall that either?

25 A No.

1 Q Okay. All right. So what you do recall is basically
2 off these evidence sheets, right?

3 A Yes.

4 Q And a you stated a couple of photographs you believe
5 you took?

6 A Yes.

7 Q Right?

8 A Yes.

9 Q Can I see those?

10 A Yes, ma'am. (Handed)

11 Q Let me show you State's Exhibit Number 28. Is that the
12 condition that you found that or did you open it and take a
13 picture?

14 A I opened it and took a picture.

15 Q So you didn't take a picture of where it was before you
16 opened it, correct?

17 A No.

18 Q Or the continue it was in before you opened it?

19 A No, because I didn't know what was inside of it.

20 Q All right. But once inside of it you can kind of look
21 down in there see the pills it in there, right?

22 A Yes.

23 Q And then there is this other container, right?

24 A Yes.

25 Q And it says kitchen table, correct?

1 A Yes, that was the kitchen table.

2 Q All right, but were they like that or were they in a
3 purse?

4 A I believe they were in the purse. I pulled them out,
5 saw what they were and then photographed.

6 Q But this says kitchen table?

7 A Because that's where they were when I actually seized
8 them.

9 Q But you got them out o the purse?

10 A I had to search through the purse, yeah.

11 Q So you could have put from the purse, correct?

12 A That's true.

13 Q But you didn't?

14 A No.

15 Q But remember my questions, the reason we document where
16 we find things is because these type of ownership, these
17 collateral details become important, correct?

18 A Uh-huh.

19 Q All right. And did you do anything else other than
20 open them before you took that photograph?

21 A No, I took the photograph and then sealed them back up
22 in the same containers at which time I put them in the evidence
23 bag. Once we got to the Moss Justice Center to our office I
24 took those photographs of them and then sealed them up in our
25 evidence bag and drop them into evidence locker.

1 Q You also took that photograph?

2 A I did.

3 Q All right. And that's State's Exhibit Number 29 for
4 the record. All right. I thought you said that you took all
5 these photographs of the house but now your testimony is that ==
6 and maybe I was confused before -- these are actually back at
7 the law enforcement center?

8 A These were, yes. These were taken at the residence.
9 (Indicating)

10 Q So white background of States 30, 32 and it's probably
11 31 are Moss Justice photographs, right?

12 A Yes. And these two are at residence.

13 Q States 29 and 28 are residence photographs, correct?

14 A Correct.

15 Q And then State's 33, you got from Investigator
16 Harrelson, correct?

17 A Yes.

18 Q And that's all you know is you got it from his hand?

19 A Yes, he handed it to me.

20 Q But you didn't find this pursuant to the search
21 warrant?

22 A No.

23 Q And you don't have any independent knowledge of where I
24 was before you got it from his hand?

25 A It came from a confidential buy.

1 Q Were you there for that?

2 A Yes, I was.

3 Q Did you see him recover it from the C.I.?

4 A Yes, I was sitting next to him.

5 Q All right. So you did see that?

6 A Yes.

7 Q What about the search or pat down of Mr. Keith, you
8 didn't participate in that did you?

9 A No.

10 Q So State's Exhibit Number 35 which you put Keith's
11 pocket left front pants, that's information you are getting from
12 Investigator Harrelson?

13 A Yes.

14 Q Because you are not participating in that?

15 A Correct.

16 Q And you don't know if it was attached to a key ring or
17 anything like that prior to it being handed over to you?

18 A No.

19 Q And other than him telling you Keith's pocket, left
20 front, you don't know anything about it's condition?

21 A No.

22 Q Anything else that was in his pocket at that time?

23 A No.

24 Q And you stated that you read -- no, you didn't read
25 them; the rights form, correct?

1 A I read them the constitutional rights, the middle
2 paragraph here (indicating). I then also asked if they
3 understood or have any questions for their rights, and then I
4 advised if they wished they can read their acknowledgment of
5 their the rights. Explained to them that this form is just used
6 to state that they you understood their rights. Do they have
7 any questions about it, which they hadn't. I had written their
8 names which they signed and stated they acknowledged their
9 rights.

10 Q Did you ask if they could read and write?

11 A No.

12 Q Did you ask if they understood what it means about we
13 don't have the ability to give you a lawyer now but the Court
14 might get you one later?

15 A I asked if they had any questions regarding their
16 rights, if they had any questions if they understood them or did
17 not understand them.

18 Q All right. But this is after you come to their house
19 with six officers in raid gear, correct?

20 A Yes.

21 Q And then you asked them to just sign where you indicate
22 on the form, correct?

23 A If they wished to.

24 Q But you didn't participate in any questions, correct?

25 A Correct.

1 Q You went back about searching the home, correct?

2 A Yes.

3 MS. LIPINSKI: Nothing further.

4 MS. WEAVER: Nothing further from the State.

5 THE COURT: You may step down.

6 Let's take a short break. I'll ask the jury to please
7 go to the jury room. I will bring you back after that
8 short break.

9 (Whereupon, the jury leaves the courtroom.)

10 THE COURT: We will be at ease for ten minutes.

11 (WHEREUPON, there was a break in the proceedings.)

12 THE COURT: Is Miss Johnson hear?

13 MR. PLEMING: Yes, sir, Your Honor.

14 THE COURT: All right, the State has got one
15 witness, Dee Anne Johnson.

16 Miss Lipinski, have you talked to Mr. Keith about
17 his right to testify or not?

18 MS. LIPINSKI: Yes, Your Honor.

19 THE COURT: And has he indicated to you a
20 preference?

21 MS. LIPINSKI: He indicated previously. I didn't
22 speak to him today about it. I don't have any reason
23 to believe it has changed.

24 Your Honor, he's indicated he has not changed his
25 mind and he will not testify.

1 THE COURT: All right. Mr. Keith, you understand
2 you are charged with a crime. You have an absolute
3 right to remain silent. In other words, nobody at the
4 trial of the case can make you take the witness stand
5 and testify. Nobody can require that you make any
6 statement. Nobody can require that you answer any
7 questions that relate to the charges, at least you
8 don't have to respond to any questions that might tend
9 to incriminate you or prove you guilty of the crime
10 the State claims you committed.

11 So you have an absolutely right to remain silent
12 even at the trial of the case. However, if you wish
13 to testify or you wish to provide this jury with any
14 additional information this is the only opportunity
15 that you will have to provide that information.

16 Now if you choose not to testify I'm going to tell
17 the jury they can't hold that against you. I already
18 told them once but I will tell them again. They can't
19 hold that against you in any way. If you do choose to
20 testify you have to answer not only your lawyer's
21 questions but you have to answer the prosecutor's
22 questions to the extent that they are relevant, even
23 if the responses to those questions might tend to
24 prove you guilty of some crime they claim you
25 committed.

1 Have you had plenty of of time to talk to your
2 lawyers about your decision to testify or and not
3 testify?

4 THE DEFENDANT: Yes.

5 THE COURT: Have they discussed with you the
6 advantages and disadvantages of testifying as well as
7 not testifying?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you appreciate what those advantages
10 and disadvantages are?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And have you had time to reflect upon
13 your decision as to whether or not you will take the
14 witness stand and testify or you will remain silent?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And have you arrived at a decision?

17 THE DEFENDANT: I don't want to testify.

18 THE COURT: Is your decision that you will not
19 testify?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And is that a decision that you made of
22 your own free will and accord?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Has anybody forced you into it?

25 THE DEFENDANT: No.

1 THE COURT: Anybody pressured you into it?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anyone ever suggested that that's
4 the decision you ought to make in this case.

5 THE DEFENDANT: No, sir.

6 THE COURT: Did you make that decision on your own?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: After having plenty of time to reflect
9 upon it?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And are you still satisfied with with
12 that decision?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you think if you had any additional
15 time you would make a different decision?

16 THE DEFENDANT: No, sir.

17 THE COURT: So your decision now is that you will
18 not testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any other witnesses you
21 wish your lawyer to call when it's your time to
22 present evidence?

23 THE DEFENDANT: No, sir.

24 THE COURT: Okay. Thank you. Ready for the jury?

25 MS. WEAVER: Yes, sir.

1 THE COURT: Bring them in.

2 (WHEREUPON, the jury enters the courtroom.)

3 THE COURT: We will continue the states
4 presentation.

5 MS. WEAVER: Your Honor, the State calls Dee Anne
6 Johnson.

7 DEE ANN JOHNSON, called as a witness, having been
8 duly sworn by the clerk, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MS. WEAVER:

12 Q Miss Johnson if you could please state your full name?

13 A Dee Anne Johnson.

14 Q And where are you currently employed?

15 A Currently employed at the York County Sheriff's Office.

16 Q And what is your occupation?

17 A I am a forensic chemist in the drug analysis
18 laboratory.

19 Q And what education did you have to become a forensic
20 chemist?

21 A I have a Bachelor of Science degree in criminal justice
22 obtained in 1989 and a Bachelor of Chemistry obtained in 1993
23 from the University of South Carolina in Columbia.

24 Q And what training have you had?

25 A My training is predominantly from the State Law

1 Enforcement Division in Columbia. I've also attended the
2 forensic chemist seminar sponsored by the drug enforcement
3 division.

4 Q And have you tested controlled substances in the past?

5 A I have.

6 Q And for approximately how many years have you been a
7 forensic chemist?

8 A I began in early 2000 so approximately 17 years now.

9 Q And prior working with sheriff's office where did you
10 work?

11 A I worked at the Charlotte Mecklenburg Police Crime
12 Laboratory and prior to that I worked at the Columbia Police
13 Department Crime Laboratory.

14 Q And have you ever testified in Court regarding being a
15 forensic chemist?

16 A I have.

17 Q Approximately how many times?

18 A Approximately 50 times.

19 MS. WEAVER: Your Honor, at this time I would like
20 to offer Miss Johnson as expert witness in chemical
21 analysis and identification of controlled substances.

22 MS. LIPINSKI: Without objection Your Honor.

23 THE COURT: So without objection?

24 MS. LIPINSKI: Yes, Your Honor.

25 THE COURT: She is so qualified.

1 Q All right. Miss Johnson I am going to show you what
2 has been marked State's Exhibit Number 33. Can you tell me if
3 that item ever came into your possession?

4 A It did.

5 Q And on was day?

6 A On May the 17th of 2016.

7 Q And where did you receive that item from?

8 A From Mr. Jimmy Stiles.

9 Q And can you explain to the jury who Jimmy Stiles is?

10 A Jimmy Stiles is employed in our evidence department and
11 he is responsible for giving evidence back to the laboratory and
12 to the laboratory.

13 Q And where had Mr. Stiles retrieved that item from?

14 A He retrieved the item from the Moss Justice Center
15 evidence drop on April 29th of 2016.

16 Q And when you receive that item how did it appear?

17 A When I received the item?

18 Q Well, let me explain. This item is now out of the bag?

19 A Correct.

20 Q How did it appear when you you first received it?

21 A Okay. When I first received the item I only have the
22 inner envelope which has the blue on either side and red across
23 the top and the officer's signature.

24 Q And did you notice any evidence of tampering?

25 A I did not.

1 Q If you noticed evidence of tampering what would you
2 have done?

3 A There is a place up in the upper right hand corner that
4 we make notes regarding the seal and I put in okay in my
5 initials and the date noting that everything looked okay.

6 Q And once you received the bag and everything looked
7 okay what did you do then?

8 A The evidence is logged into our system and plated
9 placed storage until we are ready to analyze the actual
10 evidence.

11 Q And did you analyze that item?

12 A I did, yes, ma'am.

13 Q And can you tell the jury what was the result of your
14 analysis?

15 A Item eight was determined to contain Hydrocodone, 38
16 tablets weighing 15.95 grams.

17 Q And Hydrocodone is a schedule two controlled substance?

18 A That is correct.

19 Q And you stated that the weight was 15.95 grams?

20 A That's correct.

21 Q And can you explain to the jury what type of scales you
22 use?

23 A We have an analytical balance. Each of us have an
24 analytical balance in the lab and we weigh the substances on
25 that.

1 Q And can you explain to the jury how that is different
2 from just putting on a normal digital scale?

3 A I sorry, I am not sure what you are asking.

4 Q Do you certify the weight with those scales that you
5 use in your lab?

6 A They are certified once a year, yes, they are.

7 Q And I am showing you what has been marked as State's
8 Exhibit Number 34.

9 Q When did you receive that item?

10 A I received this item on May 17th of 2016 as well.

11 Q And who did you receive that item from?

12 A From Jimmy Stiles.

13 Q And Jimmy Stiles is with the evidence department?

14 A That's correct.

15 Q And where did Jimmy Stiles receive that item?

16 A From the Moss Justice Center evidence drop.

17 Q And when you received that item did it look different
18 then how it is packaged now?

19 A Just as item eight it would not have had this outer
20 envelope, only the inner with the blue and the red across the
21 top.

22 Q And did you analyze the substance within that item?

23 A Yes, ma'am, I did.

24 Q And can you tell the jury the result of that analysis?

25 A Item six was determined to contain Buprenorphine which

1 is a controlled substance three, seven and one half tablets.

2 Q And this outer bag is this a bag that you use?

3 A Yes, ma'am.

4 Q Okay. And explain to the jury is this something that
5 you place and heat seal around that blue bag?

6 A That's correct. Obviously in order to obtain the
7 substance inside we have to open the blue envelope and so in
8 order to reseal we include an additional outer bag so we can
9 place everything back in.

10 Q And again no evidence of tampering when you first
11 received that item?

12 A No, ma'am.

13 Q Okay. How about any evidence of tampering since you
14 tested the item?

15 A No, ma'am.

16 Q Okay. And how do you know that their has been no
17 tampering?

18 A My seal is at the bottom hear with my initials and the
19 date and the seal date and it doesn't appear that the seal has
20 been tampered with.

21 Q And I apologize, for State's 33, I just want to make
22 sure no evidence of tampering on that outer bag?

23 A Again, my seal and initials and date are across the
24 bottom.

25 Q Now I am showing you what has been marked as State's

1 Exhibit Number 45. Did that item come in to your possession?

2 A Yes, ma'am it did.

3 Q On what date?

4 A On May 17th of 2016.

5 Q And who did you receive that item from?

6 A Mr. Jimmy Stiles.

7 Q And where did Mr. Stiles receive that item?

8 A From the Moss Justice Center evidence drop.

9 Q And when you received that item how did it appear?

10 A Just as with the former two I would have received the
11 inner envelope with the blue and the red sealed across the
12 bottom.

13 Q Any evidence of tampering?

14 A No, ma'am.

15 Q And did you analyze the substance within that bag?

16 A Yes, ma'am, I did.

17 Q And can you tell the jury the results of that analysis?

18 A Item two was determined to contain Buprenorphine which
19 is a controlled substance three, seven tablets.

20 Q And after analyzing the substance what did you do with
21 the item.

22 A Substance obviously sealed in this outer bag and stored
23 until we are ready to return it back to the evidence department.

24 Q And any evidence of tampering since you resealed it in
25 that outer bag?

1 A No, ma'am.

2 Q And Miss Johnson did you prepare a report of your
3 findings?

4 A Yes, ma'am, I did.

5 Q Okay. Miss Johnson I am showing you what has been
6 marked as State's Exhibit Number 36. Is that a printout of your
7 analysis of this case?

8 A This reflects the analysis of the three items, yes,
9 ma'am.

10 MS. WEAVER: Your Honor, at this time the State
11 moves to enter State's Exhibit 33, 34, 35 and 36.

12 MS. LIPINSKI: Without objection.

13 THE COURT: They are admitted.

14 (State's Exhibit 33-36 received in evidence as of
15 this date.)

16 Q And Miss Johnson, as far as item eight that was tested,
17 the Hydrocodone.

18 A Yes, ma'am.

19 Q What is Hydrocodone a derivative of?

20 Q Hydrocodone is derived from Codeine?

21 Q A where is Codeine derived from?

22 A Codeine is derived from or is naturally occurring in
23 the plants Opium poppy.

24 MS. WEAVER: No further questions, Your Honor.

25 CROSS EXAMINATION

1 BY MS. LIPINSKI:

2 Q You also did some worksheets that involves this,
3 correct?

4 A Yes, ma'am.

5 Q All right. And that kind shows you -- you walk through
6 what kind of testing you do or what procedures you do in terms
7 of identifying this evidence, correct?

8 A Yes, ma'am.

9 Q And there is multiple ways that you could go about drug
10 testing evidence but for the most part you all use what is
11 called a gas cromotography mass spectrometry, correct?

12 A That's correct.

13 Q But you can also look up pills basically on a pill
14 chart, right?

15 A Yes, ma'am.

16 Q That's kind of the initial way you do it, right?

17 A Correct.

18 Q Round, with this marking on it, about this size, those
19 type things; gives you just initial gauge of where you are
20 going, correct?

21 A Correct.

22 Q But you have tested counterfeit drugs, correct?

23 A That's correct.

24 Q So even if it appears to be one thing you can actually
25 test it and it turns out to be something completely different,

1 correct?

2 A That's correct.

3 Q And you didn't test all 38 pills of the alleged

4 Hydrocodone, correct?

5 A No, ma'am.

6 Q You really test one pill?

7 A I will need to refer to my work sheet.

8 Q Sure.

9 A You are referring to item eight.

10 Q Yes.

11 A In this case there was approximately half a tablet
12 consumed in the analysis.

13 Q So you didn't even test all of one pill, you tested
14 half a pill?

15 A Correct.

16 Q All right. And you haven't check off, if you just look
17 at that worksheet, it says weight, volume, merely the grams is
18 more of a more scientifically accurate than volume measure,
19 correct?

20 A The gram weight is the entire exhibit.

21 Q Right. I understand that. But gram, that term, more
22 accurately relates to volume or mass as opposed to weight,
23 correct?

24 A I wouldn't say volume. Mass.

25 Q Mass?

1 A Correct.

2 Q All right. So it's really mass plus gravity, kind of
3 gives you a lay interpretation that gram may actually weigh,
4 fair to say?

5 A Yes, ma'am.

6 Q If we weighted it on the moon it would weigh different?

7 A Yes.

8 Q Okay. All right. So it's really more accurately a
9 representation of mass, correct?

10 A Correct.

11 Q And it states that you did tablet ID, right, you looked
12 it up on the chart?

13 A Yes, ma'am.

14 Q And then we did instrumentation which I assume is the
15 gas cromotograph thing, right?

16 A That's correct.

17 Q And really what we do is take a half a pill and
18 dissolve in a liquid and we put it in a machine and it spits out
19 a chart?

20 A Correct.

21 Q You are not back there with beakers and things bubbling
22 just like a mad scientist?

23 A Not quite.

24 Q All right. And we know, we kind of have a known
25 chemical footprint and that's what you compare it to, correct?

1 A Correct.

2 Q Spits out a chart. There's peaks and valleys. You
3 look at what other peaks and valleys look like and that's how
4 you decide it is Hydrocodone, correct?

5 A There is also a laboratory involved as well, yes,
6 ma'am.

7 Q It's more scientific than that. I'm not trying to
8 diminish what you do, but for the most part that's the process
9 by which you go through, right?

10 A Correct.

11 Q And Hydrocodone actually it's ten milligram tablets,
12 correct?

13 A These were coated to contain ten milligrams, right.

14 Q Milligram is how much of a gram?

15 A One thousand of a gram.

16 Q All right. A thousand of a gram. All right. So there
17 was a bunch of other stuff in this pill other than Hydrocodone,
18 fair to say?

19 A Whatever the manufacturer adds as far as the
20 pharmaceutical industry goes, yes, ma'am.

21 Q But we know it's Hydrocodone and it's even on your
22 worksheet that 325 milligram of much pill is acetaminophen or
23 Tylenol, correct?

24 A Correct

25 Q And that's how you get to the brand name Hydrocodone,

1 correct?

2 A Correct.

3 Q Because there are codeine or codeine derivative tablets
4 that arrive in other forms, right?

5 A Yes, ma'am.

6 Q There's Oxycontin and any number of variables on a
7 theme so to speak, correct?

8 A Yes, ma'am.

9 Q The Hydrocodone is 325 milligrams of Tylenol or
10 Acetaminophen and then only ten milligrams of actually what was
11 called pure form Hydrocodone, correct?

12 A Correct.

13 Q All right. And the last thing, quantitation test, what
14 did you do in terms of quantitation testing?

15 Q Our laboratory does not perform quantitation which
16 would allow us to give an amount of the the actual ingredient.
17 We only perform qualitative which tells us that the active
18 agreement is present?

19 Q All right. And actually your notes reflect Hydrocodone
20 Bitartrate?

21 A Yes, ma'am.

22 Q And you stated, your words, was a derivative of
23 Codeine?

24 A Yes, ma'am.

25 Q Which is an ingredient of Opium?

1 A It is naturally occurring alkaloid of the Opium poppy
2 plants.

3 Q But there are other things in Opium as well?

4 A Correct.

5 Q What are other things in Opium.

6 A It also contains morphine, thebaine and there's a
7 couple of other less popular ingredients as well.

8 Q But it's not -- it doesn't pertain to those type
9 things, correct?

10 A What does not pertain?

11 Q Hydrocodone doesn't derive from just thebaine and all
12 these other things?

13 A No, ma'am. No, ma'am.

14 Q All right. And so again it's more scientifically
15 accurate to say that it's a derivative of codeine not to say
16 necessarily it's a derivative of opium because it doesn't have
17 all those other things in it?

18 A Well, codeine is derived from opium and Hydrocodone is
19 derived from codeine so I would say it comes indirectly from the
20 opium poppy plant.

21 Q All right. And you stated that you tested two samples
22 of Buprenorphine, correct?

23 A Yes, ma'am.

24 Q And those were eight milligram tablets?

25 A That's correct, yes, ma'am.

1 Q And they weighed approximately .71 grams?

2 A Item six is approximately .71 grams, yes, ma'am.

3 Q But you don't do any independent testing to determine
4 how much each pill weighs, do you?

5 A Each pill, no, ma'am, just the exhibit as a whole.

6 Q But in order to get there if you have approximately 16
7 grams of Hydrocodone which is your testimony, right?

8 A Yes, ma'am.

9 Q And you have 38 pills or 37 1/2 half you would divide 16
10 by 38 in order to get the pill gram weight, right?

11 A If I wanted to do that.

12 Q If you wanted to do it. I understand. I understand it
13 is getting more broken down then that. But I am just trying to
14 get to how we kind of get to the grams of drugs versus the grams
15 in the pill, all right?

16 A Okay.

17 Q All right. And so when you talk about total you are
18 talking about weighing them all on a thing that's where you get
19 the 16 grams. The ten milligrams is the makeup of each
20 individual pill, correct?

21 A According to the literature that's correct.

22 Q But you didn't do any quantitative analysis to find out
23 exactly how much?

24 A I did not.

25 Q But nothing about these pills in any way looked like

1 they are counterfeit, correct?

2 A No, ma'am.

3 MS. LIPINSKI: Court's indulgence one moment.

4 Q Were the items in State's 34 I know they are different
5 pills. I don't want to confuse you. I'm not trying to trick
6 you. But are the items in State's 34 and 35 are they different
7 forms of Buprenorphine or are they the same? If that makes as
8 much sense.

9 A The tablets in both items State's Exhibit 35 and
10 State's Exhibit 34 both contain the same logo, if you will, or
11 marking.

12 Q Okay. So I mean, you're aware there are different
13 forms of Buprenorphine out there, correct?

14 A Different forms, yes.

15 Q Different milligram tablets?

16 A Yes, correct.

17 A There's ones that are met to dissolve. Some that try
18 to keep you from dissolving or keep you crushing. I mean, there
19 are different manufacturers, that's all fair to say?

20 A Yes, ma'am, that's fair to say.

21 Q So that's kind of what gets to my question. I know you
22 can't say they came from the same batch or anything like that.

23 A Right.

24 Q But for the most part is it possible that if you went
25 to a pharmacy you find them in the same bottle? That may be the

1 easiest way to ask that question.

2 MS. WEAVER: Your Honor, it calls for speculation.

3 She's testified they're the same. I don't know she

4 can say they came from the same bottle,

5 MS. LIPINSKI: I didn't ask her to.

6 THE COURT: Well, rephrase the question. I didn't

7 think she asked that either but ask it again so we

8 will be clear.

9 Q I know that you can't say they came from the same batch

10 or the same production day or anything like that, and I'm not

11 trying to trick you in any way. I am just trying to use lay

12 terms to make sure I get to my meaning correctly.

13 I don't want you to sit there and say they both

14 Buprenorphine and leave it at that. Are they the same kind of

15 of version or manufacturer that if I went to a pharmacy I would

16 expect to find them in the the same bottle or is one of them a

17 different manufacturer, such that I would say they came from two

18 different sources, whether it be bottle, batch or manufacturer?

19 Do you understand what I am asking?

20 A Like said before both exhibits contain the same

21 markings meaning they are similar and they may be found in a

22 similar place. Does that answer your question?

23 Q Nothing to indicate different manufacturers or anything

24 like that?

25 A No, ma'am.

1 Q All right. And that's all I am trying to get too.

2 MS. LIPINSKI: That's all we have at this time?

3 MS. WEAVER: Nothing further from the State?

4 THE COURT: You may step down?

5 THE WITNESS: Thank you, Your Honor.

6 MR. PLEMING: Your Honor, the State rests at this
7 time.

8 THE COURT: All right. That's all the State
9 intends to present in the trial of the case. Does the
10 defense wish to present any additional evidence?

11 MS. LIPINSKI: None Your Honor.

12 THE COURT: All right. That's all the testimony
13 or other evidence to be offered in the trial of this
14 case. What remains to be done are the lawyers final
15 summation. After which I will instruct you on the law
16 and you will begin with your deliberations. We can't
17 get that done this afternoon so we will start in the
18 morning. We will begin at ten o'clock. We will
19 conclude with the final summations, the instruction
20 and your deliberations.

21 So during your overnight recess keep in mind again
22 no discussion about case with anybody including your
23 fellow jurors, no research, no investigation, no
24 internet, no reference books, no nothing. You can't
25 supplement your wealth of knowledge to assist you in a

1 resolution. You have to base your decision upon what
2 you see and hear during the trial of the case and you
3 can't consult any outside sources. Okay. With that
4 do have a good evening. Please report to your jury
5 room at ten o'clock in the morning.

6 (WHEREUPON, the jurors exit the courtroom.)

7 THE COURT: Anything further?

8 MR. PLEMING: Nothing from the State.

9 MS. LIPINSKI: Your Honor, at this time I would
10 like to put the motion for a directed verdict on the
11 record if the Court would deem appropriate.

12 We would at this time move for a directed verdict
13 as to the trafficking in Hydrocodone charge and
14 possession with intent to distribute Buprenorphine
15 charge, believing that the evidence as presented does
16 not necessarily indicate that Mr. Keith is guilty of
17 either of these two offenses. We would renew all our
18 pretrial objections, namely the 403, 404 argumentation
19 and the State v Lyle argumentation.

20 As to the tracking in hydrocodone specifically I
21 don't believe the chemist ever testified that
22 Hydrocodone is a salt or isomer there of opium. She
23 testified that it was a derivative but she did not use
24 the technical term contained in the Indictment, namely
25 and as they written it says salt or isomer of opium.

1 What she called it was a derivative. Salt and isomer
2 is a technical term. It requires technical knowledge
3 and without that, substantiate that, I don't believe
4 the State has met their burden of proof as it applies
5 to the trafficking in Hydrocodone charge. She also
6 indicated that it was only ten milligrams of each
7 tablet actually contained Hydrocodone and the statute
8 does state that it is in its pure form or any mixture
9 thereof. In order to give the pure form language
10 meaning and the core meaning to these disjunctive and
11 therefore I think that taking Lyle -- I think the
12 defendant is entitled to the benefit of any weight
13 knowledge and therefore should be allowed to argue
14 that he did not traffic in 14 grams of Hydrocodone and
15 there was not enough evidence to substantiate that it
16 was specifically a salt or isomer of opium. As
17 opposed to possession with intent to distribute, while
18 there was evidence presented about intent to
19 distribute, there was nothing that tied the various
20 text messages and other drugs that would indicate that
21 Mr. Keith had any intent to distribute this
22 Buprenorphine. He's is not been charged specifically
23 with Buprenorphine in general or having possession
24 with intent to distribute Buprenorphine in general but
25 that he had possession with intent Buprenorphine of

1 these seven or if you believe 14 tablets. As a matter
2 of fact he states on the evidence presented by the
3 State that he was not going to sell the drugs or
4 narcotics that were in his possession and therefore
5 the defendant believes he's entitled to a directed
6 verdict as to possession with intent to distribute
7 Buprenorphine and at best the only thing that should
8 proceed to the jury is the possession of Buprenorphine
9 charge. And to take reason we move for a directed
10 verdict as to both charges Your Honor.

11 THE COURT: Go ahead.

12 MR. PLEMING: Thank you, Your Honor. The
13 language of the statute clearly states any opium as
14 described in section 44-53-190 or 44-53-210 when you
15 cross reference that code -- that section of the code,
16 Your Honor, under definition scheduled two controlled
17 drugs it lists opium and opiate and salt compound or
18 derivative of opium or opiate. We believe that
19 establishes that based on the testimony from Miss
20 Johnson that Hydrocodone is a derivative of opium that
21 satisfies the requirements of the statute to bring
22 this charge against Mr. Keith on the basis that the
23 Hydrocodone -- that the pills he sold to the C.I. did
24 test positive for Hydrocodone.

25 As as far as the amount of weight, the weight of

1 the evidence, there is more than enough for this to go
2 before a jury. There is overwhelming evidence that he
3 possessed more than 14 grams of that Hydrocodone and
4 that of course came in the form of video evidence in
5 which he is seen distributing and collecting money for
6 those pills, distributing those pills with his
7 co-defendant to the C.I.. In addition, we have ample
8 evidence in the form of text messages which
9 corroborates what is seen on the video.

10 As far as the possession with intent to distribute
11 Buprenorphine charge, Your Honor, again, we have ample
12 evidence with intent to distribute those drugs because
13 from all the prior drug deals that occurred the two
14 months prior and as well as testimony from Miss
15 Brandon that he did not -- it was not his habit to
16 ever possess that quantity of pills of Buprenorphine,
17 seven pills for his own personnel use. That he took
18 maybe ten a month, occasionally, but there's also
19 testimony from Miss Brandon that he was holding those
20 pills for another person that he had promised to sell
21 them to and that's why he refused to sell them to the
22 C.I. on April 28th. He told him that he had to wait
23 for the first of the month before he could get more
24 and based on that evidence as stated, plus all the
25 other evidence the State has put in the record in our

1 case in chief we ask that Your Honor deny the
2 defendant's motion for directed verdict.

3 MS. LIPINSKI: If I can just briefly respond to
4 the trafficking Buprenorphine, Your Honor. They get
5 to pick and choose what words they put in the
6 indictment. If you look at the statute they apply to
7 any litany of drugs any incantation thereof, they
8 could have pulled the derivative language. They
9 didn't pick and choose that language. They
10 specifically picked salt and isomer language which is
11 very technical language and they left out derivative.
12 If they wanted to proceed under a derivative fashion
13 and under that scientific version of it then they
14 simply had to put that into the Indictment. But they
15 choose not to and they choose not to elicit any
16 testimony from their chemist that is was possibly a
17 salt or isomer and those three words have specific and
18 distinct meanings and she didn't use them. This is a
19 notice document. I understand they are trying to get
20 to the statute but there is number of the words in the
21 statute that they choose not to include. They don't
22 get to just pull everything now back in. They choose
23 the wording they put in the Indictment and the
24 Indictment is limited to salt or isomer of opium and
25 does not contain the derivative language now they are

1 Indictment is limited to salt or isomer of opium and
2 does not contain the derivative language now they are
3 trying to rely upon. And for that reason we feel that
4 directed verdict should be granted.

5 THE COURT: Well, the Indictment does not limited
6 to those terms as you state because they state as
7 described in section 44-53-190 and 44-53-210 so they
8 incorporated the language in each of those statutes by
9 referencing the Indictment. So your motions for
10 directed verdict are denied.

11 Anything else?

12 MR. PLEMING: Nothing from the State, Your Honor.

13 THE COURT: All right. Court is in recess until
14 ten o'clock in morning. I need to see the lawyers in
15 chambers to discuss potential charges.

16 MR. PLEMING: Yes, sir, Your Honor.

17 (Court was in recess until April 27, 2017).

18 (April 27, 2017 continuation of trial.

19 THE COURT: All right. Everyone is present. We
20 ready for the jury.

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

22 MS. LIPINSKI: Your Honor, if we could just put
23 some of the things on the charging conference on the
24 record.

25 THE COURT: Well, do you just want to do it when I

1 give the charge. You can note any exceptions.

2 MS. LIPINSKI: Okay. That is fine.

3 THE COURT: Okay. Bring the jury in.

4 (WHEREUPON, the jury enters the courtroom.)

5 THE COURT: Good morning ladies and gentlemen. As
6 you know when we recessed yesterday all the evidence
7 has been received. So what remains to be done is the
8 lawyers final summations after which I will provide
9 you with the instruction on the law and then you can
10 begin with your deliberations in the case. So please
11 give the lawyers your attention as they give you their
12 final summation.

13 MR. PLEMING: Thank you, Your Honor. May it
14 please the Court.

15 THE COURT: Yes.

16 MR. PLEMING: Good morning ladies and gentlemen.
17 At the beginning of this trial during my opening
18 statement I told you that I couldn't make any promises
19 as to exactly what the witnesses would testify about.
20 What exactly they would say because they hadn't
21 testified yet, and likewise I can't tell you exactly
22 what Miss Lipinski is going to say to you in her
23 closing argument in just a few moments. But like I
24 said in my opening statement I did know what was on
25 that video and I told you that everything that you

1 would need to find this defendant guilty of
2 trafficking of Hydrocodone you would see on that video
3 and you have seen the video. All the evidence has
4 been presented now. All the text messages are in
5 evidence. You have them for your review. You heard
6 all the the testimony that corroborates what you saw
7 with your own eyes and ears on that video, and I will
8 submit to you that nothing that Miss Lipinski can say
9 to you today could possibly overcome the proof of this
10 defendant's guilt as you witnessed on that video and
11 as corroborated by the rest of the evidence that has
12 been presented. You would have to somehow believe
13 that what was plainly captured on that video was
14 somehow fact or manufactured and I submit that is just
15 simply not possible. Does not stand for common sense.
16 What you saw on that video is as real as me standing
17 before you right now.

18 I submit to you that when the evidence is so
19 overwhelming stacked against someone in a position of
20 Miss Lipinski's client that all that she can hope to
21 do is distract you by talking to you about bad people
22 Mr. Sullivan and Miss Brandon are are. That she can
23 only hope to take your focus away from the evidence
24 against her client. The evidence that proves his
25 guilt beyond all reasonable doubt.

1 Is it the fact that both of those witnesses; Miss
2 Brandon and Mr. Sullivan are guilty as well, is it
3 that makes her client less culpable. Miss Brandon and
4 Mr. Sullivan they are the faces of drug addiction.
5 Their lives represent why these laws exist and why
6 it's important that these powerful drugs be regulated.

7 My former boss and mentor John Anthony from Union
8 County use to often quote a line from a country artist
9 Jamie Johnson who says the high cost of living ain't
10 nothing like the cost of living high. And I just ask
11 that you focus on the real issues of this case and
12 apply the plain facts of the evidence to each of these
13 two offenses that have been charged against Mr. Keith;
14 trafficking Hydrocodone and possession with intent to
15 distribute Buprenorphine. These are two separate and
16 distinct offenses and because of that I would like to
17 speak about each one separately. Let's begin with
18 trafficking Hydrocodone.

19 Mr. Keith is charged with trafficking Hydrocodone
20 which requires that the State prove beyond a
21 reasonable doubt that he knowingly sold, delivered or
22 otherwise aided and abetted, attempted or conspired to
23 sell or deliver or was in knowingly and actual or
24 constructive possession, knowingly attempted to become
25 an actual or constructed possession of Hydrocodone.

1 The State must also prove beyond a reasonable doubt
2 that the amount of Hydrocodone or any mixture
3 containing Hydrocodone was four grams or more. Now
4 under the law the defendant is guilty of trafficking
5 Hydrocodone as long as he possesses the threshold
6 weight of four grams or more. But under the law he's
7 also guilty of trafficking in Hydrocodone if he
8 distributes greater than or equal to four grams of any
9 mixture containing that drug.

10 He is also guilty of trafficking Hydrocodone if he
11 conspires to sell an amount of a mixture containing
12 four grams or more of the drug.

13 In this case he did both. Well, he did all three I
14 should say. I gave you three ways under the
15 trafficking statute he is guilty in this case. You
16 saw him on camera taking \$300 in exchange for 38 pill
17 of Hydrocodone. You watched as Miss Brandon counted
18 them out for Mr. Sullivan. You've seen the text
19 messages between the defendant and Mr. Sullivan which
20 make it clear that the deal they had established was
21 for 38. All 38. And at the last minute the defendant
22 asked to hold five for a guy name Jeff who is going to
23 pay \$9 per pill and he agreed to do that. But all 38
24 were transferred from the defendant to the C.I. in
25 this case. The distribution of the Hydrocodone was

1 complete there. It doesn't matter he was holding five
2 other pills for somebody else.

3 Investigator Harrelson testified that he collected
4 how many pills after the deal was complete off of the
5 C.I.? Thirty -- eight. That's how many he had on
6 him. He had searched before he went in. He had zero
7 to start with. You heard the defendant and Miss
8 Brandon both confirm on video that the deal was for 38
9 pills. And the defendant also conspired with Miss
10 Brandon to possess and distribute greater than four
11 grams of Hydrocodone.

12 Miss Brandon testified that the defendant referred
13 to her as his secretary. And you can tell from the
14 text the images on those videos where you see her
15 using both of their cell phones texting people. In
16 the Home Depot video if you want to watch it again you
17 can, but she walks over with the phone and shows it to
18 the defendant and they talk about whatever it was on
19 there and I submit to you that supports how she
20 testified as to her role in this drug selling business
21 that they were operating. The fact that she is the
22 one seen texting on those phones, the fact that she
23 admittedly was the one that usually set up these deals
24 and that was confirmed through the rest of the
25 testimony that she -- that she would send these text

1 messages at the direction of the defendant. That
2 doesn't make -- even if she's the one that sets these
3 deals up that certainly doesn't make his culpability
4 any less in this case. And if Miss Lipinski tries to
5 suggest that to you I ask you to recognize that's just
6 a distraction. That is just her attempt to take the
7 focus off of the person who is really on trial today
8 which is Dinal Keith. As I said he is guilty of
9 trafficking in three different ways in this case;
10 possession greater of four grams of any mixture of the
11 drug, conspiracy means an agreement that he had with
12 Miss Brandon to sell a mixture of greater of four
13 grams of this drug and that he did distribute greater
14 than four grams of this drug. Now he didn't have to
15 do all three of those things but he did in this case.
16 So those are three separate basis on which you can and
17 should find him guilty of trafficking in Hydrocodone.
18 He testified that this conspiracy between the two of
19 them had been going on for 18 months. They have been
20 doing this together from the time they started dating.
21 All the evidence of these prior deals that she
22 testified about as well as the several -- the three
23 additional deals in which Mr. Sullivan bought pills
24 from the defendant leading up to April 28th of last
25 year this is all relevant to show you that they had an

1 ongoing agreement to sell these pills that lasted and
2 continued up until their arrest on April 28th of last
3 year.

4 Now, of course you already seen the conspiracy and
5 the distribution with your own eyes on that video but
6 I would be remiss if we didn't present it to you one
7 last time at the conclusion of this trial. And this
8 time we will only watch the part from inside the
9 living room. I know you don't all want to sit through
10 all that additional footage of the camera in his
11 pocket and that's probably boring for you to sit
12 through but I wanted you to see that because I wanted
13 there to be no question in your mind that anything was
14 edited or taken out of that video to make sure that
15 you understand no one is trying to hide anything from
16 you in this trial. You have the entire recording from
17 the minute they started recording on that camera until
18 the equipment was recovered from Mr. -- from
19 Investigator Harrelson back at the church.

20 (WHEREUPON, video was played.)

21 MR. PLEMING: So having watched that video once
22 more who is the one talking to Mr. Sullivan about the
23 terms of the deal they had agreed upon that day? It
24 is this defendant. Who is the one who asked him to
25 hold those five pills for Jack? The defendant. Who

1 is the one is telling him he doesn't have any Suboxone
2 available to him at that time? Denny Keith.

3 So let's talk for just a moment about the weight of
4 the drugs when they were tested. Now you heard from
5 our expert chemist who testified and confirmed that
6 those pills did contain a mixture of Hydrocodone.
7 The law is very clear that he is guilty of trafficking
8 so long as the weight of the mixture is greater or
9 equal to four grams. There is no denying that these
10 pills contain other substances with the Hydrocodone
11 but the law as I said its plain and it's clear that as
12 long as there is Hydrocodone in that mixture and the
13 weight was four grams or greater in this case it was
14 15.95 grams. That's almost four times that threshold
15 weight amount that it takes to be guilty of
16 trafficking in Hydrocodone.

17 The defense stipulated that our chemist that
18 testified Miss Johnson was an expert. They recognize
19 she's an expert. There's nothing about her methods,
20 or her findings, her opinions that can be contested in
21 this case. You have no reason to doubt as to the
22 substance that was tested positive in those pills or
23 the weight because those scales are certified and like
24 I said we met that threshold requirement of four grams
25 by almost four times.

1 As I mentioned one of the ways that he's guilty of
2 trafficking in Hydrocodone is that he is engaged in a
3 conspiracy with Miss Brandon. What is does that mean?
4 It means they had an agreement. An agreement existed
5 between the two of them to sell 38 Hydrocodone pills.
6 That's obvious from the video. And even if those
7 pills had not tested positive for Hydrocodone they
8 still be -- they still be guilty of trafficking
9 because they agreed to sell what they obviously
10 believed was Hydrocodone.

11 MS. LIPINSKI: Your Honor, I will object to that
12 line of argument. I think it's improper.

13 THE COURT: Overruled.

14 MR. PLEMING: It in fact as you know, did test
15 positive as Hydrocodone. Their method for testing
16 these 38 pills was to test one of them which tested
17 positive. Again, as I said, because the agreement is
18 what matters to be found guilty of trafficking based
19 on conspiracy. Because they had an agreement and they
20 obviously believed that these were Hydrocodone, then
21 even if let's just say hypothetically one of pills
22 contained Hydrocodone and the other 37 were imitations
23 or fakes. They are still guilty because they agreed
24 to sell what they believed to be Hydrocodone. But
25 again, I submit to you that's not the case here.

1 Common sense if you apply it to these facts will
2 conclude no doubt that those 38 pills all contained
3 Hydrocodone. This was not a sophisticated operation.
4 They were doing exactly what the defendant said he was
5 doing. He was selling his scripts to make ends meet.
6 The scripts he was prescribed and that Sherry Brandon
7 was prescribed. They weren't manufacturing fake
8 drugs. They didn't have any kind of advanced
9 technology machinery that could have produced these
10 pills with the markings that would indicate to our
11 expert chemist and to these individuals who are
12 familiar with the drugs that they are Hydrocodone if
13 they weren't Hydrocodone pills. Also, they've been
14 doing this since 2014 according to the testimony of
15 Miss Brandon. They would not have lasted very long in
16 this business had they been selling imitation pills.

17 These are all facts that you can consider and
18 should consider but again I come back to the point
19 that the agreement to sell these pills is what makes
20 them guilty in this case.

21 For a moment let's talk about a second charge,
22 possession with intent to distribute Buprenorphine which
23 is also known as Seboxone. The defendant has seven
24 pills in his pocket when the police executed a search
25 warrant on him that day. He had a prescription for

1 these medications, yes, so he was permitted to possess
2 Buprenorphine from his prescription. However, he was
3 not permitted under the law and it was illegal to
4 possess those pills with the intent to distribute
5 them. How do we know he intended to sell them. We
6 have testimony of course from Miss Brandon and Mr.
7 Sullivan that the defendant rarely took these pills
8 for his own personnel use. Sherry said that he would
9 ration her pills out that she received from her
10 prescription and that he would sell all of his. I
11 submit to you that testimony is corroborated by what
12 Mr. Sullivan testified regarding the defendant's drug
13 habits. That he had only seen the defendant use pills
14 on occasion to party and that Sherry was the one who
15 was really the real drug user based on his experience
16 with the two of them.

17 Miss Brandon also testified yesterday morning that
18 the defendant would never have had that many pills,
19 seven Suboxones, on him at one time but for one
20 purpose and that was to sell them. And the only
21 reason he didn't sell those seven pills to Mr.
22 Sullivan when he asked for them on April 28th was that
23 he had promised to give them to someone else. That
24 was also in her testimony. And you can see that is
25 how they operated once you take the time to look

1 through those text messages they were reaching out to
2 numerous people that week to sell pills they obtained.
3 Of course you have the testimony from Mr. Sullivan
4 that he had bought pain pills from the defendant three
5 separate times in the two months leading up to this
6 incident which is corroborated by the testimony of
7 Investigator Harrelson who supervised each of those
8 drug buys and observed the defendant under
9 surveillance.

10 Now you're seen the video from the Home Depot
11 incident and Investigator Harrelson informed you that
12 the video from the other two incidents did not turn
13 out that well. You have testimony from Mr. Sullivan
14 that he had been buying these same pills from the
15 defendant over the prior year and from Sherry Brandon
16 that they have been selling these medications for 18
17 months. All of that evidence is relevant to establish
18 his intent to sell his scripts just as he said he had
19 been doing when interviewed by law enforcement
20 officers after his arrest. Sherry said that he called
21 her his secretary and while there is certainly truth
22 to that she did take on that role as in setting up
23 these deals on his behalf. But she's much more than
24 that. She is not just his secretary. They were
25 partners in this. We are not ignoring that. She is

1 charged with it too. She hasn't seen the light of day
2 since they were arrested last year. It doesn't matter
3 what their respective roles were in terms of their
4 guilt because they were both part of that agreement.
5 They were both part of that conspiracy.

6 Ladies and gentlemen, to have -- I just want to
7 talk for brief moment on reasonable doubt which of
8 course is the standard here. To have any reasonable
9 doubt in this case you would have to doubt what you
10 have seen and what you've heard with your own eyes and
11 ears and that certainly not reasonable. His honor
12 will instruct you that is there difference between a
13 possible doubt and reasonable doubt. There are very
14 few things in this world that we can prove beyond all
15 possible doubt. That's not what the law requires.
16 The standard is proof beyond all reasonable doubt.
17 And to doubt what you've seen with your own eyes and
18 seen is not reasonable. There is no reason to doubt
19 the evidence in this case.

20 Miss Lipinski brought up Mr. Sullivan's signed
21 statements of his account. His account of the deals
22 that he made with Mr. Keith leading up to April 28th.
23 He read over them and they are in evidence now. If
24 you need to read those statements you can. In each of
25 those four incidents he received pills from Denny

1 Keith or at least in the last incident Denny Keith was
2 sitting right next to Miss Brandon as she counted
3 those pills out. It doesn't matter that Sherry
4 Brandon set up these deals. Denny Keith is in every
5 single one of these deals completed them. To try to
6 minimize his role in any of those instances is just
7 another attempt to distract you from the facts.

8 Now I expect that Miss Lipinski may want to point
9 out or point the blame everywhere but her client. She
10 might point the finger at Miss Brandon and Mr.
11 Sullivan and accuse them of being such horrible people
12 as if her client is somehow an innocent victim. I
13 won't defend Brian Sullivan or Sherry Brandon. When
14 the evidence is so stacked against her client however
15 this nothing left for her but try and distract you and
16 so I believe that's what she will probably do.

17 Sherry Brandon is not innocent in this and no one
18 ever claimed that she is. Mr. Sullivan is not clean
19 in this incident. But their culpability in this
20 illegal pharmacy operation in no way absolves her
21 client of his responsibility in this case which is on
22 full display in those videos and these text messages.
23 Don't forget that Miss Brandon and Mr. Sullivan both
24 have charges that have not been resolved. Miss
25 Brandon's day in Court is still pending. Mr. Sullivan

1 hasn't been promised anything in this case. He said
2 several times he hopes that he will receive some
3 benefit for his corporation and that's expected. But
4 he hasn't been promised anything. And I just remind
5 you of that, that they're both guilty of their crime
6 but that in no way absolves this defendant of his
7 responsibility for his part.

8 I want to talk to you about Brian Sullivan for a a
9 moment and I promise you we are heading down the final
10 stretch. Mr. Sullivan is a drug addict. There's no
11 question. But you didn't need to have a priest or a
12 pastor or some pillar of the community to come in here
13 or go in to Mr. Keith's home with a camera and buy
14 drugs from him. If it had been a priest that had made
15 the drug deal that captured on video we will be in no
16 different position then we are now because the
17 character of a person who is operating that camera has
18 no bearing or know effect on what you saw on that
19 video. Sure it would be nice but guess what, priests
20 don't by drugs and in drug investigations you have to
21 use people like Brian Sullivan. Leland Harrelson and
22 the other drug officers they can't buy drugs because
23 they would be spotted a mile down the road. When you
24 use confidential informants on these drug
25 investigations you have to rely on people like Brian

1 Sullivan. But again, like the old saying goes, birds
2 of a feather flock together. So she can stand up here
3 and try to distract you all she wants to and talk to
4 you about what a bad guy Mr. Sullivan and Miss Brandon
5 are but again that is just a distraction. She knows
6 how much evidence is stacked against her client and
7 I'm standing before you just asking you to not let
8 that tactic work. Don't be distracted by her.

9 Of course Mr. Brandon -- Mr. Sullivan and Miss
10 Brandon have something they hope to gain by testifying
11 in this case however because that's how these cases
12 work. As I just explained that is the only way to
13 work this investigation. But any bias or motivation
14 that they might have to cooperate can not overcome the
15 hard evidence that you have that is contained in those
16 texts and those videos. When you have someone who
17 with whom is a known liar or someone you don't feel
18 like you can trust tell you something it's smart to
19 question what they are saying, to not believe that
20 person. However, when what they tell you is then
21 corroborated with video evidence as plain as what we
22 have in this case then you can believe that person.
23 However it's not really that person that you are
24 believing you're your own eyes and your own ears and
25 they are not lying to you and that video is not lying

1 to you. And so I keep coming back to that but it's
2 because that's just that's as simple as it gets in
3 this case. Like I said in my opening, you might have
4 been sitting -- you might as well have been sitting in
5 the living room with them watching this unfold. And
6 everything that you saw I submit to you has been
7 corroborated by the rest of the evidence.

8 Now ladies and gentlemen, these drugs obviously
9 have some beneficial use when administered the right
10 way with a valid prescription through a licensed
11 pharmacy to people who need them. But when sold
12 unregulated to addicts, when sold to the type of folks
13 in the manner that the defendant Mr. Keith was selling
14 these pills in this case what those pills were was
15 poison. He was selling poison in York County. And I
16 am asking you to send a message to him that it's time
17 to stop and you do that by finding him guilty of
18 trafficking in Hydrocodone and you do that by finding
19 him guilty of possession with intent to distribute
20 Buprenorphine. I am asking you to find him guilty as
21 charged on both in Indictments because he is guilty.
22 I thank you for your time.

23 Thank you.

24 MS. LIPINSKI: May it please the Court, Your
25 Honor.

1 THE COURT: Miss Lipinski.

2 MS LIPINSKI: The Court's indulgence.

3 Good morning ladies and gentleman of the jury. I
4 want to begin by making this one point and I have a
5 great deal of respect for Mr. Fleming. He and I have
6 known each other for a long time and I don't think he
7 tried to confuse you in any way. Lawyers use terms of
8 art a lot of times and we make arguments and some
9 times it is easy to misconstrue what we say, but I
10 have no burden to overcome anything. Mr. Keith has no
11 burden of proof. I do not have to convince you or
12 prove to you that he is not guilty of anything. That
13 is not the way the law operates and I understand what
14 he was trying to argue to you. But the burden of
15 proof beyond a reasonable doubt lies with one person;
16 the State of South Carolina. The presumption of
17 innocence as you remember we talked about that at the
18 beginning of the trial, belongs to one person the
19 defendant, Denny Keith. Even sitting here after you
20 seen all that evidence he is still presumed innocent
21 unless and until when you get back there in the
22 deliberation room you decide that the evidence
23 overcomes that burden. But I have no burden and I
24 don't have to overcome anything and I don't think he
25 necessarily meant to imply that, it's term of art, but

1 I want you to be clear as we go through this, this
2 isn't a thing of who tips the scales more in their
3 favor. We may have heard that some times in wreck
4 cases that's it's the mere preponderance of the
5 evidence that if the scales of justice tip ever so
6 slightly in favor of the State of South Carolina then
7 somehow that is enough to convict Mr. Keith. That's
8 not how we operate. Burden of proof beyond a
9 reasonable doubt is perhaps the highest burden we have
10 in the legal system. It is beyond reasonable doubt.
11 It's a heavy burden that is placed upon the State and
12 that lies with them and only with them.

13 You will be asked here to return a verdict on two
14 relatively simple questions; did Mr. Keith distribute
15 38 pills of hydrocodone on April 28th and did he
16 possess with the intent to distribute Buprenorphine on
17 April 28th. That's it. And you will only be given
18 two options; guilty and not guilty. But is there a
19 reason that its guilty and not guilty. There's a
20 reason that the verdict form doesn't say guilty or
21 innocent. Because it's guilty or not guilty. The
22 judge will further instruct you that beyond a
23 reasonable doubt means not just doubt that may cause a
24 suspicion to be cast upon the defendant. It is not a
25 character voucher for Mr. Keith. I'm not asking you

1 to invite him over for dinner. I'm not asking you to
2 rate these defendants; first, second and third. None
3 of that is being done in rendering a verdict. The
4 State is asking you to place him at the top of the
5 list and we'll get to that. But that's not what your
6 verdict here is. It's not a character assassination.
7 This isn't a Federal Rico trial where they get to pile
8 all this stuff and calculate all these pills and now
9 try to make Mr. Keith out to be a drug trafficker.

10 It's curious that in opening argument Mr. Fleming
11 tells you that there's a pharmacy at 403 Hidden Valley
12 Trail and now comes back in closing argument says
13 there is really -- there is no equipment. There is
14 nothing. Your right, there's nothing. When they
15 executed the search warrant there is no scales. There
16 is no baggies. There's no loads of money. There's a
17 doublewide trailer and two people without a car. And
18 what's remarkable to me is while Mr. Fleming wants you
19 to believe it's so simple there's no reason to doubt
20 it. It's all on the video. Well ladies and gentlemen
21 of the jury, what I don't understand is if it's so
22 simple and there's nothing to question and there's
23 nothing to doubt why are we still hear on Thursday?
24 Why have you had to hear all this other stuff? Why?
25 You know, I was trying to think of some reason and

1 it's because they know that you don't really
2 understand the video unless it's explained to you by
3 Sherry Brandon and Brian Carl Sullivan. And they know
4 that either of these two people have absolutely no
5 credibility whatsoever. Something is wrong in the
6 State of Denmark.

7 I have been doing this a long time. This is not my
8 first rodeo. I have been a prosecutor. I have been a
9 defense attorney. I understand that the narcotic
10 investigation utilizes confidential informants and
11 that's the way the game is played. I get that. But
12 at some point they are responsible for who they choose
13 to work, the evidence they bring before you and
14 whether or not they actually did their job to
15 corroborate what these people said. Because the way I
16 think you kind of work is you kind of work your way up
17 the food chain. We take this bottom level addicts and
18 we get to this higher people. But what you see in
19 this case is I'm not sure who so doing what. It's
20 like some times you can go to a buffet and it's a
21 really good buffet and everything on the buffet is
22 really good and you walk out of there going, oh, I ate
23 too much. But some times when you go to a buffet what
24 you realize is nothing on that buffet really tasted
25 that good. It was just a lot of food. Most of it

1 probably bad quality made to cover up for the fact
2 that the crab legs have been out too long and the
3 roast beef was overcooked. And that's really what you
4 have here. That's why you have all this nonsense.
5 And guess what, it still doesn't get them to guilty.
6 In fact the only thing it does is under mind the
7 credibility of their own witnesses. Their own
8 witnesses. Their own evidence. Take for example what
9 likely happened in this case; Investigator Harrelson
10 caught yet again Brian Sullivan dealing drugs. Did he
11 serve those warrants. No. Even though Lieutenant
12 Ligon tells you, we never withhold warrants. Because
13 Brian Sullivan sold them a false set of goods; there
14 was this pharmacy, that he was going to put them on to
15 some major operation, that he was going to be able to
16 bring these two huge people down and they went for it
17 hard. Hard. So hard they don't even serve the
18 warrants to this day. So hard they do nothing to
19 corroborate what he says. Nothing. The agreement
20 doesn't even require him to be truthful. Wouldn't
21 that be clause one, don't lie to us. Don't lie to us.
22 What is clause one, I won't violate any other criminal
23 laws. Well, guess what? Broke that one almost
24 immediately. Admitted to you that he never stopped
25 using and he never stopped selling. The rest of it --

1 no offense to my own profession -- looks like it was
2 written by a bunch of lawyers and doesn't have any to
3 do with the drug trade. You're not an agent. You
4 can't sue us. You can't file a worker's comp claim
5 and nonsense like that that doesn't have anything to
6 do about whether or not you're a credible C.I., and
7 Brian, says, oh, it was Denny Keith. It was Denny
8 Keith. It was all Denny Keith. Look only at Denny
9 Keith. But you -- look at the statements he gave. He
10 setting up deals in the beginning with Sherry Brandon.
11 By his own statements. The only number provided to
12 Investigator Harrelson in his report at the very
13 beginning is Sherry Brandon. But yet Brian Sullivan
14 says, no, no, I met Denny Keith first. Some friend of
15 my answered the phone and I called him and I met
16 Denny, not Sherry. But look at the first statement.
17 Look at the report. It says Sherry Brandon. Why? And
18 let's talk about Brian Carl Sullivan. These words
19 came out of his mouth. I didn't stop giving drugs to
20 my pregnant girlfriend because the withdrawal would
21 kill the baby. Are you kidding me. This is who they
22 want you to believe because they need him to explain
23 the circumstances of this deal and that's his theory.
24 That's how he thinks. Not oh, he's just an addict.
25 And Mr. Fleming would like you to believe that Denny

1 Keith is poisoning all of York County. He never
2 testified that -- he didn't say anything about this
3 girl until long after he stopped dealing with Denny
4 Keith. He continues to sell and he continues to bring
5 drugs to the mother of his child. And this is just an
6 addict. Seriously. And how about you do a little
7 fact checking when he comes in, Investigator Harrelson
8 son. How about you look through his phone. How about
9 you see if there are any text messages. How about you
10 see if there are any deals that you don't know about.
11 Because there's evidence of that even in the stuff
12 they brought you between Denny and Sherry. Look at
13 the text messages. There is some deal about Xanax
14 going on that he don't know anything about. Look at
15 the text message for the 28th. They want you to
16 believe that Brian Carl Sullivan saw him on the 22nd
17 and didn't see him again until the night of the 28th.
18 Look at the deals about the buy on the 28th what does
19 Sherry Brandon -- not Denny Keith -- what does Sherry
20 Brandon say. Your wallet is here. Do you think he's
21 been without his wallet for a week. Just a little
22 fact checking.

23 They're the ones that want to distract you because
24 for some reason and I don't know if it's because they
25 bought the bill of goods from Brian Sullivan from the

1 get go they put Denny Keith's blinders on never did
2 anything. But the evidence was staring them smack in
3 the face and they don't want you to look at it either.
4 I'm not the one trying to distract you, they are.
5 They're trying to distract you by the paltry amount of
6 evidence they have by piling all this other nonsense
7 on top of you. What they don't realize at the same
8 time they single handedly sink their own ship. Sherry
9 Brandon is just a secretary. Really. Really. She's
10 just a stenographer. She's just taking notes of the
11 drug deals. She's entering them in a log. That's all
12 her role. She's an addict. Did she describe for you
13 about being an addict. Did she talk to you about
14 seeking treatment. Were there text messages on her
15 phone where she's telling people Denny's such an evil
16 doer. He takes all my pills. He won't let me have
17 any. She's got family all over Rock Hill. She had a
18 job allegedly before she met him. If he's the master
19 evil doer keeping her from the pills from her
20 addiction get up and walk out the bloomin door.
21 You're not stuck here. The reason they're stuck with
22 this secretary story is because if you look at all
23 these text messages even the magical green ones they
24 want you to believe came from Denny because Brian has
25 been programmed to say Denny to save his own skin and

1 now Sherry is willing to do it to save herself from
2 the 25-year offense. You look at text messages.
3 They're all a woman talking; LOL, thanks hon, hey mom,
4 got any more? Good night Sherry. They're stuck with
5 the secretary story because they're doing it. But
6 they have to have Sherry to get to Denny. And she is
7 testifying to save her own skin.

8 Look at the other buys. Oh, he only got drugs from
9 Denny Keith. Where is the evidence of that? The
10 first buy, oh, there's no video. Read his statement.
11 He says he set up the deal with Sherry. Maybe he
12 didn't pull the camera out of his pocket because he
13 wasn't able to set up Denny the way he needed too.
14 The second deal at Home Depot the only other time they
15 claim they have Denny Keith handing over drugs. I beg
16 you and that's a remarkable from a defense attorney,
17 to watch that deal because first of all he is not
18 charged with it and second of all look at what else is
19 on there. She is the only one on the phone. She
20 walks up she hands it to him so he knows what price to
21 give it to Carl -- and pay attention to this because
22 it is subtle but it is there -- a white to silver
23 pilot pulls up, pulls in the parking lot near them,
24 Sherry Keith goes over by him. It's off camera but I
25 suspect another drug deal goes down. And then that

1 car pulls off and you want to know how I know that
2 suspect another drug deal goes down because they did
3 too. Because the camera zooms in on that guy and his
4 plate as he pulls out of the parking lot. She's not
5 no secretary. She's trying to save her own skin and
6 she's trying to serve up Denny Keith like a roast beef
7 on a platter. And the facts don't indicate it. And
8 even their investigation doesn't indicate it. And for
9 some reason their investigation is clouded. Call a
10 spade a spade. If they want you to sign up on this
11 nonsense of a guy who is willing to sell drugs to the
12 pregnant girlfriend and mother of his child coupled
13 with a secretary who sells drugs to somebody who calls
14 her ma, then at least call a spade a spade. But even
15 the drugs that allegedly came from Sherry Keith's
16 purse, they don't even put that on the evidence sheet.
17 They say something about kitchen table. Really. They
18 got pictures of some coffee table but they don't even
19 want you to realize that they came out of her purse.
20 If I had hadn't asked that question you never would
21 have known it.

22 He wants you to believe that he took these seven
23 pills off of Denny Keith but yet he tells you I don't
24 know what condition it was in. I don't know if it was
25 attached to a key ring. I don't know anything other

1 than it came from Denny Keith. If it was attached to
2 a key ring, if was in a door and not on Denny Keith
3 how do you think that might impact your testimony. If
4 on the key ring there was unicorns and pink disco
5 balls then clearly it was Sherry Brandon's drugs,
6 wouldn't that impact to you. Why are we playing hide
7 and seek? Why are we taking evidence out of his
8 packaging or out of its original condition and then
9 putting it into evidence and trying to put it on
10 somebody else? They want you to believe Sherry
11 Brandon is this secretary why not talk to her. If you
12 are going to come in here and dodge your 25-year
13 charges don't you think you ought to actually come
14 clean and not with this sob addict story they are
15 trying to sell you. Fifteen people -- you claim you
16 sold to 15 people who are those 15 people? You don't
17 want to incriminate yourself in open court knock
18 yourself out. CM this is the number. BK this is the
19 number. Where did Denny get his drugs? Here's our
20 sources. This is what I'm providing to you. I'm
21 giving you everything. I'm telling you. If that's
22 the case then may be 25 years is a fine payment for
23 that kind of statement. But that witness on the stand
24 isn't worth the price it's worth the price it's
25 written on. And they say, well, no deals have been

1 made. Mr. Sullivan still -- still out there. Are you
2 crazy. He told you he's charged her with trafficking
3 second. She believes it's already down to trafficking
4 first and she thinks she is getting time served. It
5 might not be in writing but that didn't come out of
6 the air. And you recall Brian Sullivan charges hadn't
7 even been served and maybe I get it, you were trying
8 to protect his identity at the beginning. But when
9 you found out he's still dealing to his pregnant
10 girlfriend clearly in violation of your agreement
11 don't you think at that point you would at least serve
12 the warrants. If there is no deal out there don't you
13 think you actually man up and say, you know what, I
14 don't know if you are responsible for that. The text
15 messages on your phone clearly say you are still
16 buying and dealing. You violated the agreement. Your
17 work is over. We are going to serve the warrants.
18 But why? Why? Because that's the only way they get
19 there. And they can't even get there. The amount of
20 back peddling and bootstrapping everything trying to
21 throw and claim to you that Brian Sullivan and Sherry
22 Brandon are just victims of Denny Keith. They bring
23 you all this evidence, you got to assume that's the
24 best they have. But none of it corroborates what
25 they're saying. And they want you, all 12 of you

1 unanimously to sign off on this. This should have
2 been a very easy case to bring you. It should have
3 been clear and simple if people had done their job.
4 If witnesses had been informed and if games hadn't
5 been played. But the reality is that you don't know
6 that when Brian Carl Sullivan got caught he didn't
7 manufacture his own game of criminal survivor with
8 Sherry Brandon. For some guys to try and set up Denny
9 Keith that he's not really a part of. And there all
10 like, well, it's a conspiracy and clearly they were
11 together so everything had to be them. And you know
12 they were living together so they were never apart.
13 Where's the evidence of that? Where's the evidence to
14 back up any of her story. Where is her daughter that
15 says I never saw them separately? Where is the text
16 messages that say he won't let me leave the house
17 alone? Where's anything to substantiate this
18 nonsense. And if they're truly acting in conspiracy
19 here's another thing, look at the third deal. The one
20 that sets up the search warrant. Again, Carl Brian
21 Sullivan lies and says he goes to the house and he
22 sets up the deal with Denny Keith and he gets the
23 drugs from Denny Keith. That was his original
24 testimony to you on April 22nd. Four pills. This
25 grand pharmacy that exist. Four pills. But when you

1 read his statement what he says is, I set up the deal
2 with Sherry. I went over there. I got four pills from
3 Sherry. I took Denny to the store and when Denny came
4 back said he had three to sell me. If there is a
5 conspiracy why are there two deals on the 22nd. Are
6 they really acting together or are they not. Because
7 if there's this grand conspiracy and Denny is the
8 great manipulator that doesn't make sense. None of it
9 makes sense. And they are asking you to sign off on
10 it. They are asking you to sign off on it. And you
11 have to believe their testimony to get to trafficking
12 and to get to possession with intent to distribute.
13 Possession with the intent to distribute in particular
14 you have to believe Sherry Brandon because he's only
15 got seven pills and she says he is clearly holding it
16 for somebody else. They have full access to the
17 phone. Where is the deal where he agreed to hold it
18 for somebody. Or is she the one using the subs, the
19 one who likes them because it's her texting trying to
20 get them. If she's got them stashed all over the
21 house and Denny doesn't know about them. You're not
22 asked about some future drugs and you're not asked
23 about some historical conspiracy. You don't get to
24 tally anything and you don't get to predict the
25 future.

1 To find him guilty of possession with intent to
2 distribute those subs, you have to believe hook, line
3 and sinker all of Sherry Brandon's testimony.
4 Specifically that he was holding them for somebody
5 else and somehow they can't find the text message that
6 indicates that. And it would be one thing if when
7 they arrested them Investigator Harrelson sat there
8 and debriefed her and she told him all these things
9 contemporaneously. Told him who he was holding them
10 for. Told them where they got the stuff. Maybe
11 that's is fine. Maybe you ride with her. But he
12 tells you I only write down the important things. She
13 could have lawyered up. I didn't write that down. I
14 didn't think that was important. I don't know.
15 Seriously. And yet time served. No charges. And
16 let's get Denny Keith left holding the whole kit and
17 caboodle. But this this Pharmacy when they execute
18 this search warrant they find the pills in her purse
19 and the other pills in the container that matches the
20 one in her purse. Possibly on her key chain.
21 Possibly some place else. We don't really know.
22 That's what you have to sign off on. Why? Why make
23 it so complicated? Is it because they bought a bill
24 of goods. They didn't do the fact checking. They
25 didn't check up on Carl Brian Sullivan. They made a

1 deal with the devil with Sherry Brandon. They didn't
2 even get her to make a full allocution and accounting
3 and statement and fact check anything she says. Both
4 of them have been caught in lies. For some reason at
5 the DEU, the milk hand doesn't know what the cookie
6 hand is doing, because remember Investigator --
7 Lieutenant Ligon, we never hold warrants. We only
8 hold for a dime bag of weed. Somehow Ligons got
9 distribution of Adderall and distribution of
10 Hydrocodone and he's holding those all the livelong
11 day. Do you really know that this isn't just some bad
12 game of criminal survivor. I mean do you? Enough
13 that you, all 12 of you, unanimously are willing to
14 sign off on not just the simple distribution that they
15 tried to show you and claim Mr. Keith was part of, but
16 they want you to help them bootstrap it to trafficking
17 Hydrocodone and possession with intent to distribute
18 Buprenorphine. You don't have to play ball. You
19 don't have to buy the whole buffet. They oversold
20 what they have. Hold them accountable and find him
21 not guilty.

22 I am not asking you to say he's a nice guy. I'm
23 not asking to you invite him over for dinner. I'm not
24 asking you to give him a character reference. But I'm
25 not the one that brought these Indictments and I'm not

1 the one who called these witnesses. They did. It's
2 their burden of proof and it doesn't add up. And you
3 are not allowed when you go back there to sit there
4 and say, well, I think Denny is a bad guy. I don't
5 really know what he did but he was up to no good so I
6 am going to convict him of that. That's not your
7 role. That's not following the law.

8 The law is do you know beyond a reasonable doubt
9 that what Carl Brian Sullivan claimed he said when he
10 set up this deal with Denny which is not supported by
11 the evidence or the text messages or Sherry, which is
12 not supported by the fact that she's caught in lies
13 and she tries to tell you she doesn't deal and then
14 comes back and says she does deal and the fact that
15 she is trying to save her own butt for trafficking,
16 25. That it really was Denny Keith. And do you
17 believe that he's all part of that deal and part of
18 the seven pills and that he was holding them for
19 somebody else. Because unfortunately for them the
20 video doesn't get there. And more unfortunately for
21 them the evidence stinks. Do your job. Fact check
22 your witnesses and don't make deals with liars and if
23 you do don't come in here and ask you to sign off on
24 it. Not once, but twice. You have the right as a
25 jury to expect more. To demand more. And only sign

1 your name to something if you are willing to endorse
2 what you are being served. And if not you can send
3 the verdicts back in the kitchen and say I am not
4 going to play ball. And I know it's hard. I know
5 it's hard because to do that you have to buy on the
6 fact that he might not be the best guy and he's not
7 being held accountable, and what's going to happen.
8 But you're not here to speculate to that. That is
9 ultimately not your role. You can not think like
10 that. They are not allowed to play dirty like that.
11 You are going to be asked two limited questions.
12 Stick to those questions. Stick to that evidence and
13 don't engage in a character assassination and don't
14 engage in a popularity contest and certainly don't buy
15 a bad bill of goods because that's what you are being
16 sold and that's demands two not guilty verdicts.

17 THE COURT: Does any jury need a short break
18 before I give you the instruction? Anybody?

19 (No response.)

20 THE COURT: Okay.

21 Ladies and gentlemen you of course have heard and
22 seen all the evidence in the case. You have now heard
23 the final summations of the lawyers and therefore it
24 now becomes my duty and obligation to instruct you on
25 the law that is applicable in the case and then you

1 will be asked to go back and begin with your
2 deliberations and through that process you will
3 examine all the evidence, testimony and otherwise.
4 From that evidence you will determine what you believe
5 to be the facts as they relate to these allegations
6 made against the defendant. Once you decide those
7 facts you apply the law that I will have provided you
8 and you determine whether or not the defendant has
9 been proven guilty of a crime. If he has then you
10 verdict is guilty. If he has not then then your
11 verdict is not guilty. It is your exclusive
12 prerogative to determine what the facts are. You do
13 that through your own common sense examination and the
14 evaluation of all of the testimony and other evidence
15 received during the course of this trial. You 12
16 jurors alone will decide what weight, value and effect
17 to give any particular witness's testimony or other
18 evidence in the case. Your sole objective is to
19 render a fair and impartial decision based upon the
20 evidence presented or the lack of evidence for that
21 matter, as well as the law that is applicable as I
22 will have provided it to you.

23 The same law that provides that you are the judges
24 of the facts also provides that I am the judge of the
25 law and that simply means that nobody is going to tell

1 you how to arrive at your determination of fact in
2 this case. You do that as I've already stated through
3 the exercise of good judgement and common sense
4 conscientiously applied to the testimony and evidence
5 received during the course of the trial. You must
6 however under your oath as a juror accept the law as I
7 provide it to you as being the law that you are to
8 apply in the case. In other words, you are not to
9 concern yourself with what you thought the law was
10 before you came to serve as a juror this week or what
11 you think the law ought to be. You must accept the
12 law as I provide it to you as being the law that you
13 are to apply in the case. And then you simply take
14 that law and you apply it to the facts as you 12
15 jurors determine those facts to be based upon your
16 common sense, examination and evaluation of the
17 testimony and evidence received during the trial.

18 Now in this case as you know the State has charged
19 the defendant with two separate and distinct offenses.
20 Those two separate and distinct offenses are set forth
21 in two separate Indictments. You will have the
22 Indictments in the jury room with you as you go back
23 to deliberate. The Indictments however are not
24 evidence in the case. The Indictments don't prove
25 anything. They don't establish anything. They're not

1 to be construed or considered by you as any evidence
2 upon which you will base your decision. The
3 Indictment is simply the charging paper. It's the
4 paper that notifies the defendant as to what crime the
5 State claims he committed so he will understand that
6 and his lawyer can assist him in the preparation of
7 any defense. The Indictments purpose as far as you
8 are concern is that they will serve as the verdict
9 form. Mr. Foreman, it is on back of each of these
10 Indictments that you will see the word verdict in the
11 lower left hand corner and it is beneath that word on
12 each of the Indictments that you will indicate the
13 jury's unanimous decision whatever that decision may
14 be. But other than serving as the verdict form the
15 Indictments serve no purpose so far as you jurors are
16 concerned.

17 Now as to each of the Indictments and the charges
18 contained therein the defendant has entered a plea of
19 not guilty. As I told you that plea of not guilty has
20 placed upon the State the burden of proving the
21 allegations that they have made against the defendant.
22 The burden of proving each of the essential elements
23 of the crimes that they have alleged against the
24 defendant and therefore the burden is upon the State
25 to establish the defendant's guilt to your

1 satisfaction beyond a reasonable doubt before any
2 verdict of guilty can be returned as to either of
3 these charges. The burden is never upon a defendant
4 or person accused of a crime to prove that they are
5 not guilty or to prove that they are innocent because
6 in some cases that might not be possible. It is a
7 vital, important and carnal rule of law that every
8 defendant in a criminal charge no matter how serious
9 the offense might be for which that person stands
10 charged, that person shall always be presumed innocent
11 of that charge and that presumption of innocence
12 remains with every defendant as it does with this
13 defendant from the time that he is placed under arrest
14 and throughout the course of the criminal process and
15 even throughout the course of the actual trial in the
16 case. And as I told you, that presumption of
17 innocence is going to be with Mr. Keith even as you go
18 go back into your jury room to begin with your
19 deliberations after I provided you with this
20 instruction. And that presumption of innocence will
21 be with him in that jury room and it will be with him
22 forever unless you 12 jurors determine that he is no
23 longer entitled to the presumption of innocence. In
24 other words, after you've carefully considered all of
25 the evidence as it relates to that charge and once you

1 decided the facts as it relates to those allegations
2 and after deciding those facts you apply the law that
3 I will have provided you as it relates to that charge
4 if you 12 jurors unanimously determine that his guilt
5 as to that charge has been proven beyond a reasonable
6 doubt then he would no longer be entitled to the
7 presumption of the innocence as it relates to that
8 charge. But it is only if and unless an until you are
9 satisfied of his guilt beyond a reasonable doubt that
10 the presumption of innocence will no longer be
11 applicable.

12 Now the State does have the burden proving the
13 defendant's guilt beyond a reasonable doubt. That
14 does not however mean that the State must prove his
15 guilt beyond all doubt or beyond all possible doubt.
16 But it does require the State to prove his guilt to
17 your satisfaction beyond a reasonable doubt. And the
18 term reasonable doubt should be given its plain and
19 ordinary meaning. A reasonable doubt is the kind of
20 doubt that would cause a reasonable person to hesitate
21 to act upon the information provided.

22 A defendant is entitled to any reasonable doubt
23 that arises from the evidence or lack of evidence in
24 the case and if upon any factual issue essential to a
25 finding of a verdict of guilty you have some

1 reasonable doubt as to how that issue should be
2 resolved it would be your duty to resolve that
3 reasonable doubt in favor of the defendant.

4 Now while there are various forms of evidence such
5 as testimony, photographs, documents, charts and other
6 types of physical exhibits there are really only two
7 types of evidence either or both of those types of
8 evidence may be used to prove any fact in issue. But
9 the two types of evidence are direct evidence and
10 circumstantial evidence.

11 Direct evidence is the testimony of a person who
12 testifies from actual knowledge of that fact. It is
13 testimony by a person who has perceived the existence
14 of some fact by means of his or her senses and then
15 they come in to court and they testify as to what they
16 have previous perceived. Direct evidence proves the
17 existence of a fact directly and does not require any
18 deduction or inference in order to establish that
19 fact.

20 Circumstantial evidence on the other hand is the
21 the proof of some other fact or a set of facts which
22 taken either singularly or collectively may prove the
23 existence of a fact in question as a necessary
24 consequence; that is by a deduction or an inference.
25 And an inference is simply a deduction of fact that

1 may logically and reasonable be drawn from a proof of
2 some other fact or set of facts. In other words, it's
3 not a fact proven by the direct testimony of a person
4 based upon their perception, but it is a conclusion
5 which might reasonably be drawn from the proof of
6 other facts. In other words you may infer that a
7 particular event occurred or that a particular fact
8 exist based upon the proof of sufficient factual
9 circumstances which would reasonably warrant your
10 arriving at a particular conclusion. The commission
11 of a crime may be proven by -- or any particular
12 element necessary to the establishment of a particular
13 crime, may be proven by direct evidence or by
14 circumstantial evidence or by a combination of both
15 direct and circumstantial evidence. The law makes
16 absolutely no distinction between the weight or value
17 to be given to direct evidence or to circumstantial
18 evidence. Nor is a greater degree of certainty
19 required to be circumstantial evidence as opposed to
20 direct evidence. However, to the extent that the
21 State relies upon circumstantial evidence in order to
22 establish the commission of a crime or a particular
23 element of a particular crime all of the circumstances
24 proven must be consistent with each other and when
25 taken together point conclusively the to the guilt of

1 the accused beyond a reasonable doubt. If these
2 circumstances merely portray the defendant's behavior
3 as suspicious the proof is insufficient and it fails.
4 This burden rests with the State regardless of whether
5 the State relies upon direct evidence or
6 circumstantial evidence or some combination of both
7 types of evidence in order to prove the defendant
8 guilty beyond a reasonable doubt.

9 A proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced of the defendant's guilt.
11 There are very few things in this world that we know
12 with absolute certainty and in criminal cases the law
13 does not require proof that overcomes every possible
14 doubt and if based on your consideration of the
15 evidence in the case you are firmly convinced that the
16 defendant is guilty of a crime with which he stands
17 charged then you should find the defendant guilty of
18 that crime where it is established beyond a reasonable
19 doubt. And if on the other hand you think there is a
20 real possibility that the defendant is not guilty of a
21 crime with which he stands charged you must give him
22 the benefit of that doubt and find him not guilty of
23 that particular charge.

24 Now as I told to you, you are the soul judges of
25 the facts in this case and you are therefore

1 necessarily the soul judges of the credibility and the
2 believability of each witness that has testified
3 during the trial of this case and you 12 jurors alone
4 will decide what weight that in effect to give to any
5 particular witness's testimony or even portions of
6 that testimony. But there are several factors which
7 you should consider in your arriving at the decision
8 as to a particular witness's credibility and
9 believability and I am going to list those factors for
10 you.

11 You should consider the demeanor of the witness.
12 That is how the witness appeared to you when the
13 witness took the witness stand and testified before
14 you. Was the witness straight forward in responding
15 to questions or was the witness hesitant or evasive in
16 responding to the questions that were asked of that
17 particular witness. Simply put, did the witness
18 appear to you to be telling the truth and to have
19 knowledge of the facts for which that witness has
20 testified. You should also consider whether or not
21 the testimony of a witness is consistent or is it
22 inconsistent with that witnesses testimony provided in
23 Court or consistent or inconsistent with other
24 statements made by that same witness whether it be in
25 Court or outside of Court. You should also consider

1 whether or not the testimony of a witness is
2 consistent or is it inconsistent with other
3 witnesses's testimony or other evidence received
4 during the course of the trial. You should also
5 consider how the witness came to know the facts with
6 which that witness has testified. In other words,
7 what was that particular witness's opportunity and
8 ability to perceive the existence of those facts for
9 which that witness has testified and what is that
10 witness's ability to be able to come into Court and to
11 accurately recollect to you what they had previously
12 perceived. You should also consider any bias or
13 prejudice or interest a witness might have with regard
14 to the case. In other words, to find some reason that
15 a particular witness would come into Court and testify
16 one way or the other to help or hurt one side or the
17 other. And you may consider any interest that the
18 witness may have in outcome of the case. If you
19 determine that that witness does have such an interest
20 and you find that interest would bear upon that
21 witness's credibility. You should also consider
22 whether or not the testimony of a witness was
23 straightened or was it weakened by other testimony or
24 other evidence received during the course of the
25 trial.

1 In this case you have heard certain evidence
2 introduced into the trial of the case relating to the
3 defendant's commission of a prior bad act constituting
4 a crime. This evidence was offered by the State to
5 prove an essential element of one or more of a crimes
6 for which the defendant now stands charged. This
7 evidence may be considered by you if you find it
8 probative on that point and you find it credible only
9 as it relates to the proof of some essential element
10 that the State must prove in order for the defendant
11 to be found guilty of a particular crime for which he
12 now stands charged. But such evidence may not be
13 considered by you simply as evidence that the accused
14 acted in conformity with any prior conduct. In other
15 words, such evidence may not be considered by you as
16 evidence that the defendant must be guilty of the
17 crimes for which he now stands charged simply because
18 he has previously engaged in similar conduct.

19 Now, you as the finders of the fact and you as the
20 judges of the credibility and the believability of
21 each witness that has testified are permitted to
22 believe as much or as little of what a witness has
23 testified to as you deem is appropriate. And
24 therefore, you may believe everything that the witness
25 testified to. You may choose to believe none of it.

1 You may believe one portion of a witness's testimony
2 and reject some other portion of that same witness's
3 testimony. And in a given case you may believe one
4 witness as opposed to several, or several as opposed
5 to one. But whatever your good judgement and common
6 sense tells you is the most believable and credible
7 testimony is the testimony you should accept and you
8 should reject any testimony or other evidence that you
9 find not to be credible or believable. Again, your
10 sole objective and duty in this case is to render a
11 fair and impartial trial and by doing that you will
12 have fulfilled your obligations whatever the outcome
13 or verdict might be.

14 Now in this case as you know the defendant is
15 charged with trafficking in Hydrocodone and he is
16 charged with possession with intent to distribute
17 Buprenorphine. Each of those are separate and
18 distinct criminal offenses. Separate code sections
19 apply to those. I am going to instruct you on the law
20 separately first as to what constitutes trafficking in
21 Hydrocodone and then what constitutes possession with
22 intent to distribute Buprenorphine.

23 Now, as I provide you with this instruction I am
24 going to be instructing you on what constitutes
25 possession of an item or possession of a substance,

1 and how possession of a substance must be proven or
2 established. That instruction as it relates to
3 possession is going to be applicable in both the
4 trafficking instruction and the possession with intent
5 to distribute instruction. So I am just going to give
6 it to you one time rather than twice. But it's going
7 to be applicable to both criminal offenses.

8 Now trafficking in drugs is set forth in section
9 44-53-370 subsection (e) of the code of laws of South
10 Carolina. Those are those blue volumes you see over
11 here next to me. Every year the legislature meets in
12 session from January until June. During that session
13 they pass a number of laws and rules and regulations
14 that govern our conduct in a variety of ways. Some
15 of those laws are criminal penalty statutes. In other
16 words, the legislature establishes conduct that
17 constitutes a crime. We're prohibited from engaging
18 in that conduct in violation of that particular
19 statute. If you do violate the statute it subjects us
20 to some form of punishment or penalty. But please
21 understand the jury is only concerned with whether or
22 not a person has been proven guilty a crime and you
23 are to make that determination without any
24 consideration being given to any consequence of your
25 decision. In other words you are never to consider

1 any potential punishment or penalty that might be
2 imposed based on your decision.

3 Your soul obligation and duty is to determine
4 whether or not the defendant has been proven guilty of
5 a crime. So as I say section 44-53-370 subsection (e)
6 is the statute that relates to trafficking in illegal
7 drugs or trafficking in drugs. And that statute
8 provides that any person who knowingly sells,
9 delivers, aids, abets, or conspires to sell, or
10 deliver or who is knowingly in actual or constructive
11 possession of four grams or more of any morphine,
12 opium, salt, isomer or salt of a isomer thereof, or
13 four grams or more of any mixture containing any of
14 these substances, or any derivatives thereof, is
15 guilty of trafficking in illegal drugs.

16 The State alleges in this case by way of this
17 Indictment that the defendant did traffic in 14 grams
18 or more of Hydrocodone; a salt, compound, derivative
19 or preparation of opium. Before the defendant may be
20 found guilty of trafficking in Hydrocodone as alleged
21 in the Indictment it would be necessary that the State
22 prove to your satisfaction beyond a reasonable doubt
23 that the defendant did knowingly sell or deliver or
24 did otherwise aid, abet or conspire to sell, or to
25 deliver, or he did knowingly have in his actual or

1 constructive possession a quantity of four grams or
2 more of Hydrocodone. Hydrocodone is classified in
3 section 44-53-210 of the code of laws as a
4 scheduled two narcotic drug and is declared to be a
5 controlled substance under the law of this state. And
6 the weight of any controlled substance includes the
7 substance in pure form or any compound or any mixture
8 containing that substance.

9 To sell within the meaning of the statute means to
10 transfer the Hydrocodone in exchange for money or some
11 other consideration. To deliver within the meaning of
12 the statute means to transfer the Hydrocodone from one
13 person to another whether or not the transfer was in
14 exchange for money or any other consideration,
15 although there maybe evidence of such consideration
16 being provided.

17 The term aids and abet within the meaning of the
18 statute means to combine with another person or
19 persons and to actively participate in the commission
20 of a criminal offense. In this case that would be the
21 sell or delivery or possession of four grams or more
22 of Hydrocodone.

23 You are further instructed that where two or more
24 people act together with a common intent and purpose
25 and they combine, conspire, plan or otherwise agree to

1 the commission of a crime each person who aids, abets,
2 assist or otherwise participates in the commission of
3 that crime are equally guilty. The hand of one
4 becomes the hand of all. The act of one is to be the
5 act of all. The term conspire to sell or deliver
6 means to combine and to agree with one or more other
7 persons who is not a law enforcement officer or agent
8 to commit the crime of selling, delivering or
9 possession four grams or more of Hydrocodone.

10 Now, as I told you. I am going to define for you
11 what is meant by possession of a substance and that
12 this instruction will apply to both trafficking in
13 Hydrocodone as well as possession with intent to
14 distribute Buprenorphine.

15 Before a person -- before the defendant can be
16 found guilty of trafficking by possession of
17 Hydrocodone it must be proven beyond a reasonable
18 doubt that he did knowingly or intelligently have in
19 his actual or constructive possession the Hydrocodone
20 which is alleged to have been possessed in a quantity
21 of four grams or more.

22 Knowingly is defined in the law as having knowledge
23 of the fact. It is an act which is done willfully,
24 purposefully and consciously. Intentionally is
25 defined as purposefully, that is by aim or design and

1 not by accident or inadvertence. It maybe further
2 defined as the state of a person's mind which directs
3 his actions towards a specific object or goal.

4 Actual possession of substance occurs when the
5 substance is shown to have been in the actual physical
6 custody or control of the person charged with
7 possession with knowledge of its presence.

8 Constructive possession of a substance occurs
9 when a person although not in actual physical custody
10 of a substance exercises dominion and control over the
11 substance, or has the right to exercise dominion and
12 control over the substance.

13 A person has possession of the substance within the
14 meaning of the law when he has both the power and the
15 intent to control the disposition or use of that
16 substance. The act of possession as well as the
17 elements of knowledge and intent may be proven by
18 either direct evidence or circumstantial evidence or
19 by a combination of both types of evidence and
20 possession of a substance may be jointly shared by two
21 or more persons.

22 You are permitted to infer the act of possession of
23 a substance as well a the elements of knowledge and
24 intent from evidence of acts, declarations or conduct
25 of the person charged with possession as well as any

1 other circumstances established by the evidence in
2 this case which would reasonably warrant your arriving
3 at such a conclusion.

4 The second Indictment charges the defendant with
5 possession with intent to distribute Buprenorphine.
6 Section 44-53-377 subsection (a) provides in its
7 pertinent parts that it shall be unlawful for any
8 person to manufacture, to distribute, to dispense to
9 deliver or to possess with intent to distribute,
10 dispense or deliver a controlled substance. The
11 defendant in this case is charged in the Indictment
12 with having committed the criminal offense the charge
13 of possession with intent to distribute, dispense or
14 deliver a controlled substance. That control
15 substance alleged to have been Buprenorphine.
16 Buprenorphine is classified as a scheduled three
17 controlled substance under the law of this state. And
18 the offense of possession with intent to distribute a
19 controlled substance necessarily includes the lesser
20 offense of possession of that controlled substance and
21 therefore as I told you in this case I've instructed
22 you on what constitutes possession.

23 You will be permitted to consider two separate
24 findings of guilty as it relates to this indictment.
25 You may find the defendant guilty of possession with

1 intent to distribute Buprenorphine or you may find the
2 defendant guilty of only the lesser included offense
3 of possession of Buprenorphine. So I've already told
4 you what constitutes possession of a controlled
5 substance. And the difference in possession and
6 possession with intent to distribute is of course
7 the intent to distribute the substance.

8 In order for you to return a verdict in this case
9 as to the charge of possession with intent to
10 distribute Buprenorphine not only must the State prove
11 beyond a reasonable doubt that the defendant possessed
12 the controlled substance, Buprenorphine, the State
13 must also prove beyond a reasonable doubt that the
14 defendant had a specific intent to distribute or to
15 deliver that controlled substance. To distribute or
16 to deliver means to actually or constructively
17 transfer a controlled substance from one person to
18 another whether or not it was in exchange for money or
19 any other consideration or thing of value.

20 Intent is the state of a person's mind which
21 operates jointly with an act in the commission of a
22 crime. Intent is the the state of a person's mind
23 which directs his actions towards a specific object or
24 goal. And in this case it would be an intent to
25 distribute, to dispense or deliver Buprenorphine.

1 In determining whether or not the defendant
2 intended to distribute a controlled substance should
3 you find him guilty of possessing it you should
4 consider all of the evidence in the case including the
5 circumstances surrounding the defendant's possession,
6 the amount of the substance possessed, the manner in
7 which it was possessed as well as any other facts or
8 circumstances proven by the evidence in this case from
9 which you might reasonably find that he did intend to
10 distribute the substance. The element of intent may
11 be proven by direct evidence or by circumstantial
12 evidence from which such an intent may reasonably be
13 inferred. As often the state of a person's mind can
14 only be established by circumstantial evidence, or it
15 may be established by a combination of direct evidence
16 and circumstantial evidence.

17 You are instructed further and emphasize to you the
18 fact that a defendant does not testify during the
19 course of a criminal charge is not a circumstance that
20 may be considered by the jury in any way during your
21 deliberations or in your determination as to whether
22 or not his guilt has been proven beyond a reasonable
23 doubt. As I told you the State has brought the
24 charge.. They made the accusation. The State has the
25 burden of proving a defendant's guilt beyond a

1 reasonable doubt. The defendant has no burden of
2 proving anything. The defendant certainly does not
3 have to proven that he is not guilty or prove that he
4 is innocent because in many cases that might not be
5 possible. And therefore, you shall not draw any
6 inference nor any conclusion from the fact that a
7 defendant does not testify during the trial of the
8 case. Nor may that fact be considered by you in any
9 way nor may it even be discussed while you are in
10 engaging in in your deliberations in the jury room.

11 Now, ladies and gentlemen, I am not in any way
12 concerned with what your decisions are but you are
13 instructed that your decisions must be unanimous. All
14 12 of you must be in agreement.

15 Mr. Foreman, as you know you are charged with the
16 responsibility of presiding over jury deliberations,
17 simply to insure that those deliberations are carried
18 out in some orderly fashion. All jurors are expected
19 to participate in those deliberations and share your
20 views and opinions because the verdict of a jury is
21 the unanimous and consensus opinion of all 12 and all
22 12 must be in agreement. Now, Mr. Foreman, you are
23 going to have in the jury room along with all the
24 evidence in the case these two Indictments which serve
25 as the verdict forms. As I told you on back of each

1 Indictment on the lower left hand corner you will see
2 the word verdict. I know you can't see it from there
3 but that's where it is. There is also a place for you
4 to sign a name as foreperson. You're the only juror
5 that has to sign the verdict form. There is also a
6 place for the date.

7 Now, with respect to the trafficking in Hydrocodone
8 Indictment. There are two potential verdict forms.
9 Those two potential verdict forms are guilty and not
10 guilty. So whatever that decision is you will insert
11 it in the space provided, sign your name as
12 foreperson. With respect to -- and date it. With
13 respect to the possession with intent to distribute
14 Buprenorphine you have three potential verdict forms.
15 Those three potential verdict forms are guilty, which
16 means guilty of the charge in the Indictment; that is
17 possession with intent to distribute Buprenorphine.
18 You may also consider the lesser included offense. If
19 you find that the State has proven the defendant to be
20 guilty of possession of Buprenorphine but you find
21 they have failed to prove intent to distribute beyond
22 a reasonable doubt then you may find the defendant
23 guilty of the lesser offense, and that would be
24 possession of Buprenorphine. You would have to write
25 that out; guilty of possession of Buprenorphine.

1 That's in the Indictment so if you need to spell it
2 that's where it is. And then the third potential
3 verdict form is is not guilty. So again with the
4 Hydrocodone and trafficking in Hydrocodone the two
5 verdict forms are guilty or not guilty. With respect
6 to the Buprenorphine Indictment, the potential verdict
7 forms are guilty, meaning guilty of the charge in the
8 indictment, or guilty of of possession of
9 Buprenorphine. That's the lesser offense. Or not
10 guilty. Again, insert the requisite findings, sign
11 your name as foreperson and insert the appropriate
12 date.

13 Now, I don't know if we have any smokers on the
14 jury, if we do you are permitted to smoke during
15 deliberations but you can not smoke in the courthouse,
16 so you have to go outside. So if anybody wants to
17 smoke you let the bailiff know. They will take you
18 outside to accomplish that purpose. However you are
19 instructed that deliberations must stop if any juror
20 is absent for any authorized purpose. And they may
21 only reassume when all 12 jurors are present so that
22 all may participate.

23 If during the course of your deliberations you have
24 a question about the facts of the matter, you have a
25 question about the testimony, you may even wonder if

1 you can have something else that you think will help
2 you, please understand if some item that might assist
3 you in the resolution of this case has not been
4 introduced during the trial it can not be introduced
5 now. So no additional evidence may be received by you
6 now that you are getting ready to go back to
7 deliberations. So don't ask me for something that you
8 don't have, or that was not introduced during the
9 trial.

10 The lawyers will verify the exhibits but if for
11 some reason we leave something out and you think it
12 was introduced during the trial but you don't have it
13 you can let me know that fact. We will try to locate
14 it. But all the exhibits which were introduced should
15 be sent back with you and they should be accounted
16 for. If -- and I can't answer any questions about
17 issues of fact. You have to determine that based upon
18 your own discussions and deliberations considering the
19 evidence received during the trial. However, if you
20 have a question about testimony that was given during
21 the trial and you need to have testimony replayed or
22 reheard in order to resolve that question, we can
23 bring you back into the courtroom to have a witness's
24 testimony replayed in whole or in part. I don't
25 transcripts so I can't send you a transcript. But if

1. you do want to hear a witness's testimony again, all
2. of it or just some of it, if you let me know then we
3. will bring you back into the courtroom to have that
4. testimony replayed. If you ever have a question about
5. the law that's applicable I am always permitted to
6. answer those questions. So if you need for me to
7. re-instruct you on the law that I have given or you
8. just simply need a clarification or explanation of
9. some point of law that I provided you, I will be happy
10. to give you that re-instruction or provide you with
11. that explanation or clarification.

12. During deliberations, Mr. Foreman, if there ever
13. comes a time when you have a question or you need to
14. address something to me, if you will write it on a
15. piece of paper. Give it to the bailiff. The bailiff
16. will provide that to me and I will respond accurate
17. accordingly.

18. Once you and your fellow jurors have arrived at
19. unanimous decisions you will indicate those decisions
20. on the Indictment. Once you have arrived at those
21. decisions if you will knock on the jury room and let
22. the bailiff know you have reached a decision then we
23. will bring you back to receive your verdict. When you
24. notify the bailiff that you have reached a decision
25. you will maintain possession of the verdict forms.

1 You can give the bailiff the evidence to bring back
2 but you will maintain possession of the verdict forms
3 and I will receive those from you after you and your
4 fellow jurors return to the jury room for us to
5 receive that verdict or those verdicts. Okay.

6 Now I think that covers everything, but if it
7 doesn't I'm sure one of these lawyer will remind me
8 because I the got four of them there and I'm sure one
9 of them will remind me that I failed to provide you
10 some information that I should have and if I agree
11 with them I will bring you back. If I don't need to
12 you bring you back I will simply send word by way of
13 bailiff that you may begin with your deliberations and
14 in that event the bailiff will bring the exhibits as
15 well as the verdict forms for your use. And it looks
16 like it is noon and I don't know what time you all eat
17 lunch. While I assume all of you don't smoke I assume
18 all of you do eat. So we will provide you with lunch.

19 Where do you go for lunch?

20 THE CLERK: Pizza.

21 THE COURT: Pizza. Can everybody eat pizza, anybody
22 doesn't want pizza or can't eat pizza? Okay, good.

23 It will be pizza and you can pick out what kind
24 you want and the clerk will order. So when you go
25 back be thinking about what kind of pizza you want and

1 they well go ahead and order the pizza and bring it to
2 the jury room for your benefit. When your lunch does
3 arrive you can stop and eat, stop deliberating and eat
4 or you can eat and deliberate while you are eating.
5 That's up to you. I will not provide you any
6 instruction or rule about that. Okay, I think that is
7 going to cover it. Please go back but do not begin
8 deliberations until I send you word to do so. The
9 alternate juror can stay in the courtroom with me.

10 (WHEREUPON, the jury left the courtroom.)

11 THE COURT: Are you interested in having pizza for
12 lunch?

13 THE JUROR: I am fine with it.

14 THE COURT: Well, the reason I say that is you
15 don't have to stay because you can't deliberate
16 because the 12 are able to. But because you
17 participated I don't mind buying you lunch. In fact,
18 one of jurors might get sick after they eat their
19 pizza and then we might need an alternate. So the
20 bailiff will take you to another room. You will be
21 there by yourself. You can't talk to anybody about
22 the case because you might be called upon to come in
23 if a juror is unable to continue. But they will take
24 you to a separate room and then when the pizza arrives
25 they will give you your pizza too so let them know

1 what kind you want.

2 THE JUROR: Okay.

3 THE COURT: Thank you.

4 (WHEREUPON, the alternate juror leaves the
5 courtroom.)

6 THE COURT: Are there any exceptions taken to the
7 instruction or requests for additions to the
8 instruction by the State?

9 MR. PLEMING: No, sir Your Honor.

10 THE COURT: By the defendant?

11 MS. LIPINSKI: And Your Honor, I know you kind of
12 ruled on this pretrial, but I think it is an
13 appropriate time to put on it record. The defense
14 made a request during the jury charge conference to
15 have the lesser included offense of distribution
16 charge. We do believe there was evidence from which
17 the jury could find him guilty simply of distribution.
18 I think of the weight evidence would allow that. I
19 also -- the defense takes exception to the jury being
20 charged that they need only find him guilty of
21 possession or trafficking four grams or more. In the
22 Indictment clearly states 14 grams or more and the
23 State elected to proceed under that subsection of that
24 clause and we believe they should be held accountable
25 for that selection and that the lesser included

1 offense was inappropriate in terms of that and should
2 have been a guilty or not guilty on the trafficking 14
3 grams or more. So we would just put those matters on
4 the record. I understand you declined to make those
5 charges pretrial.

6 THE COURT: All right. Well, tell me how
7 distribution is appropriate? I mean, that's part of
8 what trafficking is is distribution, or delivery or
9 sell.

10 MS. LIPINSKI: I think if they rejected the
11 conspiracy evidence I think they could have found him
12 just guilty of distribution of what he distributed and
13 it didn't meet the weight requirements. I think there
14 is permutation of the evidence that would allow that.

15 THE COURT: What's the State's position on that?

16 MR. PLEMING: The only evidence on weight is 15.95
17 grams. If there were any evidence that the weight was
18 less then I would agree but because there's not I
19 think trafficking is the only appropriate charge.

20 THE COURT: All right. Miss Lipinski, the section
21 that they refer to or cite in the Hydrocodone
22 Indictment is 44-53-370 subsection (e) which is
23 exactly what I instructed the jury as to. I know that
24 they have some additional language in there about 14
25 grams and they have alleged that he had more than 14,

1 but I don't think that's necessary for a finding of a
2 verdict of guilty on trafficking. Because trafficking
3 in 44-53-370 subsection (e) just requires four grams
4 or more. So note your exceptions, however I decline
5 to provide any additional instruction.

6 All right. Let me ask you all to verify the
7 exhibits please before they go back.

8 Mr. Rudnick, were you satisfied with my instruction
9 based on your request?

10 MR. RUDNICK: Yes, Your Honor.

11 (Whereupon, the exhibits were sent back to the jury
12 room and they began deliberations at 12:08 a.m.)

13 THE COURT: All right, I am told the jury has
14 reached a decision. Are we ready to proceed?

15 MR. PLEMING: Your Honor, I will need to print out
16 a sentencing sheet. I just realized that. I don't
17 have one in the courtroom now.

18 THE COURT: Okay. All right, are we ready to
19 receive the jury's decision?

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

21 MS. LIPINSKI: Yes, sir, Your Honor.

22 THE COURT: All right. Bring them in please.

23 (WHEREUPON, the jury enters the courtroom at 1:35)

24 THE COURT: Now Mr. Foreman, have you and your
25 fellow jurors reached a unanimous decision as to the

1 each of the Indictments.

2 THE FOREMAN: We have Your Honor.

3 THE COURT: Have you reflected those decisions on
4 the back of the Indictments as requested?

5 THE FOREMAN: I have.

6 THE COURT: Have you signed your name as foreperson
7 and dated it?

8 THE FOREPERSON: I have.

9 THE COURT: All right. If you will please hand
10 those up by way of the bailiff.

11 THE COURT: You may publish the verdict.

12 THE CLERK: Indictment 2017-GS-46-00955 the State
13 versus Dinal Wayne Keith, indicted for trafficking
14 Hydrocodone, verdict guilty. Signed by foreperson,
15 dated today's date. Indictment 2017-GS-46-00956 the
16 State versus Dinal Wayne Keith, Indictment for
17 possession with intent to distribute Buprenorphine
18 verdict guilty signed by foreperson, dated today's
19 date.

20 Ladies and gentleman, of the jury if that be your
21 verdict so say you all by raising your right hand.
22 Let the record show all jurors his affirm this
23 verdict.

24 THE COURT: All right. All jurors have responded
25 in the affirmative. Does the defendant wish to have

1 have the jury polled?

2 MS. LIPINSKI: No, Your Honor.

3 THE COURT: Any other matters we need to address
4 with the jury present?

5 MS. LIPINSKI: No, Your Honor.

6 THE COURT: All right. Thank you, ladies and
7 gentleman. That is going to conclude your service not
8 just for the trial of this case but for the service
9 for the week. So I do want to take this opportunity
10 to sincerely thank you for your willingness to serve
11 as jurors this week and of course for your actual
12 service in the trial of the case. I do hope that
13 experience has not posed too much of a hardship and I
14 do sincerely hope that it has been an educational and
15 beneficial experience for you. Good news is you can't
16 be required to serve again in this Court for three
17 years, so enjoy your experience.

18 If you go with the bailiff back to the jury room
19 one more time they will take you downstairs and scan
20 your badges and they will let you know about your pay
21 vouchers and employer statements should you need one.
22 Okay. Thank you again for your participation.

23 (WHEREUPON, the jurors leave the courtroom.)

24 THE COURT: We will be at ease while you all
25 prepare the sentencing document.

1 (WHEREUPON, there was a brief recess.)

2 THE COURT: Anything further on behalf the State?

3 MR. PLEMING: No, sir Your Honor.

4 THE COURT: Okay.

5 MS. LIPINSKI: Just a matter of the record. At
6 this point we would ask for a motion notwithstanding
7 the verdict, renew all pretrial motions specifically
8 the Lyle and 404 motion. There's evidence that the
9 jury could have reached their verdict based on the
10 danger of unfair prejudice and then overcome by what
11 we have argued all along would be the unfair character
12 evidence presented by the State and for that reason we
13 would just renew pretrial motions and renew that
14 motion at this time to protect the record..

15 THE COURT: All right, each of most motions are
16 denied.

17 Anything else?

18 MS. LIPINSKI: Nothing else from the defense Your
19 Honor.

20 THE COURT: What about his history.

21 MR. PLEMING: Yes, sir, Your Honor. His prior
22 criminal history is as follows: 1981 DUI, simple
23 assault and battery; DUI, second offense in '84; DUI
24 third offense in '85; violation of South Carolina gun
25 law in '87; DUS in '87; assault and battery, operating

1 a gambling house. Received nine month sentence on
2 that in 1997. In 1996 simple possession of marijuana.
3 In 1999, assault and battery with intent to kill. He
4 received a ten year sentence on that. In 2013
5 possession with intent to distribute -- well,
6 distribution conviction for Hydrocodone, first offense
7 and a PWID, a proximity charge. Received a 18-month
8 sentence suspended on 18-months probation. And also
9 convicted of possession of controlled substance in
10 unrelated offense.

11 THE COURT: Are you all in agreement he has got
12 two priors for purposes of enhancement.

13 MS. LIPINSKI: Yes, Your Honor. We do acknowledge
14 that.

15 MR. PLEMING: Yes, sir, Your Honor.

16 THE COURT: You all want to sign this sheet. On
17 the Indictment -- excuse me. Mr. Keith, do have
18 anything you want to add?

19 THE DEFENDANT: No, sir.

20 THE COURT: Indictments 2017-955, an Indictment for
21 trafficking in Hydrocodone wherein you have been found
22 guilty by the jury for that offense the sentence is
23 you be confined to the South Carolina Department of
24 Correction for a period of 25 years and pay a fine of
25 \$100,000. Indictment 2017-956, possession with intent

1 to distribute Buprenorphine, third or subsequent
2 offense wherein you have been found guilty by a jury
3 the sentence is you be confined to the South Carolina
4 Department of Corrections for a period of 20 years.
5 Those sentences are concurrent. Give him credit for
6 any time he is entitled to pursuant to the 24-13-40.

7 MS. LIPINSKI: Thank you, Your Honor.

8 MR. PLEMING: Thank you, Your Honor.

9 THE COURT: Mr. Keith, you have a right to appeal
10 the decision of the jury and the sentence of the
11 Court. You must file any notice of your intent to
12 appeal those decisions within ten days of today's
13 date.

14 THE DEFENDANT: All right. Thank you.

15 (END OF TRANSCRIPT)
16
17
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25

**YORK COUNTY MULTIJURISDICTIONAL
DRUG ENFORCEMENT UNIT**

To be utilized on search warrants, residential consent searches and any other practical applications. Read Constitutional Rights and Waiver of Rights to the group. Ask each person individually if they understand their rights and receive an affirmative response. Either have the person sign this form, or put "Unable" if they are unable to sign due to safety issues, or write in "Refused" if they have to sign. If a person is to be questioned, ask them if they don't mind talking with you.

Constitutional Rights

You have the right to remain silent. Anything you say can be used against you in Court. You have the right to talk to a lawyer for advice before answering any questions and to have your lawyer present during questioning. You have the right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of appointing you a lawyer, but one will be appointed by the Court for you if you wish. If you wish, you may answer questions without the presence of a lawyer and you may stop answering any time you desire.

Acknowledgment of Rights

I have read or had read to me the statement of my rights shown above. I understand what my rights are and know what I am doing. I know that the person(s) talking with me is/are a police officer(s) and I understand what he/she is talking about.

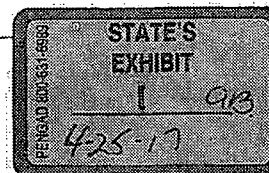
Case #: 201600014795 Incident Location: 403 Valley Haven Trail, Hickory Grove, SC

Date & Time: 4-28-16 7:45pm Officer: Gardner

Print Suspect's Full name, DOB & Address Suspect's Signature or Unable or Refused

Daniel Wayne Keith 5-10-58 (Daniel W Keith)

Sherry Lynn Brandon 2-8-65 Sherry L. Brandon



WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2016A4610200914

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 3-9-17

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 4/27/17

DOCKET NO. 2017-GS-46- 00955

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

MARCH 9, TERM 2017

THE STATE

VS.

DINAL WAYNE KEITH

INDICTMENT FOR

TRAFFICKING HYDROCODONE

SC Code: § 44-53-370(e)

CDR Code: 0287.06.07

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
2017 APR 27 PM 3:49
vs
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

INDICTMENT

At a Court of General Sessions, convened on March 9, 2017, the Grand Jurors of York County present upon their oath:

TRAFFICKING HYDROCODONE

The defendant, Dinal Wayne Keith, did on or about April 28, 2016, in York County, South Carolina, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of fourteen (14) grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, namely hydrocodone, as described in Section 44-53-190 or 44-53-210, or fourteen (14) grams or more of any mixture containing any of these substances, all in violation of 44-53-370(e), 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.


T. BLAINE PLEMING
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2016A4610200915

ACTION OF GRAND JURY**TRUE BILL**Foreperson of Grand Jury
Date: 3-9-17**VERDICT****GUILTY**Foreperson of Petit Jury
Date: 4/27/17

DOCKET NO. 2017-GS-46- 00956

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS**MARCH 9, TERM 2017****THE STATE****VS.****DINAL WAYNE KEITH****INDICTMENT FOR****POSSESSION WITH INTENT TO
DISTRIBUTE BUPRENORPHINE**SC Code: § 44-53-370
CDR Code: 0188.01.13

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

Defendant

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

Defendant**Witness:****C.C.C. PLS. AND G.S.**

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
INDICTMENT
2017 APR 27 PM 3:49

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on March 9, 2017, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE BUPRENORPHINE

The defendant, Dinal Wayne Keith, did on or about April 28, 2016, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase buprenorphine, a schedule III controlled substance, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976, as amended).

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


T. BLAINE PLEMING
ASSISTANT SOLICITOR

COUNTY OF YORK

STATE VS.

DINAL WAYNE KEITH

AKA: Dinal Keith, Dinal Keith

Race: White

Sex: M

Age: 58

DOB: [REDACTED]

SS#: [REDACTED]

Address: Valley Haven Trail

City, State, Zip: Hickory Grove, SC 29717

DL#

SID# SC00348461

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: **Trafficking Hydrocodone**

In violation of § 44-53-370(e) of the S.C. Code of Laws, bearing CDR Code # 0287

INDICTMENT/CASE#: 2017GS4600955

A/W: 2016A4610200914

Date of Offense: 04/28/2016

CDR Code #: 44-53-370(e)

CDR Code #: 0287

SENTENCE SHEET

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

T. Blaine Fleming, Assistant Solicitor

78406
SC Bar #

Defendant

Attorney for Defendant

704
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed — years and/or to pay a fine of \$ 100 provided that upon the service of — days/months/years and or payment of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for — months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: —☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ — plus 20% fee: \$ —— days/hours Public Service EmploymentPayment Terms: —Obtain GED: ☐☐ Set by SCDPPPS —Attend Voc. Rehab. Or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ — Beginning —\$ — Paid to Public Defender FundOther: —Recipient: —*Fine: —

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$201,715-

Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Aileen Butler

SCCA/217 (07/2016)

Presiding Judge: William J. HamiltonJudge Bar ID: —Sentence Date: 04/27/2017Judge Code: 205304/27/2017

COUNTY OF YORK

STATE VS.

DINAL WAYNE KEITH

CERTIFIED TRUE COPY

INDICTMENT/CASE#:

2017GS4600956

A/W:

2016A4610200915

Date of Offense:

04/28/2016

S.C. Code §:

44-53-370

CDR Code #:

0188

AKA: Dinal Keith, Dinal Keith

Race: White

Sex: M

DOB: [REDACTED]

SS#: [REDACTED]

Address: Valley Haven Trail

City, State, Zip: Hickory Grove, SC 29717

DL#

SID# SC00348461

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Possession with Intent to Distribute Buprenorphine 3rd or Sub. Offense

In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0188

☐ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

T. Blaine Fleming, Assistant Solicitor

78406
SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and or paymentof \$; plus costs and assessments as applicable*; ~~the balance is suspended with probation for~~~~months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.~~☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25§14-1-213 (Drug Court Surcharge) \$150 \$ 150§50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ \$

TOTAL

\$ 275☐ Appointed PD or appointed other counsel,

Proviso §61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Aileen Butler

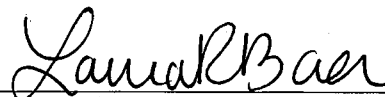
SCCA/217 (07/2016)

Presiding Judge: Judge Bar ID: Sentence Date: Judge Code: 205304/27/2017

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 18th day of July, 2018.

RECEIVED
JUL 18 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County
Honorable J. Derham Cole, Circuit Court Judge

RECEIVED
JUL 18 2018
SC Court of Appeals
RESPONDENT,

THE STATE,

V.

DINAL WAYNE KEITH,

APPELLANT

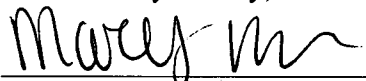
CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of July, 2018.



Tyler Cheney
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 18th day of July, 2018.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: May 12, 2027.